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**DRAFT REGULATIONS ON THE PLANNING HIERARCHY
CONSULTATION PAPER
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Homes for Scotland is the representative body for the private home building industry in Scotland. Homes for Scotland represents the interests of over one hundred and thirty member organisations who provide 95 of every 100 homes built for sale in Scotland and we have a rapidly expanding membership of professional and other service businesses engaged in our industry.

Homes for Scotland has been involved in an ongoing 'conversation' with the Scottish Government during the modernisation of the planning system. We are grateful to the Scottish Government for taking time to present the proposals to our member companies and hope that the early feedback given has been helpful in the drafting of the new regulations. Homes for Scotland will be responding formally to each of the draft regulations forming the planning modernisation package.

Rather than answer each of the consultation questions posed we have raised issues which we feel need full consideration before the regulations can be put in place.

Thresholds for Major and Local Housing Developments

For major housing development, it is proposed that the threshold should be 100 or more units, or where the area of the site exceeds 2 hectares. Our members do not, in principle, take issue with the thresholds proposed for major development. What it means in practice, however, causes serious concern. The concerns being so great as to encourage certain sections of the industry to call for the threshold to be reduced to 50 and in some cases as low as 20. The pressure to drop thresholds stems from one major concern, namely the independence of Local Review Bodies.

Local Review Bodies

The consultation on Modernising Planning Appeals states that 'Local Review Bodies', comprising a small number of elected members, will determine appeals on 'local development' applications. In essence this means that a planning application can be refused by a planning officer with appeal only to local councillors within the same Authority. Beyond the decision by the Local Review Body the only appeal will be to the Court of Session, resulting in a long and expensive process. An appeal to the Court of Session must be made within 6 weeks of the date of decision.

Our member companies are concerned that it will be difficult for any Planning Officer to work independently from the local elected members in their area. It is likely that normal working practices will involve taking a view from peers. We are concerned that Planning Officers could come under pressure to refuse applications, particularly in areas with an

inherent anti-development culture. Without the application going to the Planning Committee, the only right of appeal of the planning officer's decision for the applicant will be through the Local Review Body made up of elected members of the employing authority, who themselves might be subject to the same decision making influence which weighted the planning officer's original decision.

The current system's strength derives from the Reporters' expertise in planning and, more critically, their independence. We are concerned a) that elected members may not have enough knowledge or experience to properly assess the decision and b) that local members may be inclined to exercise a 'duty to care' to protect the individual officers within their authority and therefore tend to uphold their decision. The draft regulations state that the Local Review Bodies will be "*supported by the Authority's legal officer supported as necessary by the planning authority's professional planning expertise drawn from those not involved in the decision under review*". It is difficult to envisage a situation where the planning officers would give independent advice to the local members that would call into question the professional judgement of colleagues.

The English Proposals

Our member companies are aware that a similar scheme has been proposed in England. The proposals are very similar to draft regulations for Scotland with two key differences. Firstly, in England the Local *Member* Review Bodies are to be established either as a single authority or in partnership with another authority. The involvement with another authority could add a degree of independence to the Review Bodies. Secondly, and most crucially, the types of applications expected to be delegated to the Local Member Review Bodies in England are small scale such as householder developments; some change of use applications, alterations to shop fronts, advertisements and works to protected trees. In contrast, in Scotland, the Local Review Bodies will be delegated with powers to consider appeals from applicants for housing developments up to 100 units or on a site exceeding 2 hectares.

Implications of lowering the threshold

Homes for Scotland appreciate that a lower threshold for 'major development' would have several implications. For example:

1. it would mean an increase in applications requiring pre-application consultation with communities;
2. it would result in an increase in processing agreements and a higher number of applications to be considered by the Planning Committees, impacting on the resources of the planning authority and affecting the efficiency of the system;
3. it would mean that more proposals would be categorised as major, resulting in more projects requiring prioritisation and effective project management, again having an affect on resources and the intended streamlining of the system.

Notwithstanding the foregoing, Homes for Scotland remains concerned about the independent decision-making ability of Local Review Bodies and as a consequence would call for a lower threshold.

Homes for Scotland will respond to the draft regulations for Modernising Planning Appeals separately but feel that the issues cannot be considered in isolation from the proposals for the Planning Hierarchy. For the proposed threshold for local housing developments to be supported by the house building industry it is crucial that the regulations for Local Review Bodies are significantly altered to ensure genuine independence of the scrutiny.

Regional Variation

The draft regulations propose that no regional variation to the thresholds will be introduced across Scotland. We are aware that the proposed 'major developments' can have a significantly different impact in different Local Authority, and indeed settlement, areas. However we are supportive of the proposal and are pleased that the thresholds will be consistent across Scotland providing clarity and certainty for our members.