ENHANCED SCRUTINY

1. **Do you agree with the proposed categories of development to which the requirements for pre-application consultation apply?**
   The categories generally seem appropriate, provided that category 1 is not intended to include changes of use, which would seem disproportionate.

   Arguably, the categories referred to in Schedule 7 (Bad Neighbour Development) should all appear in this table, and it may also be appropriate to include developments over a certain threshold within conservation areas.

2. **Do you have any comments on the thresholds in Schedule 1 of the DMR on pre-application consultation?**
   The 5 house threshold seems very low even acknowledging that this will only apply to sites not identified for housing in the development plan. Many brownfield and infill developments will be larger than this but may not be contentious applications. A higher threshold of at least 10 units would be preferable.

3. **Is the information required in a pre-application screening notice sufficient?**
   A draft Design and Access Statement should also accompany the consultation.

4. **Is 21 days a reasonable period for authorities to respond to a pre-application screening notice in all circumstances?**
   In order to be consistent with other notification processes, 28 days might be more appropriate, and would enable proper consultation with any consultees, if required.

5. **Do you agree with the proposed content of the proposal of application notice?**
   Yes, but the success of the approach is likely to be the result of the proposed flexibility to allow additional consultation, as required.

6. **Are the requirements to notify community councils and neighbours if the proposal of application notice sufficient or should others be notified at this stage as a statutory minimum?**
7. **Do you agree with the minimum statutory requirements for pre-application consultation in regulation 8?**
   Provided that there is discretion for the local authority to seek consultation with other interest groups, where they exist, there should be no need to extend the statutory requirement.

8. **Do you agree with the requirements on the content of pre-application reports?**
   Yes; this may include any feedback invited as a result of the consultation exercise, e.g. exhibitions.

9. **Do you support the classes of development which will be subject to pre-determination hearings?**
   All parties already have the opportunity to comment on applications through existing procedures, and the added value achieved through hearings is therefore questionable; it is therefore suggested that they should be restricted to a minimum number of classes. Developments that are significantly contrary to the

development plan should not be subject to a mandatory pre-determination hearing or indeed that this category should necessarily be a committee decision. The important point is that any potential **approval** is subject to a committee decision and hearing. **Refusals** of "significantly contrary" proposals should be open to delegated decisions by officers. *NB. This point also needs to be cross referenced to the consultation on schemes of delegation.*

It is unclear from the consultation document or from the regulations when such hearings would take place, and who would be able to take part; the opportunity cannot be afforded to all those who made representations, as this would have the potential to prolong the decision-making process immeasurably and unnecessarily. We should not lose sight of the fact that the decision-making process and the body that makes those decisions should be independent, and thus able to make decisions without undue influence. Ample opportunity already exists for views to be made known through the current arrangements, and as hearings should not be an opportunity to introduce matters that have not already been made known through written representations, it is difficult to identify how this would identify any positive benefit to the system.

10. Should the opportunity to be heard at a pre-determination hearing be extended to other parties beyond those who made representations?

There should never be an opportunity for parties who have not participated at an earlier stage in the application process to be heard at a Hearing. This would enable matters to be raised that had not previously been submitted to the planning authority and had not been available in the public domain for scrutiny.

If the right of a pre-determination hearing is provided, then natural justice would suggest that the same opportunity should be extended to the applicant. However, this is only likely to extend the process further.

11. What arrangements would need to be made to convene full Councils to make these decisions?

This measure would not seem to be entirely consistent with efficient and expeditious decision making. If applications already considered by a committee, part of whose constituted purpose is to determine applications, it seems to introduce an unnecessary delay to then refer a decision to full Council, making determination within two months extremely difficult, if not impossible.

At present, meetings of the Council, while monthly, are convened one or two weeks after the current Planning and Building Standards Committee, meaning that, for a report to appear on the agenda for Council, it will either need to have been placed on that agenda before it has been considered by the planning committee, or will have to wait, in some cases, for up to six weeks after it has been considered by the planning committee.

Alternatively, the meetings calendar would have to be altered to accommodate the need to consider applications (although the issue described above is likely to remain), or to convene separate meetings for planning matters, which would seem an unnecessary encumbrance, in an already busy meetings schedule.

PROCESSING AGREEMENTS

12. **Do you support the view that processing agreements should be put in place before the submission of the application?**
13. **Do you agree that where there is to be a processing agreement that it should be entered into not later than 28 days after validation?**
    If this approach is to work, it can only do so if agreed in advance of the submission of the application, as the potential to agree a timescale is likely to diminish the longer time passes after validation. The issue is likely to be how attractive such agreements are likely to be to developers. The time period for determination, as well as for appeal, should be altered to reflect the agreement.

14. **Do you agree with the suggested components of a processing agreement?**
    Yes, albeit that there appears to be an obvious omission under "information requirements" in that account for third party representations before and during the application process has not been included.

15. **Do you agree that the sole parties signing the processing agreement should be the planning authority and the applicant, or do you think that there is scope for statutory consultees to also sign the agreement?**
    Without buy-in from statutory consultees it is unlikely that processing agreements will be signed. There is considerable merit in those consultees being party to the agreement although this may require an element of the planning fee to be set aside perhaps under an SLA.

PLANNING PERMISSION IN PRINCIPLE

16. **Do you support the proposed approach to Planning Permission in Principle and approval of matters specified in conditions?**
    No objection in principle, provided that single applications can be made to discharge more than one (or all) of the associated conditions at one attempt, rather than require an application for each condition.

CONTENT OF APPLICATIONS AND VALIDATION

17. **Do respondents consider the approach to the content of planning applications to be appropriate or are any of the other options in paragraph 5.3 preferable?**
    The proposed content set out in paragraph 5.3 is generally acceptable, subject to the following suggestions:
    - Location plans should identify not only the land necessary to carry out the development, but also other adjoining land within the applicant's control (the so-called red and blue lines). This is important, particularly on larger schemes, to enable works required by local authorities (such as access arrangements or landscaping), but which had not been included within the site by applicants, to be controlled by condition.
    - Site plans should also identify buildings on adjoining sites (even if only within a certain distance – say, 20 metres), as the relationship of a

development to neighbouring buildings outside the site is often one of the key determining factors, but is not easy to assess without these buildings having first been accurately identified on a plan.

The quality and content of applications varies so significantly that to set out nationally acknowledged standards, without which an application cannot be validated, would be very welcome and would add consistency and certainty to the process, for Councils and applicants, as well as others involved in the process.

18. What other measures could help to ensure that applications are supported by adequate information at the start of the planning process whilst still encouraging efficiency in the development management system?

Whilst recognising the difficulty of seeking additional information as it has been described in 5.3(b), there is surely an opportunity to set out in tabular form, in a manner similar to the Schedules in the Environmental Impact Assessment Regulations, circumstances and thresholds where additional assessments are required. These might include:

- Flood risk assessments
- Traffic Impact Assessments
- Ecological information (e.g. bat surveys)
- Archaeological assessments
- Retail impact assessments

It is generally easy to identify the types of application or circumstances where such assessments will be required; however, because they are not presently necessary in order for an application to be deemed valid, requests for this information have to be made during the lifetime of an application, leading to often considerable delays, particularly where survey information can only be carried out at particular times of year, as in the case of bat studies. Invariably, as the application has been registered by this stage, the applicant cannot always be persuaded to withdraw the application. To have the support of regulations to be able to insist upon the supply of this information (or, if that is not possible, to "stop the clock" until it is supplied) would be very welcome.

See also the response to 19 below in relation to the submission of this information.

19. Do respondents consider that the draft regulations on the content of applications for planning permission in principle are pitched at an appropriate level of information?

A move away from merely submitting a red line around a site to seek permission in principle is very welcome. It is unclear from the consultation, however, whether, the additional detail must be supplied in plan form, or whether a written statement will be sufficient in isolation. It is considered that, whilst a written statement would be beneficial (and should be encouraged), a plan or plans indicating the requisite detail should be a fundamental requirement of the submission.

There is an apparent inconsistency with the approach to applications in principle and other applications, in that provision is made for additional information to be requested within a month of submission (and more critically, that the time period for determination would not commence until those details are received). Whilst welcome, it is considered that this should apply equally to all forms of application, or

at the very least to those applications requiring the assessment/survey work set out in the response to 18 above, if it is not accepted that that information should be necessary for the application to be made valid.

20. **Do respondents consider that the requirements on content of applications are sufficiently clear to allow validation to be a relatively straightforward administrative check?**
    On the whole, yes, but the regulations need to be sufficiently clear that without all of the required information, the application will not be considered valid (and may even be returned)

DESIGN AND ACCESS STATEMENTS

21. **Do you have a view on the two options on the range of applications to be accompanied by a design and/or access statement?**
    Experience of the relatively established approach to Design and Access Statements in the English system would suggest that statements have generally added very little value to the determination of all but the more major or sensitive applications. Indeed, in many cases, developers pay only lip service to the requirement for submission, but there is little an authority can do to request further detail. However, a properly constructed statement can be an extremely useful tool in the full and proper analysis of larger and more sensitive schemes.

    Against this background, Option 2 would appear to be the more realistic and proportionate response, as the system is not suited to small scale development. The regulations may need to be supported by guidance to developers (and local authorities) as to the content of statements, and what would happen in the event that a statement is judged to be insufficient.

22. **In addition to those considered in the options, in what circumstances might statements consider only one element – design or access?**
    It will inevitably be the case that one of these strands will be more dominant in any given case. However, if Option 2 is applied, then there should still be reference to both. To suggest that one element can be dispensed with in certain cases is only likely to introduce uncertainty, inconsistency and unnecessary debate about what should be included. In short, the regulations should require both, even if one element is justifiably lighter in content.

23. **How can access panels be used most effectively in considering design and access?**
    Access panels may be an appropriate form of pre-application dialogue, enabling local knowledge and experience to be fed into D&A Statements, but the parameters and input will need to clearly defined and consistently applied, in order to operate effectively. The weight that should be attached to comments made should also be clarified.

24. **Do you consider that there is sufficient clarity in the regulations to allow for effective and timeous validation of applications where the design and/or access statements are required?**
    Unless there is to be a checklist of what should be incorporated, registration staff are unlikely to be equipped with the skills or capacity necessary to make a qualitative assessment of statements. In this case, a similar proposal to the applications in principle process, whereby an opportunity is incorporated to enable an authority to seek additional information where appropriate.

25. **What role can local authority access officers play in assessing the access element of statements?**
26. **What information do planning authorities and communities need to ensure a thorough and robust assessment of the design and access statement?**
    This should be an opportunity to integrate differing requirements at the earliest possible stage, rather than needing to change designs and layouts later, including at Building Regulations stage, although this is likely to have resourcing implications.

NEIGHBOUR NOTIFICATION AND PUBLICITY FOR APPLICATIONS

27. **Do you consider the proposals on service of notice to neighbours to be appropriate?**
    Whilst there is considerable merit in Councils managing the neighbour notification process, it is likely to give rise to significant resourcing implications.

    The prospect of the Council having to specifically notify *landowners* of adjoining land where there are no premises (or address point) is not attractive, as the information on land ownership of "un-occupied" land is not readily available. As the planning implications of a development are most likely to impact upon occupied buildings, it would be more appropriate and proportionate, but also less time-consuming and less costly to directly notify only those adjoining owners/occupiers of adjoining *premises*. Other interested parties may be alerted either by site notice or press advertisement.

28. **Do you agree that, in order to minimise costs and potential delay, a single notice sent to the address of the neighbouring land is sufficient for these purposes?**
    Yes. Neighbour notification will already have implications for resourcing. Anything more would make the system very unwieldy and would slow the process down. Arguably, such an approach is unnecessary, as it should be incumbent upon the recipient to alert any other interested parties to the application –a standard phrase incorporated into neighbour notification letters could remind the recipient of this responsibility.

29. **Is the proposed approach to keeping informed of PPP and approval of matters specified in conditions appropriate?**
    There will be aspects of the development, broadly comparable with the current "reserved matters" that are likely to be of interest to neighbours and other interested parties, but there is the risk of "consultation fatigue" if neighbours are notified of every submission made to discharge a condition, and the value of such an

approach is questionable. Arguably, notification should be restricted to particular key issues.

30. Do you support the proposed definition of neighbouring land?
The 20m distance for neighbour notification is undesirable. The definition should be restricted to the current distances which largely encompass immediate neighbours. Para 7.9 which introduces flexibility/discretion is undesirable and will lead to confusion, and challenges as a result of variations in practice. A single fixed prescribed national standard should apply. There should not be regional variations.

31. Do you consider the proposals concerning the use of site notices and of local advertisements to be appropriate?
Yes. As described above, it may be that, in order to make the neighbour notification process more efficient, one or other of these approaches is always carried out, so that neighbour notification can be concentrated on premises rather than land.

In order to reduce local authority costs, making the posting of a site notice the responsibility of the applicant, (who will, in the greater proportion of cases, be either resident or operating from the site in any event) should be explored.

32. Do respondents support the proposed requirements on notifying owners and agricultural tenants and the placing of local advertisements in this regard?
It appears that there may be some duplication of effort in this proposal: If the tenant has already been notified that an application is likely to be submitted, it seems unnecessary for the Council to then write to them again; a better approach may be to stipulate that the applicant's notification should happen no earlier than seven days before the submission of the application, thus rendering further notification unnecessary.

33. Are you content with the Scottish Government's proposals for the public availability of the list?
Yes: These proposals must make explicit provision for "public availability" to include through electronic means.

34. Is the advertisement of the availability of the list in the local newspaper on a monthly basis appropriate?
This raises no fundamental concerns, provided that it is restricted to advertising only the availability of the list, rather than the list itself. Quite how useful this will prove remains to be seen.

STATUTORY CONSULTEES

35. Do respondents have any views on the list of statutory consultees and the criteria for consultation?
Nothing to add on this issue.

36. Do respondents consider it appropriate to extend the statutory period for determining an application for national and major development to four months?

Yes. Whilst the proposals for considerably more pre-submission work to be carried out by the applicant will improve the content of submissions, the complexity, sensitivity and potential for environmental impacts, are such that a longer period for determination would be not only welcome, but necessary.

DECISION NOTICES, REPORTS OF HANDLING AND REGISTERS

37. Is the level of information to be provided in the decision notice appropriate?

For the most part, the proposals represent the prudent incorporation of information that is to the benefit of all parties involved in the process; the inclusion of drawing numbers has the potential to be quite burdensome, but is likely to be outweighed by benefits further down the line. The inclusion of reasons for approval is unnecessary and onerous, with no obvious benefit. Again, experience in England, where this approach has become established, is that little value is added: The developer, for the most part, will not be concerned *why* permission has been granted, merely that it *has*. If any other party is sufficiently interested in the reasons for the decision, they will generally scrutinise the report that led to the decision, which will necessarily be altogether more in depth. At a time when more and more information is available online, setting out a précis of reasons in the decision notice seems unnecessary and of limited value; far better that the parties concerned are directed to the report, for example, by link to e-planning public access. (Alternatively, the report could be copied with the notice, but such an approach would be expensive and would appear to be inconsistent with the e-planning agenda).

38. How should planning authorities best manage the potential burden of ensuring those who made representations are advised of the decision?

The issue of large volumes of representations has not generally been a significant one for the Council, because although in some cases, the volume has been large, the numbers of applications where this has occurred has been relatively small. Ideally, if correspondents provide their e-mail address, responses could be provided electronically *en masse*. In the case of petitions, one solution has been to respond only to the organiser of the petition.

39. Is the information to be contained in the report of handling appropriate in order to provide a robust summary of how the decision has been dealt with and the reasons behind the planning authority's decision?

40. Can existing Committee reports, where available, be easily adapted to incorporate the proposed statutory requirements in paragraph 4 of Schedule 4?

This would not appear to result in any additional encumbrance, as much of the information is already contained within Committee reports. Again, provision will need to be included to allow this information to be recorded, stored and made available electronically.

BAD NEIGHBOUR DEVELOPMENT

41. What might be an appropriate alternative name for "bad neighbour development"?
"Development with the Potential for Amenity Impact"

42. Do you support the proposed additions and deletions to the list of "bad neighbour developments" and do you have any other suggestions?
Support proposals. No additional suggestions.

CONTROL OF INCREASE IN GROSS FLOOR SPACE – MEZZANINE FLOORS

43. Are there any other uses which you consider should also be subject to controls on increases in gross floor space?
No.

44. Do you support our proposal to have different approaches depending on whether other increases in the internal floorspace have taken place?
As the underlying issue relates to the impact of trading floorspace, there is logic to this approach.

45. Do you consider that 200 square metres is an appropriate level to help achieve the objectives of helping protect town centres?
Yes.

46. For the purpose of controlling internal floorspace, do you support the decision to use amounts in square metres rather than a percentage?
Yes: this provides greater certainty.

CONCLUDING REMARKS

47. Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations or the order?
No.

48. Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or the order?
No.

49. Do you have any other comments to make on the draft development management regulations or the mezzanine floors order?
At all times, the Regulations should make it clear that consultation, notification and advertising should be capable of being conducted using e-planning methods and these would satisfy the legal requirements. For example, where reference is made to providing Community Councils with weekly lists of applications, it should be acceptable to provide access to electronic lists on a self service basis. Similarly, it should be acceptable to direct consultees and parties submitting representations to the web site to obtain information on decisions including decision notices.

In relation to the proposed powers to seek additional information (para. 13.11), then it is the strongly held view that, if the information is necessary to determine an

application, then the absence or otherwise of that information should have a bearing on that application's validity. To be properly robust, there will need to be some sort of penalty if the required additional detail (para. 13.12, Regulation 15(1)) is not provided.