

## **Development Management Consultation Paper**

### **Q1: Do you agree with the proposed categories of development to which the requirements for pre-application consultation apply?**

The classes go beyond those defined in the proposed Hierarchy for determining applications. Greater consistency and uniformity should be applied: only nationals and majors, as defined in the hierarchy regulations, should be subject to pre-application consultation. Introducing different categories and thresholds only adds confusion and will complicate not simplify the process.

### **Q2: Do you have any comments on the thresholds in Schedule 1 of the DMR on pre-application consultation?**

The classes mean any EIA development – Schedule 1 or 2 – must be subject to pre-application consultation - not all Schedule 2 developments are controversial.

The criteria for 5 houses (or flats) requires justification and is set too low. To avoid this consultation hurdle, developers may elect to keep proposals under the threshold value, which raises issues about 'cumulative' development, an issue not addressed in the Paper. Equally, it may mean lots of small-scale residential designations being identified through the local plan preparation process: this will add clutter to local plan Proposal Maps.

Clarification is required about whether 'green belt' is limited to the statutory definition or is to be given local expression.

Generally, if thresholds are set too low this will raise public expectation and place significant burdens on developer and planning authority resources.

### **Q3: Is the information required in a pre-application screening notice sufficient?**

Yes, but could criterion f not just ask whether or not the site is designated in the local plan? Asking an applicant for a view is about assessment of the proposal relative to the development plan, which is not the intended purpose of the notice

### **Q4: Is 21 days a reasonable period for authorities to respond to a pre-application screening notice in all circumstances?**

Provided the content and quality of the notice contains all the requisite information, 21 days seems a reasonable period to answer the basic question. The circumstances where an extended period would be required seem limited but if necessary the response should be given within 21 days from the date of receipt of the last piece of additional information requested.

Whilst there may be benefits in obtaining an opinion, applicants might regard the process as an unnecessary burden, which lengthens the process of obtaining permission. The procedure is not dissimilar to the EIA screening opinion but it will require the planning authority to set up an additional separate procedures, which will be used more frequently.

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**Q5: Do you agree with the proposed content of the proposal of application notice?**

Yes, it seems reasonable and fair.

**Q6: Are the requirements to notify community councils and neighbours of the proposal of application notice sufficient or should others be notified at this stage as a statutory minimum?**

Some flexibility is needed to include not just Community Councils but also Community Associations or similar dependent on local arrangements. Asking applicants to notify neighbours at the pre-application stage may give rise to concerns and complaints, as can occur under the existing arrangements and may also cause confusion with the proposed transfer of responsibility for formal notification procedures to planning authorities. As there seems to be a requirement for the planning authority to check the information provided it is tempting to suggest that the authority should do the formal notification, for a fee

**Q7: Do you agree with the minimum statutory requirements for pre-application consultation in regulation 8?**

Yes, in principle, if the engagement is limited to a public advertisement and a public meeting. However, what is more important is that any guidance (yet to be published) gives clear advice on what is expected from the consultation process, including how any meeting is to be run to ensure the purposes and expectations of the consultation procedure are achieved and that it does promote genuine engagement within the community.

**Q8: Do you agree with the requirements on the content of pre-application reports?**

Yes but the responses should be tabulated within the report to include all comments raised and their associated response.

Pre-application consultation is for the applicant not the planning authority to undertake. As such it is not clear from paragraph 2.2, how local authorities are expected to raise awareness of the right to comment at the formal stage. Perhaps in the report, applicants should be asked to demonstrate what advice they have given to those involved about when and how to comment on any formal application submitted to the planning authority?

In paragraph 2.21, rather than proof of postage, proof of who, when and how parties have been consulted is more important

**Q9: Do you support the classes of development which will be subject to pre-determination hearings?**

No. Not all EIA developments, including Schedule 2 proposals are controversial. A definition of 'significant' is required: if this mandatory requirement for a hearing is being determined at a national level, then a national definition of the terms must be given rather than being left to local interpretation. Most EIA development, at least in Moray, end up at Committee, usually because they are a departure anyway (and this is the real

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reason for referral to Committee). In Moray hearings are based on PAN 41 i.e. the proposal departs from the plan and there are objections/representations received on the proposal. Must a hearing be a mandatory or prescribed procedure if there are no objections?

**Q10: Should the opportunity to be heard at a pre-determination hearing be extended to other parties beyond those who made representations?**

Reflecting current practice in Moray, the opportunity should be extended to include an applicant (to speak to the proposal and the stated objections). Where necessary, consultees could also be invited (to amplify their response whether in support or against the proposed recommendation. (Attendance from these parties may be implicit within the procedures but the Regulations should clarify this).

There is no need to open up the proceedings to other parties at this late stage in the determination process, especially those who have made no representations on the proposal: they could attend the meeting to listen to the debate but should not be allowed to take part.

**Q11: What arrangements would need to be made to convene full councils to make these decisions?**

The purpose of referral is unclear. If the relevant (planning) Committee have full powers to determine the case there is no need to consider the proposal yet again at another committee. This could mean another 'hearing', etc. To refer up to yet another Committee only adds uncertainty and delay in the determining the proposal. It would also delay any required notification to Scottish Ministers and issue of a formal notice.

To accommodate this requirement would mean full Council meeting more frequently whether through arranging Special Meetings or re-arranging their business on a shorter cycle of meetings, etc. Additional training of elected members and others maybe required for those who do not already sit on the Planning Committee.

**Q12: Do you support the view that processing agreements should be in place before submission of the application?**

Yes, the agreement should be in place beforehand to allow the effective and efficient use and management of available resources into progressing the application in accordance with the agreed time-scale for consideration. If resources are spent negotiating an agreement after submission this diverts resources that could otherwise be used in considering the proposal.

**Q13: 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?**

No. 28 days may not be enough time, depending on the nature and scale of the project and who needs to be party to the agreement. Alternatively, you could seek to negotiate but if it is not entered into within the allotted time, you have just wasted a month and reduced the determination period now available to 3 months instead of 4 months.

**Q14: Do you agree with the suggested components of a processing agreement?**

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Yes, in principle. However, the decision-making framework approach highlighted at paragraph 3.11 ignores reference to the planning authority's own Committee structure and scheme of delegation, which is the mechanism through which decisions are made.

Whilst it is important to identify information requirements that should accompany the application, this is different from an subsequent assessment about the quality and content of the information as presented, which may be deficient and result in delays in processing the application.

**Q15: Do you agree that the sole parties signing the processing agreement should be the planning authority and the applicant, or do you think there is scope for statutory consultees to also sign the agreement?**

If there are no consultees involved then an agreement can be signed by the applicant and the planning authority. However if there are other parties involved i.e. consultees then they must be party to the agreement. This can and will cause problems if they don't agree with the contents or time-scale of the agreement. All parties involved must 'buy in' to the process and ensure that sufficient resources are available to deliver their response within the allotted time.

The regulations should clarify whether sanctions can or will be imposed against consultee if they do not respond timeously. It seems unfair that if they don't deliver the planning authority is penalised including loss of fee income and adverse publicity.

**Q16: Do you support the proposed approach to Planning Permission in Principle and approval of matters specified in conditions?**

Yes, the approach seems relatively clear and straightforward.

**Q17: 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?**

No, in practice, there is wide interpretation amongst authorities about what constitutes a valid application and it is disappointing the regulations fail to advance the debate and set a level of detail. 'Reserving' this matter for guidance at a later date or through e-planning does not help and is without guarantee that it will be any more conclusive.

Whilst the regulation should not be so prescriptive so as to be unworkable and lead to unnecessary work there should be some flexibility to allow authorities some discretion to ensure all the necessary information required to describe and assess the proposal is included.

**Q18: 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?**

Perhaps planning authorities should be given the right not validate/register a proposal until all the requisite information it deems necessary has been provided?

**Q19 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?**

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Not sure this progresses or resolves the debate on the level of information required. It is not clear what status the 'further information' would have and the further details (paragraph 5.8) have the potential 'convert' a PPP into a detailed submission. If authorities can require other information for PPP why cannot this principle be extended to all other applications?

**Q20: Do respondents consider that the requirements on content of applications are sufficiently clear to allow validation to be a relatively straightforward administrative check?**

Not agreed. An administrative check is one thing but not a substitute for a check to ensure that all information necessary to describe (and assess) the development has been provided.

**Q21: Do you have a view on the two options on the range of applications to be accompanied by a design and/or access statement?**

Option 1 could lead to statements which are not really necessary. Can their content and length be limited otherwise this could be a burden both to prepare and assess. Option 2 develops current practice and should be progressed and limited only to more larger-scale proposals, which will be subject to additional procedures and requirements.

**Q22: In addition to those considered in the options, in what circumstances might statements consider only one element - design or access?**

Apart from clarification over the definition of 'sensitive area' (e.g. does this also include areas designated as AGLVs, etc?) a statement on design only seems a more likely requirement than that for access, particularly to avoid duplication with Building Standards legislation. Perhaps an element of flexibility can be considered/introduced dependent on the circumstances of the individual case?

**Q23 How can access panels be used most effectively in considering design and access?**

If these statements are required for applications subject to pre-application discussion the required consultation statement should demonstrate how consultation with an access panel has been carried out and how this consultation has informed the development as submitted. With a potential increase in applications requiring statements for assessment, access panels could be over-burdened and they need to be adequately resourced and funded to effectively participate in the process, otherwise delays could occur

**Q24: Do you consider that there is sufficient clarity in the regulations to allow for effective and timeous validation of applications where design and/or access statements are required?**

Yes in so far as this is confined to an administrative check about whether a statement is included but again, it is not a substitute for ensuring that all the required information for assessment is presented at the time of submission.

**Q25: What role can local authority access officers play in assessing the access element of statements?**

Direct input through consultation and providing training to assist development management officers in assessing the statements.

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**Q26: What information do planning authorities and communities need to ensure a thorough and robust assessment of the design and access statement?**

Detailed advice and guidance required including training (assuming sufficient resources available) to assist in undertaking assessment of statements. In Moray absence of dedicated/specialist design staff means requirements for assessment will impact on existing staff or reliance on external sources that may delay determination of proposals.

**Q27: Do you consider the proposals on service of notice to neighbours to be appropriate?**

Yes in principle, but it will have resource implications for planning authorities to address. At present, applicants can have a long lead in time to prepare their submission and identify notifiable interests. Once transferred, planning authorities, they may receive no prior warning of the bulk of the workload (i.e. local developments), they will not be able to ask applicants as part of their submission to identify who should be notified and other information also has to be assembled for inclusion in the notice before it is served. 5 days may be more feasible for a smaller-scale local development but for a larger development, even with information provided at the pre-application stage, may present an administrative and resource challenge – a recent ‘major’ flood scheme application had approx. 1000 notifiable interests.

**Q28: 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, but if the option is limited only first or second class post, the latter may be a cost saving but it can cause delay, resulting in complaints in time taken to deliver – a matter over which the planning authority has no control. Delivery by hand or similar should be considered as perhaps a more effective and immediate means.

**Q29: Is the proposed approach to keeping people informed of PPP and approval of matters specified in conditions appropriate?**

Yes but it will lead to a greater number of notifications being issued.

**Q30: Do you support the proposed definition of neighbouring land?**

Yes in principle but further guidance is required for interpretation purposes. Going from 4 to 20 m could lead to greater number of individual notifications being served but not necessarily resolve the inevitable and frequent complaint from people who regardless of the formal requirement still think they should be included.

**Q31: Do you consider the proposals concerning the use of site notices and of local advertisements to be appropriate?**

Yes in principle, but for authorities that are perhaps more ‘rural’ in character there could be a large up-take in advertisement requirements, even if costs are recoverable. If the use of site notices remains discretionary, this could lead to complaints about both when they are used, and when they are not.

**Q32: Do respondents support the proposed requirements on notifying owners and agricultural tenants and the placing of local advertisements in this regard?**

No. Owners and tenant will receive advance notification (by applicant) and then have to wait for the formal notification (by planning authority). Applicant's should provide details of owners/tenants at the time of submission (as part of the pre-application consultation statement including evidence that the proposal has been discussed with them) and the planning authority could then undertaken the notification requirement at the same time as for neighbours? This should not prejudice owners/tenants interests and it might reduce or avoid some of the confusion when several notices for the same development are issued in close succession.

**Q33: Are you content with the Scottish Government's proposals for the public availability of the list?**

Yes on the basis of increasing awareness but it may well result in a much longer document. r

**Q34: Is the advertisement of the availability of the list in a local newspaper on a monthly basis appropriate?**

No this is an unnecessary requirement. It is really needed given publicity and access to the web and the promotion of Public Access and e-planning initiatives?

Lists are already made available to Community Councils but existing arrangements under PAN 47 do not seem to work, even with 'reminders' being issued about the procedure. Some, even when consulted, are slow to respond because their working arrangements do not match planning authority time-scales for responses, which can delay the determination of the application. Rather than be able to require consultation any application they should only be consulted where there is a genuine community interest or impact, to enable a more focused consideration of the proposal. For Community Council, regulation 30, n) criteria ii) and iii) should be the only basis on which Councils can require consultation.

**Q35: Do respondents have any views on the list of statutory consultees and the criteria for consultation?**

There are no objections to the minor change in wording, which makes sense, Otherwise the existing arrangements and criteria work reasonably well, although clarification of terms e.g. material increase, is always welcome.

What is more important is that consultees – statutory or otherwise – respond within the prescribed time-scale to avoid contributing to the delay in determining applications. See also comments on Community Council above.

**Q36: Do respondents consider it appropriate to extend the statutory period for determining an application for national and major development to 4 months?**

Yes as a 'default' period for proposals where no processing agreement applies, although it is still likely that these proposals will take longer to determine. With processing agreements the 4 month period will be flexible – some agreements could specify a longer (and more realistic) time-scale. This will need to be recognised when measuring performance.

**Q37: Is the level of information to be provided in the decision notice appropriate?**

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The notice will draw together a variety of information, not all of which may be included on the notice at present. This will have implications for compiling the document and copying it all relevant parties. Attaching a copy of committee reports/minutes, as the reasons for the decision is one thing but if a less formal report structure is used for delegated decisions (as is the case in Moray, to improve performance and reduce time spent in writing formal reports for every single application), the format for recording reasons for the decision will require review if it is to be made more publicly available.

**Q38: How should planning authorities best manage the potential burden of ensuring those who made representations are advised of the decision?**

How about a letter to each party with details of a link to the Council's web site where details of the decision can be viewed? For those without access, the letter could say where details can be made available for inspection at the Council offices.

**Q39: Is the information to be contained in the report of handling appropriate in order to provide a robust summary of how the application has been dealt with and the reasons behind the planning authority's decision?**

Yes, the recording is necessary but a danger is the production of lengthy reports may not be a means but an end in themselves.

**Q40: Can existing Committee reports, where available, be easily adapted to incorporate the proposed statutory requirements in paragraph 4 of Schedule 4?**

Yes, but the premise here seems to be that Committee style reports should be prepared for all decisions whether determined by Committee or under delegated powers

**Q41: What might be an appropriate alternative name for "bad neighbour development"?**

Public Interest

**Q42: Do you support the proposed additions and deletions to the list of "bad neighbour developments" and do you have other suggestions?**

Yes, although it must be clear that the consideration is based on demonstrable amenity impact – including of 'worship' might lead to concerns being raised in terms of religious discrimination, etc. If a skateboard park is located within an established public park is it still a bad neighbour?

**Q43: Are there any other uses which you consider should also be subject to controls on increases in gross floorspace ?**

No

**Q44: Do you support our proposal to have different approaches depending on whether other increases in the internal floorspace have taken place?**

Yes

**Q45: Do you consider that 200 square metres is an appropriate level to help achieve the objectives of helping protect town centres?**

Yes

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**Q46: For the purpose of controlling internal floorspace, do you support the decision to use amounts in square metres rather than a percentage?**

Yes

**Q47: Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations or the order?**

For others to comment

**Q48: Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or the order?**

No

**Q49: Do you have any other comments to make on the draft development management regulations or the mezzanine floor orders**

The Regulations place new responsibilities on planning authorities, requiring a major review of current working practices and procedures, and impact on available resources which will need to be addressed. The proposals, including provision to front-load process will add extra procedures. This will make for a more complex rather than simplified system for processing applications, perhaps greater than that envisaged and may not sit well with stated objectives including a more effective and efficient system.