

REPORT TO: PLANNING AND TRANSPORTATION COMMITTEE –
13 FEBRUARY 2006

REPORT ON: MODERNISING THE PLANNING SYSTEM – THE NEW PLANNING
BILL

REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION

REPORT NO: 7-2006

1 PURPOSE OF REPORT

- 1.1 To review the new Planning Bill and propose this Council's response to the Scottish Executive.

2 RECOMMENDATION

- 2.1 It is recommended that;
- a the Committee agrees the initial comments it is proposed to forward to COSLA in order to enable them to give evidence directly to the Scottish Executive Communities Committee in response to the Bill at this time.

3 FINANCIAL IMPLICATION

- 3.1 There are no direct financial implications from this report.

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 The Local Agenda 21 implications of this report cover a very wide range of key themes, in particular transportation implications for new developments, issues of sustainable development, the efficient use of resources and minimising of waste and access to facilities, services, goods and people is not achieved at the expense of the environment and are accessible to all.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 No equal opportunities are associated with this report.

6 BACKGROUND

- 6.1 The Committee will recall that a report on the White Paper "Modernising the Planning System" (504-2005 refers) in September 2005 recommended that early action take place in order to be able to 'hit the ground running' when the new planning system is introduced and that it may be necessary to initiate some form of 'Shadow Authority' capable of taking forward the proposed 'Strategic Development Plan Authority' aspects of the White Paper proposals.
- 6.2 The Planning Bill was introduced to the Scottish Parliament on 19 December 2005 and will be taken forward by the Communities Committee. The Committee has already established a timetable for taking oral and written evidence. It is important that the Council be able to respond swiftly to any proposed changes to the substance of the legislation during that process.

- 6.3 Members will be aware that many of the provisions of the proposed new legislation are controversial and that there is likely to be significant debate over the provisions of the Bill during its progress through the Scottish Parliament.
- 6.4 From the White Paper it is clear that the type of issue likely to be the subject of debate would be the definition of 'Major' and 'Local' Developments and the corresponding responsibility for dealing with appeals at either Local Authority or Scottish Executive level likely to be identified in secondary legislation.
- 6.5 Much of the detail regarding specific provisions and implementation of the Bill will be contained in the secondary legislation only laid before Parliament after the Bill has been approved.
- 6.6 Comments on the specific provisions of the Bill are contained in Appendix 1 to this Report and it is recommended that these are forwarded to the Scottish Parliament Communities Committee prior to the March 6 deadline for written evidence.

7 CONCLUSIONS

- 7.1 Dundee City Council in general supports the proposed changes to the current Planning System. The Council however has some concerns regarding the details of the proposed legislation and these are highlighted in the Appendix to this report.

8 CONSULTATIONS

- 8.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance) and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

9 BACKGROUND PAPERS

Rights of Appeal in Planning: A Consultation Paper, Scottish Executive, April 2004
Making Development Plans Deliver: A Consultation Paper Scottish Executive, April 2004
Modernising the Planning System, Scottish Executive, June 2005

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APPENDIX 1 - PLANNING (SCOTLAND) BILL (AS INTRODUCED TO THE SCOTTISH PARLIAMENT 2005)

Bill Clause	1997 Act Clause	Provision	Summary of Council's Comments on White paper	Comments and Recommendations
1	3A (New)	<u>National Planning Framework (NPF)</u> Scottish Ministers to prepare "a spatial plan", known as the NPF. It must contain a strategy for Scotland's spatial development and a statement of priorities. It may contain other matters and classes of "national development". It is to be kept under review.	The proposed strengthening of the existing NPF was welcomed. However, the Council was concerned about the adequacy of scrutiny arrangements in Parliament and in particular in the context of "national" category applications.	It is not entirely clear how the NPF will define "National Development" as this will be one of the tasks of the NPF and not Secondary legislation. The definition of what constitutes "National Development" must be made clear and should be limited to develop which is truly national in scale and nature. This is an important issue to resolve to ensure that there is no unnecessary involvement by Ministers in developments that should be for the determination by locally elected members.
	3B (New)	<u>NPF Parliamentary Consideration</u> Ministers are to lay the NPF before parliament for a period of 40 days. Ministers are to have regard to any resolution or report from the parliament in adopting the final NPF.		The adequacy/inadequacy of parliamentary and particularly public scrutiny needs to be examined.
	3C (New)	<u>NPF to be laid before Parliament</u> The NPF, or revised NPF to be laid before parliament and finalised, accompanied by resolutions or reports under Section 3B and a report on any changes made.		No comment.

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2	3D (New)	Part 2 (Development Plans) completely repealed and replaced to include provision for STRATEGIC DEVELOPMENT PLANS and LOCAL DEVELOPMENT PLANS.	The Council indicated that it had consistently supported the changes to the current system of strategic planning in Scotland.	No comment.
		<u>Sustainable Development</u> Planning authorities must exercise the Development Plan function with the objective of contributing to sustainable development. Ministers may issue guidance.	The Council was concerned at the introduction of Strategic Environmental Assessment of Development Plans.	This is a new and important provision which mirrors that of new legislation in England. The Council welcomes the pursuit of sustainable development through the development plan function. These principles require to be embedded in both the Strategic and Local Development Plans. In particular the principle of the re-use of brownfield land over the release of greenfield land for housing should be emphasised to minimise commuting within SDPAs.
	4	Strategic Development Plans (SDP) <u>Strategic Development Plan Authorities SPDA</u> Ministers are to designate, by an Order, planning authorities which are to jointly prepare an SDP. Ministers may direct that an employee of a constituent authority is to manage the SDP and that other employees are to be assigned. The group to be known as "Strategic Development Planning Authority" and the manager "Strategic Development Plan Manager".		The detailed arrangements are to be set out in Secondary Legislation (Order) however the White Paper has already indicated that the Constituent Authorities for the Dundee City Region are Dundee City, Angus, Fife and Perth and Kinross Councils.

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	4 (continued)			<p>Whilst the appointment of the SDP manager has been set out in the Bill the arrangements for the appointment and status of other staff requires clarification. Is there to be a dedicated team to prepare the SDP? What powers will the SDP Manager have in terms of appointing other staff? In order to ensure the proper and timeous preparation of the SDP the status and powers of the SDP Manager require to be clarified.</p> <p>In addition, the issue of the SDPA having powers to ensure that each authority complies with the SDP when determining planning applications needs to be more fully considered.</p>
	5 (New)	<p><u>Strategic Development Plan Area</u></p> <p>SDP Authority to submit plan of area within 3 months for confirmation by Scottish Ministers. An individual planning authority may modify the boundary.</p>		<p>The 3 month timescale to agree a "Plan Area" between the authorities constituting the SDPA is considered to be rather optimistic. This timescale requires to be extended or authorities given the opportunity to start work on defining the "Plan Area" prior to the official designation of the SDPA.</p>

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	6 (New)	<u>Redetermination of Boundary</u> An SDP authority may submit an amendment to the area at any time.		The detailed arrangements for the preparation, submission, examination, approval and adoption of SDPs are to be set out in Secondary Legislation (Regulations) and therefore it is not possible to fully assess at this stage the full implications for the Council.
	7 (New)	<u>Form and Content of SDP</u> SDP is to include a vision statement, a spatial strategy, analysis of relationship to adjoining areas and other matters to be prescribed. An SDP must include maps, diagrams etc. The vision statement is to cover physical characteristics, principal land uses, demographics and infrastructure.		No comment.
	8 (New)	<u>Preparation of SDP - General</u> SDP is to take into account NPF and other matters to be prescribed. Ministers may direct completion date.		No comment.
	9 (New)	<u>Main Issues Report for SDP</u> "Main Issues Report" to be prepared to include general proposals for development and such general proposals as constitute reasonable alternatives. The report is to be informative and accessible and should indicate likely areas of policy change. SDP authorities to consult "the key agencies" (defined in Section 23D), adjoining planning authorities and others to be prescribed. It is the duty of a key agency to co-operate. The opportunity for representations shall be made.		No comment.

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	10 (New)	<u>Preparation and Publication of SDP</u> SDP to have regard to representations to the main issues report, and to be sent to each key agency and persons responding to the main issues report and to be the subject of consultation as prescribed. Six week period for representations. The plan may be modified prior to submission to Ministers, along with a Consultation Statement and a copy of the proposed action programme for the plan. A modified plan may not be submitted if the modifications change the underlying aims or strategy - a new plan must be prepared. The modified plan is to be published for representations at the same time as submitting to Ministers.		The duty on "Key Agencies" to co-operate with the SDPA in Plan preparation and action programmes is welcomed. However, it is essential that these agencies are required to contribute fully within the very tight timescales for SDP preparation and are committed to the delivery of the proposals contained within the SDP.
		Replacement plans must be submitted to Ministers within 4years of the approval of the previous one. Key agencies to co-operate in the preparation of SDPs.		
	11 (New)	<u>Alternative Proposals</u> Individual authorities may submit alternative.		No comment.
	12 (New)	<u>Examination of Proposed SDP</u> Examination to be held if any representations are not taken into account, or if alternative proposals (Section 11) are submitted, or if Ministers consider it appropriate. Appointed person (ie Reporter appointed by Ministers) to consider the outcome against the Consultation Statement. Regulations will prescribe procedures but appointed persons will determine the form of examination. Publicity arrangements for the examination direction and for		In undertaking consultations and preparing the Consultation Statement, potential delays can occur if the Reporter undertaking the inquiry determines that the Statement is unsatisfactory. It is therefore important that Council's undertake full an structured consultations to avoid criticism and delay.

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		the appointed person's report are set out.		It would be preferable, however, if validation of the Consultation Statement could be made at an earlier stage in the process.
	12A (New)	<u>Examinations Under Section 12(2)</u> If the appointed person is not satisfied with the outcomes in relation to the Consultation Statement, he/she may recommend further steps for consultation, prior to the full examination continuing. Authorities may make representations to Ministers on the Reporter's findings. Ministers may direct further steps. Further modifications may be made prior to examination.		The detailed arrangements for the preparation, submission, examination approval and adoption of LDPs are to be set out in Secondary Legislation (Regulations). Therefore, it is not possible to fully assess at this stage the full implications for the Council. This will also refer to the apportionment of costs although the costs of the Examination will be shared between Council's and the Scottish Executive.
	13 (New)	<u>Proposed SDP - Approval or Rejection</u> Ministers may approve the proposed SDP in whole or in part, with or without modifications, or reject it. Where there has been no public examination, modifications must be published for representations.		No comment.
	14 (New)	<u>Publication and Publicity for SDP</u> SDP authorities are to publish the "constituted" plan.		No comment.
	15 (New)	Local Development Plans <u>Form and Content of Local Development Plans</u> LDPs are to include a spatial strategy and such other matters as to be prescribed. Where the area is not	The Council gave only qualified support as this could add to the plan's complexity. It was uncertain whether or not it related to privately	This new statutory commitment to keep plans up to date is in support of the plan led system and to ensure that the relatively poor performance

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		within an SDP, the LDP is to set out a vision statement. Schedule of land ownership of planning authority to be included. LDP to include maps and diagrams etc. Any vision statement to refer to physical characteristics, principal land uses, demographics and infrastructure.	owned land.	of Scottish local authorities is turned round in support of the changes to the development management system. This will have resource implications.
	16 (New)	<u>Preparation and Monitoring of LDPs - General</u> PAs are to prepare LDPs for all parts of their district "as soon as practicable" following enactment and to review every 5 years. LDP to take into account the NPF and prescribed matters. Scope for subject plans and joint authority LDPs is retained. Consistency with relevant SDPs required. Authorities must submit a report to Ministers where they fail to meet the 5 year review deadline.		The schedule of land is to relate to "the occurrence of development on land owned by the planning authority". Procedural matters etc and to be contained in Secondary Legislation (Regulations).
	17 (New)	<u>"Main Issues" - Report for LDP</u> This section is identical to Section 9 for SDPs.		No comment.
	18 (New)	<u>Preparation and Publication of Proposed LDP</u> This Clause is broadly similar to Section 10 for SDPs, enabling Ministers to monitor consultation arrangements and the action programme.		Comments as for SDPs on previous page.
	19 (New)	<u>Examination of Proposed LDP</u> When submitting the proposed LDP to Ministers under Section 18, the planning authority shall request the appointment of a person (Reporter) to examine the plan where representations have not been fully taken into account. However, Ministers may require an examination for this reason anyway. As with SDPs (Section 10), the appointed person		The Reporter will be appointed by Ministers not LAs as at present. The format of the examination of the LDP is to be at the Reporter's discretion. In addition, the Council will be obliged to amend the LDP in accordance with the Reporters recommendations.

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		shall firstly examine the outcome of the plan against the intentions of the consultation statement and further procedures may be required.		This is not a requirement for preparation of Local Plans at present. It is considered that this is unnecessary involvement by Ministers (through an appointed Reporter) in what are essentially local issues for determination by locally elected members.
	19 (New) (continued)	With regard to the appointed person's report on the examination, the planning authority shall make such modifications as are recommended or such other modifications as are requisite having regard to the report, and publish them, subject to the Strategic Environmental Assessment. Within 3 months of the report, they must subject all the modifications, a statement explaining why modifications are not made where contrary to a recommendation, the proposed plan, the report, an environmental assessment and the advertisement used to advertise the modified plan to Ministers.		Co comment.
		<u>Further Provisions for Examination Under Section 19 (4)</u> This section is similar to Section 12A for SDPs dealing with modifications as a result of initial scrutiny of the appointed person against the intentions of the consultation statement.		No comment.
	20 (New)	<u>Constitution of LDP</u> Includes the adoption procedure, a 28 day period of notice, Scottish Ministers' powers of direction where they consider the plan is unsatisfactory including		Comments as for SDPs above.

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		directions to modify or directions to call-in the plan.		
	20A (New)	<u>Publication and Publicity for LDP</u> This Clause is similar to Clause 14 for SDP.		These powers of intervention may be viewed as an over involvement by Ministers in what is essentially a matter of local concern for elected members.
	20B (New)	<u>Development Plan Schemes</u> DPS to be prepared by each strategic development planning authority and by each planning authority when required by Ministers or at least within a year of preparing any Development Plan. The scheme is a programme which includes timetabling, stages of preparation, consultation intentions. The form and content may be the subject of regulations.		Appears to be a means of local authorities committing themselves to a plan preparation Timetable. Although Regulations will determine form and content there is no statutory provision for submission to Scottish Ministers.
	21 (New)	<u>Action Programmes</u> Action programmes will be required for all SDPs and LDPs. Consultation is required with key agencies and prescribed bodies, who must co-operate. The form and content of procedures may be the subject of Regulations. An authority shall adopt and publish an action programme within 3 months of the date on which the plan to which it relates is constituted, and must keep it under review when required by Ministers or at least every 2 years.		Although copies must be sent to Scottish Ministers there is no provision for SM's approval. No provision for general public engagement.
	22 (New)	<u>Supplementary Guidance</u> Both strategic development planning authorities and planning authorities may adopt and issue Supplementary Guidance in connection with relevant Development Plans. Procedures for consultation and adoption and the matters to be covered may be the		It may be felt that this is an unnecessary involvement by Ministers in what is essentially a local issue for determination by elected members. It would appear from Clause 24

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		subject of Regulations. The principles covering publicity and consultation are set out. Supplementary Guidance must be submitted to Ministers and may not be adopted for at least 28 days. Ministers may direct an extension of time, modifications or that the supplementary guidance shall not be adopted.		below that SPGs are to be a component part of the Development Plan.
	23 (New)	<u>Disregarding of Other Enactments</u> Representations concerning matters relevant to trunk road orders, special road schemes, orders for the public roads or new town designated sites may be disregarded for the purposes of main issues, reports and proposed Development Plans.		
	23A (New)	<u>Regulations for Development Plans</u> Regulations may cover the whole or part of Scotland and may deal with different cases. Ministers may direct authorities with regard to procedures and the provision of information.		No comment.
	23B (New)	<u>Default Powers of Ministers</u> Ministers are given powers to direct defaulting authorities, or to intercede, in the preparation of SDPs or LDPs in the event of specific time limits not being met or actions in any case not being carried out within "a reasonable period". In the case of an SDP, Ministers may authorise one of the constituent planning authorities to act in default of the joint action of the strategic development planning authority. Ministers are given powers to recover costs.		This seems to replicate the existing Section 22 and emphasises the power which Ministers have to facilitate development planning where LAs lag behind. Do not think the existing power has been much used.
	23C (New)	<u>Reviews of Plans in Enterprise Zones</u>		

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		A duty to review Development Plans following the designation of a new enterprise zone is continued.		
	23D (New) 24 (New)	<p><u>Meaning of "Key Agency"</u></p> <p>Key agencies, for the purposes of this section, are to be specified by ministers in regulations.</p> <p><u>Meaning of "Development Plan"</u></p> <p>The definition of Development Plan is updated and confirms to include both the SDP and the LDP, including Ministers' notices of approval or the planning authority's resolution to adopt, <u>together with any supplementary guidance</u> issued in connection with these plans. Schedule 1 of the 1997 Act concerning old Development Plans continues.</p>		It is crucial that the "Key Agencies" include the main providers of physical infrastructure eg Scottish Water. Without the commitment of these agencies the implementation of the proposals of the SDP will be severely undermined.
	25 (New)	<p><u>Status of Development Plan</u></p> <p>The existing wording associated with the primacy of the Development Plan is retained but clarification is also provided that, while the NPF is not part of the Development Plan, any reference to a national development in the NPF will require that related determinations will also have regard to relevant parts of the NPF. Otherwise, the NPF stands as material considerations. In the event of incompatibility between the NPF and the Development Plan, the latter is to prevail.</p>		See comment above regarding the status of SPGs.
3(1)	26 (2AA) (2AB) (New)	<p>Meaning of "Development"</p> <p>Ministers may specify in a development order that interior alterations (currently not development) shall constitute development where the gross floor space is increased.</p>	This provision was supported by the Council to cover off a loophole in the existing legislation in respect of mezzanine floors in major shopping	Noted.

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			developments.	
	(6) (Amended)	The application of planning control to inland waters for the purposes of controlling fish farms is extended to the offshore marine environment to a distance of 12 nautical miles.	No comment.	To bring the provisions of the Environment and Water Services Act under the ambit of planning control and to extend this control to 12 miles. Relates to fish farming only.
	(6)(C) (6)(D) (6)(E) (6)(F) (6)(G) (6)(H) (6)(I) (New)	New provisions regarding offshore planning control of fish farms including allocation of planning authority responsibilities, consultation with SEPA, a scope for secondary legislation and application to national parks.		
3(2), (3), (4)		Transitional and consequential matters arising from this section.		
4	26A (New)	<u>Hierarchy of Developments</u> In addition to national developments (defined in 3A(4)(b), "major developments" and "local developments" are to be defined by Regulations and Ministers may direct that any local development may be treated as a major development.		Scottish Ministers will determine in Secondary Legislation the classes of development to be assigned to each category of development except "national" (see above). The power of Ministers to direct should be noted.
5(1)	27A (New)	<u>Notification of Initiation of Development</u> New notice to be serviced by the intending developer on the planning authority. The planning authority to inform the applicant of the requirement when granting planning permission.	One of a number of measures introduced in support of the enforcement function. Welcomed by the Council.	Noted. However, the SE appreciate that consultation is taking place by the UK Treasury on the proposed introduction of a Planning Gain Supplement in support of the implementation of development. This may entail the submission of a similar commencement notice.

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	27B (New)	<u>Notification of Completion of Development</u> Notice of completion to be served on the planning authority "as soon as practicable after completion". The planning authority may require notices for each phase of a development.	As above.	
5(2)	123(1) (Amendment)	A further category of unauthorised development is added to this Clause for "initiating development without giving notice" in accordance with Section 27A (1) of this act.		A tidying up provision in relation to the above.
6(1)	32 (New)	<u>Applications for Planning Permission</u> This substituted section broadens the scope for Regulations and Orders relating to planning applications and specifically refers to the form and content of applications, the requirement for statements concerning access for the disabled and for pre-application consultation reports (Section 35C).		Much of the detail of the Development Management provisions will be contained in Secondary Legislation (Regulations and Orders). This clause facilitates this process.
6(2)	182 (2A) (New)	Similarly extends the scope of the advertisements regulations to specify the form and manner of consent applications.		Similar to above.
6(3)	PLBCA Act 9 (Amendments)	Similarly extends the scope of regulations concerning the form and manner of applications for listed buildings and conservation area consents.		Similar to above.
7	32A (New)	<u>Variation of Planning Applications</u> Planning authority may not agree to vary an application if the variation would result in a substantial change in the description of development. Regulations or development order to set out the circumstances for variations.		Although detail will be contained in Regulations and an Order this clause recognises confusion which presently exists when applicants vary applications before determination and authorities adopt different approaches to accepting such non-

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				approaches to accepting such non material amendments.
	32B (New)	Makes similar provisions with regard to applications referred to Scottish Ministers.		
8(1)	33A (New)	<u>Development Already Carried Out</u> Planning authority may issue a notice requiring the submission of a retrospective application.	As above.	
8(2), (3), (4)		Amendments to Section 123(2) and 146(1) clarify that issuing a notice requiring a retrospective planning application constitutes enforcement in the same category as breach of condition and that the notice should be recorded in the enforcement register (as should temporary stop notices, see Section 24).	As above.	
9(1)	34 (New)	<u>Publicity for Applications</u> This section is completely replaced with broader scope for Regulations and development Orders with regard to publicity to include publicity for Section 75 Agreements.		This is a tidying up measure with the addition of reference to the revised provisions for legal agreements.
9(2)	38(1)	Minor and consequential amendments.		Noted.

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10	35A (New) 35B (New)	<p>Pre-application Consultation</p> <p>Regulations are to prescribe classes of development for which prospective applicants must carry out pre-application consultation. The prospective applicant may serve a notice requiring an opinion from the planning authority on the need. The authority may request further information. The authority must respond within 21 days. An opinion on a cleared case holds for 12 months.</p> <p>(Compliance) "Proposal of application notice" to be made to the planning authority at least 12 weeks prior to the relevant planning application. The form of the notice, persons to be consulted and the form of consultation are to be prescribed by secondary legislation. The planning authority may require further steps for consultation by responding within 21 days.</p>	This measure was supported in principle by the Council although the White Paper did not make it clear whether the adequacy or otherwise of the consultation by the applicant constituted a material consideration in the determining of an application in this category.	These clauses introduce the broad principles of a procedure to be prescribed in Secondary legislation. For certain types of application to be set out in Regulations the authority will be asked to determine whether pre application procedures by the applicant are necessary and if they are what procedures are to be undertaken by both applicant and authority within defined timescales. Where pre-application consultation is required a report is received from the applicant outlining the measures taken.
	35C (New)	A pre-application consultation report is to be submitted with the relevant planning application.		The Bill, however, does not prescribe what should happen to an application where the applicant is in default in providing the report or where the report is considered to be unsatisfactory. Therefore, the Council's concern has not been fully answered in the Bill.

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11	36 (Amended)	<p><u>Public Information as to How Planning Applications Have been Dealt With</u></p> <p>The scope of planning registers is extended to include details of variations to applications, material considerations considered, pre-application consultation reports, statements of reasons for all decisions, Section 75 Agreements etc.</p>	The Council supported this and similar provisions in the White Paper for enhancing the level of public information resulting from the development management process.	The Council already operates a fairly full system of making planning information public. These requirements will therefore have minor impact.
12	36A (New)	<p><u>List of Applications</u></p> <p>Planning authorities are to maintain an updated weekly list of all outstanding applications, including variations (Section 32A (1), and proposal of application notices (Section 334B (2)(b)). The availability of the list is to be advertised in a local newspaper. Costs may be recovered from applicants.</p>	As above.	<p>As above. However, the mandatory publication of each weekly list in the local press could have a significant cost implication. The bill indicates that details will be contained in Regulations which may indicate how costs are to be recovered from applicants.</p> <p>The Council has already enhanced its web based facilities in this regard.</p>
13	38A (New)	<p><u>Pre-determination Hearings</u></p> <p>Planning committee hearings are given statutory status. While secondary legislation will set out prescribed classes of development and prescribed parties, procedures will be at the discretion of authorities.</p>	The Council gave qualified support to this and other methods of enhanced scrutiny of applications.	Noted. The definition of the classes of development involved will be set out in Secondary Legislation although procedures will be a matter for Councils. The Council already operates a system of hearings ("deputations") and this will require refinement to meet the terms of Secondary Legislation and to improve even further current arrangements.

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14	39 (Amended)	<u>Power to Decline to Determine Applications</u> Most of Section 39 is replaced to extend the power to decline to determine applications from cases which have gone to appeal in the previous 2 years to any case which has been refused within 2 years by the planning authority or by Ministers, and dealing with circumstances of twin tracking.	The Council supported this measure in the White Paper. However, the Council was anxious that the use of the term "similar" was defined.	Noted. A definition of the word "similar" referred to many times in this clause does not appear to be refined in the Bill.
15	43(1) (aa) (New) 43(1) (bb)	<u>Manner in Which Applications for Planning Permission are Dealt With</u> Ministers may direct planning authorities with regard to conditional grant of consent (avoiding the need for call-in). Further provisions allowing planning authorities to require supporting documents or evidence to be submitted with an application.	Whilst supporting this provision in principle the Council wished there to be a dialogue with the SE on the acceptability of the proposed condition. N/A.	The wording of the Bill appears to allow the authority a degree in accepting or not the terms of any Direction. Gives added weight in primary legislation to an important matter presently contained in provisions of the Procedure Order.
	43(1A)	This section includes the new requirement for authorities to give reasons for all decisions.	Supported by the Council.	
	43(3) 43(4)	New provisions for applications for modification or discharge of planning obligations under Section 75.	N/A.	A new provision relating to the amended Section 75 provisions.

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16	43A (New)	<p><u>Local Developments - Schemes of Delegation</u></p> <p>Each planning authority to prepare a scheme of delegation to officers with regard to local development or other applications for consent, agreement or approval. The powers delegated are specified to include determination of applications (Section 37), consultations and taking into account representations (Section 38), power to decline (Section 39), conditional grant of consent (Section 41), departure from conditions (Section 42) and mineral consent regime (Schedule 3). Any authority may rescind delegation for any application. The planning authority itself shall review any refusal, planning condition or non-determination by the delegated officer if required by the applicant ("local appeals"). The procedure for review is set out. There is no further right of appeal to ministers, other than for certain cases of deemed refusal.</p>	The Council strongly supported the range of proposals in the White Paper which would see a greater proportion of final decision making done at the local level. This is part of the White Papers package of measures representing an alternative to a third party right of appeal.	<p>The detail of this package of legislative reforms will be contained in secondary legislation (Regulations) and will have significant implications for how the Council undertakes its decision making duties in respect of planning and related applications. At the core of this will be a Scheme of Delegation which it must prepare and keep under review, and Regulations may specify its form and content and procedures for preparation and adoption. The Bill incorporates provisions which allows an authority to determine an application which would otherwise fall to be determined under delegated powers.</p> <p>The above will have implications for the extent to which the local Review Body will become involved. Regulations will guide the detail of this process.</p>
	43B (New)	<p><u>Matters Which May Be Raised in a Review</u></p> <p>No new matters to be raised in a review other than certain exceptions.</p>		This provision tends to emphasise the role of the Review body as undertaking a review of decision already taken rather than having the power to introduce or have introduced new evidence not previously before it when the decision was made under delegated authority.

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17	46(1A)	<u>Call In of Applications</u> A minor modification to call-in powers to allow directions to be withdrawn or modified.	N/A.	Appears to be a tidying up clause.
		<u>Appeals</u>		
18(1)	47(1A) (Amended)	Removes the right of appeal to Ministers in the case of delegated cases but allows an appeal to the Court of Session.	The provisions of the White Paper were supported in principle by the Council.	These provisions are designed to enable the new approach advocated above.
18(2)	47A (New)	Limitation of new matters which may be raised in an appeal.		
18(3)	237 (amended)	Amendments in relation to validity of certain plans, schemes, orders and actions in relation to the delegation of decisions by planning authorities.		
18(4)	239 (amended)	Consequential changes for proceedings for questioning the validity of Orders etc in relation to delegation of decisions.		
18(5)	267 (amended) 267 (1A) 267 (1B) (New)	Extends the scope of regulations to cover appeals and applications, irrespective of whether ministers hold an inquiry.		
19(1)	58 (Amended)	<u>Duration of Planning Permission</u> Planning permission to lapse after 3 years unless development has begun (instead of 5 years). Planning authorities may direct a different time limit.	This proposal in the White Paper was supported by the Council as a means of reducing the uncertainty for Councils and communities where permissions lie unimplemented for prolonged periods.	Noted. Brings Scottish Legislation into line with new legislation in England.
19(3)	PLBCA Act 16 (Amended)	<u>Duration of Listed Building Consent</u> Similar provisions with regard to listed building consent.		

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20	59 (New)	<u>Planning Permission in Principle</u> Replacement of the existing Section 59 to define "planning permission in principle" and time limits for the approval of conditioned matters (there is not reference to "reserved matters"). Application for approval of conditioned matters to be made within 3 years of permission in principle or 6 months of a previous refusal. A planning authority may direct a longer or shorter period than 3 years. Development must thereafter start within 2 years.	N/A.	This new provision appears to remove references to outline planning permission and reserved matters permissions and replaces them with a simplified arrangement for establishing the principle of a development and the submission of details. The proposal outlined in the White Paper which would have conveyed outline permission on the basis of a local plan allocation and on which the Council expressed concerns does not appear in the Bill.
21	41(5), 60, 61(1), 71(1), 88(5), 232(7) (amended)	<u>Further Provision as Regards Duration</u> Consequential amendments as a result of the above.	N/A.	Noted.
22	75 (substituted)	<u>Planning Obligations</u> Unilateral agreements included. More specific arrangements for financial contributions are included. An obligation can have effect on a specified date or event. Registration of the agreement is still discretionary; for any registered agreement, enforcement is clarified against owners, tenants, occupiers and third parties. Planning authorities are given direct action and cost recovery powers.	The Council supported the White Paper proposals for making the planning agreements process more open, accountable and understandable.	The Bill will introduce new provisions relating to unilateral obligations and other provisions to extend the scope and detail of Section 75 of the present Act. Secondary Legislation (Regulations) and Best Practice Advice is to follow.

Bill Clause	1997 Act Clause	Provision	Summary of Council's Comments on White paper	Comments and Recommendations
	75A (New)	New provisions for modification and discharge of obligations involving an application to a planning authority, with appropriate procedures.		
	75B (New)	New provisions with regard to a right of appeal to ministers in respect of determinations of modification and discharge applications, with appropriate procedures (including registration).		
	75C (New)	An owner, when ceasing to be an owner, does not necessarily cease to be bound by any planning obligations. New owners may be severally bound with former.		
23	75D (New)	<u>Good Neighbour Agreements</u> Any person may enter into an obligation, by agreement with a "community body" ie a community council or other body recognised by the planning authority with substantial connection with the land or an object to preserve the local amenity. The agreement may be registered and enforceable.	The Council gave the White Paper proposals now reflected in the Bill qualified support.	The Bill does not appear to answer the queries the Council had about the relationship between the contracting of a Good Neighbour agreement between a "person" and a "community body" and the statutory planning process, particularly the relationship between a proposed GNA and a proposal for planning permission and the role of the planning authority in enforcing the provisions of the GNA. It is however proposed that where no agreement can be reached between a "person" and a "community body" in brokering an amendment to an agreement the planning authority will have a decision making role. Provisions for appeal to Scottish Ministers on that
	75E (New)	GNAs may be modified or discharged. The planning authority shall decide on application made by either party in the event of disagreement.		
	75F (New)	Appeals procedure to ministers against the planning authority's decision.		
	75G (New)	An owner, when ceasing to be an owner does not necessarily cease to be bound by any planning obligations. New owners may be severally bound with former.		

Bill Clause	1997 Act Clause	Provision	Summary of Council's Comments on White paper	Comments and Recommendations
				determination role.
24	144A	<u>Temporary Stop Notices</u> (TSN General) A Temporary Stop Notice may be served to have effect for 28 days or less.	In considering the package of White Paper measures in support of more effective enforcement, the Council supported this provision.	
	144B (New)	(TSN Restrictions) Dwelling houses and prescribed activities to be exempt as are activities which have been going (not necessarily continuously) for 4 years, unless it relates to building, engineering, mining or the deposit of waste. Only one TSM may be served for any breach.		
	144C (New)	(TSN Offences) Contravention of a TSN is an offence which may be charged on a daily basis or longer.		
	144D (New)	(TSN Compensation) Anyone with an interest in the land is entitled to compensation for loss or damage attributable to a TSN only if a relevant planning permission or certificate of lawful use or development exists, or if a notice is withdrawn. Other provisions are identical to those for stop notices and further rights of entry for this purpose are added to Section 269.		
25	158A (New)	<u>Enforcement Charters</u> It is the duty of a planning authority to prepare an Enforcement Charter containing its policies and procedures. It must comply with guidance. It must be kept under review, published and sent to ministers and public libraries.	As above.	Noted. The Council already has an Enforcement Charter. However, it is appropriate that this is reviewed in the light of the provisions of the Bill.
26(1)	159	<u>Tree Preservation Orders</u> TPOs to be kept under review.	These provisions were supported	Noted. New TPO Regulations

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	(Amended)		by the Council.	containing details will follow.
26(2)	160 (Amended)	Powers expanded to include trees, groups of trees or woodlands or cultural or historic significant. Planning authorities must now be notified when a statutory undertaker or anyone operating in compliance with an act of parliament proposes operations on trees covered by a TPO. Ministers may by regulations prescribe the form of application for a consent under a TPO.	These provisions were supported by the Council.	Noted. New TPO Regulations containing details will follow.
26(3)	161 (Amended)	All TPOs to take effect immediately, removing the status of provisional orders under Section 163.		
26(4)	161A (New)	A new power to enter land for the purposes of affixing a TPO notice conspicuously where trees may be in imminent danger of felling etc.		
26(5)	164(2) (Amended)	Insertion of word "timeously".		
26(6)	168 (Amended)	Confirms that any replacement trees planted as a result of enforcement action in a TPO are also subject to the TPO.		
27	Part 11A (New) 241A (New)	<u>Correction of Errors</u> (Errors in Decisions) Ministers or an appointed person may correct a correctable error in a decision notice when requested to do so in writing by any person or where they have written to the applicant and written consent has been received. (Correction Notice) A correction Notice to be issued to the specified parties.	N/A.	These provisions enable Scottish Ministers to issue amended decision notices on appeal cases where corrections are necessary.

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	241B (New) 241C (New)	(Effect of Correction) In the case of corrected decisions, the date of the original decision is superseded by that of the corrected one. The new section clarifies that correction notices may be the subject of proceedings for questioning the validity of decisions.		
		(Supplementary) includes definitions of decision document, correctable error and applicant, for this purpose.		
	241D (New)			
28	Part 12A (New) 251A (New) 251B (New)	<p>Assessment of Planning Authority's Performance or Decision Making</p> <p><u>Assessment of Performance</u></p> <p>Ministers may conduct an assessment of a planning authority's performance, or appoint someone to do so.</p> <p><u>Assessment of Decision Making</u></p> <p>Ministers may conduct an assessment of how a planning authority deals with applications for planning permission, or may appoint someone to do so. Special regard will be had for conformity with the Development Plan or ministerial advice. Decisions assessed must be more than 2 years old.</p>	<p>The White Paper provisions relating to the monitoring of planning authority performance by Scottish Ministers was given qualified support by the Council requesting that the criteria for monitoring are realistic given the additional responsibilities and procedures required as a consequence of the proposed new legislation.</p>	<p>The clauses in the Bill are detailed and no mention is made of the publication of Regulations or an Order. The provisions give Scottish Ministers broad powers of scrutiny of planning authority patterns of decision making and may make an independent assessment. Following the publication of a report they may issue a Direction requiring the authority to act on the terms of the Direction.</p> <p>This therefore goes beyond the monitoring of statistical performance against prescribed targets or standards and again raises the issue of the unwarranted intervention of</p>

Bill Clause	1997 Act Clause	Provision	Summary of Council's Comments on White paper	Comments and Recommendations
				Scottish Ministers.
	251(C)	<u>Further Provisions</u> Ministers are required to notify the planning authority of any proposed assessment, to indicate its intended scope and who any appointed person is, with all reasonable access to facilities and information to be provided.		
	251(D)	<u>Report of Assessment</u> The assessment report is to be issued to the planning authority and may recommend improvements. The authority must provide a response report within 3 months. Reasons must be given for declining to implement recommendations. Ministers may direct compliance with the recommendations.		
29	252 (Amended)	<u>Fees and Charges</u> Planning application fee scales may be related to performance criteria by the planning authority. Regulations shall set out the procedural details. Different criteria may be applied to retrospective	N/A.	These extended provisions replace existing provisions in the Act concerning the framing of Secondary Legislation (Regulations) prescribing fees to be paid by applicants under the exercise of Councils development management responsibilities and picks up on the potential for the refunding of fees in respect of any default by authorities in the proposed contract arrangements for major applications. Amended Fees regulations should follow.

Bill Clause	1997 Act Clause	Provision	Summary of Council's Comments on White paper	Comments and Recommendations
30	253A (New)	<u>Grants for Advice and Assistance</u> Ministers may take grants to persons who provide advice and assistance in planning matters.	This provision was given support within the Council's broader consideration of measures for the Scottish Executive supporting Councils in undertaking their new responsibilities.	This provision relates to financial support which is to be made available to assist Councils in training recruitment and retention of appropriately qualified and skilled staff.
Part 9		<u>Business Improvement Districts</u> Sections 31 to 46 of the bill relate to new powers of a local authority in Business Improvement Districts (BIDs). The purpose is for the benefit of "those who live, work or carry on any activity in the district". Local authorities may act jointly. Funding powers are provided. BID arrangements, once made, are binding on local authorities. Local authorities shall keep their BID revenue accounts. BID proposals must be approved in a ballot of non-domestic ratepayers. Regulations will specify the scope and procedures for BID proposals. Vote conditions for approval by ballot must be met – majority vote in favour, a 25% turnout, the rateable value of property held by those voting in favour exceeds that of those voting against and the aggregate rateable value of all those voting is 25% of the franchise. A greater level of majority may be built into the proposal. A local authority may veto a BID proposal on grounds to be prescribed. Persons with an interest may appeal to ministers against the exercise of veto. BID arrangements will last for a maximum of 5 years and may be renewed. Ministers may make regulations for the alteration or termination of BIDs	N/A.	These provisions lie beyond the scope of mainstream planning responsibilities of Councils and are incorporated as facilitating measures for those Councils which wish to promote Business Improvement Districts under their economic development responsibilities.

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47	Schedule 1 (Amended)	<u>Old Development Plans</u> Detailed arrangements for how existing Development Plans will be superseded by strategic and local Development Plans.	N/A.	Noted.
48	16	<u>Further Amendments of the 1997 Act</u> Further amendments listed in this section are largely consequential eg the amendment of Section 30 (2) to allow the use of development orders to cover the allocation of developments to the different levels in the hierarchy (national, major, local). The revisions of Sections 237 and 238 concerning validity of plans etc and Court of Session challenge is extended to planning obligations and good neighbour agreements. New definitions are provided in the interpretation section 277 for the main new terms introduced.	N/A.	Noted.
49		<u>Further Amendment of the Listed Buildings Act</u> Amendments include deletion to reference in Section 69 of outstanding conservation areas. Scottish Ministers may in future grant aid to any conservation area. In addition, an amendment to the interpretation Section 81 adds a definition of "demolition" to include partial demolition.	N/A.	Noted.
50 51 52 53 54		Standard provisions with regard to the Schedule of Repeals, Interpretation, Supplementary and Consequential Provisions, Commencement and Short Title	N/A.	Noted.