



RESPONSE TO PLANNING WHITE PAPER

INTRODUCTION

1. The overall view of Homes for Scotland is that the Planning White Paper is positive and the proposals put forward by the Scottish Executive make encouraging reading. It covers many of the issues of concern which Homes for Scotland has in the past raised with the Executive and Scottish Ministers. Homes for Scotland is therefore content with the broad thrust of the document as well as its tone. It is generally to be welcomed. Homes for Scotland also supports the intentions in the White Paper that provide for a more structured approach for engagement with local communities. Giving priority to investment is important but we recognise the value of engaging with local communities.
2. Nevertheless Homes for Scotland continues to have major concerns on a number of issues and would request that the Executive give further consideration to the matters in advance of proceeding with new legislation in the forthcoming Planning Bill. On other issues, while acceptable in principle, there is at present an absence of sufficient detail regarding implementation and there is a need to put more "flesh on the bone" if the intent of the White Paper and the planning reforms are to be achieved. Homes for Scotland would be happy to work with the Executive on some of these issues.

GENERAL

3. It is essential that developers and local communities are provided with the increased certainty and confidence through the planning system that they are seeking but Homes for Scotland has an underlying anxiety whether and how the proposed changes can be achieved satisfactorily. The delivery of many of the changes will not be achieved directly by the Executive itself but will be highly dependent on the ability and willingness of planning authorities to respond positively to the planning reform agenda.
4. Delivery of the agenda will require a significant culture change in the approach by many planning authorities. We continue to have fundamental concerns over the delivery by councils of what will to a large extent become a more positive pro-active role for them. Unfortunately Homes for Scotland's experience to date with many councils suggests that this is not the current approach. Many councils have failed to deliver a plan-led system or an effective development control system to date. The inbred culture that prevails at most levels in many councils today will need to change and this starting point must be recognised by

the Scottish Executive. In our opinion, without a positive and significant change in approach by local authority staff, many of who are responsible for delivering the existing system, the new plan-led system will fail and plans will not be kept up to date.

5. Not only will councils need to change their underlying approach, but also this will be taking place against a background of increased workloads and at a time when planning authorities are struggling to both retain and attract highly competent and motivated staff. Many planning authority officials do not have adequate training or expertise to address matters such as the role of market housing or detailed matters such as planning agreements and their implications for development economics. Additionally, we understand that as part of the recent Scottish Executive financial settlement with local government, some local authorities are now seeking early retirement for staff over 50 years old. It must be assumed that this financial settlement will have an impact on the quality of the planning service in local authorities. In summary, without the right culture, training, level and quality of staff in local authorities, including major improvements in the management and delivery of the planning system, we believe that these positive and encouraging proposals from the Executive will flounder.
6. Homes for Scotland recommends that, as part of the planning reform agenda, consideration should therefore be made to the training of existing planners and more effort made to encourage people to train to be planners. The agenda should also be supported by special additional funding to recruit more staff within local authorities based on an identifiable failure to deliver or to fund consultants to prepare new development plans (see later comments).
7. On specific matters we have the following comments.

PURPOSE OF PLANNING

8. The Foreword by the First Minister and the Deputy First Minister is a most welcome acknowledgement of the importance of economic development and its contribution to sustainable growth in Scotland. The Foreword is particularly important in setting the context for the subsequent improvements to the planning system proposed later in the White Paper.
9. Homes for Scotland welcomes in particular the statement in the Foreword - "*The Executive's top priority is promoting sustainable economic development to create a modern and vibrant Scotland*" and the acknowledgement in the second sentence that "*a modern, up to date planning system is critical to achieving that objective*". We are, however, concerned that in taking forward the key elements of the White Paper into the Planning Bill, these statements, which are important in setting out the purpose of planning, could be lost and their importance undermined. We strongly believe therefore that the Planning Bill should set out a statutory purpose for planning that reflects fully the emboldened introduction in the Foreword.

10. Furthermore, we note and fully support the recommendation in the recently published planning research commissioned by the Scottish Executive into “Business Development and the Planning System” (Tribal HCH August 2005) – *“The Planning Act should explicitly recognise the role which the planning system plays in the economic life of the country, and should make explicit that the views of statutory consultees and other third parties such as local residents should be set against the needs of the economy.....(para 6.17).”*
11. We accept that planning will at times involve difficult decisions and a win/win situation will not always be achievable. If economic development, including new housing, is to be given top priority, (the Executive’s housing policy “Homes for Scotland’s People” acknowledges the role of housing as a contributor to economic growth), then less weight may in some circumstances need to be given to other factors, as acknowledged in the Tribal research. This important matter should be made explicit in the Planning Bill, as the research recommends.

NATIONAL PLANNING FRAMEWORK

12. The size of the country in relation to the existing development pressures requires a strong lead context such as the National Planning Framework (NPF) to target investment in infrastructure and to maximise private investment. Homes for Scotland is supportive of the NPF as a guide for development in Scotland and welcomes therefore the statement that the Scottish Executive will develop further the NPF, “enhancing its role and status”. We are unclear, however, what this statement will mean in practice. We note that there is no reference to a statutory basis for the next NPF, either in section 5.1.2 or appendix 8 of the White Paper. We consider this to be a serious omission and we recommend that a statutory basis for the NPF should be provided in the forthcoming Planning Bill (Regional Spatial Strategies in England have statutory basis). Without a stronger statutory basis, the NPF will continue to be only a material consideration and, in some cases, carry less weight than local development plans on the assumption that Section 25 will continue to give them primacy.
13. Furthermore, this status should extend also to other Scottish Executive published national planning policies which at a minimum should have equal weight to development plans. Our experience is that Reporters can give greater weight to development plans over national policies.
14. The need to provide a clearer statutory basis for NPF 2 should also be accompanied by a number of other major changes, both in the approach to its preparation and in its contents. The preparation of NPF 2 should be more inclusive, subject to greater consultation and have greater input and involvement from stakeholders, including house builders.
15. An approach not dissimilar to the preparation of Regional Spatial Strategies in England would seem to offer a possible model which could address these deficiencies. PPS 11 in England recommends the use of steering groups or focus groups in their preparation and identifies house builders as one of a

number of key stakeholders to participate in such groups. The strategies, including the scale and general location of new housing for the next 15-20 years, are also subject to formal public examination. Without such changes, NPF 2 will not be seen to be sufficiently open and transparent and will not carry the confidence of the development industry.

16. Homes for Scotland is of the view that the move to single development plans through most of Scotland could lead to a possible weakening in the strategic component in the new local development plans, hence the need for a stronger role for NPF 2 in setting out the strategic scale of new housing required. We are disappointed that while the White Paper signals a stronger overall role for NPF 2 eg *“It will play a key role ensuring the sustained co-ordination of policies with a spatial dimension, integrating and aligning strategic investment priorities....”* and *“The NPF will support the role of our cities as drivers of the economy, addressing spatial issues of national importance which cut across city region boundaries. It will set out the land use planning requirements such as investment in water drainage capacity and waste management”*, the White Paper ignores linkages between such investment and new housing and other major development and is silent about the contribution of new housing in the NPF. This omission is all the more surprising following the Executive’s acceptance of the broad thrust of the Barker Report as being relevant in Scotland. Likewise, the Executive’s Scottish Housing Policy Statement – Homes for Scotland’s People (published March 2005), acknowledges the important link between both the overall supply of housing and having the right housing in the right place as being vital to economic growth. Furthermore, it recognises that new homes are not only vital to help businesses attract potential employees but that the house building industry is itself a significant employer and contributor to economic growth.
17. The contents of NPF2 to be published in 2008 need therefore to be overhauled and extended to provide a stronger strategic component for the new development plans by including housing numbers and targets, linked where appropriate to priorities for economic investment, and to advise on pressured areas such as the Edinburgh housing market. It is important therefore that the NPF plans proactively for growth, particularly in the light of Scottish Ministers’ commitment to in-migration. Homes for Scotland’s view is that the current demographic approach based on population projections do not by themselves take adequate account of this commitment. Realistic population projections and accurate economic forecasting, together with housing market information, have to be determined principally at the national level but reflected locally. Such forecasts should define clearly the strategic requirements for land for housing, business and industry. The strategic requirements should be clearly planned by local authorities in favour of growth with sufficient land to meet housing demand which in turn will aid affordability – an increased and plentiful land supply will in turn reduce competitive bidding.
18. An improved process for addressing the quantitative issues is therefore essential but, as SPP 3: *Planning for Housing* recognises, the overriding objective must be broader, giving stronger weight to qualitative issues. In Edinburgh, for example, there is an increasing mismatch between flats and

family housing, and although acknowledged by City of Edinburgh Council in its consultation paper on the forthcoming City Local Plan, it is not clear how this will manifest itself in terms of land supply. As SPP 3 acknowledges, the completion of quality dwellings and the creation of sustainable, mixed, residential developments of high environmental quality are important. While the new Planning Act will be important in providing for the more efficient preparation and delivery of new development plans, it is only part of the planning process. Of equal importance is the nature and location of new development and how it contributes to sustainable economic development including the quality of the built environment. This reinforces further the need for the Planning Bill to set out the purpose of planning.

KEEPING DEVELOPMENT PLANS UP TO DATE

19. Generally Homes for Scotland supports the proposals put forward on this matter. We welcome in particular the requirement for the new development plans to be reviewed and replaced with updated and approved plans every 5 years - as the White Paper acknowledges, 70% of local plans are older than 5 years. While there may be a role for sanctions to address poor local authority performance, this would be an inadequate alternative to up-to-date local development plans. If Plans are going to provide approval in principle to alleviate the necessity for outline planning applications in some cases, then slow delivery of and poor performance in reviewing local development plans will be unacceptable. Where development plans are more than 5 years old, the submission and granting of outline planning permission should remain acceptable.
20. While the White Paper gives prominence to the need to review, publish and adopt local development plans every 5 years, it is silent on the starting point. Homes for Scotland recommends that there should be an effective starting point with up-to-date local development plans available in all local authorities within 2 years of the commencement of the new Planning Act. We acknowledge that this will be challenging in terms of resources, both manpower and financial, but an effective up-to-date plan-led planning system cannot take place without it. We are of the view that a range of options should be provided for in the new legislation, including outsourcing to consultants. Outsourcing is not unusual elsewhere in Europe or parts of England. The cost of achieving the speedy preparation of new plans within 2 years might be in the order of £16m, effectively £8m per annum. This represents a small proportion of underspend in local authority expenditure. In support of the modernising planning agenda, we recommend that the Scottish Executive should provide ring-fenced funds to support this new legislative requirement.
21. Without an increase in resources, both staff and financial, together with a change in the culture of local authorities and the management of the planning process, we are not confident that the proposed changes will be able to achieve the regular updates as set out in the White Paper. Should this come about, there must be clear advice from the Executive on the status of local development plans more than 5 years old. Likewise, there should be advice on the status of existing plans in advance of new plans being completed and

adopted. Without such advice, there could be an increase in planning appeals with resource implications for the Executive and SEIRU.

22. As indicated, Homes for Scotland is not persuaded that possible sanctions for not meeting the 5 year commitment would necessarily be effective or particularly helpful. Our preference therefore is for local development plans to take a longer-term view as required through SPP 3 : *Planning for Housing*. The new development plans should provide scope for other sites coming forward beyond the 5 year period and which would meet the requirements of the 5-12 period within the context of a longer-term settlement strategy. While this requirement has existed in SPP 3 since its publication, it has had little impact. The Executive now needs to give further advice on this matter. Homes for Scotland would be willing to work with the Executive on such advice. If necessary a more flexible approach to local development plan review is preferable in order to secure the delivery of new housing rather than the imposition of sanctions.
23. Additionally, monitoring by the Scottish Executive Planning Division should be reviewed. To date, monitoring has focused on where plans are in the process ie started, in draft, finalised and adopted. Monitoring should be extended to the implementation of policies and proposals and there should be a statutory requirement for an annual monitoring report if the primacy and worth of new development plans is to be improved and strengthened.

Strategic Development Plans

(i) Forecasting Housing Demand

24. The critical element in a Strategic Development Plan, the successor to the Structure Plan, as far as housing is concerned is the forecasting of housing demand. No revised methodology has yet been published by the Executive that sets out how market information can be used.
25. Both the Barker Report and the Minister confirm that there has to be more efficient forecasting not only of housing needs but a clearer recognition of market information. In our view, the methodology should take into account demographic factors, housing backlogs, market indicators, housing demand, affordability targets and an optimistic view of future economic expansion and the inward migration which it creates.
26. Barker was very strongly of the view that this process should be carried out independently and free from political influence. Once the answer is delivered, politicians have the right to take whatever decision they decide is appropriate on it. They should not attempt to influence the answer that is produced in the first place.
27. Barker recommended that this work should be carried out at regional level. There is no such equivalent in Scotland. Also, Homes for Scotland does not believe that local authority planners have the appropriate training or skills to carry out this work. Ideally, independently employed economists should therefore carry out the work.

28. Most of Scotland where the major problems lie will soon be covered by only four strategic development plans for the city regions. Homes for Scotland recommends that for each city region area independent economic consultants could be employed reporting to a stakeholder group comprising the local authorities, Scottish Enterprise, Communities Scotland and the private sector including house builders. This would have the twin advantage of producing a more realistic and objective answer and also of relieving the workload of planning and housing departments in local authorities. It is also likely to be quicker.

(ii) Monitoring of Structure Plan

29. Both Barker and the Minister call for much more effective monitoring of development plans. Barker (Recommendations 6 & 7) asserts that it should be based on monitoring of the local housing market and the council performance in both house completions and responsiveness to the market. Implicit in Barker Recommendation 14 is a much more effective system of Land Audits.

30. Barker recommends that the monitoring should be undertaken at regional level of which there is no Scottish equivalent. The Barker Report also noted that data was poor in Scotland. If such a system is to be effective in Scotland and to carry the confidence of house builders, Homes for Scotland is of the opinion that the present system should be overhauled. We acknowledge that this might not be a matter for primary legislation but it is integral to the wider planning reforms and a more responsive planning system.

31. Our preferred solution is the same as previous ie that the monitoring of strategic development plans should be undertaken by independent economists at structure plan level to an agreed system established by the Executive in consultation with users. Councils monitoring their own performance are likely to be unreliable.

(iii) Housing Allocations V Completions

32. Currently, most structure plans and, we assume, their successor, strategic development plans, merely require that land be allocated for housing. They do not require that housing completions must be achieved. Barker asserts that such plans should be assessed on the basis of completions. Homes for Scotland is of the opinion that a key measure of whether housing policies are being implemented is the housing completions that are being achieved, not just the land that is allocated.

33. Strategic development plans should be based on the housing completions that are required to meet housing needs and demands being achieved. The proposed Action Plan should also be used to review the success of the Plan in terms of housing completions.

These considerations lead us to the conclusion that there is an early need for clarification on how the new strategic development plans for the city regions will operate in practice.

Should Reporters' findings be binding?

34. The proposals in the White Paper are generally supported, although exceptionally Homes for Scotland members have experienced “maverick” Reporters imposing their own views. There must in such exceptional circumstances be scope to depart from the Reporter’s recommendations where there are sound planning or legal reasons. Alternatively, to avoid such problems occurring, consideration should be given to the appointment of a panel of Reporters covering a range of interests and experience including housing and economic development rather than a single Reporter as currently occurs.

Other Development Plan Matters

35. **Neighbour notification** – Homes for Scotland has no objection to the proposal that there should be neighbour notification of local development plans but we would request information on how it will work in practice.
36. **Links to other legislation** – We note that the White Paper is silent on the links between development plans and local housing strategies. Local housing strategies are becoming an increasingly important component of the planning system but are often based on poorly researched and incomplete housing needs assessments. The Scottish Executive should set out a standard format of their form and content so that there is a consistent methodology across Scotland. The White Paper fails to demonstrate a joined-up Government approach on this matter with the scope for stronger links between planning and housing legislation. As in the Irish Republic, we consider that local housing strategies should be part of the development plan process and, equally as important, subject to external scrutiny. Unlike development plans, there is at present little effective consultation with private developers and other stakeholders. As a result the current round of local housing strategies has produced variable and patchy documents, but the implications for associated development plans are often chaotic, variable and can be unsatisfactory. Housing authorities can virtually do what they want, while planning authorities are tightly constrained. The Planning Bill should address this inconsistency by incorporating local housing strategies within the housing components of development plans.
37. The achievement of quality development is not solely dependent on Planning legislation. The delivery of new development is highly dependent on other legislation as demonstrated by Private Bills for trams, roads etc and role of the Roads (Scotland) Act. A number of Homes for Scotland members were involved in a Road Construction Consents working group. Many of the new ideas and best practice that should be reflected initially in development plans and later in planning applications eg home zones, density mixes, new solutions to parking etc are simply not being delivered because of the eagle-eyed and “by the book” approach adopted by local authority staff.

38. The White Paper is silent on this problem and the new Planning Bill provides a valuable opportunity to address it eg by emphasising primacy of planning over the Roads (Scotland) Act or alternatively providing powers that amend the Roads (Scotland) Act so that the local authority can give a “corporate view”. This would also enable local authorities to give greater weight to the place-making agenda and reconcile roads requirements with the planning policy priority for improvements in the design and quality of new developments and the built environment. In this context, the requirement for separate Roads Construction Consent should be removed. We recommend that through the new Planning Act issues such as local roads should now be brought under the planning system to achieve quality developments and speedier decisions. At the same time, there is a need to recognise the cumulative requirements on new developments arising both from planning policy, eg open space standards, as well as other legislation, eg SUDS, all of which can have an impact on place-making. The Planning Bill should also acknowledge the link between strategic investments such as trams, major roads, new railways and hospitals and the planning system.
39. **Strategic Environmental Assessment** – The White Paper, and we assume the Planning Bill in due course, fails to deal with the tensions between planning reform and the requirements of Strategic Environmental Assessment (SEA) eg the preference to go straight to deposit stage when SEA regulations are forcing Glasgow and East Ayrshire Councils to publish draft plans first. The SEA regulations run counter to the spirit of the development plan reforms and we look to the Planning Bill to address this tension.

NEW HIERARCHY FOR PLANNING

40. In principle, the proposed new hierarchy is a significant step forward but Homes for Scotland’s view is that the distinction between national, major and local developments as set out in the White Paper is not yet sufficiently clear. It is likely that residential development proposals will straddle both the major and local categories, although we assume that the majority of new housing developments will fall in the major category. There is a need therefore for greater clarity and clearer definitions from the Executive and advice on the scale of developments and the cut-offs between the different categories. Homes for Scotland would be willing to work with the Executive on the detailed application of this change as it affects residential developments.

Processing of Planning Applications

41. Assuming the strategic development plan and the local development plan have been produced timeously, the principal aspect which concerns developers at the local level is development control and how it is operated.
42. At various points, the White Paper makes the following proposals which are relevant to the processing of planning applications including:

- *Applications for outline planning permissions are to be removed (page 29), the principle of development being established by the local development plan.*
- *For major developments full details are to be provided at the planning application stage (page 21). It is assumed that this could also apply to local developments and all other applications.*
- *Prior to the planning application, the developer is to hold consultations with the planning authority (page 33) and the local community (page 38).*
- *Processing agreements are to be entered into (page 21 and Appendix 4, page 65) in which a realistic timetable is to be drawn up for the planning applications to be determined, informed by the views of the statutory consultees. Appendix 4 sets out various procedures and penalties for non-performance.*

Approval in principle / outline planning applications

43. We welcome the proposal that allocation of a site in a development plan will indicate that the principle of development for a particular use has been accepted on a site. “Approval in principle” is generally welcomed as an additional positive step and should, in particular circumstances, deliver speedier planning decisions. But this new provision can only apply in the case of proposals which conform to the development plan.
44. This presumption is likely to be undermined by the frequent and increasing reliance in housing land audits for housing land supply and development plan purposes on windfall sites, often based on past annual contributions to the land supply rather than an objective assessment of future supply. This non-planning approach must be stopped if the continuing primacy of Development Plans is to have support from Homes for Scotland, as it runs counter to a plan-led approach.
45. For a number of reasons set out below, a legislative provision to provide for approval in principle should be **additional to**, not in place of, outline planning applications. Homes for Scotland views the retention of outline planning permissions as being essential. There will still be valid applications which do not conform with the local development plan where an outline consent will have to be sought. Even in the case of conforming applications, some pre-detailed application procedure will be required. Planning gain matters are also usually dealt with at the outline stage on major sites and agreement on planning gain at an early stage avoids increasing incremental burdens being placed on developers over time. Likewise, unless the development plan provides for the reuse of, say, PFI school sites for housing, then such windfall sites will be subject to an outline planning application.
46. Additionally, many major applications are too large to deal with wholly at the detailed stage. Indeed, without an outline application it may not be possible to

master plan a large site like Ravenscraig where the generation of value through outline planning permission is an important part of the regeneration process. An outline planning permission establishes value and enables developers to raise funds for development. Outline planning permission therefore plays an essential role in the operation of the land market. It also enables phasing and infrastructure issues to be resolved. Homes for Scotland is strongly of the view therefore that outline planning permissions must be retained.

Processing Agreements

47. Processing agreements are supported in principle but the final arrangements for putting them into practice need to be discussed and further consideration given to their detailed implementation. We see a number of difficulties should they be introduced.
48. The proposed processing agreement only covers the period between the submission of the planning application and the granting of planning permission. In our experience, the major slippage in time tends to be prior to that. In a recent case of a major housing development, a Homes for Scotland member had to wait eighteen months to obtain a planning brief from the planning authority before a realistic start on a planning submission could be made.
49. The processing agreement does not cover, for example, pre-application discussions. It seems to be common practice not to minute such discussions and in the absence of minutes of meetings, developers are vulnerable to other planning staff and possibly members taking a different view on a proposed development at a later stage, resulting in delay and possibly abortive expenditure. The planner's view should represent a corporate local authority view. As the Tribal research on "Business Development and the Planning System" noted, the planning system is not sufficiently predictable and transparent and the pre-application stage can lead to delay and uncertainty. We recommend that such discussions should be brought into the processing agreements as part of the more structured approach proposed in the White Paper.
50. We note that penalties appear only to occur if the applicant is successful on appeal and not if the agreement is not satisfied in the first place. Indeed, once the agreement is put in place, except for an agreed event, it should be adhered to or all or a substantial part of the planning application fee is returned. In our opinion it cannot be only on the basis of being successful at appeal, given the cost and risk of such an approach - hence such an action will rarely be pursued and the authorities know this.
51. Homes for Scotland is therefore unenthusiastic about the various sanctions proposed in Appendix 4 of the White Paper for non-performance. To apply them would involve considerable wasteful effort on both sides with little prospect of producing a constructive result. Efforts would be much better directed to trying to recover the programme as far as possible and delivering new development efficiently.

52. Apart from the planning brief, there are many other matters which should be initiated before a realistic submission can be made and which will fall outwith the scope of a processing agreement. Where applicable, these include environmental assessments, geotechnical investigations, archaeological surveys, traffic impact analyses and similar matters. In our view, consultations with the statutory consultees should also have been begun by developers before the submission is made. Homes for Scotland would be happy to amplify views on a proposed revised procedure for the processing of planning applications, which would result in a less haphazard and uncoordinated approach.

Statutory procedures for pre-application discussions

53. We support these procedures as a welcome addition to the planning application process. As indicated in paragraph 49, there is currently a very non-committal attitude from existing development control planners in planning authorities when conducting pre-application discussions or meetings and statutory procedures should address this problem. Pre-application discussions must carry with them greater commitment by planning authorities and, as indicated previously, represent the corporate view of the authority and not be subject to unexpected or last minute change.

Community Involvement

54. This topic is mentioned throughout the White Paper and in principle Homes for Scotland is willing to work with the underlying spirit and intent. We note, however, that the White Paper does not provide any great detail on the levels of discussion or information to be provided. We look forward to draft guidance being published at an early stage by the Executive for stakeholder input. We are not persuaded that PAN 47 currently provides an adequate basis for achieving this – it states that “*discussions on the planning merits of cases between applicants and community councils are strongly discouraged*”. A key consideration is that community involvement should not unduly delay the processing of the planning application. As an essential stakeholder, Homes for Scotland would be willing to work with the Executive on this matter.

Proposed reduction in the life of planning permission to 3 years

55. Homes for Scotland’s view is that 3 years is too short, given the experience, for example, of Scottish Water delays. There is no evidence of planning blight where delay extends to 5 years, as stated in the White Paper. While we would consider evidence where blight has occurred, Homes for Scotland view is that there is not a strong case for such a change.

Developer contributions / Planning agreements / Planning gain

56. Overall the White Paper does not address adequately how planning permissions can be delivered more quickly. One source of significant delay is Section 75 agreements. In general there should be reduced reliance on Section 75 agreements which are being frequently and increasingly used. Homes for

Scotland view is that soundly worded enforceable planning conditions should be the norm, and section 75 agreements only required in exceptional circumstances, in line with the Executive's advice.

57. Where Section 75 agreements are required, on average they add a further 12 months to the approval process but in other cases significantly longer following the issue of the "minded to grant" letter. These delays are confirmed in the recently published planning research by Tribal HCH into "Business Development and the Planning System" which concluded that the increasing use of Section 75 agreements was a major contributory factor in the declining development control performance in local authorities. Too often staff in planning authorities see Section 75 agreements being outwith the planning application process and the Tribal research confirms that there is little involvement on the part of planning staff in the drafting of the legal agreement. Furthermore, they are not able to explain the reasons for the delay. Our understanding is that responsibility moves from planning to the legal services department in the local authority, which does not necessarily accord any high priority to their preparation. This represents another example in our opinion of poor management in local authorities. The White Paper does not address these concerns and neither does it draw on the research undertaken by Iain Ross when on secondment to the Scottish Executive in 2004. Other than Aberdeenshire, few authorities have the skills to deliver agreements timeously.
58. Homes for Scotland's view is that the planning permission should at a minimum set out the Heads of Agreement where a S75 agreement is required. We note that appendix 6 states that the Heads of Agreement should be public and Homes for Scotland's view is that the planning consent is the preferred vehicle for achieving this. There could also be increased scope for model agreements and we consider that the Scottish Executive should advise further on their scope. This would accord with one of the recommendations in the Tribal research. We welcome the proposal for developers to offer unilateral undertakings.
59. The provision of infrastructure and planning gains by developers through Section 75 agreements may in due course have to be considered in a UK context should a land tax, ie a planning gain supplement, be introduced as recommended in the Barker Review. Inevitably, as a tax it will relate not only to English experience but have wider UK application in order to achieve a level playing field.
60. The Barker Report argued very strongly that any land tax should be set at a moderate level so as not to discourage landowners from selling their land. Barker further proposed that developer contributions under Section 75 Agreements for planning gain, infrastructure provision etc should be scaled back to what is essential so that they amount to less than the tax. (Recommendation 24, page 68). Our strongly held view is that unless this occurs, there will not be justification to seek both planning gain through Section 75 agreements at the present levels and additionally through a new planning gain supplement. This could have implications both for the Planning Bill and the associated guidance and advice in due course. We are of the view that in relation to Section 75

Agreements, there is a need for the primary legislation to be modified to set out more clearly the circumstances when Section 75 Agreements would be appropriate and which in turn should also address the issue of delay. If the Planning Bill is not considered to be appropriate, we look to the early publication of new guidance which draws on the Iain Ross research as recommended by the Tribal report and which also reflects more fully development economics, for example, in relation to windfall sites.

61. In the context of planning gains, the White Paper fails to take account of the costs of Stamp Duty Land Tax which is an additional cost on developers. This needs urgent review where land or contributions in kind, eg offset payments as a percentage of land costs, are used in lieu of actual provision to fulfill affordable housing policies. In addition, there are problems with VAT recovery issues associated with and related to affordable housing provisions and other provisions of planning gains.
62. The Barker Report also contends that the Government should make resources available for infrastructure provision and that a Community Infrastructure Fund should be set up and which has been accepted by the Government in England. If, along with this, Barker's other proposals are accepted, it points to a major difference between the situation in England and Scotland and the lack of a level playing field for Scotland.
63. Not only does there not appear to be any intention to set up a Community Infrastructure Fund in Scotland, the Scottish Executive does not appear to be prepared to make funds available to councils for infrastructure to support house building. On the contrary, the policy appears to be to encourage councils and Scottish Water to pass on as many costs as possible to the house builder.
64. A current example is West Lothian Council which in its new local plan is demanding that house builders provide two new secondary schools and extensions to others, several primary schools and extensions and many other onerous items of infrastructure as well as making provision for 25% affordable housing. Much of it is wanted up-front. They warn that their list of requirements is likely to increase. There is no guidance as to how the provisions are to be administered and managed except to say that they expect developers to pay for council staff time spent on doing so. The situation in West Lothian is inconsistent with what is said in "Homes for Scotland's People" which signals, in the section on infrastructure planning and investment, plans by the Executive to invest in new schools.
65. If this is to be the future norm with a new tax on top, house prices will be kept under relentless pressure, house production is likely to fall and the need for affordable houses will increase.
66. The Barker Report recognises that there are limits to what it is sensible to require developers to provide and that is particularly true in Scotland where there is not the help of an enabling body similar to English Partnerships (see later), there is no Community Infrastructure Fund to provide gap funding and developers are increasingly expected to subsidise Scottish Water.

67. West Lothian and other councils can argue quite reasonably that they are not funded to provide the facilities that are required. On the other hand, their provision by developers pose serious financial risks for them, particularly in falling markets.
68. There is a need to create a code of practice or other similar document for public utilities (particularly Scottish Water) to establish what level of infrastructure it is legitimate for house builders to provide for in their housing developments.
69. As recommended by Barker (REC 20), to help their cash flow, the provision of infrastructure by developers should be phased where possible.
70. Public utilities, including water, should establish fair prices for developer charges for extensions or alterations to infrastructure networks for new housing developments (Barker REC 20).
71. We recommend that the Planning Bill should provide for a Community Infrastructure Fund to support residential and other development and funds allocated accordingly to address infrastructure problems in places such as West Lothian. There is also a need for the Planning Bill to establish the type and extent of planning gains that it is reasonable and legitimate for developers to be asked to provide.

English Partnerships

72. Another major weakness in Scotland as compared with England is that there is no body in Scotland equivalent to English Partnerships which fulfils an enabling function in assisting development to take place and whose role the Barker Report wishes to expand (Recommendation 21, Page 62). The present role is described in paragraphs 3.26 to 3.29 (page 61)
73. In Recommendation 21 Barker expressly suggests to devolved administrations that they should examine this aspect. To date there appears to have been no progress on this in Scotland.
74. One of the major problems house builders have in the provision of off-site facilities is that they have no powers of compulsory purchase. This is one role fulfilled by English Partnerships, amongst many others, in assisting development to take place. Their help in West Lothian, for example, would be invaluable. In the absence of a Scottish equivalent to English Partnerships, we strongly recommend that the Planning Bill provides reserve compulsory purchase powers for developers to use in exceptional and specified circumstances.

Planning Fees

75. The proposed requirement to increase fees is mentioned throughout the White Paper to compensate for the additional workload for negotiating and processing major developments. We would welcome further clarification as to the likely fee

level increases. Unfortunately, we are not confident that increased fees will be matched with better service. As indicated earlier, Homes for Scotland members would be willing to take over some of the work presently carried out by the Planning Authorities, eg on consultations, and additionally retain responsibility for neighbour notification. Homes for Scotland believes that consideration should also be given to a scheme of refunds of planning fees where planning authorities fail to perform within set and agreed timetables.

Enforcement

76. We note that the Executive is committed to ensuring greater compliance with planning decisions and the White Paper sets out a range of proposals to raise the priority and role of enforcement as part of the new planning system. Homes for Scotland supports the promotion of a planning system which inspires increased confidence on the parts of both local communities and the development industry, and we consider the strengthened arrangements for enforcement should achieve this aim.

Registering appeals

77. The reduction in the period from 6 months to 3 months to register appeals is noted but Homes for Scotland's view is that it will increase the number of appeals due to limited time required to consider the implications of a planning authority's decision. In many instances it takes over a month to receive the formal decision notice from the Council which is backdated to the date of the Committee meeting. In some cases it can be even longer resulting in the possibility that developers could be time barred should the 3 month period be adopted. We would also anticipate that such a change could have implications for SEIRU in terms of workload in the light of the experience of the Planning Inspectorate in England. We understand that the Planning Inspectorate in England was swamped with planning appeals when a similar measure was introduced and has now reverted back to the 6 month period. We are of the opinion that the 6 month period should be retained.

Local appeals

78. We note the intention that there will be increased scope for appeals to be heard locally. It is, however, not clear who will service the review body on appeals against decisions delegated to local authority planners. Homes for Scotland's view is that a panel of experts rather than a panel of elected members should consider them. If the review body is to be made up of local councillors will they be responsible for writing up their findings and recommendations? Additionally, in order to avoid conflicts of interests, we assume that such councillors would not be members of the Planning Committee. Whichever composition is agreed, it is essential that they have some training in planning as recommended by the Executive. Without adequate safeguards, there could, in our opinion, be an increase in legal challenges to such appeal decisions.

Development proposals in which the local authority has an interest

79. As the White Paper acknowledges local authorities are also major developers, either directly or through arms length companies such as EDI in Edinburgh. While the White Paper goes some way to addressing this issue, we are not persuaded that it goes far enough and will provide the level playing field and transparency sought by private developers.

Good Neighbour Agreements

80. Homes for Scotland has noted the proposal to introduce Good Neighbour Agreements for the management and operation of site works during the construction phase to meet required standards as development proceeds. We accept that for particular developments, such as mineral working or opencast coal extraction, it will be good practice to introduce such agreements in order to support the Executive's policy commitment to environmental justice and to reassure local communities affected by long-term workings. Homes for Scotland members are committed to achieving the highest standards of project management and already apply high standards during housing construction which meet fully the requirements of the particular local authority. Given the present satisfactory arrangements, Homes for Scotland therefore seeks the Minister's assurance that proposals for good neighbour agreements will not be applied to housing developments.

A FRAMEWORK FOR IMPROVING DELIVERY IN THE PLANNING SYSTEM

81. Homes for Scotland welcomes the intention to give greater weight to a new framework of reporting, monitoring and evaluating local authority performance. The important point is to identify councils who consistently under-perform. The White Paper makes reference to the development of a system of auditing the performance of councils (page 53) and an effective system of auditing should be able to identify such councils.
82. Homes for Scotland's view is that the planning audits should be placed on a statutory footing, requiring regular auditing of performance and supported by a legal requirement to publish audit reports.
83. Where local authorities are demonstrably failing to deliver a satisfactory planning service to the public, the Executive should have powers to take over and deliver the planning service, either with professional Executive staff or appointing consultants. At Hull, ODPM staff have been appointed to operate the local authority, including the planning service.
84. In England, ODPM appears to have a strong enforcement role. As part of a similar enforcement role in Scotland, Homes for Scotland is of the opinion that there should be a stronger corporate approach in local authorities and the Chief Executive's Department should have increased interest and involvement in the delivery of the planning service, consistent with the delivery of economic growth in the area. Delivering planning objectives would be seen as an important priority in a Council's business plan and enabling politicians to move forward

with positive decisions instead of overturning planning official's recommendations for their own often very local ends.

85. The view of Homes for Scotland is that the Planning Bill should provide for a range of practical solutions in Scotland, to be used in exceptional circumstances, that could address through appropriate and effective enforcement measures poor performance by planning authorities.

Planning Departments responsible for neighbour notification

86. Planning Departments are already over burdened and adding responsibility for the additional administration in the preparation of notification certificates will increase the burden. Homes for Scotland members would be content to maintain the status quo as members are not persuaded that there is a strong case for the proposed change. To do otherwise will not only increase the local authority workload but we are also not persuaded that it will bring any added value. Homes for Scotland is particularly concerned that the transfer of responsibility could also result in another source of potential delay. As an alternative, we would be happy to engage in discussions with the Executive looking at how improvements to the present system can be achieved.

E - Planning

87. Although the system of e-planning was implemented in 2004, not all authorities have yet set up accessible platforms to allow the submission of applications in this manner. To achieve the greatest benefits from e-planning, all authorities must adhere to the requirements. Homes for Scotland recommends that the Planning Bill should make e-planning a statutory requirement for all Councils.
88. Homes for Scotland also supports greater use of web-based resources for Plan and Application consultation which would be supported by wider advertisement of consultations, developments by authorities. Moving to an accessible electronic system will, however, require investment in local authority resources to cope.

ADDITIONAL POINTS DRAWN FROM ASSOCIATED PLANNING RESEARCH "OPTIONS FOR CHANGE"

Primacy of The Development Plan

89. We support the proposal in the "Options for Change" (OFC) (page 19) that Section 25 of the 1997 Act should be reworded to give 'material considerations' equal weight to 'the development plan'.

Validity of Applications

90. We support the proposal in the OFC (page 35) that planning authorities should be given a time period (say 7 days) to decide the validity of an application. A possible sanction for a late decision on validity could be that the time for dealing with the application should be reduced by the extent of the delay.

Duty Of Consultees To Respond

91. We support the proposals in the OFC (page 40) that consultees should be obliged to give a substantive response to any consultation before the end of the prescribed period.

CONCLUSION

92. Homes for Scotland's general opinion is that this White Paper as a precursor for the new planning system will indeed be a real improvement on the existing arrangements and many of the changes are to be welcomed.
93. With improved management and resourced properly by each individual local authority, the change in the White Paper should in theory create a smoother and more efficient planning application process and hopefully install a confidence with developers in their dealings with local authority planning departments.
94. Investment in housing is critical if Scotland is to grow and prosper. The house building industry needs a system that gives it certainty in relation to its investment decisions and clarity on wider expectations such as design and sustainable economic development. As our comments have acknowledged, delivering this requirement represents a significant challenge for planning authorities and other stakeholders. We recognise also that some of the changes outlined in the White Paper will be delivered not only through the Planning Bill but also through secondary legislation and planning guidance. For our part, as an important user of and a major stakeholder in the planning system, Homes for Scotland looks forward to working with the Executive in the detailed delivery and implementation of the new planning system.

Homes for Scotland

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