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**Scottish Executive Consultation
Making Development Plans Deliver
Scottish Environmental Link Response
July 2004**

Introduction

Scottish Environment LINK (LINK) is the umbrella body for Scotland's voluntary environment organisations. There are 35 bodies in the network representing a broad spectrum of interests working towards a more environmentally sustainable society.

Scottish Environment LINK (LINK)'s Planning Group (members listed below) welcomes the opportunity to comment on this consultation but we are concerned that the proposals in this document, taken together with other proposals for modernising the planning system, will act to the disadvantage of third parties unless a widened right of appeal is introduced.

The consultation paper makes a number of welcome proposals but we remain to be convinced that proposals contained in the consultation will in them selves deliver a better planning system.

We welcome the specific references to SEA in the consultation but query how this will sit with the removal of the consultative draft plan?

Our detailed comments are given below.

Q1: What are the most important factors in the successful management of development planning?

LINK Planning Group member bodies have worked with local authorities across Scotland and have found that, those authorities with the most successful approaches to development planning identify it as priority area and resourced accordingly. The most successful authorities have dedicated teams set up specifically to deal with development plan production and monitoring.

Q2: Should development plan schemes indicate timetables for plan preparation to provide some certainty for stakeholders?

Members of the public and stakeholders such as LINK Planning Group member bodies frequently find the timetable for preparation of plans unpredictable and difficult to understand. A clear forward plan for the consultation stages of the plan would therefore be highly desirable, but would only be of use if adhered to.

Q3: What are the most effective ways to ensure quick preparation and review of development plans?

Of the measures identified in the consultation, we believe that a statutory duty to update plans could be a useful incentive, but we are not clear how this differs from current arrangements. However, the power for Scottish Ministers to issue a direction requiring a plan be updated is already available and has rarely been used; we are unclear whether the proposal modifies this in any way.

We would strongly oppose any steps that reduce the primacy of the development plan as we feel this would create confusion rather than provide clarity. Section 25 of the Town and Country Planning (Scotland) Act requires that decisions be made in accordance with the plan unless material considerations indicate otherwise. To remove the primacy of the plan creates uncertainty concerning an important principle that underpins the planning process.

We are doubtful whether linking good performance with additional resources will do little more than bolster already effective authorities thereby widening the gap between good and bad. Conversely, removing the right to charge fees on planning applications after a set period following approval/adoption has some merit

With reference to our response to the Executive's consultation on 'Rights of Appeal in Planning', LINK suggested that the introduction of limited third party rights of appeal once a development plan becomes out-of-date would act as a significant incentive on local authorities to ensure quick preparation and review.

It is a fact that we have to legislate most for those authorities that are performing less well than others. The proposal to audit authorities who fail to perform seems a fair response and the audit findings should be made binding on the authority concerned.

Up to date data and survey information also greatly enhances plan preparation. For example, the process of identifying suitable sites for development will be aided by a detailed knowledge of key wildlife sites which need protection. This should not just include statutory sites but also important local non-statutory sites which are important for wildlife and biodiversity.

Q4: Do you agree that early targeted consultation on the key issues should replace consultation on draft policies and proposals?

We appreciate that the consultation document is attempting to streamline the current system. However, we are concerned that by removing the consultative draft plan stage, key stakeholders will be excluded from the process. Secondly, a fragmented approach to interrelated social, economic and environmental issues is not a sound way of pursuing sustainable outcomes. The most recent example of this type of approach relates to the Wester Ross local plan and from that example we are not yet convinced there is sufficient evidence to justify the fundamental changes being proposed.

Even without a consultative draft plan, stakeholders will require to be consulted on something tangible, whether that is outline proposals, planning for real exercises or public meetings. It is difficult to see how this will significantly differ from producing a consultative draft plan, which local authorities currently have considerable scope to draft in as much or as little detail as they see fit.

We recommend the retention of the consultative draft plan but suggest that authorities could adopt a 'light touch' when it comes to production. It would be counter productive to speed up consultation by removing the draft stage; if this only leads to more objections later in the process.

We also believe that Strategic Environmental Assessment should be an integral part of the consultation process and is likely to relate best to the consultative draft stage. If carried out effectively this should assist participants by providing environmental information on a range of possible options. We would appreciate clarification on how the proposed reforms and the implementation of SEA requirements intermesh.

Q5: Should these and any other bodies have a duty to engage in development planning placed upon them?

Effectively engaging statutory agencies has been a long-standing problem for the development planning process so this reform is to be welcomed. In particular we recommend that the duty should be extended to the Forestry Commission given that ending universal structure plan coverage will, in a number of areas, remove the natural home of Indicative Forestry Strategies.

It is disappointing that Highland and Islands Enterprise and Scottish Enterprise are not included on this list and we strongly recommend that they are added, given that their remit extends into spatial and strategic aspects of economic development.

Similarly, Historic Scotland is not included on the list either, despite its role in the planning system. In the case of Executive agencies such as Historic Scotland there are obvious problems resulting from their regulatory responsibilities within the planning system, their relationship to the Scottish Executive and freedom to participate in development plan making. This issue must be resolved and not ignored.

Q6: Do you have any suggestions for improving the involvement of businesses in the development planning process?

The business community has consistently argued that public involvement with the planning system should occur at the initial rather than the later stages of the development process. It is therefore disappointing that evidence seems to suggest that involvement of commercial organisations in the development planning process is often 'neither been sustained nor consistent'. Our own experiences have lead us to conclude that, given the Executive cannot compel business to become involved in the development planning process, the only real incentive would be to introduce a limited third party right of appeal for development plan departures. We believe that this would provide a strong incentive for business to engage with the process of plan making from the outset.

Q7: Do you agree that the certified copy of the plan should remain a paper version?

Yes, not all members of the community have access to, or familiarity with, IT facilities and this is likely to be the case for a number of years. Key maps are also often better viewed in hard copy.

Q8: Do you agree that a Development Planning Forum should be formed to support better plan-making?

With the right membership Development Planning Forums could offer a valuable opportunity to share good practice, however, as always the efficiency of such a body will be dependant on the regularity and content of meetings and the status of non-governmental participants. Such bodies should have a clear remit to consider how to effectively plan and deliver adequate and meaningful consultation. We reemphasise that effectiveness will be dependant on strong community representation amongst a broad and balanced range of interests and suitably moderated.

Q9: Do you agree that action planning is a continual process with formal publication of an action plan every two years?

Yes.

Q10: Outside the city regions, do you support the provision for an area-wide local development plan to set the overall context in areas where there continues to be a mosaic of local development plans?

In the absence of a Structure Plan the provision of an area-wide local development plan is essential. In those areas which will not have a City Region Plan we are concerned that strategic issues will not be able to be addressed. For example, the

cumulative impacts of wind farms in the Highland Council area cannot be addressed by individual local development plans.

We are also concerned that the production of these area-wide local development plans is discretionary and will therefore not be a priority in comparison to mandatory local development plans.

Cross boundary issues between authorities may not be able to be handled in an effective manner. There are circumstances where mineral deposits for instance occur on both sides of a local authority boundary and at the moment mineral policies can be different each side of the border. Authorities must come to some agreement on those issues in order that the single resource can be treated in a consistent manner. Similarly, any developments on or near the border of a local authority area should be sensitive to developments of the adjoining authority area.

It is vitally important that the plans still contain registers of local wildlife sites and other statutory and non-statutory designated sites. Such details should not be lost in broad-brush authority wide plans.

Q11: Do you agree that, where it can be demonstrated that there has been community and other stakeholder consultation, supplementary guidance should have statutory backing?

LINK Planning Group members remain unconvinced that this particular proposal has been fully considered. If supplementary planning guidance has been produced with community and stakeholder consultation and is therefore to be considered statutory, why should it not be included in the local development plan or City Region Plan? If this is not the case, then the proposal threatens to encourage less rigorous consultation on policy issues that are the subject of supplementary guidance.

If the purpose was to allow planning authorities greater flexibility to respond to emerging issues, then we would support the proposal with the proviso that the community and stakeholder consultation is no less than that which is required for the plan making process itself. Without this, authorities might be tempted to produce skeleton plans with almost all the detail provided in supplementary guidance, thereby avoiding the cost and potential delay of adequate consultation. A danger is that important topics such as renewable energy, village planning and minerals might be dealt with in this way.

Involving the public in specific consultations on technical matters appears fraught with difficulties, whilst the adequacy of the consultation arrangements will be difficult to measure. We would draw your attention to the recent Wester Ross Local Plan which relies heavily on non-statutory 'Development Plan Policy Guidance' and has not been subject to any level of public scrutiny. Given that effective consultation is both time consuming and costly this is unlikely to be an isolated example.

Q12: Do you support greater consistency in the style of plans, particularly proposals maps?

This is an excellent idea, which we strongly support.

We would also argue that there should be more uniformity in how local authorities designate and protect non-statutory sites. We note that SNH & COSLA are undertaking work in this area and hope that advice and guidance will be available to planning authorities on the use and management of such designations as part of the development planning process.

Q13: Under what circumstances should local authorities be allowed to depart from the Reporter's recommendations on the local development plan examination?

Limited scope to depart from the Reporter's recommendations must be provided to allow local authorities to modify recommendations if there has been a fundamental change in circumstances. However, someone has to be the final arbiter and if a full inquiry has taken place there is an expectation that the outcome will be adhered to by the LA. Inquiries should seek to identify, and then address legitimate community concerns and must not be viewed as some sort of toothless exercise.

It should be remembered that communities enter the planning process believing that the Reporter is an impartial arbiter who has the power to amend the local plan in light of the evidence presented during the inquiry. Therefore, the local authority should not be allowed to ignore the inquiry report unless it is able to present strong and compelling evidence justifying its stance. If Reporter's recommendations continue to be ignored, on the apparent whims of local authorities, then community involvement and support for development planning will further ebb away.

Q14: Do you agree with the proposed content for city region plans?

We believe the proposed content for City Region Plans is too restricted. We strongly recommend that the Executive clarify the definition of 'environment', we believe this should include derelict and contaminated land, waste and energy, biodiversity and cultural heritage. The absence of these issues will significantly reduce the value of the City Region Plans.

We are also concerned that the emphasis on a narrative approach will render the CRPs devoid of actual policies – is this the intention? If so, we are very concerned that the CRPs will cease to serve any real function at all. Firm well-defined policies are a prerequisite for effective forward planning, providing certainty for both developers and communities.

Q15a: Should there be equal representation of local authorities on the joint committees?

No comment.

Q15b: How should costs be divided among local authorities on the joint committees?

No comment.

Q16: Do you consider that the proposed approval process will be quick and transparent?

Yes, we welcome the proposals.

Q17: Are the proposed transitional arrangements appropriate?

The transitional arrangements appear adequate.

The LINK Planning Group includes: Scottish Wildlife Trust, Friends of the Earth Scotland, RSPB Scotland, Woodland Trust, *Ruralscotland*, the National Trust for Scotland, The Cairngorms Campaign and the Ramblers Association Scotland