Development Management – Consultation Paper
Comments from Forth Ports PLC

Q1: Do you agree with the proposed categories of development to which the requirements for pre-application consultation apply? Q1. We agree broadly
Q2: Do you have any comments on the thresholds in Schedule 1 of the DMR on pre-application consultation? Q2. We consider the threshold of 5 units for residential sites to be much too low. The bad neighbour developments in 1 should require consultation REGARDLESS of SIZE, if they are not in the development plan. Retailing at 1 should be separated from bad neighbour uses, and the 2500 sq m threshold should apply.
Q3: Is the information required in a pre-application screening notice sufficient? Q3. Yes.
Q4: Is 21 days a reasonable period for authorities to respond to a pre-application screening notice in all circumstances? Q4. Yes and there should be no exceptions or opportunities to request an extension of the time limit. If there is no response, the applicant should be able to proceed without pre-application consultation.
Q5: Do you agree with the proposed content of the proposal of application notice? Q5. No. The intention of the Act is to transfer the responsibility for neighbour notification to the planning authority. This provision will effectively transfer the work required to identify all the neighbours back to the applicant. There are other methods of publicising community consultation apart from direct notification of individual residents, and in any event, the consultation should also involve people more broadly than just those adjoining the boundary of the site. ‘Neighbouring land’ is also not defined. Nor is the location of premises thereupon.
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? Q6. This response is related to the response to Q5. It is important to consider what the purpose of the consultation is. Is it to allow the community within which a proposal is situated to discuss the merits of the proposal and make comment, or is it, as is the current case with neighbour notification a process of garnering objections from those most closely situated in relation to the development? The current proposals seem to be designed to gather objections from those most closely located, rather than encouraging a community discussion.

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

Q7. These do seem to be an absolute bare minimum, although PAN81 will encourage better practice. There should be an opportunity to make written comments, at least, as well as an opportunity to speak at a public meeting which may be exclusive.

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

Q8. Yes

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

Q9. Yes

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

Q10. There would appear to be no provision for the applicant or applicant's agent to appear which seems wrong. Otherwise, we agree. The process should be an ordered and orderly one, allowing those people who have made a submission to be heard. The submission itself should be the thing that triggers a right to appear.

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

Q11. This is a procedural point for local authorities to answer.

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

Q12. It is probably impractical to suggest that the agreement should be in place prior to the planning authority receiving the full package of documentation and having time to reflect on the magnitude of the application. Pre-application discussions can and will take place, but the planning authority will not be possessed of all the documentation until submission. This does not prevent early discussion, or the applicant submitting a suggested draft agreement with the application documentation.

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?

Q13. Yes. The timescale of the agreement should be capable of review by mutual consent.

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

Q14. The proposals appear to over-complicate the matter. There is an obligation on the planning authority to determine the application – that is its role. The information requirements mentioned are likely only to become apparent following the circulation of the application around the consultees. The project plan and timescale is likely to be all that is really required. These agreements should not become a complex legal process.

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?

Q15. We consider it essential to the workings of the planning system that statutory consultees respond to planning applications within the required timescales, however it seems unnecessarily complex to require them to sign up to each processing agreement – it may also lead to very complex debates about who is liable for the return of fees where an agreement is broke, to the detriment of the operation of the planning system as a whole. There seems to be a place for protocols between planning authorities and their consultees, and the regulations could be altered to require these.

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

Q16. Broadly, yes, however in practice this will be little different from the approval of matters reserved. Contrary to myth and legend, these are not approved without a planning application – such applications are registered, and have their own reference numbers with the suffix REM. They are, however, frequently approved under delegated powers, and this seems a sensible approach when the principle of the permission has been approved at OPP stage. How do these 'conditions' differ from the ones that require an action at a trigger point. E.g. land to be made available for a primary school on the occupation of the 2000th house. That will still be a condition but will not require a planning application. Are there to be 2 types of condition? The regulations also seem to require (14 (2) d (ii)) 3 copies of the original planning application every time an application is made to approve a matter specified in conditions. For a big planning application this can involve reams and reams and reams of paper being submitted every time a more detailed matter is to be determined. The purpose of this requirement is unclear.

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?

Q17. 5.2 is fine. The additional suggestions are likely to lead to too much information in many cases. Sensible pre-application discussions with the planning authority should reveal what supporting documentation is likely to be required. The 'stopping the clock' suggestion, as you rightly point out, is likely to just frustrate the process. It is possible to consider many other aspects of a proposed development whilst one further study is being prepared.

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?

Q18. Applicants, by and large, want to see their applications determined, and proceed with the development proposed. In general, therefore, they try and ensure that anything that is likely to be required by the planning authority is submitted. Pre-applications discussions are probably the best way of ensuring agreement as to the documentation required. In some authorities these can be difficult to arrange, as there are insufficient staff to resource them. The importance of pre-application discussions should be stressed as part of the culture change initiative – an effective way of front loading the application process. It is at the discretion of the planning authority not to register an application that it regards as deficient in any event.

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?

Q19. No. The draft regulations erode the idea that planning permission can be obtained in principle before investing what can amount to massive amounts of money in detailed design etc. An OPP is currently frequently obtained prior to selling a site, to establish value. The new owner will appoint a masterplanner, architect and so forth to take the proposal forward. The public is likely to feel misled if these stipulations – especially the idea of an indication of what the development will be like and a design and access statement, change drastically as the development is taken forward. The architecture may be very traditional or unashamedly modern. It may be brick or stone or render or glass. It may have copper roofed turrets on the corners or glass facades. How is the applicant supposed to have got far enough to decide all this, when there is no planning permission 'in principle'? It is completely inappropriate for a planning authority to be able to request details of the design and even down to landscaping and how disabled people will access a building that has yet to be designed – very detailed matters – at the application for PPP stage. The way this is drafted there will be no PPP, every application will effectively become a detailed one.

PPP will still be applied for on sites in the development plan, as an allocation does not give the same financial certainty – enabling a developer to raise capital for example, in order to take a project forward.

We would urge you to reconsider these proposals, perhaps with research into what type of information has been submitted with recent successful outline planning applications at a variety of scales, before settling on the content of the regulations as proposed.

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

Q20. These proposals are generally agreed.

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?

Q21. It seems logical, to avoid the proliferation of surplus information produced to 'tick a box' that option 2 is adopted. We have already commented that a design and access statement is likely to be inappropriate in most cases of application for Planning Permission in Principle. The access part particularly as this should be completed at the stage at which the buildings are designed.

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

Q22. A design statement to establish principles or parameters may be prepared before the stage where a building is designed in detail. It will only be at this point that access can be included. There may be stages in the process before full design is in place.

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

Q23. Is there a need to resource access panels in the same way that Planning Aid is resourced?

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?

Q24. This will only work if there is an administrative check that the statement has been prepared, rather than an assessment of its content.

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

Q25. A procedural question for local authorities to answer, with the proviso that such an assessment must be undertaken within the same time frame as all the other consultations on the application.

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

Q26. We are not sure what is intended by this question. What information is required in the statement to appraise the development? Or what information is required by an authority in order to assess the statement? If the latter, it will be for the planning authority to consider the content of the statement and weigh it in the determination of the application like any other matter. If there is a suggestion that an access panel must review each statement, then a new body will have to be set up to co-ordinate and resource access panels across Scotland.

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

Q27 and 28. No. An Occupier, who opens the letter, and has no financial stake in the property concerned may not either have a reason to object or to draw the owner's attention to the letter.

The owner of the property may be much more interested in adjoining proposals than his or her tenant. Each party should be notified. Unsure about the distinction between occupiers and lessees, and there may be a case to reduce the need for 3 letters down to 2, the owner and the occupier or lessee. If people have a period of 21 day in which to reply, it seems odd to specify that second class post is an acceptable way of notifying them.

There is also an inconsistency in the current system of notification, best explained by an example. For a large application such as Leith Docks where there are existing tenants on the site, we were obliged to notify all the people living around about the site, and all the people on the site whose tenancies had more than seven years left to run, as they were treated as owners. There was no obligation on us, however, to notify all those people who are tenants on the site, but whose tenancies have less than 7 years to run. It seemed wrong that someone who lives nearby, with no financial interest in a site, should be notified, whereas a tenant actually on the site with 6 years and 364 days of tenancy left to run had no right to be notified. In the case of Leith Docks we notified all the tenants with less than seven years voluntarily, however the rules really should be amended to protect the interests of such people.

We are concerned that there is no requirement to place an advertisement as well as send letters as a 'back stop' point in the notification process. The responsibility for notification does not rest with the applicant, and yet the applicant could suffer delays and frustrations in the process if a neighbour subsequently challenged the process. The obligation should be to notify with diligence, clearly, but there should be a provision that prevents a challenge if a neighbour does not receive a notice for some reason. As an applicant, Forth Ports has notified by registered post to prove that notifications were delivered to particular addresses but this can be a cost and administrative burden, and it would be preferable to have an advertisement as well.

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?

Q28: - See above.

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

Q29. There is a risk that this will burden the system – it could have time and cost implications if it includes notifying each signatory to a petition, every time there is an application to discharge a condition on a major application. In some cases this could be dozens of applications over a period of a decade or more. Continued notification over this period seems unnecessary – especially if the objection was to the principle of the development – once commenced many objectors will lose interest.

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

Q30. 20 metres may be sensible in a rural context, but could generate a significant notification burden in an urban context. 10 metres would seem more sensible. If altered, the distance should be standardised, however, with the development plan notifications.

Q31: Do you consider the proposals concerning the use of site notices and of local advertisements to be appropriate? Q31. Broadly, yes. Local authorities may need planning advice later about the circumstances in which notices and adverts are required. The element of discretion may mean that rather than make a decision they are simply required in any event.
Q32: Do respondents support the proposed requirements on notifying owners and agricultural tenants and the placing of local advertisements in this regard? Q32. It seems unnecessary duplication for the applicant to have to notify that they are about to make a planning application, and for the planning authority to then notify them again once it is submitted. Notification should be given to tenants on a site who do not fall within the category of 'owners' as well, as set out in response to Questions 27 and 28 above.
Q33: Are you content with the Scottish Government's proposals for the public availability of the list? Q33. Yes.
Q34: Is the advertisement of the availability of the list in a local newspaper on a monthly basis appropriate? Q34. Yes.
Q35: Do respondents have any views on the list of statutory consultees and the criteria for consultation? Q35. None.
Q36: Do respondents consider it appropriate to extend the statutory period for determining an application for national and major development to 4 months? Q36. Broadly, yes. Generally, this is a back stop position as these applications will be the subject of a processing agreement.
Q37: Is the level of information to be provided in the decision notice appropriate? Q37. Yes, however guidance may be required on framing reasons for decisions. It is a good idea in theory but may be difficult to exercise in practice especially for major applications. Alternatively it could be very simple indeed but not very informative – on an allocated site, it could be simply to fulfil the aims and objectives of the adopted development plan.

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

Q38. This is a procedural question for planning authorities to answer. E-communication wherever possible would seem most sensible.

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?

Q39. and Q40. The inclusion of much of the application documentation will lead to excessive paper generation, unless all applications are submitted electronically and the documents are available as downloads. The report of handling would appear to be an unnecessary duplication of the officer's report to committee. There could simply be a requirement to place the committee report on the register in electronic form.

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

Q40: - See above.

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

Q41 and 42 – nightclub/public house may be imprecise – all licensed premises for the sale of alcoholic drinks for consumption on the premises may be better. Skateboard park is too specific – surely a go-kart track would also be covered, and a golf driving range – some definition of sports and leisure facilities is required. Suggest you title them developments which raise amenity issues and require additional scrutiny?

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

Q42: - See above.

Q43: Are there any others uses which you consider should also be subject to controls on increases in gross floor space?

Q43. No

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

Q44. It seems very complex.

Q45: Do you consider that 200 square metres is an appropriate level to help achieve the objectives of helping protect town centres? Q45. There would seem to be little relationship between the minor level of 200 square metres and the need to protect town centres.
Q46: For the purpose of controlling internal floorspace, do you support the decision to use amounts in square metres rather than a percentage? Q46. If the intention is generally to control any increase in size without a planning application, then yes. If the idea is to set a limit that will have limited impact, this would be more sensibly be expressed as a percentage of the current floorspace.
Q47: Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations or the order? Q47. 48. 49. No
Q48: Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or the order? Q48: - See above.
Q49: Do you have any other comments to make on the draft development management regulations or the mezzanine floors order? Q49: - See above.

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