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**Response to Scottish Executive consultation on
Environmental Impact Assessment of Reserved Matters Applications
19 September 2007**

Homes for Scotland represents the home building and residential development industry in Scotland. Our 90 member companies build some 95% of all new homes built for sale in Scotland. Against that background Homes for Scotland is pleased to have the opportunity to comment on the proposals for Environmental Impact Assessment of Reserved Matters Applications consultation document.

This response follows Homes for Scotland's June response to the Executive's consultation on the proposals for updating Circular 15/1999. It is understood that the Executive will include updated guidance on Outline Planning Permission, reserved matters and Environmental Impact Assessment (EIA) in a future revised Circular.

This consultation paper sets out the Scottish Executive's proposals for amending Part II of the Environmental Impact Assessment (Scotland) Regulations 1999 to transpose into Scots law the requirement that consideration must be given to the need for EIA before determining a planning application for approval of reserved matters.

Homes for Scotland members have been involved in EIA of outline planning applications and reserved matters planning applications since Interim Guidance on EIA of reserved matters was issued by the Scottish Executive in July 2006.

With reference to **Paragraph 8** of the consultation document, Homes for Scotland members are often required to prepare "*multi-stage development consents*" owing to the market conditions where one housebuilder may 'sell on' land which has outline planning consent to another housebuilder who would then be required to obtain planning consent for reserved matters pertaining to the outline consent (i.e. an 'upgrading' of the outline planning consent), or alternatively seek full planning permission (i.e. a 'fresh' planning application). These legal requirements oblige our members to essentially follow a multi-stage development process as described in the consultation document. This is also the case where proposals are revised or varied. In this context, our members will often instruct revisions to an Environmental Statement prepared for outline planning consent, in order to satisfy the legal requirement for the subsequent EIA of a reserved matters application.

Paragraph 18 refers to proposed new measures which would prohibit granting planning permission for a multi-stage consent without consideration of environmental information. We support this measure and agree that an accompanying Environmental Statement (ES) should be submitted for the first time, as a revision or as an update to previously submitted ES's. This procedure clearly brings more clarity and certainty to the decision-making process and ensures that all likely environmental impacts are assessed upon the scheme intended to be implemented by the applicant, and not just on a generic scheme, as in the present multi-stage development consent system at the outline stage this is considered acceptable in

law. Of course, the new requirement shall place additional financial and time constraints on our members who would need to instruct revisions and amendments to ESs. Additionally the need, in some cases, for specific seasonal surveys (e.g. birds) may effectively delay revisions until surveys are complete which adds significant time to the application process.

We note the risks outlined in **Paragraph 20**, with respect to the prospects for discovery of new issues of environmental impact at the reserved matters stage, which had they been known at the outline stage would have resulted in permission being refused. Whilst our members can already use legislative procedures to claim compensation (under Section 76 of the Town and Country Planning Act (Scotland) 1997) in the event of revocation or modification of the original consent, there is concern that it may become difficult for members to realise the development value of land with outline consent where these new discoveries are made. The implications could be significant and include increased costs for making a compensation claim, increased costs in the revocation or modification of the consent (dependent on the new discovery and the need for mitigation of that new discovery). The sum of these obligations could ultimately affect the commercial viability of schemes.

Paragraph 23 outlines the procedures where an ES has not been submitted. We agree with these provisions, as they largely follow current practice in terms of the need to seek a screening opinion. We also welcome the provisions where any previous negative screening opinion adopted at the outline planning permission stage may now be superseded. We understand that an applicant would then seek a screening direction from Scottish Ministers in the manner currently provided for in the 1999 regulations.

Paragraph 25 relates to procedures where an ES has previously been submitted prior to the grant of outline planning permission. This procedure refers back to the term “multi-stage development consents” at Paragraph 8, and our comments in relation to the exchange or trade of land with outline planning consent as is frequently the case for our members. We agree that the Planning Authority, under the new guidance, would be required to consider the adequacy of the ES for the project, in light of the reserved matters before them. However it should be made clear in the guidance that revised, updated or supplementary information responding only to new impacts not known at the outline stage, is just as acceptable as the provision of a fully revised or updated ES to satisfy the Planning Authority.

With specific response to the Executive’s questions, in light of the comments above, Homes for Scotland comments:

Question 1 – Do you consider that the proposed definition of “the project” is helpful in clarifying the scope of the proposed new provisions?

Our comments above relate to our experience with “*multi-stage consents*” and should be considered as such. Responding to the definition of “*the project*” we are happy that this be used, since an element of process and programme is central to the delivery of the end product for our members, i.e. homes. The term is helpful in clarifying the scope of the proposed new provisions.

Question 2 – Do you consider that the draft Environmental Impact Assessment (Scotland) Amendment Regulations 2007 implement appropriately the ECJ rulings of 4 May 2006 in the Barker Case and in Commission v UK?

The Draft regulations appropriately implement the ECJ rulings.

Question 3 – Do you have any comments to make on the proposed draft regulations?

Homes for Scotland's comments on the proposed draft regulations are set out in detail above.

Question 4 – Do you have any comment to make in relation to the draft regulatory impact assessment contained at Annex B of this paper? In particular to the indicative costs of compliance outlined in Annex B and the risk that implementing these Regulations could result in OPP being revoked, or modified, as a consequence of significant environmental issues being considered at the reserved matters stage?

Our detailed comments above largely address this question. In terms of the benefits outlined in Annex B of the paper, Homes for Scotland welcomes the new regulations in the sense that they are already in place on an administrative basis and that they already bring greater clarification and certainty. In terms of the costs outlined in Annex B of the paper, Homes for Scotland has already commented above about **Paragraph 20**. We note that costs are likely to be minimal, but there are likely to be additional costs which need to be budgeted for and in some cases may determine the viability of a project. Our members frequently instruct the preparation of ESs from an early stage in the development process and the cost range identified in the Annex (£30,000 to £150,000) is considered reasonable, however the unknown quantities are rarely identified at the early stages and in cases these can be significant costs at later stages. Similarly, our comments in **Paragraph 20** in relation to compensation apply.