REPORT TO: **DEVELOPMENT QUALITY COMMITTEE - 17 MARCH 2008**

REPORT ON: **DEVELOPMENT MAN AGEMENT - CONSULTATION PAPER**

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

REPORT NO: **88-2008**

1 PURPOSE OF REPORT

1.1 The report seeks to confirm the views of the Council in response to the Consultation Paper "Development Management" and to authorise the Director of Planning and Transportation to issue the response to the Scottish Government by 2 April 2008.

2 RECOMMENDATION

2.1 It is recommended that the Committee:

a endorses the commentary set out in Annex A to this report and the responses to the standard consultation questions set out in Annex B to this report as the Council's formal response to the Consultation Paper;

b authorises the Director of Planning and Transportation to issue the formal response to the Scottish Government by 2 April 2008.

3 FINANCIAL IMPLICATIONS

3.1 Additional burdens will be placed on planning authorities as a result of these proposals. Examples of additional costs are most likely in the following areas: pre-application consultations by applicants; pre-determination hearings; processing agreements; assessment of access and design statements and neighbour notification. Annex A to this report makes a commentary on the likely direct and indirect resource implications for each of the main proposal areas.

3.2 The Scottish Government in the Consultation Paper has indicated that to a degree the additional costs to Councils are likely to be covered by a re-evaluation of application fee levels. Revised Regulations will be necessary and research is underway.

3.3 Therefore, at present, it is not possible to quantify the net financial impact for the Council of the proposals until the detail of the Regulations are known and the outcome of this consultation paper is known. A further report will be made to the Committee in due course. However, attention of Members is drawn to the suggested response in Annex B to this report at Q49.

4 BACKGROUND

4.1 This Consultation Paper was published by the Scottish Government on 9 January 2008. It is the third so far in a series of papers relating to Development Management issues following the enactment of the Planning Etc (Scotland) Act 2006 in December 2006. These papers include or make reference to draft secondary legislation which will implement the provisions set out in the principal legislation. The other two consultation papers on enforcement and the hierarchy of applications were considered by the Development Quality Committee at its February 2008 meeting

(Reports 28-2008 and 59-2008 respectively refer). Reference is also made to Article III of the Minutes of the Planning and Transport Committee of 12 September 2005 (Report 504-2005 refers) when members considered the terms of the White Paper "Modernising the Planning System" which paved the way for the 2006 Act.

4.2 Members should note that the consultation paper, the subject of this report, does not contain provisions relating to Schemes of Delegation or Local Review Bodies. These will be subject to a separate consultation paper which has been published. A separate report on this paper will be made to the Committee in April. Nevertheless, relevant aspects of the draft proposals are referred to where relevant in this report.

4.3 This Consultation Paper concerns new secondary legislation on procedures relating to processing planning applications (to be now known as 'development management'). The Consultation Paper contains the draft Town and Country Planning (Development Management Procedure) (Scotland) Regulations (DMR) which stems from the provisions of the new 2006 Act which in turn amends the 1997 Act.

4.4 The changes to development management are concerned specifically with: making the processes around planning applications fit for purpose and responsive to different types of development proposal; improving the efficiency in the way planning applications are determined; and improving public involvement in these processes.

4.5 The paper responds to the content of the 2006 Act and the White Paper which preceded it and which together seek to

a improve the involvement by communities at the development planning stage when the local policy context for considering development proposals is being prepared;

b allow local communities a greater role at the pre-application stages of certain applications to influence the nature of the proposals before an application is lodged;

c allow enhanced scrutiny during the processing of such applications;

d ensure greater awareness of proposals and transparency of decision-making.

4.6 Annex A to this report summarises the proposals following a topic based approach and includes an evaluation of the draft proposals. Annex B provides a recommended response to each of the questions posed by the paper.

4.7 The Consultation Paper contains no provisions for transitional arrangements but gives a commitment to consult further on this and to ensure adequate publicity before the detailed provisions of the Regulations are introduced (see also Para 4.11 below).

4.8 Copies of the Consultation Paper have been deposited in the Members Lounges or may be viewed on-line at www.scotland.gov.uk/Topics/Planning/Modernising.

4.9 The importance of this Consultation Paper should not be underestimated by Members or by other stakeholders in the process, particularly Community Councils, other community groups, developers, agents, planning consultants and consultees. Unless there is a full understanding by each of these parties of the implications of

these fundamental changes, there is a danger that the implementation process will be frustrated leading to confusion and delay whilst the Council ensures that correct statutory procedures are followed. It is hoped that each of these groups has taken the opportunity to comment on the draft proposals and influence the process of change.

4.10 The proposed changes to development management procedures, as will be seen from Annex A, are far from straight forward. All the current consultation documents need to be read and interpreted together as a package.

4.11 It is disappointing that in order to achieve the creditable objectives of the new Act, development management processes and procedures have to become so complex, unwieldy and difficult to interpret and explain to stakeholders.

4.12 For this reason it is considered important that planning authorities are given sufficient time prior to full implementation to prepare back-office systems, train staff and Members and engage in awareness raising in communities and with agents.

5 POLICY IMPLICATIONS

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

6 CONSULTATIONS

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

7 BACKGROUND PAPERS

7.1 "Development Management" - Consultation Paper January 2008.
7.2 "Draft Regulations on the Planning Hierarchy" - Consultation Paper November 2007 and Report 59-2008.
7.3 Planning Etc (Scotland) Act 2006.
7.4 Report 504-2005 relating the White Paper "Modernising the Planning System - June 2005".

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7 March 2008

Annex A: Summary of Proposals and Commentary

Topic 1: ENHANCED SCRUTINY	**Regulation(s): 4-9 Schedule 1**	**Paras: 2.1-2.32**

Summary of Proposals

Pre-application Consultation with Communities by Applicants:

- These provisions will apply to "national", "major", large scale bad neighbour developments applications subject to environmental impact assessment (EIA) procedures and certain developments which are "significant" departures from the development plan. Those listed in Schedule 1 of the proposed Regulations are included in this category.
- A prospective applicant may serve a Notice on the Council requiring a view on the need for pre-application consultation. 21 days are allowed for a view to be issued.
- Where formal pre-application consultation with communities is required, and at least 12 weeks prior to the submission of an application, the applicant must submit a Proposal of Application Notice on the Council and formally serve it on the relevant community council, and owners and occupiers of neighbouring land. The Council has the opportunity to seek that consultation beyond this level be undertaken. The applicant is responsible for press publicity and for convening at least one public meeting.
- The applicant must (with the application) submit a Pre-application Consultation Report. Without it, the Council can decline to determine the application. (This is in addition to normal public participation requirements of the Act).
- Mandatory Pre-determination Hearings are to be required for EIA developments and for developments which are "significant" development plan departures. This is seen as a minimum requirement and Councils may wish to vary this in accordance with local circumstances.
- Full Councils, as opposed to Committees or officers under delegated powers, are required to determine applications which are the subject of such Hearings.
- EIA developments and those which are "significant" departures are to be notified to Scottish Ministers under the provisions of a separate Direction already in place.

Commentary

This package of measures is suggested in principle as a key element of the Act's strategy for increasing public awareness of proposals at the earliest stage with opportunities for communities and planning authorities to influence major developments before an application is lodged.

However, the Consultation paper does not make clear if Councils will, in assessing Pre-application Consultations Reports, be required to verify their accuracy. If so, it is not clear how this could be achieved or in the determination of the application whether the issue of accuracy can be a material consideration influencing the decision.

Commentary (Cont'd)

The table in Schedule 1 of the proposed Regulations introduces categories of application to the security process which may not be national or major applications. The construction of new residential accommodation above five units (and which is not a proposal in the development plan) will be subject to these scrutiny arrangements. This has the capacity to create a significant resource burden on applicants, agents, communities, Community Councils and planning authorities as the number of potential "windfall" sites could be significant over the course of a year. Although such proposals will have an impact on communities it is doubted that this will be so significant to warrant consultation measures beyond normal neighbour notification and participation measures which will continue to apply. Arguably other land uses (eg small scale retail, commercial or industrial proposals) not covered by these arrangements will probably have a greater community impact.

It is also considered that the earlier notification of owners and neighbours is likely to create confusion as these processes will require to be undertaken again when an application is submitted. Also, it is unclear if Councils will be expected to identify neighbours and advise applicants (see Topic 6 below).

The Council's policy on hearings will require to be revisited once the Council has had an opportunity to assess the implications of the Consultation Paper on its Scheme of Delegation.

Potential Resources Implications

The impact of the package of proposals is most likely to be felt by applicants, agents and Community Councils. The impact on planning authorities is likely to lie on officers who will be called upon to administer the Proposal of Application Notices procedures and the assessment of Pre-application Consultation Reports Annex D (Para 3.14) indicates their officers may need to take some part in the consultation to "assure that the applicant was representing their proposals in a balanced and fair way". This will place an additional burden on planning authorities.

It is also estimated that the number of referrals to Scottish Ministers will increase as a result of the scrutiny package but the number is difficult to assess.

Although increases in planning fees are mentioned as one method of meeting the additional expenditure, this matter is not covered in this Consultation Paper. The Council will have an opportunity to influence this matter when the new draft fees Regulations are published.

Reference to Annex B Consultation Questions: Q1 - Q11

Topic 2: PROCESSING AGREEMENTS	**Regulation(s): 27**	**Paras: 3.1-3.17**

Summary of Proposals

- This provision is applicable to "national" and "major" developments only.
- The provisions allow the applicant and the Council to agree on the approach and timescale for the determination of the application. It would act as a voluntarily entered into project management tool. Agreements are expected to be entered into where it is "practical to do so." (para 3.4).
- Processing Agreements should ideally be agreed at the pre-application stage. If not, 28 days are allowed for reaching an agreement after application submission.
- The statutory time period for determining "national" or "major" developments is to be four months instead of the normal two months.
- Para 3.11 of the Consultation Paper specifies the suggested content of an agreement.
- Agreement reviews are possible as circumstances change.
- Processing Agreements would be public documents (Part 1 of Register, website etc).
- The return of an applicant's fee is anticipated where an authority is "found to have acted unreasonably" (Para 3.17).

Commentary

It is considered that for certain large scale developments, such a project management tool will prove useful for both applicant and the Council. However, such agreements will probably be subject to continuous, rather than periodic change. This may prove confusing for the public who will have access to the Agreements. Of greater concern is the proposal for the fee to be returned where the Council is found to have acted "unreasonably". Who will adjudicate? Why is no complimentary provision being introduced to penalise the applicant or third parties (eg consultees) for delays which are outside a Council's control.

Potential Resources Implications

There is an outside chance in extreme cases that the planning fee may require to be refunded. Although there will be staff resource implications the drawing up of such agreements will be closely related to routine negotiations that any additional devoted time should be readily absorbed.

Reference to Annex B Consultation Questions: Q12 - Q15

Topic 3: PLANNING PERMISSION IN PRINCIPLE	**Regulation(s): 12-15**	**Paras: 4.1-4.16**

Summary of Proposals

- The existing Procedure Order (to be replaced) provides for the making of applications for outline planning permission (OPP) and for follow up Reserved Matters applications (REM).
- OPP is to be replaced by planning permission in principle (PPP) which will require matters specified in conditions to be subject to further approval by the Council. All such approvals will be the subject of a formal application/applications. The proposed Regulations contain details on the content of such applications. The new Act prescribes determination timescales for those further applications.
- These applications for further approval will require to be made in writing, be accompanied by appropriate plans and a statutory fee. The Council will be required to notify neighbours and also those who made representations on the PPP application.
- Consequently reserved matters applications are to be abandoned.

Commentary

It is noted that applications for PPP will require in future to be accompanied by more detailed plans than is statutorily required at present, viz building layouts, dimensions and heights of buildings, access points, and open spaces. In addition, design/access statements will also be required.

It is considered that these statutory requirements may mislead those consulted into believing that the proposals are "set in stone" whereas applicants and planning authorities will wish to accept them for illustrative purposes only. Applicants are unlikely to be so far advanced in their thinking to be able to supply definitive details especially that requested for access and design statements. The status of the plans required under Regulation 12(2) should be made clear in the Regulations.

Potential Resources Implications

The proposals are likely to add to the burden of planning authorities in enforcing the enhanced requirements for information and in neighbour notification.

Reference to Annex B Consultation Questions: Q16

Topic 4: CONTENT OF APPLICATIONS & VALIDATION	**Regulation(s): 11, 12, 14, 15, 28 and 29**	**Paras: 5.1-5.18**

Summary of Proposals

- Work on specifying Standard Application Forms is underway by the Scottish Government.
- The proposed Regulations specify in detail what constitutes a valid planning application including the precise nature of plans to be submitted. Additional guidance will follow.
- Supplementary reports and assessments (eg retail, transport, flooding) will be for Councils, as at present, to request as suits individual cases.
- Existing arrangements are confirmed in that there will be no stopping of the processing clock to allow for essential supporting information to be provided.
- In future, planning permission in principle (PPP) applications will require to contain supplementary information. A single red edge plan will no longer be acceptable (see Topic 3).
- An application will be valid when the last piece of information statutorily required is received. The processing "clock" starts at that point.

Commentary

It is regrettable that the Consultation Paper has concluded that it is unable to define circumstances where an application should not be validated in the absence of all the essential technical information required. Consultees and notified neighbours may not have access at the outset to sufficient detail to make an informed input. Notifying neighbours afresh when the information is finally received is an option, but one which is not presented in the Act and which would place an additional burden on planning authorities. By the time this stage is reached, the two month processing time will have elapsed and the period for consultation and objection from third parties will have expired in the vast majority of cases. Not all such applications will necessarily fall into the national or major category or be subject to enhanced scrutiny arrangements.

It ought to be possible for the Regulations to specify those categories of application where Councils will be expected not to validate an application until all essential information is assembled, or at least to allow planning authorities a degree of discretion.

The Council frequently finds that delays in the processing of an application occur as the result of delays in the receipt of essential information from applicants/agents. It is not clear from planning legislation whether a Council can declare an application invalid and return it to the applicant undetermined if essential information is not provided within a reasonable and prescribed timescale. The proposed Regulations should provide planning authorities with those powers.

Potential Resources Implications

The above suggestion would introduce greater certainty for applicants, communities, notified neighbours and Councils and minimise the time currently devoted to assembling additional essential information in a restricted timeframe.

Reference to Annex B Consultation Questions: Q17-Q20

Topic 5 DESIGN AND ACCESS STATEMENTS	**Regulation(s): 16**	**Paras: 6.1-6.32**

Summary of Proposals

- Under the new Act it is a statutory duty for planning authorities to perform their duties in a way which encourage equal opportunities.
- It will also be a statutory duty for prescribed applications to be accompanied by DESIGN STATEMENTS and ACCESS STATEMENTS.

OPTION 1: Proposes that the requirements will apply to all applications for planning permission except those for

- the validation of conditions applied to a previous permission;
- householder developments;
- engineering operations;
- material changes of use.

OPTION 2: Proposes that the requirements will apply only to "national" and "major" category applications and "sensitive" sites (eg for their historic or environmental interest).

Design Statements will be required to set out design principles and concepts.

Access Statements will be required to set out issues relating to access for disabled persons and how these have been dealt with in the proposals.

Statements will be applicable to PPP.

Both statements will be material considerations.

Both statements may or may not be set out in the same document.

Access Statements will relate to external features and design only.

Pre-application consultation by applicant with relevant stakeholders including groups representing disabled persons is advocated, eg via Voluntary Access Panels.

Statements are required for a relevant application to be validated.

Commentary

It is considered that Option 1 represents the better alternative as it is most likely to include all applications likely to raise design and access for the disabled issues.

The philosophy and proposed content of Design Statements is supported. It is the Council's established practice to require them for specified types of application and formalising this requirement is to be welcomed.

However, in respect of Access Statements, whilst their objective is to be supported there is a lack of detail as to their content and how they are to be evaluated as a material consideration. External design impacts are invariably linked to internal circulation arrangements within buildings, a matter which is the subject of evaluation under the Building Standards Regulations and not the Planning Act. Planning and Building Standards Regulations could easily come into conflict and solutions satisfying both requirements may not be readily found in advance of warrant details being available.

Commentary (Cont'd)

In addition, evaluating and consulting on Access Statements may prove to be a major challenge for Councils who do not have the necessary internal expertise and where Voluntary Access Panels meet infrequently or may be poorly resourced. This could potentially hold up the determination of an otherwise acceptable application.

It is considered that Design and Access Statements should be separate documents subject to individual evaluation and consultation.

It would appear that Access Statements will be required irrespective of whether or not they are buildings to which the public are to have access. This is at variance with existing guidance in PAN78 "Inclusive Design" (Page 8).

Both PAN78 and this Consultation Paper give insufficient guidance as to the minimum contents of Access Statements, nor to their evaluation in planning terms. Further guidance on these matters is considered essential.

Potential Resources Implications

Additional burdens are likely to fall on applicants in the preparation of these mandatory statements; on Councils' Access Officers and Voluntary Access Panels in engaging in consultation; and for planning and building standards officers in evaluating Access Statements. Again the Consultation Paper turns to the solution of increasing application fees as a potential remedy.

Reference to Annex B Consultation Questions: Q21-Q26

Topic 6 NEIGHBOUR NOTIFICATION AND PUBLICITY	**Regulation(s): 2, 18, 22, 23**	**Paras: 7.1-7.19**

Summary of Proposals

- Previous consultation papers prior to the new Act confirmed the Scottish Government's decision to transfer neighbour notification procedures to planning authorities. This is now confirmed in the draft Regulations.
- A single notice must be "given" by normal post to the owner/lessee/occupier of neighbouring land/property within five working days of the validation of the application.
- Neighbour notification is required in respect of applications for PPP and also in respect of applications required by condition of a PPP. However, Notice is also to be served on those who made representations on the original application in principle.
- The minimum period for representations is extended from 14 to 21 days from the date on which the Notice is "given" to neighbours.
- The definition of neighbouring land is simplified to land within 20m of the boundary of an application site.
- Authorities will be encouraged "through guidance" to issue Notices to "any other land as they consider appropriate" taking account of local circumstances.
- In addition, local newspaper advertising will require to be used where
  - no premises can be identified
  - there is a proposal for bad neighbour development
  - a proposal for development contrary to the development plan
- In future planning authorities will be able to recover the costs for this press advertising from applicants.
- No statutory provision is made for site notices to supplement statutory requirements.
- Revised fees will be introduced to cover the higher costs of these responsibilities on planning authorities.
- Applicants will continue to notify owners and agricultural tenants as at present.
- Local authorities will be obliged also to notify these owners/tenants that the application papers have been received and are available for inspection.
- Where an owner/tenant cannot be identified it will be the local authorities' responsibility to place an advertisement to this effect and recover the costs subsequently from the applicant.
- The Regulations specify the content of the notification package (Regulation 22).
- In notifying neighbours planning authorities are required to indicate relevant provisions of the development plan and how they intend to deal with the application (Regulation 22(4)(i)(j).

Commentary

This is a significant new statutory responsibility for Councils. When originally consulted on the matter at the White Paper stage, the Council agreed with the proposal in principle provided the additional costs were covered by additional revenue viz, from an increase in the planning fees. The proposal to extend the minimum period for representations to 21 days is supported in principle, but Councils will face a major challenge in co-ordinating the neighbour notification procedures with an application's appearance on the Weekly List and Public*Access* and with timescales for statutory advertisements to minimise confusion as to the precise period within which representations may be lodged.

Commentary (Cont'd)

The simplification of the definition of neighbouring land is supported. However, tests have indicated practical difficulties in the electronic capture of all qualifying addresses into a mailing list. This process will require to deliver absolute accuracy in the interests of fairness and natural justice and it may be that manual checking will be required, adding to the resource impact. The Regulations do not make it clear if the proposed 20m distance excludes intervening roads.

In the interests of certainty and consistency the proposal that other neighbours beyond those identified under the 20m rule might be notified as a result of local circumstances is not supported as it will be impossible to adopt a consistent and fair approach across a range of different applications.

The new and added responsibility of Councils to notify owners and agricultural tenants for a second time is considered to be unnecessary and could lead to mis-notification if the details provided by the applicant prove to be inaccurate.

At the neighbour notification stage, it is considered that it will be difficult for the Council to identify with any certainty development plan implications so early in the lifetime of an application and where the validation stage involves an administration check only as to the competency of the submission against the requirement of the Regulations. Also it may not be possible given the nature of Schemes of Delegation to be definitive about how the application is likely to be determined procedurally. Co-ordination of this information may not be possible within the statutory period between receipt of a valid application and its notification to neighbours.

No indication is given as to the consequences for Councils if the five day period for the "giving" of neighbour notification is exceeded.

It is unclear from the Regulations or the Consultation Paper what the terms "give" and "given" actually mean. Are neighbour notification notices "given" when they are issued or received?

Although the issue of a single notification letter to owners/occupiers/lessees is a welcome simplification, manual postal delivery has the potential to lead to complaints of non-receipt or late receipt of notifications. However, this has to be balanced against the further added cost of eg, recorded delivery.

It is considered that the Schedules to the Regulations should prescribe a template form for neighbour notification.

Potential Resources Implications

It is Scottish Government's objective in reorganising the fees required, that the full costs of processing applications including neighbour notification will be recoverable.

It has been estimated from recent research that neighbour notification is likely to cost Councils in the order of an <u>average</u> of £75 per application.

Although the Council will wish to comment on the revised Fees Regulations in due course, it may wish to re-emphasise its qualified support for these revised measures. The portion of fee increase related to this new statutory responsibility must be realistic within an overall fee increase which itself must be proportionate to the development proposed in order that householder applicants are not disproportionately levied.

Reference to Annex B Consultation Questions: Q27-Q32

Topic 7: LISTS OF APPLICATIONS	**Regulation(s): 24-26**	**Paras: 8.1-8.8**

Summary of Proposals

- Weekly Lists of new applications must be kept (see 36A of new Act).
- Weekly Lists shall require to contain specified information as outlined in Regulation 24 and shall be in four specified parts.
- Lists will contain references to any Proposal of Application Notices (see above) or applications made direct to Scottish Ministers (for "urgent development" under procedures introduced on the removal of Crown immunity).
- The date of receipt of application currently set out in the list is to be replaced by the date on which representations must be received.
- Publicity is to be as follows:
  - on Websites
  - available for inspection at authorities principal offices
  - available to Community Councils and in public libraries
  - availability of weekly lists rather than the lists themselves are to be publicised monthly in a local newspaper with scope to recover costs included in the application fee.

Commentary

The Council already maintains and publishes a Weekly List. However, its form and presentation will require to be adjusted and its efficient preparation and production will to a degree depend on how our computer software can accommodate the new information required as a consequence of the Regulations. There is an issue surrounding the degree to which the time periods for public participation can be effectively co-ordinated and explained clearly to stakeholders (see Topic 6 above).

Potential Resources Implications

There will be a minor back-office resource implication in the redesign and publication of the Weekly Lists. The commitment to increase planning fees to cover the cost of newspaper publicity is welcomed. The Council will consider this further when proposed amendments to the Fees Regulations are published.

Reference to Annex B Consultation Questions: Q33-Q34

Topic 8: STATUTORY CONSULTEES	**Regulation(s): 30**	**Paras: 9.1-9.6**

Summary of Proposals

- The current provisions for statutory consultation are confirmed in the new DMR.
- Progress with e-planning arrangements may mean that detailed arrangements for consultation will change in future.
- Consultation is required "before the determination of an application" rather than "before the granting of planning permission". This is to ensure that the views of consultees are available to DPEA or the Local Review Body on appeal. This is particularly important where a determination needs to be made on potential referral cases.

Commentary

The proposals in respect of statutory consultation introduce no fundamental change. The Council is aware of the need to make arrangements for electronic consultation in future and welcomes this as a measure which will increase efficiency as long as the consultees are equally equipped to respond fully and timeously. This matter is of concern. The determination of applications can be delayed whilst essential technical responses are made available by consultees. The Scottish Government should introduce measures to ensure that statutory consultees respond in a full and timeous manner.

The proposal concerning the timing of consultation is welcomed.

Potential Resources Implications

There are likely to be resource implications for the Council.

Reference to Annex B Consultation Questions: Q35

Topic 9: TIME PERIODS FOR DECISIONS	**Regulation(s): 29**	**Paras: 10.1-10.8**

Summary of Proposals

- For "local" developments the statutory period for making a decision will be two months from the date of submission of a valid application.
- For "national" or "major" developments the period will be four months.
- Applications shall not be determined until the time periods for neighbour notification/ notification of owners/tenants (Regulation 22) and press publicity (Regulation 23) have expired.
- Exceptions to the above are where
  - there has been late payment of fees for advertising.
  - the advertisements for applications contrary to the development plan is placed late and the time period for comments has not expired with the two or four month period.
  - there has been mutual agreement between parties to extend the period of two or four months as appropriate.
- The time periods do not include the specified requirements for validation to take place. Provisions for "stopping the clock" are not made.
- In future the applicant will have three months instead of six months from the date of decision to appeal or refer the matter to the Local Review Body as appropriate.

Commentary

It was regrettable that the new Act did not take the opportunity, given the increased complexity of the planning process, to increase the two month period to, say three months. The increase to four months for large scale applications is welcome. However, it is considered to be regrettable that "stopping the clock" will not be supported in the Regulations. It is frequently the case at present, even for minor applications that the analysis phase of processing including statutory consultations cannot begin or progress until all the required technical information has been submitted and verified.

The proposals for timescales relating to the submission of appeals is supported.

Potential Resources Implications

There are unlikely to be resource implications for Councils.

Reference to Annex B Consultation Questions: Q36

Topic 10: DECISION NOTICES, REPORTS OF HANDLING AND REGISTERS	**Regulation(s): 20, 39**	**Paras: 11.1-.11.19**

Summary of Proposals

- In future decision notices must set out the "terms" of the decision (ie for both approval and refusals) viz any conditions applicable and the reasons for the decision.
- Decision notices will also be required for applications required by a condition imposed on a previous grant of planning permission.
- Permissions will lapse after three years instead of the present five and this will be noted on the decision notice. (Councils can direct that an alternative period is applicable).
- The suite of time periods currently applied to outline permissions will no longer be applicable to decisions in respect of PPP applications. However, as they are outlined in primary legislation, they will nevertheless be applicable.
- In future, decision notices will refer to the plans considered by the authority in determining the application.
- Decision notices will refer to Section 75 notices where these have been concluded.
- Decision notices are to include conditions and the reasons for them issued by Scottish Ministers by way of a Direction.
- Decision notices relating to the approval of matters specified in Conditions will require to contain descriptive and reference matters.
- Copies of all decision notices are to be sent to all those who submitted representations.
- The Regulations provide a detailed description of the enhanced content of Parts I and II of the Statutory Register of applications (Paras 11.10-11.18).
- A statutory period of seven days is introduced for entries to Parts I and II of the Register.
- Part II of the Register is to include the report of the Council on the "handling of the application".

Commentary

All these provisions are supported. Most are undertaken by the Council already. The most significant change is the need in future to include in the decision notice reasons for approval as well as refusal. No guidance is given as to how this is to be done as part of the decision notice. The Council will continue to prepare comprehensive reports (viz Reports of Handling) on each application. In future this should contain specific explanatory text summarising the case leading to the decision. It is this which would be incorporated into or appended to the decision notice.

As part of its e-planning protocols the Council will wish to pursue with its software suppliers the feasibility of creating on-line as opposed to paper-based registers which comply with the Regulations.

Potential Resources Implications

There are no resource implications likely as a result of these draft proposals.

Reference to Annex B Consultation Questions: Q37 - Q40

Topic 11: BAD NEIGHBOUR DEVELOPMENT	**Regulation(s): 23.1 and Schedule 7**	**Paras: 12.1-.12.5**

Summary of Proposals

- Bad Neighbour Developments are those likely to raise amenity issues beyond immediate neighbours or during evening or weekend hours.
- A revised list of Bad Neighbour Developments are provided in the Regulations.
- Applications for such developments will be subject to publicity measures as at present.
- Large scale bad neighbour developments are referred to in Schedule 1 of the Regulations and will be the subject of enhanced scrutiny provisions (see Topic 1).

Commentary

The proposals are sensible and welcome as the existing list of "bad neighbour developments" is dated.

Potential Resources Implications

There are no resource implications arising. However, it is presumed that in redrafting the Fees Regulations that the "bad neighbour advertisement" fee will continue to be payable by the applicant as at present and that an appropriate fee scale will be introduced and specified.

Reference to Annex B Consultation Questions: Q41 & Q42

Topic 12: MISCELLANEOUS ISSUES	**Regulation(s): -**	**Paras: 13.1-.13.18**

Summary of Proposals

This section of the Consultation Paper makes reference to the following issues: powers of direction; Crown immunity; CLUD provisions; marine fish farming; e-enablement of development management; powers to require further information; and to forms and certificates.

This section makes reference to Variation of Applications. The new Act specifies that planning applications may with the agreement of the planning authority be varied after submission. Where the planning authority considers that such a variation is substantial they must not agree to it and a new application will be needed. The planning authority may give such notice of variation as they consider appropriate. Variations cannot be made after an appeal has been made to Scottish Ministers.

The existing powers which authorities have to require additional information to be provided to allow them to determine planning applications and applications for planning permission in principle is retained (one month).

Commentary

There are no issues arising from the miscellaneous issues referred to above.

The proposal restricting the variation of applications is welcome. However, the definition of "substantial" will be for each authority to determine on the planning merits of each proposal. There is no provision in the new Act for "non-substantial" variations to be the subject of fresh neighbour or owner notification.

Potential Resources Implications

There are no likely resource implictions.

Reference to Annex B Consultation Questions: N/A

Topic 13: MEZZANINE FLOORS	**Regulation(s): -**	**Paras: 14.1-.14.10**

Summary of Proposals

The Consultation Paper contains a Draft Order specifying the circumstances where increases in the gross internal floorspace of retail establishments may be made through the introduction of mezzanine floors without the need for planning permission (viz 200m^2 or 10m^2 in cases where previous internal floorspace increases up to 200m^2 had already taken place).

This is to overcome a loophole in the present legislation where such proposals do not require planning permission and where there was the potential for adverse planning implications.

Commentary

This Order is welcomed as it fills an existing loophole in the legislation.

Potential Resources Implications

No resource implications are likely.

Reference to Annex B Consultation Questions: Q43-Q46

Annex B: Consultation Paper Standard Questions and Council Response

Q1	Do you agree with the proposed categories of development to which the requirements for pre-application consultation apply?	The Council supports the proposals for the "national" and "major" categories of development as described. However, the Council considers that the provision in Schedule 1 of the proposed Regulations in respect of housing is set at an unreasonably low threshold (see question 2 below).
Q2	Do you have any comments on the thresholds in Schedule 1 of the DMR on pre-application consultation?	In respsect of item 3 in the table, the Council considers that this threshold is set at an unreasonably low level for authorities, communities and applicants. Many "windfall" developments will be potentially captured by this threshold. It is suggested that most housing developments of this scale are not the subject of specific proposals in the local plan. Equally there are other land uses which are likely to create concerns for local residents which are not included in the list, eg small retail commercial/industrial developments. The Council suggests that Item 3 of Schedule 1 is deleted.
Q3	Is the information required in a pre-application screening notice sufficient?	No. Planning authorities would benefit from the receipt of as much detail about the proposed development as possible (Para 2.9a)). The value of requirement f) under Para 2.9 is not understood.
Q4	Is 21 days a reasonable period for authorities to respond to a Pre-application Screening Notice in all circumstances?	It is not clear from the Regulations that the planning authority may extend the period indefinitely or by a specific period or whether such a period can be extended. It is not clear how Councils should act if insufficient information is provided within the 21 day period (as extended) nor what a prospective applicant should do if no response from the Council is timeously issued.

Q5	Do you agree with the proposed content of the proposal of application notice?	The requirement for content under Section 35B(4) of the Act appears general and not likely to satisfy the information requirements of those to be consulted. It is suggested that the fullest description as possible of the proposals is given.
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?	It is considered that notification should be extended to established community groups other than Community Councils. There does not appear to be a requirement for prospective developers to have engaged with technical consultees prior to community participation. It would not reflect on the process well if applicants were unable to answer basic technical questions at that stage.
Q7	Do you agree with the minimum statutory requirements for pre-application consultation in regulation 8?	The press publicity may appear in the classified columns and has the potential to be overlooked. This is perhaps best supported by the mandatory issue of a Press Release to the newspaper concerned. It appears that requests for such additional publicity are at the discretion of the authority (Para 2.17) and the authority may be under pressure to ensure that publicity goes beyond what is reasonable. It is suggested that the Regulations are definitive as to the publicity necessary rather than to merely set a minimum requirement.
Q8	Do you agree with the requirements on the content of pre-application reports?	Regulation 9(c) is likely to be contentious. How is the account of the meeting to be verified as a true record? In particular, the extent to which the applicant has agreed to alter the proposals to meet the representations expressed will be open to challenge and interpretation. It is not at all clear how planning authorities are to evaluate these reports and whether such evaluation is to become a material consideration in determining the application.

Q9 Do you support the classes of development which will be subject to pre-determination hearings?	The Council supports the categories as minimum requirements. In reviewing its Scheme of Delegation and establishing the Local Review Body the Council will wish to review the arrangements it already has in place for hearing deputations. A Model Code of Conduct for Hearings is essential.
Q10 Should the opportunity to be heard at a pre-determination hearing be extended to other parties beyond those who made representations?	The Council considers that Members should receive a balanced argument at Hearings. It therefore feels that, in addition to those who have made representations, the applicant or their representative should be offered the opportunity to be heard. No other parties should be given the opportunity to be heard.
Q11 What arrangements would need to be made to convene full Councils to make these decisions?	In the case of Dundee, the full Council constitutes all of the principal Committees including the Development Quality Committee which determines applications which do not fall within delegated powers. Unless the Council changes its Committee structures this complication does not arise. However, the Regulations do not make clear whether in making the decision, full Councils or Committees acting under delegated authorities should receive the Hearings. Members at full Council may be reluctant to make a decision where only a proportion of the membership have had the benefit of hearing the deputations. Full Councils tend to meet on unspecified cycles and this may result in delays in decision-making.
Q12 Do you support the view that processing arrangements should be in place before submission of the application?	Such a proposition is entirely sensible as it would reinforce commitments concerning the pre-application scrutiny stage and in respect of essential information which should be submitted with the application and not subsequently.

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?	It is considered that to conclude a processing agreement so late in the overall processing period would partly defeat the objective of efficient management of the case by all parties.
Q14 Do you agree with the suggested components of a processing agreement?	It is considered that the Consultation Paper provides adequate guidance which is capable of being amended to suit local circumstances and individual projects.
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?	The involvement and most importantly the commitment given by statutory consultees will be important to the value of the processing agreement as a management tool. It is the Council's view that parties are unlikely to be willing to sign an agreement if there is the likelihood that any party is not committed. Councils in particular may be unwilling to sign if the other parties are not equally to be penalised for unreasonableness, eg in not providing inputs by mutually agreed dates.
Q16 Do you support the proposed approach to Planning Permission in Principle and approval of matters specified in conditions?	Whilst the Council supports the proposals in principle, the Council considers that in most cases it would be unreasonable to request a high degree of detail from an applicant at the PPP stage. This could have the effect of consultees and the public believing that this detail cannot be varied by subsequent applications for the approval of details. It will also be difficult for applicants to propose definitive access and design statements at the PPP stage. Many applications for PPP will (as outline applications are) be made to establish site value as an aid to marketing the site. In relation to Para 4.2 of the Consultation Paper, Councils may be unreasonably tempted to require further planning applications for details where positively worded conditions might be more appropriate. It is not understood how the process of Councils varying standard conditions on PPPs by direction

	will operate in practice.
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?	It is of concern that Regulation 11 is not more definitive in prescribing at least minimum requirements in terms of submitted plans. It is considered that elements from Consultation Paper Para 5.3 could be included in Regulation 11. It is of regret for the reasons set out in Annex B to this response that applications will be validated when further essential information is required. It is proposed that authorities should make the judgement of what is required on a case by case basis before an application is validated. In other words the processing "clock" should start at that point.
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?	Each Council would prepare guidance to illustrate for certain categories of application what mandatory information should be supplied with the application and that this can be further elaborated on during pre-application discussions.
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?	See answer to Q16 above.
Q20 Do respondents consider that the requirements on content of applications are sufficiently clear to allow validation to be a relatively straightforward administrative check?	No. With reference to the answer to Q17, the more definitive and prescriptive the Regulations the more straightforward validation as an administrative process can be. In addition, the requirements to notify neighbours of development plan implications likely to be decision-making procedures takes validation beyond an administrative check. This will require professional planning input and is likely to delay neighbour notification and validation. Co-ordinating the timing of neighbour notification, weekly list processes and statutory advertisements is then likely to be a less than straightforward process which is likely to confuse applicants and other stakeholders.

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?	As specified in Annex B to this report, the Council favours Option 1. As mentioned above (Q16) the preparation of meaningful design and access statements for PPP applications is considered to be impractical.
Q22 In addition to those considered in the options, in what circumstances might statements consider only one element - design or access?	As the submission of both categories of statements is a statutory requirement of the new Act, both should be provided as a minimum requirement of validation. However the content, approach and length of each will vary according to circumstance. The Council considers that they should be distinctly separate documents submitted in parallel with cross references as appropriate.
Q23 How can Access Panels be used most effectively in considering design and access?	It will be the case that applicants and Councils will wish to draw on the experience of Access Officers and Access Panels. The Act's proposals will have a resource implication on both. Access Panels tend to be convened by volunteers and may only meet infrequently. They may also require professional input to guide their response.
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?	No. The Council considers that neither the Consultation Paper, Regulations or existing Planning Advice Notice 78 give sufficient guidance as to the minimum contents for valid statements at registration. Other than the verification that statements are required and submitted, to do further assessments at the validation stage would require professional planning input which will have resource implications and lead to workload delays.

Q25 What role can local authority access officers play in assessing the access element of statements?	Potentially Access Officers will be required to play a critical role in supporting planning officers in the assessment of access statements. This will have resource implications and will require a corporate approach to ensure timeous input to the statutory process. This may not be possible as Access Officers have other responsibilities and will often be based in a department other than Planning.
Q26 What information do planning authorities and communities need to ensure a thorough and robust assessment of the design and access statement?	Above all they need to be able to draw on expertise quickly as delay in validation and assessment will compromise efficiency objectives. Also the core content of the statements needs to be prescribed in the Regulations supported by advice issued both nationally and locally.
Q27 Do you consider the proposals on service of notice to neighbours to be appropriate?	The Council has concerns relating to a number of practical/process matters as set out in Annex A to this response. At the White Paper stage the Council gave qualified support to the transfer of the function to planning authorities on the proviso that the Council was not left at a financial disadvantage. The revised Fees Regulations will consider this further. However, it is considered that to ensure accuracy and speed of notification the resource implications for the Council could potentially amount to two additional FTE administrative staff. It is doubted whether a proportionate increase in planning fees will be adequate to compensate in full for this.
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?	It is agreed that a single notice served by conventional post is the most straight forward and cost effective approach. However, there are risks attached, eg there will be no reliable and corroborated way of confirming that notices have either been issued or received. Recorded or personal delivery methods have been considered and rejected by Scottish Government.

Q29 Is the proposed approach to keeping people informed of PPP and approval of matters specified in conditions appropriate?	The Council has concerns about the need to take the administrative step of notifying owners and agricultural tenants for an additional time. Councils will not with any certainty be able to guarantee accuracy of this information which will have been supplied by applicants. Verification of the information would not be practicable.
Q30 Do you support the proposed definition of neighbouring land?	The 20 metre rule has practical consequences. All buildings will be required to be 'captured' by the computer for the generation of an accurate list of addresses to be notified. This may not be possible without a manual verification process. In addition, the Regulations do not make clear whether or not a road is to be excluded from the measurement. In each case where premises are not present Councils will need to publish an advertisement. As not every application will require such an advertisement, the Fees Regulations will require to be drafted in such a way as to ensure the payment for the advertisement is received by the Council prior to the advertisement being placed. Validation of any application should not take place until all statutory fees have been received. This needs to be clarified in these Regulations and in the proposed Fees Regulations.
Q31 Do you consider the proposals concerning the use of site notices and of local advertisements to be appropriate?	The Council does not consider site notices will add value to the process. In respect of the use of press advertisements, the Council is concerned as to the administrative cost implications of recovering this element of the fee from the applicant if the Regulations do not make clear that <u>all</u> statutory fees are payable before an application is finally validated.
Q32 Do respondents support the proposed requirements on notifying owners and agricultural tenants and the placing of local advertisements in this regard?	See answer in respect of Q29. The responsibility for running an advertisement where an owner/agricultural tenant is unknown will transfer to Councils with costs recoverable from the applicant. As not every application will require such an advertisement the Fees Regulations will require to be drafted in such a way as to ensure payment at the time the application is validated.

Q33 Are you content with the Scottish Government's proposals for the public availability of the list?	The Council already produces a Weekly List and an element of reconfiguring its layout will be involved. The greatest challenge is likely to be the co-ordination of its publication to coincide as far as possible with neighbour notification and validation dates to ensure that the extended 21 day period for responses is not unduly eroded. The ability of Councils to set a single date by which responses should be received looks to be not achievable. This will cause confusion among stakeholders.
Q34 Is the advertisement of the availability of the list in a local newspaper on a monthly basis appropriate?	This is a reasonable suggestion. However, again the statutory fee will be expected to offset these costs.
Q35 Do respondents have any views on the list of statutory consultees and the criteria for consultation?	The Council has concerns not so much with the requirement to consult but the ability for consultees to respond fully and timeously. Late or absent consultation responses at present impacts on the duty of Councils to discharge their statutory planning functions. The Council would encourage Scottish Government to introduce a mandatory requirement on statutory consultees to respond fully and timeously to considerations on planning applications.
Q36 Do respondents consider it appropriate to extend the statutory period for determining an application for national and major development to four months?	Whilst the Council appreciates that the statutory two month period has been retained under the new Act it considers that the increased complexity of the planning process introduced by these Regulations will mean that fewer applications will be capable of determination within this statutory period. It is recommended that key performance indicators be adjusted to take this into account. The extension of the period to four months for larger scale and complex applications is supported. However, it is noted that where there has been non-payment of a recoverable cost for advertising from the applicant the statutory two or four month period will not apply. This complexity could be reduced if these costs were payable prior to the application being validated or somehow incorporated into the initial statutory fee. As noted above the Regulations should make this issue absolutely clear.

Q37 Is the level of information to be provided in the decision notice appropriate?	The Council has no comment other than to request that the Regulations prescribe how the statement of reasons for the decision are to be incorporated into the decision notice. Will an appended note satisfy statutory requirements? As with most consequences of the Regulations back office systems will require adjustment.
Q38 How should planning authorities best manage the potential burden of ensuring those who made representations are advised of the decision?	It is the Council's practice at present to advise all objectors once a decision has been taken at Committee. Process adjustments will be necessary depending on the Council's final amended scheme of delegation.
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?	The Council already produces comprehensive written reports for every application determined and that these reports are publicly available. They contain reasoned planning arguments and always make a recommendation. Given the likely implications of the introduction of Local Review Bodies the content of delegated reports will require to be adjusted.
Q40 Can existing Committee reports, where available, be easily adapted to incorporate the proposed statutory requirements in paragraph 4 of Schedule 4?	The Council's existing reports are sufficiently comprehensive in that they contain the information required by Paragraph 4 of Schedule 4 to the proposed Regulations. As indicated above delegated reports will require to be reformatted to provide all the information required in an explicit format.

Q41 What might be an appropriate alternative name for "bad neighbour development"?	The Council has no positive suggestions to offer. Whilst it is appreciated that the label is not very positive, the term does tend to encapsulate the range of issues which might arise from an application in this category.
Q42 Do you support the proposed additions and deletions to the list of "bad neighbour developments" and do you have other suggestions?	The Council supports the suggestions for additions and deletions set out in Paras 12.4 and 12.5 of the Consultation Paper.
Q43 Are there any other uses which you consider should also be subject to controls on increases in gross floorspace?	The Council has no suggestions to make in this regard.
Q44 Do you support our proposals to have different approaches depending on whether other increases in the internal floorspace have taken place?	The Council has no comment to make on the proposed floorspace limits set out in the draft Order.

Q45 Do you consider that 200 square metres is an appropriate level to help achieve the objectives of helping protect town centres?	See answer to Q44.
Q46 For the purpose of controlling internal floorspace, do you support the decision to use amounts in square metres rather than a percentage?	The use of square metres as opposed to a % measure is supported.
Q47 Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations of the order?	Given the proposed extent of pre-application scrutiny proposed for certain categories of application (Schedule 1) the Council is concerned that Community Councils and other voluntary groups will not be in a position to respond to the likely degree of commitment within relatively brief time periods. Across the full package of measures the commitment of applicants, agents, developers and other consultants will increase overall. In particular, developers will require to re-evaluate the project management of their developments to build in a greater commitment at the pre-application stage. This may have an adverse commercial impact on business.
Q48 Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or the order?	As mentioned in respect to Q35 the Council has concerns that statutory consultees may not be in a position to respond comprehensively or timeously to consultation requests.

Q49 Do you have any other comments to make on the draft development management regulations or the mezzanine floors order?	Whilst the Council welcomes the general thrust of the draft Regulations it would respectfully ask the Scottish Government to acknowledge that the development management process will inevitably become even more complex and the administrative cost burden on Councils will inevitably increase. Although it is proposed to increase the scale of fees in a forthcoming amendment to the Fees Regulations, the Council doubts whether an appropriate balance in the fee scales will be achievable between full cost recovery and fee levels proportionable to the development proposed. The final implementation of these Regulations will be a major challenge for Councils. Office systems will require to be adjusted and staff trained or retrained. Also, it is likely to fall to Councils to ensure that stakeholders are familiar with the new requirements and the delivery of external training is inevitable. The Council would respectfully request that the Scottish Government in drawing up transitional arrangements and implementation timescales acknowledges that a reasonable timeframe for this will be required. This matter is particularly important during a period when local review bodies will be established and begin to operate.