

Response to the Scottish Government Independent Review of the Scottish Planning System

by the Scottish Environment LINK Planning Taskforce

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Summary

Any review of the Scottish planning system must result in a system that:

- has an overarching purpose of achieving sustainable development
- addresses the twin challenges of climate change and biodiversity loss
- includes for a fair and equal right to challenge decisions

About Scottish Environment LINK

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for this community in communications with decision-makers in Government and its agencies, Parliaments, the civic sector, the media and with the public.

Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through Task Forces – groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits.

This response has been prepared by the LINK Planning Task Force. Task Force members welcome the opportunity to provide written evidence to the committee and look forward to being able to provide the independent panel with oral evidence in due course. The panel should note that, given the diverse interests of LINK members, it may be of value to receive oral evidence from a number of LINK member organisations.

Purpose of the planning system

LINK members are long standing advocates of a robust and fair, plan-led, land use planning system because effective spatial planning is a vital part of ensuring that the right development happens in the right place and is sustainable. Well planned places are essential for the environment and therefore for our future quality of life and well-being.

Inevitably, the planning system should be kept under review in order to ensure that it provides an adequate framework to meet society's biggest challenges. Without doubt, two of the biggest and most urgent challenges we face, globally and in Scotland, are biodiversity loss and climate change.

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Although the details are complex, these huge threats are both essentially symptoms of unsustainable living, including unsustainable built development practices which have increased carbon emissions and damaged wildlife.

It is surprising that threats of such major significance for the planning system are not right at the very top of the priority list. Of course there will always be room for improvement to detailed implementation but rather than delving straight into the detail of the current system, what is required is a fundamental refocusing of what the planning system is for and an assessment of whether it is delivering the changes required to meet these challenges.

Ultimately, the planning system must be about improving quality of life for all. It must be about making the future Scotland a better place than the present Scotland. It needs to be about making a Scotland that is positive for people who live here, for people across the world and for future generations. To achieve this, achieving sustainable development must be brought to the centre of what planning is for. The duties set out in the Planning Act for development plans and the National Planning Framework to contribute to sustainable development must be extended and strengthened so that achieving sustainability is an overarching purpose of the planning system, which also specifically applies to development management and to enforcement. Once this overarching objective has been established, detailed procedural elements can be considered as to whether they are fit for purpose to help achieve this objective.

What works well and not so well?

Although there are problems with the overall direction of travel, much of the detail of the current system works well. The National Planning Framework provides a very useful national spatial steer, although there are ongoing problems with the adoption process, particularly in relation to the overly tight timescales for parliamentary approval and in the process for identifying national developments, which needs overhauled to make it more democratic. The relationship with the Sustainable Land Use Strategy and the National Marine Plan would also benefit from clarification. There are obvious crossovers between some of the land and marine uses that these policy documents cover (and sometimes promote) but the consequences do not always seem to be considered in other documents. For example, aquaculture, forestry and energy sectors all impact on more than one document.

SPP provides an essential and clear statement of national priorities and encourages national consistency where international obligations need to be met. The majority of SPP is supported by Scottish Environment LINK but, in common with many Scottish Government documents (including the NPF) there is an inappropriate emphasis on the impossibility of pursuing sustainable economic growth rather than simply a clear statement on the need to achieve sustainability and for all development to be sustainable. The stated presumption in favour of "development that contributes to sustainable development" seems unnecessary and causes some developers particular confusion.

Development plans and the plan led system can work well but there is a need for great care to be taken to ensure allocations are in suitable locations and of appropriate scale. More could be done to front-load environmental assessments at the development plan stage by ensuring that SEAs are sufficient to ensure that environmental impacts are properly addressed at the plan stage. This would make it less likely that unsuitable sites would progress into the final plan and should reduce the environmental assessment burden at the project stage. An effective SEA should also ensure that there are proper links between the development plan and other sectoral plans. SDPs, although currently limited in geographic scope, are useful for setting regional priorities but they have much greater potential for considering strategic environmental issues. The land use strategy consultation is exploring how the land use strategy might be delivered at a regional level. There

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could be potential for SDPs to fulfil at least part of this role, helping integrate forestry, biodiversity, flood risk strategies. Clearly articulated regional environmental priorities, set out spatially in SDPs, could significantly improve cross-sectoral coordination in our efforts to tackle Scotland's biggest environmental issues.

Effective monitoring and enforcement are vital to ensuring the environmental effects of development are kept within consented parameters. These aspects of planning are also vital to ensuring that the public have trust in the system, yet they are still often neglected. Current enforcement procedures often appear cumbersome and ineffective and many planning authorities seem reluctant to utilise their powers, perhaps because of this. Greater transparency would also help. It is currently very difficult to find out whether conditions are being complied with for example. The opencast coal situation highlighted various major inadequacies regarding monitoring and the securing of financial guarantees. It is vital that improvements are made across all sectors to ensure these circumstances can not be repeated. As the planning authority most heavily affected by the opencast coal collapse, East Ayrshire Council have now introduced a good model for monitoring compliance. <https://www.east-ayrshire.gov.uk/PlanningAndTheEnvironment/MineralsWasteandOnshoreWindSites/Quarterly-Compliance-Monitoring.aspx>. Specific policies in the East Ayrshire LDP ensure developers contribute towards the costs of monitoring, which is undertaken by external consultants. This frees up Council resources and improves efficiency.

Permitted development rights are an area which could perhaps be explored in more detail to ensure that activities covered are appropriate. Recent work by Scottish Environment LINK highlighted how tracks constructed under permitted development rights in parts of Scotland were causing significant environmental damage and needed the level of scrutiny and quality control that planning applications provide. The efficacy of the rather complex notification arrangements introduced by Scottish Ministers for tracks is being monitored closely by Scottish Environment LINK but would warrant consideration by the panel.

The Central Scotland Green Network was a very welcome inclusion as a national development in NPF2. Good progress is now being made on many aspects of the network, resulting in improvements for wildlife and people across Central Scotland. Inclusion in the NPF highlighted that this was a national priority for action and has really helped drive forward individual projects. Several development plans now also include supportive policies for green networks in their areas but there needs to be a clearer steer that a national ecological network is also required, with all development plans and many more planning applications contributing to delivering high quality green infrastructure.

One obvious area where planning could be simplified and improved is in the Cairngorms National Park, where the National Park Authority does not have full planning powers. This anomaly could be addressed relatively simply and is only likely to simplify the process for all.

A fair right to challenge decision making

Although there are many positives from the current system, much of which is 'not-broken', the system is still hugely weighted in favour of the interests of the promoters of development rather than the interests of the public as a whole. The default position is often that a development should happen unless there are overwhelming reasons for it not to progress or it is 'bad enough to refuse'. As soon as an application for planning consent is made, the promoters of a development have a huge advantage. And, of course, when an application is refused consent the applicant has a right to appeal that decision, unlike other parties who have no right to appeal when a decision is approved, no matter how clearly unsound the decision. Whilst in theory any party can seek

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recourse through the courts, that does not address the current unfairness of the planning appeal system. An equal right of appeal needs to be introduced to improve decision making and increase public confidence in the planning system. The introduction of such an equal right of appeal would make a substantial contribution towards a Fairer Scotland.

In practice, accessing justice through the courts is difficult and costly but also unsatisfactory as a means of resolving planning disputes since issues of substance or merit are excluded from review. The introduction of protective expense orders (PEOs) limiting the costs a petitioner is liable for should they lose the case has the potential to reduce the cost of legal action for some cases. However, even if an application for a PEO is successful, raising one's own costs is a daunting prospect. Action in the Court of Session is expensive and there are often significant barriers to accessing legal aid, which means that costs can quickly run into tens of thousands of pounds.

The introduction of a low-cost, flexible, planning and environmental tribunal, could go some way to not only resolving issues of cost, but also provide a more accessible forum in which to settle planning disputes. The Scottish Government currently has an outstanding manifesto commitment to consult on options for an environmental court or tribunal, providing a timely opportunity to explore potential in this area.

This response was compiled on behalf of LINK Planning Task Force and is supported by:

Badenoch and Strathspey Conservation Group

Buglife

Cairngorms Campaign

Friends of the Earth Scotland

Froglife

Planning Democracy

RSPB Scotland

Scottish Campaign for National Parks

Scottish Wild Land Group

Scottish Wildlife Trust

The Association for the Protection of Rural Scotland

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