

planning democracy



Planning Democracy's Response to the Planning Review Consultation Places, People and Planning

Our overall view

PD are concerned that the proposals in the Consultation Paper will not substantially improve public confidence or engagement in planning for two key reasons: 1. they *do not acknowledge existing power imbalances that have contributed to a growing democratic deficit within the system* 2. *They do not address the systemic barriers to meaningful participation that these imbalances create.*

The proposals do very little to increase the quality or quantity of engagement opportunities. The most significant proposal is to introduce a process of local place planning which has potential and may confer some greater community control over development. However, without proper resourcing throughout the system and an associated cultural change amongst professionals, this may just exacerbate existing shortcomings.

The proposals do not adequately address structural inequalities within planning and provide few additional rights for communities, notably no right to appeal decisions despite this idea once again receiving overwhelming public support.

In places the proposals also reveal a deeply worrying view of public engagement as a problem to be managed by experts rather than a core part of democratic decision-making about the use and development of land.

Beyond provisions related to public engagement, the Consultation offers few concrete ideas to ensure better quality development is delivered and falls some way short of the promise of a 'gamechanging' or 'root and branch review'. We remain concerned that this round of planning reform has been driven largely by the lobbying of the development industry and therefore mistakes short-term calls to increase the efficiency of decision-making processes for substantive improvement in the quality of planning outcomes. Good planning is complex and streamlining decisions for large scale developments will not necessarily serve Scotland's long-term interests. We are disappointed that, despite all the rhetoric, the proposals currently reflect a very limited view of the potential for planning to shape better futures for people in Scotland.

What is missing?

- a) The review seems too ready to accept that the failure of the planning system to allocate enough land for housing is at the root of Scotland's housing crisis. Appropriate levels of housing land should be made available but it is vital that this is done through democratic processes and ensures that sites are allocated in sustainable locations that will contribute to the creation of good places. It is disappointing that the review has not gone further to explore more radical solutions, such as how new forms of public land assembly and the effective taxation of betterment could fund better quality infrastructure and housing. Such changes could also help to promote a much needed change in the culture and practices of the housebuilding industry that currently profits far more from trading development land than it does from the quality of what is built on it.
- b) Whilst the review nods towards the need to join planning up with other areas of local policy-making, including community planning, community empowerment and land-reform there is no overarching vision to achieve this or exploration of the powers that would be required to deliver meaningful change. There is little concentration on how to develop a planning system whose performance is measured by the quality of the development delivered and the capacity the decision making process has to deliver sustainable development in the public interest, including how to introduce meaningful measures of performance in relation to community empowerment.
- c) The vital role of the planning system in enabling democratic debate about environmental change is worryingly absent from the Consultation paper. Indeed, the narrow focus on efficiency and housing means there is almost no mention of the environmental challenges we currently face and how planning can help to address these (and in places the tone of the consultation goes so far as to present environmental protection as a regulatory burden that needs to be reduced)
- d) Finally, we note that since the review was announced in October 2015, we have been spent considerable time (over 100 hours) providing written or oral evidence and attending events. Although the opportunity to be involved in the process is welcomed we feel obliged to point out that as a volunteer-run organisation without permanent or full-time staff this has placed a considerable burden on our resources. Our comments are not only based on our opinion, but reflect the many hours we spend responding to community inquiries, travelling around the country to workshops with communities and having detailed correspondence with people about their experiences of planning. However, we have to ask ourselves "to what purpose is all this hard work" Is anything of substance actually going to change as a result of our detailed input? Is anyone involved in the process willing to uncouple themselves from their fixed positions and accept another perspective? If our message is rather more challenging than you would like, will it be dismissed as another response that doesn't support already preconceived ideas of what the review will result in? The burden of this consultation is being felt even more keenly by many local community organisations and individuals who we know are struggling

with the huge complexity of the topics. The fact that many struggle with the terminology and technical detail doesn't negate their perspective and invalidate their input. The fact that people achieve putting in a response should be highly regarded, their time and input lauded and appreciated. Those who don't manage to respond, those who we know feel ill equipped to respond to this thesis of a consultation should be enabled in future. We acknowledge the workshops and outreach that has been carried out, however we request that the Scottish Government (SG) consider in future how such consultations as these can be designed to minimise the risk of further disillusionment by a) making the consultation process way more accessible and flexible with regard to how people can comment on specific issues b) by being prepared to reconsider proposals and statements that have been put forward in consultation, in response to community input.

1. Making plans that work

Key question

Do you agree that our proposed package of reforms will improve development planning?

Overall, the proposals seem a mixed bag that propose to tinker with the existing architecture rather than seeking fundamental improvements. Some ideas do seem to point in the right direction, but lack convincing detail on how this will be achieved (integration with community planning). Others seem to be based on worrying tendencies towards centralisation (loss of SDPs) and streamlining (cutting MIR).

There is too little fundamental thinking about 1. why the much vaunted idea of a 'plan-led system' has never effectively emerged in practice in Scotland (i.e. the loose relationship between the plan and development management decision-making) 2. the trade-offs that plan production always generates and how they can be balanced (e.g. between detail and timely production, flexibility and certainty etc.) and 3. how to transform how plans are produced by introducing real innovation and experimentation.

Selected technical responses:

1. Do you agree that local development plans should be required to take account of community planning?

Yes, but it may require changes to the community planning act as much as legislation on land use/ spatial planning. Currently under the legislation (The Local Government in Scotland Act 2003)

"There is a duty under the act for certain public bodies to participate in the process. These currently include NHS Boards, the Police, the Fire Service, the Enterprise Network (Scottish Enterprise and Highlands and Islands Enterprise) and Strathclyde Passenger Transport Authority. While the Act is not prescriptive on who is involved, effective partnerships should bring together other local, key participants, including the voluntary

sector and community representatives where appropriate. Their interest will span a wide range of issues including health, education, community safety, transport and others, acting as a bridge or link between national and local priorities”.

This could be strengthened so that the duty for certain bodies to be required includes planning representatives. However, legislation is one thing and meaningful delivery is another. Not least how will planners find the resources to take part in community planning processes, but how will the relationships be made to work together and who will have priority?

This requires additional capacity within a planner’s workload, when the review already places increasing pressure on planners to deliver more up front work on development plans. Planners will be required to develop new skills and understanding of a process with a different emphasis and culture,. Consideration is required for what incentives can be put in place to encourage staff to work in a collaborative manner with community planning partnerships.

Planning now relies on the market to determine what does and doesn’t get built. The whole tenor of the planning review plays to the tune of market driven priorities where the main customer is the developer. Community planning and indeed local place planning are arguably driven by locally determined needs, where the main customers of the system are considered to be the community. How will the new requirement to take account of community planning overcome the conflicting priorities of the different partners and the tension between the very different drivers and approaches?

In addition, in many ways both community planning and land-use planning are highly-professionalized processes, remote from the communities they claim to serve. A much more ambitious challenge would be to join-up or integrate these processes at a local level *with* affected publics. This would require a commitment to working with and developing real community development skills and an enabling approach focused on empowering people to understand and respond to the challenges they face.

Throughout the whole review process there is a denial of these different cultures/ drivers/ approaches. On the one hand the review purports to deliver better community empowerment, on the other it wants to satisfy the needs of the developers.

2. Do you agree that strategic development plans should be replaced by improved regional partnership working?

We are concerned that the abolition of SDPs will 1. Lead to an effective centralisation of more planning policy 2. Create informal, ad-hoc and therefore much less transparent and accountable processes for strategic plan-making that will make it much harder to exert

democratic control over decisions and 3. Without additional support will be likely to further stretch existing resources and capacity in local planning authorities.

This is not to argue that SDPs are perfect. However, building on the capacity and knowledge developed since their introduction seems preferable to removing them altogether. If properly resourced far more could be done to ensure that they engage meaningfully with all stakeholders including affected publics. One method that could be employed – for example to address the contentious issues like housing land allocations – is citizens’ juries. These are used in Australia and Canada to provide a means of community input to issues of significant public interest.

2(a) How can planning add greatest value at a regional scale?

Regional scale planning should enable strategic decisions to be made about major infrastructure and preferred development patterns. This should be established through inclusive debate between all affected parties. The value of such strategic-level coordination can be diffuse and hard to measure. However, the SG could do more to support evidence gathering about the benefits of developing effective, democratic strategic leadership.

3. Should the National Planning Framework (NPF), Scottish Planning Policy (SPP) or both be given more weight in decision making?

Greater statutory weight for the NPF seems another highly centralising prospect. The SG already has extensive powers to set national policy and to influence plans and decisions at lower levels. There seems little reason to extend this and any such move will likely undermine local democracy. A principle of subsidiarity should be applied to all planning decisions which should be made as freely as possible at the lowest possible level. Where a higher-tier authority seeks to direct local decisions (through NPF, SDP etc.) it is vital that all affected parties are fully included in decision-making and have rights of redress.

3(a) Do you agree with our proposals to update the way in which the National Planning Framework (NPF) is prepared?

PD have argued for some time that NPF preparation should seek to experiment with innovative deliberative techniques (see e.g. 4b below), acting as a showcase for the kinds of approach that might be adopted elsewhere in the system whilst also ensuring that all affected parties are fully and fairly involved in a national conversation about strategic priorities and choices.

4. Do you agree with our proposals to simplify the preparation of development plans?

There is an argument for simplification by limiting the stages of plan production, which could also make the current process more user friendly for communities, however this should not be confused with oversimplifying the engagement process. Planning Democracy

believe that the process should enable and indeed encourage communities to be much more prominently involved in the production of plans, including actually writing policies.

The loss of the MIR risks returning to situation where consultation on a draft plan forces planners into a 'decide, announce, defend' approach. This would be a step backwards in the level of sophistication of engagement that the Scottish planning system has now reached.

Community engagement is most effective when it is an ongoing cumulative process enabling understanding of issues to build and relationships and trust to strengthen over time so it is important to allow a more conceptual/ generalised stage at the start of the process. Individual engagement events should be planned and designed with this in mind and aim to contribute to the overall aims of the engagement process.

The principle of the MIR is therefore sound in so far as it entails engaging as early as possible to explore the issues that a plan should address. The challenge for LPAs is learning to do this in a meaningful way that people are able to engage with. Here as elsewhere, a commitment to prioritizing and resourcing engagement and to experimenting with a variety of potential techniques is required. Unfortunately, there is relatively little evidence of such experimentation to date.

4(a) Should the plan review cycle be lengthened to 10 years?

4(b) Should there be scope to review the plan between review cycles?

Finding the means to produce an up-to-date system of plans capable of leading development activity has been a continuous struggle throughout the history of the post-war planning system in Scotland and is clearly not an easy task.

It is clear from historical and international comparative experience that there are a number of tensions that must be considered and balanced or traded-off, for example: greater certainty from plans is likely to mean less flexibility to adapt to changed circumstances; greater speed of preparation is likely to be traded off against securing high-levels of involvement and buy-in to a plan (which can greatly increase its effectiveness).

In a rapidly changing world, a ten-year plan cycle is likely to prove impractical in responding to development pressures. It also further divorces development planning from local authority democratic cycles in ways that will do little to resolve the democratic deficit in planning or the challenges that planners have in responding effectively to corporate priorities and agendas.

Ideally plan periods should fit with other processes of strategic policy-making, generating increased integration and opportunities for broader and more inclusive engagement.

If plans are to effectively and legitimately guide development it is vital that they are produced in an inclusive way. A move towards ten year plan cycles highlights the limitations

of approaches to public engagement that insist that those who do not engage early in the production of plans should have less right to object at the development management stage, which could come eight-ten years after a plan was produced.

This highlights an important tension between moves to make plans longer-term, more strategic and more powerful in decision-making and the need to make sure that they are inclusive, adaptive and responsive. Any such change should only be made if strong new mechanisms to make development plans inclusive and responsive can be introduced and made to work.

The issue of how to incorporate local place planning into this long term system is also relevant if so much emphasis is being given to local place planning.

There is also considerable opportunity to at last realise the potential to adopt a more deliberative approach that enables more public involvement, particularly in deciding controversial issues such as housing allocations and energy policy. This could lead to a more empowering model of engagement that involves rather than consults the public, using techniques such as citizens juries that have been widely used in other controversial areas of public policy but not as yet in land-use planning.

Citizen juries and more deliberative approaches to resolving matters of controversy have been successfully introduced in Australia and British Columbia, Canada. The Canadian examples have also seen local referendums being used to allow local citizens to vote on whether the recommendations made by a more inclusive, community led committee should be adopted or not. Given the desire for accountable mechanisms of inclusion and decision making among communities throughout Scotland, PD believe that these should be given suitable consideration by the review committee. It should be noted that in Australia, citizen juries have been used to create a mechanisms to scrutinise the process and content of matters of controversy or of significant public interest (night-time economy or environmental concerns). Importantly they were comprised of a representative sample of the community (by lottery like jury service) who were given the mandate and remit to engage with professionals and experts in order to come up with their recommendations. The Scottish Government could also consider adopting such an approach for dealing with 'tricky', topics such as housing allocations, for example.

This would involve new skills, processes and ways of working but the long term benefits of better quality plans guiding sustainable development in line with agreed community aspirations could be substantial.

4(c) Should we remove supplementary guidance?

Supplementary guidance can be a useful means of developing important detail on particular issues without the statutory process implied by their inclusion in a development plan. The

use of such guidance should, however, be proportionate and should not be a means of avoiding full public and democratic scrutiny. All such guidance should be clearly listed and made available in the same place as the development plan. The SG should issue guidance and monitor the use of supplementary guidance but local authorities should retain discretion to develop such policy on issues of concern.

Wherever, possible the intention to produce such guidance should be consulted on as part of the development plan process, and citizen review panels (as suggested for 'gatecheck' plan examinations) could be involved in monitoring their production.

5. Do you agree that local development plan examinations should be retained?

Yes, since they provide an important opportunity for public scrutiny.

5(a) Should an early gatecheck be added to the process?

This could be a worthwhile idea but should be understood as a learning opportunity in the development of ideas rather than as a 'test of compliance'

5(b) Who should be involved?

There is a great potential here to create citizen panels to participate in early 'gate checking' examination of plans –a principle that could also be usefully extended to the make up of local review bodies that hear appeals

5(c) What matters should the gatecheck look at?

Key emerging or controversial issues and options for dealing with them through the plan and in relation to existing government policy could be looked at. These could be seen as an opportunity to explore creative and innovative policy responses.

5(e) Could professional mediation support the process of allocating land?

Site allocations should be determined by democratically determined plans for the sustainable development of settlements. At present too much of the site allocation process is determined by whether or not owners are willing to sell or develop land. This means that sites are allocated not on the basis of good strategy but on the basis of a next best fit and/ or of lobbying from development interests who stand to gain huge windfalls from the increase in land value that allocation and subsequent permission bring. What is really required therefore is a more effective means of ensuring that agreed plans can be proactively delivered (e.g. land assembly powers, betterment taxation to remove windfalls).

In this regard mediation is of secondary value and should not be considered a substitute for proper democratic debate to explore disagreements about spatial strategy and site allocations.

Mediation should also not be seen as a way of reconciling people to options they oppose in order to ensure a pre-defined answer to a question. At the moment any disagreement with

a default 'yes' to development is construed negatively in Scotland. 'Agreement' and 'consensus' are, however, not always possible or desirable and should not be the goal of planning processes – sometimes planning should be about enabling constructive disagreement.

Mediation also works under a fairly limited set of circumstances where all parties to a dispute have both something to gain from an agreement and a series of alternative positions that can be explored. This is not always the case in relation to site allocations which can more closely resemble a zero-sum game.

Further key principles for mediation are that the process is without prejudice and that mediators are impartial and independent. If the mediators are also planners a further principle of mediation could be construed as being undermined, where planners are now often seen by communities as having a bias towards resolving conflict in favour of development.

Provided these conditions can be met, mediation can and should be used. However, it should not be seen as a panacea and should be used with caution to ensure that the technique retains credibility in situations where it can really make a difference.

6. Do you agree that an allocated site in a local development plan should not be afforded planning permission in principle?

It is unclear that PPIP would bring substantial improvements. Designation in a plan already confers a sort of outline planning permission or presumption in favour of development.

PPIP could also lead to unintended effects, e.g. more time consuming conflict during plan preparation that would make it harder to produce up-to-date and relevant development plans.

Any such move would certainly need to ensure that it enabled the full democratic participation of affected communities. We therefore would not support this proposal without further assurance that all site allocations and PPIP have been adequately consulted on during the plan production phase. As happened with Hunterston in the NPF2 a late submission by a developer resulted in the public being largely unaware of a major development being included as a national development unless they had read an annex of the associated strategic environmental assessment. Any development plan that includes PPIP should ensure that no sites or permissions are allocated without proper consultation. These sites in our mind should also be subject to appeal by communities.

A further concern is around the requirements for EIA on these allocations. Has any research been conducted on this? The current research does not seem to cover the legal environmental requirements.

7. Do you agree that plans could be strengthened by the following measures:

7(a) Setting out the information required to accompany proposed allocations

If we are to continue planning based almost exclusively on a reactive call for sites (which we do not believe we should) then this process should be made as transparent and democratically accountable as possible with all details of site ownership/ options on land and proposed land-use digitally mapped, made publicly available and continuously updated so that communities and others are fully aware of potential development ideas and interests. This interactive register should also include details of all communication between public authorities and owners/ developers with regard to any particular site.

7(b) Requiring information on the feasibility of the site to be provided

7(c) Increasing requirements for consultation for applications relating to non-allocated sites

This proposal is important but does not go far enough. It is important because it recognises that the planning system can be used to incentivise certain types of desirable behaviour amongst developers and to disincentivise undesirable behaviour. However, this is a very weak incentive for developers to stick to what is in the plan. Providing a community right of appeal for anything outwith the plan would be a much stronger incentive that could powerfully reinforce the principle of a plan-led system. It is therefore surprising that the SG has been so hasty to dismiss this proposal without citing any evidence or allowing the issues to be debated.

7(d) Working with the key agencies so that where they agree to a site being included in the plan, they do not object to the principle of an application

Key agencies should be seen as an important, if not fully independent, check and balance on decision-making within the system. Due to culture-change and resource shortages their powers are already used much less than in the past. Whilst it is important that they are used proportionately this should be a question for the professional judgement of the agencies themselves who should retain the right to object where they identify potential harm. Given the level of discretion in the system and the lack of detail that often accompanies site designations in plans, applications can often raise issues that tip the balance of professional judgement. The agencies should retain the right to use their powers where this is the case.

2. People Make the System Work

Key question:

Do you agree that our proposed package of reforms will increase community involvement in planning? Please explain your answer.

We do not agree that they will make a substantial difference. It seems these proposals are trying to avoid the obvious resolutions to community involvement, which are to address the key power imbalances. Address these and resource and skill planners better and things could be improved substantially.

Whilst proposals for Local Place Plans could be a good step, the detail will matter a great deal. Beyond that, there are no proposals here that set out how to substantially improve community engagement in the production of LDP's or national plans and little evidence of desire to resource or experiment with innovative forms of engagement. There is also a suggestion that the review thinks of communities as sources of 'unreasonable protectionism' rather than as the core of the planning system.

Selected technical questions:

9. Should communities be given an opportunity to prepare their own local place plans?

We cautiously welcome this proposal as the idea of Local Place Plans is *potentially* empowering for local communities but much depends on the detail of implementation.

Key Concerns:

The tone of the proposal suggests a view of communities as likely to take 'unreasonable' positions: this is not a promising position from which to start.

Successful local place planning should be fully integrated with LDP production but also with community planning processes at the local level. This requires a step-change in modes of working within local authorities to ensure coordinated approaches to collaborating with and supporting communities in their production. The resources, skills and attitudes required to make this a success need careful attention, particularly the community development skills it will require of planning professionals.

The relationship between LPPs and LDPs should be seen as a negotiated one, rather than starting with a default understanding that the LDP should take precedence. There need to be concerted efforts to ensure that there is an ongoing conversation between local aspirations and LDPs, LPPs should be seen as one way of taking that conversation further.

Lack of resources to deliver decent plans. How communities will be resourced to develop their own Local Place Plans, particularly disadvantaged communities should be detailed before this proposal goes through. Communities should not be required to apply competitively for grants to achieve these plans. In England a near complete failure to address this issue in relation to Neighbourhood Planning has meant that they are almost exclusively prepared in wealthier communities with high levels of social and cultural capital (and quite often the assistance of locally based professionals)

If English Neighbourhood plan process is followed there is also a danger of a backdoor privatisation of planning through the need for communities to hire consultants to carry out certain process such as housing needs and character assessments. This is partly a product of the legal and procedural complexity of the process down south and efforts should be made to ensure that such barriers are limited in Scotland

The emphasis on charrettes to deliver community involvement is concerning and cynically could be viewed as providing more work for a range of planning consultants to parachute into communities using off the shelf tools of engagement, rather than understanding the community itself, using resources and skills already within that community eg third sector

agencies and community groups and assets. Other techniques should be explored as they can provide additional value and can provide better opportunity to iron out contentious issues.

It is also important that communities taking the time, effort and expense to produce such plans are reassured that they will be given due weight in local planning authority decision-making. As such, PD believe there is a strong case for any groups preparing local place plans to be granted a right of appeal against decisions that contravene an agreed or emerging plan.

9(a) Should these plans inform, or be informed by, the development requirements specified in the statutory development plan?

Given likely disjuncts in plan preparation timescales, they should be considered part of an ongoing dialogue with the LDP, each able to propose or, with agreement, to introduce changes to the other dependent on their stages of preparation.

It is also important that the LPP process is designed to support communities to understand development requirements and to think about how they can be incorporated within local areas.

Unfortunately, the tone of the Consultation Paper suggests a worryingly, negative view of communities as inherently protectionist instead of setting out a positive vision for LPPs as a means of building collective capacity and strengthening LDPs by more effectively incorporating community aspirations and engagement into them.

9(b) Does Figure 1 cover all of the relevant considerations?

10. Should local authorities be given a new duty to consult community councils on preparing the statutory development plan?

This seems like a reasonable idea to extend existing arrangements that apply to development management decision-making.

Incidentally many community councils complain to us that they are not treated as statutory consultees and are not notified about major applications. Suggests the need to ensure the current system is working.

10(a) Should local authorities be required to involve communities in the preparation of the Development Plan Scheme?

Is it not already an expectation under the engagement section of Circular 6/13?

If local authorities began to make use of revolving membership 'citizens' panels' of those already interested in planning issues (as per our suggestion with regard to LDP gatechecks and LRBs) these could be used to help shape the development plan scheme. Some limited wider public engagement may also be reasonable but there is a danger of over-consultation on issues of process rather than enabling real debate about matters of substance.

11. How can we ensure more people are involved?

In order to achieve the inclusive and effective community engagement you need to design the *whole system* around democratic decision making. Engagement needs to be a key priority not a mere add on, it's got to be believed in and bought into. Necessary preconditions of respect, trust and equality are vital to engaging anyone, let alone 'hard to reach' groups.

These pre-conditions also include providing communities with more leverage and power to ensure that community engagement is taken seriously. Of course, there are examples of good practice, however, these are the exception and not the rule. Perhaps most significantly, at present there aren't any consequences for developers or local authorities who don't engage with communities meaningfully or who actively seek to undermine or bypass local views. Until this is addressed then little is likely to change. At the moment, prevailing conditions and the culture of the planning system and development industry are such that there is little to incentivise or better still *require* that developers and local authorities do engage communities and attempt to understand their perspective.

To get more involvement the questions that need to be asked are

- "What would be required to get the planning and development sectors to change their behaviour towards community engagement?"
- "What can we do so that developers who do community engagement well, will be rewarded and those who don't, will face some sort of sanction?"
- "How do we create a culture where developers who contribute to the public good have nothing to fear from engagement?"

In general, there has been little examination of how the attitudes and behaviour of the development sector influences the possibility of more meaningful engagement - instead the focus is always on how engagement techniques or communities themselves need to change. This is important, of course, but on its own it's not enough.

There are too few incentives for developers to engage as communities have very little power, statutory minimum standards are low and the combination of discretion/ flexibility and the pro-development policy environment mean that planning applications are likely to be approved anyway.

It doesn't take a genius to identify where the real power lies, and to see the huge inequalities communities face. Seldom heard groups are well practised in living with these inequalities and can smell tokenism a mile off. You will never empower these groups and create a culture that they wish to engage with without firstly acknowledging and changing

the prevailing culture that frequently dismisses them from the start. Importantly you will not change it without recognising existing power imbalances and trying to tackle them.

If you really want public involvement you need to question whether the profit motive always justifies self-interested behaviour on the part of developers: too often it seems that the system assumes all development is in the public interest rather than developing strong and compelling ideas about the kinds of change required to improve places and people's lives. A developer's main aim is to make profits, not to empower communities, but the planning system also exists to regulate that behaviour and can be used to promote pro-social behaviour as a quid-pro-quo for hugely reducing the risk involved in development. There is little prospect that a large volume housebuilder is going to prioritise community engagement unless existing requirements and expectations are challenged and changed.

In this context, frontloading, whilst an attractive idea does not provide any guarantee to communities that they can influence the development plan for their area, let alone subsequent development management decisions. This lack of predictability means there is little incentive for individuals to get involved in development plan preparation, even if they are motivated enough to navigate the legal, technical and procedural complexities involved. And in this regard, there remains a clear expectation that people need to learn the language of planning, rather than developing a more genuinely enabling system where planners translate community wishes into planning terms.

Without some form of certainty that their efforts will be worthwhile and more proactive work and resources to build capacity, particularly amongst under-represented groups, only the highly-motivated will engage (often reinforcing an existing professional cynicism about the merits of engagement).

Providing some means to challenge decisions at the end of the process would help to deal with the first of these challenges, incentivizing people to engage in a development plan process. After all, why should anyone want to spend hours of their precious time engaging in a development plan consultation process if a developer can successfully gain permission, unchallenged, for a proposal that goes against that plan?

The second challenge requires real resources and commitment to better communicate with people about how and why planning matters and to make it easier for them to get their aspirations translated into plans and decisions. This is a major challenge that needs to be recognised and prioritised, particularly if social groups currently less engaged with planning are to be enabled to participate.

11(a) Should planning authorities be required to use methods to support children and young people in planning?

The emphasis on children and young people is welcome enough but is it really the major problem in terms of getting people involved in planning? Given existing resource restrictions it is hard to see this as a key priority except perhaps where children will be the main users of a proposed development. The RTPI and others should perhaps be encouraged to engage in

wider outreach and educational activities but this does not seem like something that should be a priority concern for the SG.

12. Should requirements for pre-application consultation with communities be enhanced? Please explain your answer(s).

The acknowledgement that PAC does not work well is welcomed, as is the recognition of the need for community feedback. However, unless there is a requirement and measurement of how well the consultation is done that materially influences decisions, there is unlikely to be any improvement. Training is always welcomed, but really until communities are recognised as the chief customer of the planning system and an equal player, developers / planners will continue to feel at liberty to do the minimum if they wish.

One further issue is that, despite being sold as a form of frontloading, PAC frequently comes after local planning authorities and prospective applicants have engaged in sometimes extensive closed door negotiations over a development scheme. This means it is frequently not that early a form of engagement at all.

The use of citizens' panels/ their members to be consulted at the earliest possible stage could be one means of introducing some more meaningful frontloading of community input and publicity, increasing transparency.

13. Do you agree that the provision for a second planning application to be made at no cost following a refusal should be removed?

Yes, but it could go further.

We recommend:

There should be a presumption against development in cases of repeat applications unless the applicant can prove material changes in the proposal or circumstances

Refusals based on the principle of a proposed development should lead to an automatic updating of the development plan to reflect a policy presumption against that form of development on the site in question. This would help to provide certainty and protection for communities.

- Devise a special category created by a refusal that flags up that particular types of development are not welcome on that site. Any subsequent application would then need to provide clear evidence as to why this no longer applied before it was validated

14. Should enforcement powers be strengthened by increasing penalties for non-compliance with enforcement action?

Greater resource and political will is needed to ensure developments comply with planning conditions and agreed environmental limits. Planning authorities need to be supported to take action.

- Greater emphasis should be placed on monitoring of conditions
- Where people living next to a development report breaches, their evidence, own monitoring and experience should be valued and acted upon.
- Authorities must be able to be more confident that enforcing the rules will not lead them into unnecessary legal disputes with developers.
- There should be a new emphasis on viewing planning permission and building control consents as a contract between a developer/operator and a public authority that is licensing certain activities. Where this contract is breached, action should be taken.

15. Should current appeal and review arrangements be revised:

Yes. PD have for some time been making the case for the introduction of a limited, equal right of appeal (ERA) for communities under certain circumstances. We believe that the SG has been too quick to dismiss the potential benefits of ERA and that, in abruptly closing down the space for debate without citing any detailed evidence, have reinforced a widely held perception that these planning reforms, like the planning system, is not being conducted on a level playing field.

PD believe that a system of appeals serves several related purposes in the planning system:

- a) A 'check and balance' on democratic decision-making that ensures fairness

Appeals provide a means of ensuring that planning powers are being used responsibly. Such a system of checks and balances is fundamental to democratic government.

- b) A scrutiny function to improve plans and decisions

Related to this, appeals also provide an important test of decision-making and decision-makers. The planning system in Scotland is highly discretionary. This means that unlike most other European countries, plans are not legally binding. If other 'material considerations' indicate that an application should be approved it can be.

This level of discretion in decision-making makes it plain that planning decisions are not objective but involve a high degree of subjective (and therefore political) judgement. This has contributed to long-running concerns about the quality of local authority decision-making and seems to be borne out by the fact that around half of the appeals made by applicants are currently upheld. All of which makes it important to scrutinise decisions to ensure not whether they are 'correct', but whether they can and should be improved. The suggestion that is sometimes made of removing *all* planning appeal rights would involve placing an awful lot of added confidence in decision-makers to get it right first time.

- c) A scrutiny function to ensure that policies and plans are being implemented as intended

All appeals are determined based on the planning merits of a case, using the same criteria as the original decision maker (essentially the provisions of the development plan plus any other 'material considerations'). This means that appeals also allow both central and local government to ensure that the policies and plans they make are being effectively implemented.

Any changes to existing appeal rights should be based on strengthening not undermining these principles. PD further believes that appeal rights can be used to shape how the wider planning system operates. For this reason we believe ERA could help achieve the following wider goals of planning reform/ the planning system:

ERA and public trust in planning

The consultation notes that levels of public trust in planning are low. ERA would not resolve these overnight but it would be a powerful symbol of change, introducing a welcome level of enhanced scrutiny and embracing a principle of equality between different parties in the planning process.

ERA and better decision-making

Scottish Planning Policy, the Governments' key statement of national policy, explicitly states that engagement can improve plans and decisions and lead to better outcomes. In the Republic of Ireland where so-called third parties do have such rights, 21% of the appeals resulted in refusal and 79% in a change of conditions. No appeal led to the same conditions and permission being grantedⁱ in 2015. This suggests that the SG is right. **At present in Scotland, however, whilst the 6% of all decisions that are refused can be appealed and therefore tested and improved, there is no such scrutiny of the 94% of decisions that are approved.** This suggests that a large number of 'weak' approvals are probably getting through the system. Significantly, evidence from Ireland also suggests that fears of a flood of vexatious appeals may well be misplaced. Whilst around 55% of appeals were brought by third parties this only represented around 3-4% of all applications and led to only 1% of applications being refused.

ERA and frontloading/ the plan-led system

The current argument goes that it is more important for the public to be involved early on in the planning process, and particularly during the preparation of development plans. The implication here is that allowing people more influence at the end of the process will discourage them from getting involved earlier on. The real problem in establishing a plan-led system, however, is the gap that exists between the plan and the decision in the Scotland due to the historical accident of 'material considerations'. As long as this remains the case, development management and not development plans will remain the key locus of

decision-making power and denying people rights at this stage will deny them access to the most important part of the system.

More than this, however, we believe that the incentive of knowing that any application that departs from an agreed plan would be subject to appeal would have the effect of incentivising both developers and communities to engage proactively in development planning processes. Significantly developers would also be discouraged from submitting speculative applications that are often a major cause of conflict and mistrust.

Given these potential benefits, PD argue for the introduction of a universal but restricted right of appeal for both applicants and any other non-commercial competitors who register a comment on a planning application.

Existing applicant appeal rights should be restricted. Applying only when applications that are in accord with the development plan are rejected, or decisions are made against an officer's recommendation (existing rights to appeal against non-determination and the imposition of planning conditions should remain).

A community right of appeal should at the very least apply to any group that makes a representation on a planning application but only in relation to applications that are approved despite departing from an agreed development plan, are made against an officer's recommendation or where the local authority has an interest in the land.

In the absence of an up to date development plan appeal rights should be extended to all parties, providing a powerful incentive to ensure relevant and timely plan preparation.

15(a) for more decisions to be made by local review bodies?

PD believes in an *independent* process for hearing planning appeals.

LRBs have not yet been robustly tested, partly due to market conditions and perhaps partly because local decisions are less likely to reach the courts. Criticisms of centralisation and a desire to localise decision-making are important and have a much broader resonance and significance in Scotland at present. However, if we accept that an important function of appeals is to provide an *independent* check and balance on democratic decision-making, it is important to question if local review bodies are fit for this purpose, at least as currently set up.

The LRB consists of elected members who have not been involved in a planning decision, however these members are part of the same body. This questions their independence, it is not merely an internal administrative review. Impartiality is difficult to ensure because you cannot guarantee that members have no knowledge of the appeal or contact with those making the decision. This does not provide the level of safeguards necessary.

The make up of Local Review Bodies should be opened to a wider and potentially revolving range of citizens and professionals on the model of the planning panels used in Victoria, Australia, the children's panels in Scotland. Alternatively, they could be modelled on the idea

of a citizen's jury moderated to ensure representation of technical and legal expertise and elected representation. Their decisions should be monitored by the independent DPEA.

15(b) to introduce fees for appeals and reviews?

15(c) for training of elected members involved in a planning committee or local review body to be mandatory?

We would welcome greater training and understanding of planning decisions made by elected members, however the LRB needs to be able to demonstrate independence and a more diverse make up, this is more important than training.

15(d) Do you agree that Ministers, rather than reporters, should make decisions more often?

Given the role of appeals in providing an independent check and balance on decision-making it is important that they constitute a "fair and impartial hearing" under the Human Rights Act. This function would be lost if more decisions were made by Ministers who set the policy framework within which decisions are made. PD therefore believes in a two-tier, independent process for hearing planning appeals.

More ambitiously, the DPEA should be made independent or attached to an environmental court and should deal with cases of national and major significance. It is important that cases are heard in public and offer a chance for all parties to have their concerns heard and addressed.

16. What changes to the planning system are required to reflect the particular challenges and opportunities of island communities?

The particular needs of rural communities may also be worth considering in this regard. For example local developments often have a bigger impact on rural areas, This might require closer monitoring of local developments in rural areas. Where development pressures are less predictable and dispersed across rural areas it can also be difficult for development plans to provide clear guidance on decision-making.

3. Building More Homes and Delivering Infrastructure

Key Question:

Will these proposals help to deliver more homes and the infrastructure we need? Please explain your answer.

The proposals start from the assumption that the planning system has slowed housing development but little or no evidence has been produced that convincingly makes this case. There has been little or no exploration of alternative explanations from development

finance to the structure and business model of the UK house-building industry. Before introducing reforms it is surely necessary to fully understand the problems they are seeking to address and to be convinced that change will tackle the causes of those problems.

Disappointingly the review has also failed to explore how more proactive planning powers might provide a much more effective way of delivering more and higher quality homes and infrastructure by tackling over-inflated land values and effectively ending the generous public subsidy to the development industry that stems from our failure to effectively capture betterment.

In general, the review presents housing requirements as a technical issue to be decided by experts rather than political decision about how society wants housing to be planned.

Selected technical questions:

17. Do you agree with the proposed improvements to defining how much housing land should be allocated in the development plan?

Housing figures cannot be determined through any objective technical means, any pretence at doing so is an attempt to depoliticise what are important societal choices. Instead figures need to be democratically debated as part of building a case for more housing and generating public understanding of why new development is needed, how and where it can best be accommodated within sustainable settlements.

The current housing crisis is, however, not simply a crisis of under-supply. Rather it is a much more complex problem related to the increasing financialisation of housing as an 'asset class' and a long term failure to fund and build affordable housing to meet social needs rather than market demands. The private sector has never built enough homes to meet societal need and it is worth questioning why it is assumed that they would do so today. Change in planning would be easier to accept if these wider issues were also being addressed, and land supply issues were being debated proportionately.

It is also important to point out that planning does not need to 'adapt to different market circumstances' but can play a positive role in shaping the kind of market we have. Housing markets are fundamentally different in other European countries where more proactive planning powers limit speculation in land-values and encourage a much richer ecology of house-building firms to compete directly on the quality of what they build. This leads to demonstrably better results in terms of quality and sustainability of housing and infrastructure. It is time we started to debate these issues in Scotland rather than simply repeating ill-founded myths about planning restrictions causing supply shortages. Indeed, despite claiming to seek a move away from the focus on housing numbers, the underlying assumption of the proposals is that by centralising targets and making their assessment more technical, the market will be freed to deliver the housing we need. This assumption is highly questionable at best.

Existing communities should not simply have to accept that large quantities of new development are required without this being fully explained and justified. It is also important to begin a conversation about why people see so little evidence of this improving

the quality of places or meeting the housing needs of their friends and family. We should be asking how the quality of development can be improved so that communities benefit from it. This is a challenge the existing housebuilding industry seem unwilling to accept, and the suspicion is that it often suits them to ensure that blame is placed on the planning system instead.

18. Should there be a requirement to provide evidence on the viability of major housing developments as part of information required to validate a planning application?

Viability assessment is not an objective or scientific process and, depending on a series of starting assumptions, assessments can be produced that suggest very different outcomes. We should not move to a situation where developers are encouraged to use viability assessments to argue down their contributions to necessary infrastructure and affordable housing as has unfortunately now become the norm in England.

19. Do you agree that planning can help to diversify the ways we deliver homes?

19(a) What practical tools can be used to achieve this?

Yes, but this can only be effectively done if planning is thought of in much more proactive terms as a means of planning and delivering democratically agreed development. As outlined above, the use of powers of public land assembly and selective disposal (for example in plots of varying size to favour a wider ecology of for-profit and not-for-profit/community builders) could enable planning to much more positively shape a diversity of approaches which, given the highly consolidated nature of the Scottish housebuilding industry, is otherwise unlikely to emerge.

20. What are your views on greater use of zoning to support housing delivery?

20(a) How can the procedures for Simplified Planning Zones be improved to allow for their wider use in Scotland?

SPZs may be one tool that can provide greater certainty about development. However, their very limited uptake suggests that there are real or perceived barriers to their use and effectiveness.

Any move towards more zoning needs to ensure that any designations are subject to full democratic scrutiny and debate. It is unlikely that charrettes, principally a design-tool, would be the most appropriate mechanism for enabling such debate. Rather, as argued elsewhere in this response, local authorities should be encouraged to experiment with various deliberative mechanisms and methods.

It is also important that simplified planning zones are not seen as a means of bypassing other forms of scrutiny, including environmental regulations. Finally, SPZs should not be a means of offering 'cut price' planning permissions by reducing the level of developer contributions for infrastructure and services.

21. Do you agree that rather than introducing a new infrastructure agency, improved national co-ordination of development and infrastructure delivery in the shorter term would be more effective?

A specialist infrastructure agency could develop considerable expertise and capacity that may be harder to sustain within the SG. This could and should include a remit for ensuring full democratic participation in infrastructure planning.

22. Would the proposed arrangements for regional partnership working support better infrastructure planning and delivery?

Not clear what if any public/community involvement there would be in the 'infrastructure and development delivery group'

22(a) What actions or duties at this scale would help?

23. Should the ability to modify or discharge Section 75 planning obligations (Section 75A) be restricted?

This seems sensible, assuming some flexibility may be needed if/ when market conditions change significantly

24. Do you agree that future legislation should include new powers for an infrastructure levy? If so, 24(a) at what scale should it be applied?

A levy could provide a more transparent and certain method of collecting some form of betterment, though it would need to be well integrated with development planning processes and not too complex a procedure.

More generally, this proposal ducks key issues around how infrastructure could and should be funded through either public buying of development land at existing use value (e.g. as farmland and not housing land), or proper taxation of the large uplift in land values that comes when land use is changed (e.g. when farmland becomes housing).

25. Do you agree that Section 3F of the Town and Country Planning (Scotland) Act 1997, as introduced by Section 72 of the Climate Change (Scotland) Act 2009, should be removed?

The SG needs to provide further detail on this. The Consultation does not provide a citation for the independent study it accredits. It seems important to establish if the lack of added value to date is due to the way the provision is being implemented (or not) by local authorities and developers, or its redundancy.

Stronger leadership and Smarter Resourcing

Key question:

Do you agree the measures set out here will improve the way that the planning service is resourced? Please explain your answer.

The major issue in this regard is one of resources. Planning services have been subject to significant funding cuts. There is little here that suggests a willingness or desire to commit significantly more public resources to planning. More generally, the case needs to be made in stronger terms that investment in better planning can yield long-term efficiencies in terms of preventative spend through ensuring e.g. good access to green space and leisure facilities, active travel options for public health etc.

Greater cost recovery from applicants is a second best option to proper public funding of planning services and, whilst necessary, should not come with any assumption that applicants, as paying customers, are any more important than other stakeholders planning services work with and for.

The SG needs to be careful that reform does not introduce additional requirements that further stretch already tight resources.

Selected technical questions:

27. What are the priorities for developing skills in the planning profession?

Greater understanding of community development skills is required, alongside recognition that this is a speciality of its own and that planners should be working with community development professionals. We recommend that training in the basics would enable planners to appreciate the requirements of community development. The skill deficit perhaps could be managed by working with community organisations within their areas, for example to deliver good quality community engagement on LDPs or support to LPPs.

28. Are there ways in which we can support stronger multidisciplinary working between built environment professions?

Multi-disciplinary working needs to be based on joining up service delivery in and for places, and should include an important dimension of working with communities and publics too. This will only become a reality through strong leadership and commitment across and beyond public agencies. An integrated approach to local place planning as a cornerstone of community *and* development planning could be a powerful mechanism to realise such goals. Without such a mechanism it is important to recognise how hard it can be to join up the different timescales and priorities of various actors.

29. How can we better support planning authorities to improve their performance as well as the performance of others involved in the process?

Planning departments must be better resourced. Many concerns regarding lack of efficiency raised by the review could be addressed by increasing resources to over stretched planning departments. It is also important to further develop and debate how performance is measured and monitored. At the moment, for example, there are no meaningful measures of effective community engagement. This means that it is easy for engagement to be dismissed as a secondary concern.

30. Do you agree that we should focus more on monitoring outcomes from planning (e.g. how places have changed)?

Yes this seems like a good idea, concentrate on the quality of development and places and the *capacity* of people to contribute to place-shaping .

30(a) Do you have any ideas on how this could be achieved?

Work with communities to decide how to evaluate plans and consultations. Currently the planning performance framework doesn't involve evaluation of consultation methods from a community perspective.

31. Do you have any comments on our early proposals for restructuring of planning fees?

A risk that needs to be avoided is that this will lead to further inequalities for communities as applicants' demand rights to a better service from paying a higher fee.

32. What types of development would be suitable for extended permitted development rights?

It may be worth looking at householder developments again but this was investigated quite recently. Too much extension of PD rights poses significant risks, as witnessed in the decision to extend office-residential use-class changes in England. Houses are now being routinely built on office sites that have not been subject to any assessment of their locational suitability, access to services and green space, environmental and space standards etc.

Such changes are based on a view of planning regulation as an unnecessary interference in the market, rather than a means of adding value to development and ensuring the creation of good places.

33(a) Should we make provisions on the duration of planning permission in principle more flexible by introducing powers to amend the duration after permission has been granted? How can existing provisions be simplified?

33(b) Currently developers can apply for a new planning permission with different conditions to those attached to an existing permission for the same development. Can these procedures be improved?

33(c) What changes, if any, would you like to see to arrangements for public consultation of applications for approvals of detail required by a condition on a planning permission in principle? 33(d) Do you have any views on the requirements for pre-determination hearings and determination of applications by full council?

In general terms, planning permission and conditions should not be subject to further change/ negotiation beyond the decision-making period.

For all of these questions it is vital that procedures respect the rights of all of those affected, particularly where members of the public have taken the time to participate in the decision-making process. It is therefore important that any flexibility, or powers to make changes or

discharge conditions etc. are transparent and suitable opportunities are provided to comment.

34. What scope is there for digitally enabling the transformation of the planning service around the user need?

Who is the user whose needs would be considered?

ⁱ <http://www.pleanala.ie/publications/2016/ar2015.pdf>