

**REPORT TO: DUNDEE, PERTH, ANGUS AND NORTH FIFE
STRATEGIC DEVELOPMENT PLANNING AUTHORITY
JOINT COMMITTEE MEETING ON 26th JUNE 2012**

**REPORT ON: DEVELOPMENT PLAN EXAMINATIONS CONSULTATION:
TAYplan SDPA RESPONSE**

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REPORT NO: SDPA07-2012

1 PURPOSE OF REPORT

- 1.1 This report provides an overview of the recent consultations launched by the Scottish Government for future reform of the planning system. The report sets out a response to those consultations relevant to TAYplan SDPA.

2 SUMMARY

- 2.1 The Scottish Government has published a range of consultations on proposals for the future reform of the Scottish planning system. This report sets out TAYplan's response to the Development Plans Examinations consultation. Constituent Planning Authorities will be responding separately with regards Local Development Plans.
- 2.2 Examinations for the Strategic Development Plan differ to that for the Local Development Plan; the Ministers decision on the strategic plan is binding. TAYplan's response to this examination may therefore raise different responses to those which the constituent Councils raise within their own responses in relation to Local Development Plans. TAYplan's response highlights the differences and recommends that differences remain.
- 2.3 The Government is seeking views on the delivery of development given the current economic climate and the issues which this has brought in funding and delivering infrastructure to enable and service development. TAYplan's response supports that proposed by the 4 constituent Councils.

3 RECOMMENDATION

- 3.1 It is recommended that The Joint Committee:
- a) Note the consultation response on Development Plan Examinations as set out in Sections 6 of this report, as submitted to the Scottish Government.

4 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications.

5 CONSULTATIONS

Background

- 5.1 The Planning etc (Scotland) Act 2006 introduced major changes to the planning system in Scotland. Included within these changes were mandatory examinations for Strategic Development Plans. Prior to this there were no examinations of structure plans, with only one examination on a site specific site in the Glasgow area being held over a few decades. The change to mandatory examinations has therefore been a big and significant change in the process of Strategic Development Plans. Prior to these changes the Ministers decision on structure plans was binding, this has remained for Strategic Development Plans.

Scottish Government: The Planning Reform - Next Steps

- 5.2 In late March the Minister for Local Government Planning, Derek McKay, set out proposals for future reform of the Scottish planning system. The 'Planning Reform Next Steps' document published sets out a package of proposals which are aimed to help the planning system reach its potential in supporting economic recovery. The key priorities for the next stages of planning modernisation are:
- Promoting the plan led system;
 - Driving improved performance;
 - Simplifying and streamlining processes; and,
 - Delivering development.

The document emphasises the changes are mostly thought to be non-legislative measures, however legislative changes will be brought forward where these are considered to be necessary.

- 5.3 As part of these reforms the Scottish Government have also produced five consultation papers covering the topics below. The closing date for responses to these consultations was Friday 22nd June 2012. A copy of the response as set out in section 6 to this report has been submitted.

- Fees for planning applications;
- Development delivery;
- Development plan examinations;
- Miscellaneous amendments to the planning system; and,
- General Permitted Development Order.

- 5.4 A number of documents and learning resources have been launched and these include:
- Planning Reform – Next Steps;
 - National Planning Framework for Scotland 2 – Monitoring Report 2012;
 - Development Economics and Viability Resources;
 - Inspirational Design Website; and,
 - Planning Performance Frameworks (Publication by Heads of Planning Scotland).

6 DEVELOPMENT PLAN EXAMINATIONS CONSULTATION

6.1 TAYplan has now experienced the first examination which has helped inform this response. The consultation paper invites responses to four questions. TAYplan's recommended responses are set out below.

6.2 Overall the mandatory examinations for Strategic Development Plans are welcomed and ensure that the issues raised by respondents are considered independently.

Q1. How well do you think the examination process is functioning and should any changes be made to the process at this stage?

6.3 The pre-examination stage is important to help ensure that the processes which the Planning Authority is proposing are aligned with the DPEA and legal requirements. TAYplan was at the forefront of considering the legislative and other requirements for Strategic Development Plan examination. The early engagement with the DPEA administrative staff was particularly important and helpful.

6.4 The legislation relating to Strategic Development Plans differs to that from Local Development Plans in a number of areas. Some of these TAYplan consider should be reviewed, including:

- the Schedule 4 template for Strategic Development Plans does not provide for the Strategic Development Planning Authority suggesting minor changes without these being constituted as modifications and triggering the need to re-publish and consult. This differs to Local Development Plans where minor amendments can be suggested. It is recommended that thought is given to providing the same opportunity for Strategic Development Plans. Such changes would be minor, but would allow the Planning Authority to set out factual changes required e.g. updating a timeline diagram, any grammatical errors, removing text which relates to the period for representations.
- On approval of the Plan, the Scottish Government should be required to advertise the approval and the 6 week legal challenge period should commence from that date (the effective date of the Plan).
- On submission of the Proposed Plan, both the Strategic Development Planning Authority and DPEA are required to place adverts in local papers. There may be scope to combine or reduce the content of these to avoid some duplication. The DPEA advert advised that the SDPA submitted the Plan anyway.

6.5 The Report of Conformity on the participation statement requires to be submitted alongside the Proposed Plan and other documents to Scottish Ministers for examination. Checking the Authority has complied with their participation statement is the first step within the examination process. Examination time could be reduced if the Report of Conformity were to be submitted to Scottish Ministers for their approval/endorsement after the participation is completed by the Authority and before submission of the Proposed Plan to Ministers.

- 6.6 The preparation of the Schedule 4 documentation and related library documents (all those document to which representations and TAYplan referred to within the Schedule 4) was a very intense work period; the most intense of the whole process. The pulling together and copying of all documentation was a significant part of this work. The requirement to submit hard copies of all documentation to the DPEA should be re-considered. Information now is largely accessed online and the Planning Authority can hold a hard copy should anyone wish to access the information in this way. This change would speed up the process and save, for TAYplan, approximately £1,400 in printing costs and 20 hours of staff time (based on printing being outsourced). Related to this is the need to further consider how the library documents are provided to the DPEA. It is recommended that where documents are available online that a weblink is provided rather than the need to provide a full hard copy of that document.
- 6.7 At the outset of the Examination consideration should be given to a meeting for interested parties where the Reporter(s) could set out how the examination is likely to proceed and allow questions in relation to the process.
- 6.8 Following submission of the Plan, there was no indication of when further information requests would be received from the Reporters. It is recommended that an indicative timeline is considered pre-examination and publicised. When information requests are received they have tight deadlines to respond. In TAYplan's experience a number of our responses to these information requests were lengthy. Information requests were received in batches making it difficult to manage the associated workload, particularly where there is a small team. It is suggested this could be managed by the Reporters better. The principle of information requests is supported.
- 6.9 Where the DPEA consider that there are to be no oral hearings the Reporter(s) should be required to publicise this and the reasons for that decision. It is recommended this should be done not in the monthly updates which the Reporters provide, but in a clear and separate statement. TAYplan consider this will provide more clarity and better understanding of this part of the process to all interested parties.
- 6.10 TAYplan, along with Glasgow and Clyde Valley SDPA, were the first Development Plan examinations where the DPEA took on the responsibility for hosting all information relating to the examination on their website. Previously Planning Authorities had to host information and all correspondence. At an early stage of considering the examination procedures TAYplan raised concerns on clarity for customers and DPEA took on this responsibility. This is welcomed and TAYplan consider provides better customer service and keeps all related examination information within the one website portal.
- 6.11 Section 12(6)(a) of the Planning etc (Scotland) Act 2006 does not allow an examination of the plan to commence within 4 weeks after the direction is made. TAYplan is not clear why this is required and whether in practice this is resulting in some delay.

6.12 Overall, TAYplan considers that the examination process is functioning well and supports the mandatory need for an examination on a Strategic Development Plan. There is still a need for interested parties to fully understand that the Main Issues Report is the key stage for making their views known, and that only those issues raised within representations made to the Proposed Plan can be considered at examination.

Q2. If you think changes are needed which option do you support, and why?

6.13 Four options are set out in the consultation document (detailed within Appendix One to this report): improving current practice; greater discretion to depart from the Reporter's recommendations; restrict the scope of the examination; and remove the independent examination from the process. TAYplan consider that Ministers should continue to make a distinction between Strategic Development Plan examinations and those for Local Development Plans.

6.14 In relation to Strategic Development Plans, TAYplan considers that *Option 1* improving current practice is the favoured option. For strategic plans, the Ministers decision on these has been binding for many decades and this is considered important. On Ministers approval of a strategic plan this provides certainty for the Local Development Plans whose process will be following, and therefore avoids any delays to Local Development Plans in this respect. Where for example an additional strategic land allocation is considered by Reporters to be required, this should be for the Planning Authority to consider.

6.15 There is currently no discretion to depart from the Ministers decision and therefore Option 2 is applicable to Local Development Plans. Restricting the scope of the examination, Option 3, would be likely to take longer and be more open to legal challenge in respect of determining what issues are scoped in and out. Option 4 to remove the examination is not supported. Introducing mandatory examinations for strategic plans has been widely welcomed and is important to ensure that all unresolved issues raised through representations to the Proposed Plan are considered independently.

Q3. Are there other ways in which we might reduce the period taken to complete the plan-making process without removing stakeholder confidence?

6.16 Strategic Development Planning Authorities are not *legal entities*. The main implication this has is on the speed of the plan making process. For example, TAYplan could not approve and adopt the Habitats Regulation Appraisal and therefore before submitting the Plan to Ministers had to await this approval from the 4 constituent Councils; a delay of 5 weeks.

- 6.17 TAYplan, both at Main Issues Report and Proposed Plan stage, sought *responses electronically through a structured format*. At Main Issues Report stage 75% responded online and 10% by email. At Proposed Plan stage 75% responded online and 9% by email. This allowed much quicker consideration of the responses and within 10 days an overview of responses could be provided. At proposed plan stage, this significant level of online responses saved a minimum of 165 hours of TAYplan staff time in uploading responses. As a consequence, the administrative time at this part of the process is greatly reduced allowing a focus on commencing the consideration of representations received timeously. The TAYplan core team designed the online questionnaire in a way which assisted customers to respond and also grouped similar issues together resulting in significant efficiencies. It is therefore recommended that consideration is given to how electronic responses could be maximised and whether this could be mandatory.
- 6.18 In TAYplan's experience, it is believed that *collaborative partnership working* with Key Stakeholders/Agencies has greatly assisted in the Project Plan timescales being delivered without slippage over a 3 year period. This approach required involvement from those parties from the very start of the Plan making process and throughout. Thought should be given to whether the legislative requirement needs strengthened to better ensure effective collaborative working throughout Scotland.
- 6.19 The backbone to TAYplan's plan making is *project management*. TAYplan consider that project management could be better utilised across Planning Authorities with an aim of speeding up the process, through tighter management of that process. Whilst through annual Development Plan Schemes key timescales are provided by Planning Authorities, TAYplan suggest that thought should be given to whether Development Plan Schemes should include actual project plan summaries with time slippages/advances highlighted.

7 CONSULTATIONS

- 7.1 The Treasurer and Clerk to TAYplan, the Director of Infrastructure Services, Angus Council, The Director of City Development, Dundee City Council, The Head of Enterprise, Planning and Protective Services, Fife Council and the Executive Director (Environment), Perth & Kinross Council have been consulted and are in agreement with the contents of this report.

8 BACKGROUND PAPERS

- 8.1 Scottish Government consultation on Development Plan Examinations
<http://www.scotland.gov.uk/Resource/0039/00390632.pdf>

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11th June 2012

Appendix One

Scottish Government consultation document: Development Plan Examinations

Extract from pages 5-6 setting out 4 options

Full document: <http://www.scotland.gov.uk/Resource/0039/00390632.pdf>

Option 1: Improving Current Practice

The new arrangements are bedding down. It may be too early to review or consider significant changes. Most plans have travelled through the Examination system relatively quickly and at a relatively modest cost. Some may consider that the timescales and costs associated with Examinations are worth paying to ensure that plans comply with strategic and government

policy and for greater trust and transparency of process. But certain minor adjustments to the plan making system may inject more pace and dynamism into the process.

Promotion of good practice, improved project management or minor adjustments to administrative arrangements in the process leading up to submission may allow for a more streamlined Examination. As indicated above, some delays have arisen because reporters have concluded that some proposed plans did not address housing land issues effectively.

Rather than seek to remedy failings in a proposed plan such as the identification of sufficient housing land, reporters could complete the Examination and return the plan to the authority recommending adoption of the plan but highlighting the need for the authority to address an issue, such as provision of additional housing land allocations. This would enable most of the policy proposed in the plan to proceed, including proposed land allocations but highlight a shortcoming. It would avoid the need for reporters to explore, consult and determine which additional development sites should be added to the plan. This would be left to the planning authority where such a need was identified.

Option 2: Greater Discretion to Depart from the reporter's Recommendations

This option would allow planning authorities greater scope to set aside reporters' recommendations if the authority could provide clear reasons to demonstrate that these were not in the interests of the areas they were elected to represent. This could mean reverting to past practice where representations were considered and supported by reporters but on occasion overturned by the planning authority. Some criticised this approach as it was seen as undermining public confidence in the system. Authorities would be expected to provide clear reasons for such departures but would retain more control over the final plan than is currently perceived to be the case.

This option would require changes to primary legislation.

Option 3: Restrict the scope of the Examination

At present the Examination process focuses on matters raised in representations which have not been resolved. Were the planning authority enabled to define the matters it sought to be considered through the Examination process there is potential for less time and resource to be involved than is the case at present.

It is not clear how much time would be saved in this way and there may be some loss of confidence in the process by stakeholders. Scope could be restricted in other ways, for example to focus only on the plans compliance with the National Planning Framework and with the strategic development plan to ensure a shorter, more focused, process.

This would require changes to secondary and possibly primary legislation.

Option 4: Remove the independent Examination from the process

In this option the planning authority would consider representations made to the proposed plan. They would then adopt the plan, with or without modifications. The adoption process would be accompanied by a statement by the planning authority setting out its consideration of all representations made to provide clarity on those which have resulted in a modification being made and reasons for setting aside others. This would provide clear and transparent reasons for the planning authority's final position on the plan. This option would greatly reduce the time and cost associated with plan preparation but could erode stakeholder confidence and increase the risk of a plan being challenged. Some may be concerned that this approach would not ensure that plans conform with national and strategic policy.

It would require changes to primary and secondary legislation.