

[INSERT COMMITTEE]

ITEM [insert Item No. ]

[INSERT DATE OF MEETING]

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**REPORT BY REPORT BY HEAD OF HEAD OF PLANNING AND BUILDING STANDARDS**

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**PROPOSED RESPONSE TO PLANNING ENFORCEMENT REGULATIONS 2007  
CONSULTATION**

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**1 PURPOSE**

- 1.1 The purpose of this report is to seek the agreed position of the Council in response to the consultation on Planning Enforcement Regulations 2007.

**2 BACKGROUND**

- 2.1 As part of the implementation of The Planning etc (Scotland) Act 2006, the Scottish Government is proposing additional powers of enforcement and has published its proposals for consultation and comment.

- 2.2 The full text of the consultation can be found at:  
<http://www.scotland.gov.uk/Publications/2007/10/31093316/14>

### 3 RESPONSE TO CONSULTATION

- 3.1 The consultation document invites responses to a number of questions about changes to the enforcement process, and what follows are some observations on each of the matters raised. It is recommended that this should form the basis of the Council's response to the Scottish Government:-

**Q1. Do you support the proposal that penalties should be increased for continuing breaches and if not, why not?**

**Proposed Response:** The principle of penalties being increased for continuing breaches is a sound proposal; however, the mechanism being proposed is fundamentally flawed. The recipient of an original notice would have the right of appeal at the time of the service of that notice. When the notice is upheld the principle of the enforcement action would have been established. To require the service of a further enforcement notice before a further fixed penalty can be issued would be overly bureaucratic and could introduce unwarranted delays. In addition it would provide a further right of appeal which itself could result in confusion and obscuration of the original notice. This further right of appeal is not justifiable since the principle of enforcement has been established, and the facts of the breach remain unaltered. A system which would avoid the ongoing need to issue notices to accompany the fixed penalty would be preferable to the planning authority, and therefore a useable tool to add to the toolkit. A preferable approach would be for the mechanism to be incorporated within the original notice, so that all fixed penalty notices are derived from that original enforcement notice. It would then be a simple matter of the fixed penalty notices following on one after the other within a clearly defined time period until the maximum has been reached. Alternatively if a fix penalty notice must be accompanied by an enforcement notice then any subsequent enforcement notice should therefore not have a right of appeal attached thereto. If, by the time the final fix penalty notice has been served, the matter is still not resolved, there could then be an automatic referral to the Sheriff Court for disposal.

NB

Legal services are concerned that the wording of S136A(3) would mean any further service of a Fixed Penalty Notice would be incompetent since the facts of the breach remain the same and the steps or activities required will not change. The service of a fresh enforcement Notice would not change the steps or activities required since the original notice would presumably be comprehensive

**Q2. Do you have any views on the proposed amounts for the fixed penalty, in particular the proposed initial amounts?**

**Proposed Response:** A penalty of £1000 would be a major deterrent to a householder or small business, but will be unlikely to represent a significant disincentive to a large developer.

**Q3. Do you have any views on the proposed increase in the amount of each subsequent fixed penalty, in particular with regard to the number of FPNs that would be required to reach the maximum and whether the fixed penalty should increase by a larger amount for each subsequent offence?**

**Proposed Response:** The number of stages required to arrive at the maximum penalty of £5000 is excessive. Consideration should be given to reduce the number of steps.

**Q4. Do you have any views on the proposed level of information requested in the Notice of Intention Develop (NID) or any suggestions for other information, for example declaring that any suspensive conditions had been met, might be useful?**

**Proposed Response:** This is a sound proposal but in order to make it effective the developer should be required to list the names of all companies they have traded under during the prescribed period to avoid the unscrupulous developer changing the company name in an attempt to avoid prosecution. Developers should be required to list all developments undertaken within the prescribed period.

**Q5. Are you content with the proposed time limits for recording relevant enforcement action?**

**Proposed Response:** The proposed three year period is short and should be extended to 5 years.

**Q6. Bearing in mind that the purpose of the notice is to make people aware of the development and direct them to the appropriate contacts for further information, are you content with the level of information to be included?**

**Proposed Response:** For this to be effective a designated person within the company should be identified.

**Q7. Are you content with the proposed categories of development for which notices would be required to be displayed, and if not, why not?**

**Proposed Response:** In principle, the proposals are sound; however, the threshold for major developments may not be applicable within a rural context, including the Scottish Borders and the categories could be changed to include medium developments, thus recognising the impact that smaller developments have on sensitive areas.

**Q8. Do you consider this (means of displaying notices) sufficient, or would you like to suggest other criteria for the siting, display, size, etc, of these notices?**

**Proposed Response:** Given that it is common practice for professionals, including architects and engineers, to display a notice at a development site to advertise their involvement on a project, it is suggested that the notice should be displayed on a board of the same size (1200mm by 300mm) and material as these. The notice should be displayed in the same location as other professional notices and if more than one entrance exists a notice should be displayed at the principal entrance.

**Q9. Are you content with the proposed draft Regulations and if not, why not?**

**Proposed Response:** On the whole the proposed regulations would be a useful addition to the enforcement toolkit and should be welcomed

**Q10. Are there any other situations where you believe use of a Temporary Stop Notice should not be permitted?**

**Proposed Response:** No

**Q11. Do you wish to comment generally on the draft Regulations, RIA, EqIA, or other issues in respect of this consultation?**

**Proposed Response:** The introduction of a completion notice is to be welcomed; however, the proposal does not go far enough and would benefit from some strengthening. A developer should be required to apply for a completion certificate which would trigger an inspection by the planning authority, which would be able to sign off the works if they comply with the consent or refuse to issue the certificate until the works achieve compliance with the approved plans and conditions.

**Proposed Response:** A Temporary Stop Notice should be allowed to be served on newly completed dwelling to prevent occupation when conditions on the consent have not been complied with.

**Proposed Response:** The introduction of NID, Completion Notice and the requirement to display information has the potential to be quite resource intensive, which is likely to have staffing implications for local authorities.

**Proposed Response:** Consideration should be given to allow full recovery of all costs associated with enforcement action from the moment the case is first registered and not just from the implementation of direct action.

**Proposed Response:** Consideration should be given to bring Breach of Condition Notices (BCNs) into line with the proposals for enforcement notices both in terms of the maximum penalty for a fix penalty notice and to allow direct action to be initiated when a BCN is not complied with. This would overcome the necessity for two notices to achieve the desired outcome – namely remedying the breach.

**Proposed Response:** Consideration should be given to closing a loophole whereby two separate periods of appeal exist in relation to a retrospective application. In situations where a retrospective planning application is refused the planning authority would normally follow up the refusal with enforcement action to seek the removal of the unauthorised works. It can be the case that an enforcement notice is served within a few weeks of the decision to refuse the application being sent out, with the result that the applicant would have 28 days to appeal the enforcement notice and 6 months to appeal the refusal of planning. In some cases the applicant appeals both the notice and refusal together and in this situation no problems arise however in the case where the applicant does not appeal against the enforcement notice, the notice will then be valid, they then appeal the refusal within the 6 month period resulting in a situation which would prevent enforcement of the valid notice. The process would be simplified in situations were a planning appeal in respect of the refusal has not been submitted it must be submitted once an enforcement notice is served thus allowing the appellant to have both matters dealt with concurrently.

**Proposed Response:** In order to implement the proposals in a meaningful manner Local Planning Authorities will be required to provide additional resources to the enforcement teams and this cost should be met by the Scottish Government through the transparent addition of funding for this purpose to the General Revenue Support Grant.

## **4 CONSULTATION**

4.1 The Head of Legal Services, the Head of Corporate Administration, the Head of Corporate Finance and the Head of Financial Administration have been consulted and has no objection to the contents of this report.

## **5 FINANCIAL IMPLICATIONS**

5.1 There are no direct financial implications to the Council arising from this report. However, a number of the proposals contained in the paper are likely to have resource implications. It is not yet possible to quantify these costs and no information is yet available to indicate whether Council's will be expected to absorb these costs, whether additional funding will be made available from government, or whether costs may be met from another source such as an increase in planning fees. Recent indications suggest however that the Scottish Government expects planning authorities to apply planning fees solely to the processing and determination of applications and not to use these fees to cross subsidise enforcement services. In this context a clear indication of how enhanced enforcement services should be resources is required from the Scottish Government.

## **6 RISK COMMENTARY**

6.1 There may be a requirement to allocate additional resources to deliver the requirements of the new regulations.

## **7 ENVIRONMENTAL RISK**

7.1 None

## **8 EQUALITY**

8.1 There are no implications within the response which would impact on equality

## **9 SUMMARY**

9.1 The report sets out a response to the proposed recommendations in relation to the planning enforcement regime as it is amended by the Planning etc. (Scotland) Act 2006. In general, the changes are to be welcomed, subject to some suggested changes, which are recommended to be included within the Council's formal response.

## 10 RECOMMENDATION

10.1 I recommend that the information contained within the report is agreed as the Council's formal response to the consultation document.

### Approved by

Name	Designation	Signature
Brian Frater	Head of Head of Planning and Building Standards	[insert signature]

### Author(s)

Name	Designation
Alan Guedner	Development Control Enforcement Officer

**Background Papers:** Planning Enforcement Regulations 2007 consultation paper

**Previous Minute Reference:** [insert last Minute reference (if any)]

# REPORT CONSULTATIONS

Report Title:

Committee: **Development and Building Control** [Insert date]

## 1. MANDATORY CONSULTEES

<u>SERVICE</u>	<u>Date Sent</u>	<u>Date of Response</u>	<u>Considered by</u>
<b>LEGAL SERVICES</b> (Ian Wilkie)	21.02.08	28.02.08	Nuala McKinlay
<b>CORPORATE FINANCE</b> (Sandy Brown)	21.02.08	22.02.08	Andrew Mitchell
<b>COPROPORATE ADMINISTRATION</b> (Neville Dundas)	21.02.08		
<b>FINANCIAL ADMINISTRATION</b> (Alan Bowman)	21.02.08	25.02.08	Hugh Kinsella
Pamela Spink	21.02.08		
Nicola Patterson	21.02.08		

## 2. OPTIONAL CONSULTEES (depending on content of report)

<u>SERVICE</u>	<u>Date Sent</u>	<u>Date of Response</u>	<u>Considered by</u>
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