

**REPORT TO: PLANNING & TRANSPORT COMMITTEE - 10 MARCH 2008**

**REPORT ON: DRAFT REGULATIONS ON DEVELOPMENT PLAN EXAMINATIONS-CONSULTATION PAPER**

**REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION**

**REPORT NO: 126-2008**

## **1 PURPOSE OF REPORT**

- 1.1 To advise the Committee of the comments to be forwarded to the Scottish Government on the Draft Regulations on Development Plan Examinations.

## **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee note and endorse the comments of the Director of Planning and Transportation, prepared for submission to the Scottish Government as the City Council's response to the Draft Regulations on Development Plan Examinations.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications as a result of this Report.

## **4 BACKGROUND**

- 4.1 The Scottish Government published "Draft Regulations on Development Plan Examinations" for consultation in December 2007. The consultation period extends to the 4 April 2008.
- 4.2 The draft regulations advise that, in the new development planning regime introduced by the Planning etc (Scotland) Act 2006, 'examinations' are intended as the principal means of independently testing issues arising from representations on proposed strategic development plans (SDPs) and local development plans (LDPs).
- 4.3 The draft regulations also advise that the 2006 Act requires examinations to be held into all proposed SDPs and LDPs where there are outstanding representations. In addition, examinations must also be held into proposed SDPs where planning the authorities that make up the strategic development plan authority (SDPA) have not agreed on the content of the plan and have submitted alternative proposals, or where Scottish Ministers otherwise consider an examination to be appropriate.
- 4.4 It is the intention of the draft regulations is to provide more certainty by setting out the scope and some key procedures for the examinations in legislation with a continued role for guidance by way of a new code of practice for development plan examinations.
- 4.5 The draft regulations highlight that the scale of objection to local plans and the nature of the local plan inquiry process have been identified as significant causes of delay in the adoption of local plans. In addition, it is recognised that many people, particularly those not used to legalistic or planning procedures, found the arrangements off-putting and not helpful to them in stating their concerns about proposals. Whilst the issues of participation have been sought to be addressed through previous changes to the system the unwieldiness and delay caused by the scale of objections has not.

As a result a major aim of the revised procedures has been to seek to reduce the time taken for examinations while still ensuring that significant planning issues and community concerns are properly examined.

- 4.6 A key change proposed in the draft regulations is to adopt the new terminology of 'examinations'. As a result it seeks to move away from the presumption that there will be an inquiry, to the carrying out of an examination comprising a range of methods, including written submissions, hearings and inquiry sessions. As a result, in many cases written submissions will be the most appropriate route to consider the issues raised and no further oral sessions will be required.
- 4.7 The Act 2006 already stipulates that the form the examination is to take is at the discretion of the appointed person.
- 4.8 The Draft Regulations are therefore seeking to ensure that Examinations should:
- take significantly less time than the current process
  - be focussed on the appointed person seeking out the information he feels he needs to reach conclusions on the matters in hand
  - be into the issues raised in representations rather than responding to each and every individual representation
  - be succinct and proportionate
  - ensure that it is as easy as possible for people to get involved; and
  - be similar procedurally for SDPs and LDPs as possible.
- 4.9 The Draft Regulations propose that the general costs and overheads associated with examinations into SDPs should be met equally by the SDPA and Scottish Ministers and that the costs associated with examinations into LDPs should be met by the planning authority.
- 4.10 The response of the Director of Planning and Transportation to this document forms Appendix 1 to this report.

## **5 POLICY IMPLICATIONS**

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty and Equality Impact Assessment. There are no major issues.

## **6 CONSULTATIONS**

- 6.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Head of Finance and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

## **7 BACKGROUND PAPERS**

- 7.1 None

Mike Galloway  
Director of Planning & Transportation

Ian Mudie  
Head of Planning

**APPENDIX 1**

The main thrust and guiding principles of the draft regulations are considered to be appropriate. The aim of seeking to reduce the time taken for examinations is considered to be essential if the new development plans (SDPs and LDPs) are to be delivered within the proposed timescales.

**Q1 Do you agree that these principles should underpin the regulations and guidance for development plan examinations?**

Agree, broadly speaking. However, it may be that the objective of pursuing a similar procedural approach to examinations for both SDPs and LDPs may not be realistic. While the broad strategic sweep of SDPs means that they are suited to a development plan examination approach based on written submissions and hearings, the more detailed focus of LDPs might mean that this type of approach proves less feasible in practice. Given the nature of the issues which they must address, it is possible that LDP examinations will become more heavily dependant on inquiry sessions. If this proves to be the case, it might limit the gains achieved through the new examinations process.

**Q2 Do you support the use of a new code of practice to set out the detailed procedures for examinations, rather than prescribing this detail in regulations?**

Yes. The use in the past of codes of practice (as opposed to regulations) for this purpose does not appear to have given rise to significant problems. In addition, they can be relatively quickly reviewed if, and when, the need should arise.

**Q3 In order to ensure an efficient process, should the draft regulations restrict the matters to which the appointed person may refer in assessing the authority's conformity with its participation statement?**

Yes. However, it would seem appropriate that the appointed person should have the discretion to request further information in exceptional circumstances. The scope for such requests should be clearly defined and strictly limited.

**Q4 Are you satisfied that the proposed scope of the examination successfully balances the need for a speedy and efficient process with a rigorous assessment of appropriate issues?**

Yes.

**Q5 Specifically, where should responsibility lie for identifying the issues to be assessed in the examination?**

The final responsibility should lie with the appointed person. If this responsibility were left to the planning authorities alone, they could be left open to possible accusations of bias/manipulation.

**Q6 Should the regulations set out a defined list of matters to which the appointed person can refer in assessing the plan, and if so, which matters should be included in such a list?**

In addition to the matters referred to in paras 20 and 21, the regulations could refer to Scottish Planning Policy documents and to any significant relevant policy, etc. documents published subsequent to the submission of the initial representations/responses.

**Q7 Are there other bodies beyond those proposed in regulation 6(4) from whom it should be possible to seek further representations?**

Regional Transport Partnerships (perhaps already included under 'Key Agency'?)

**Q8 Do you agree that the proposed apportionment of examination costs is fair and workable?**

Given that the planning authorities falling within an SDPA area will already be required to finance the day to day running of that authority, it might seem a bit harsh that they will also be required to meet half of the examination costs. This might be viewed as an unfair financial burden on those authorities which happen to fall within one of the city region areas.

**Q9 Are there any potential impacts on the business or voluntary sectors that we should be aware of in finalising these regulations?**

By focussing on issues as opposed to individual representations, the regulations should avoid a great deal of duplication and reduce the time required for such parties to participate in the proceedings. However, they may argue that, as a result, they have been denied the opportunity to fully address issues specific to their own representations.

**Q10 Are there any potential impacts on particular societal groups that we should be aware of in finalising these regulations?**

Don't know.

**Q11 Do you have any other comments to make on the draft development planning examinations regulations?**

While the appointed person can invite further representations from a range of parties, there doesn't seem to be any provisions covering how these parties will be selected. Whilst it might be assumed that the selection of these parties will be at the discretion of the appointed person, there is a need for clarification on this.