



SCOTTISH EXECUTIVE

Development Department
Planning Division

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Our ref: PGG 1/14/1

1 April 2004

Dear Consultee

PUBLIC CONSULTATION - RIGHTS OF APPEAL IN PLANNING

I enclose a consultation paper on the above subject and invite your comments on the questions raised.

Our White Paper *Your Place Your Plan*, published in March 2003, brought forward proposals for strengthening and enhancing public involvement in the land use planning system in Scotland. The White Paper announced an intention to issue a consultation paper on third party planning appeals in the context of the measures set out in the White Paper to enhance public engagement in the planning system. The commitment to consult on the issue was reiterated in *A Partnership for a Better Scotland : Partnership Agreement*, published in May 2003.

There are complex issues around extending the right of appeal. We think it is important that all stakeholders should have the chance to express their views on the subject before any decision is taken.

Responding to this consultation paper

We are inviting written responses to this consultation paper by **Friday 30 July 2004**.

Please send your response to:

rightsofappeal@scotland.gsi.gov.uk

or Richard West

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

If you have any questions about this consultation please contact **Richard West** on [REDACTED].

We would be grateful if you could clearly indicate in your response the numbers of the specific questions, or parts of the consultation paper, to which you are responding. This will aid our analysis of the responses received.

I also enclose a note about the Executive's consultation processes which includes a *Respondee Information Form*. This form allows you to indicate how you wish your consultation response to be handled. Please return your completed form along with your response to the consultation. All responses will be acknowledged.

If you wish to access this consultation online, go to <http://www.scotland.gov.uk/view/views.asp>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is, if you prefer to submit your response by e-mail to rightsofappeal@scotland.gsi.gov.uk.

This consultation paper can be made available in alternative formats or community languages on request. Please contact **Richard West** on [REDACTED].

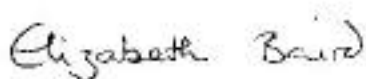
Access to consultation responses

We will make all responses not marked confidential available to the public in the Scottish Executive Library 21 days after the closing date of the consultation unless confidentiality is requested. In addition, we will later publish an analysis of responses on the Scottish Executive website. All responses will be checked for any potentially defamatory material before being logged in the library or placed on the website.

For future engagement:

A new email alert system for Scottish Executive consultations (to be named SEconsult) is currently being planned. This system will allow stakeholder individuals and organisations to register and receive a weekly email containing details of all new Scottish Executive consultations (including web links). SEconsult will complement, but in no way replace, Scottish Executive distribution lists, and is designed to allow stakeholders to 'keep an eye' on all Scottish Executive consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We will publicise the launch of the system on the Scottish Executive website and would encourage you to register when it is available.

Yours faithfully,



Elizabeth Baird

RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name:

Postal Address:

Consultation title: **Rights of Appeal in Planning**

1. Are you responding as: (please tick one box)

- (a) an individual (go to 2 a/b)
- (b) **on behalf of** a group or organisation (go to 2c)

If responding as an INDIVIDUAL:

2(a) Do you agree to your response being made available to the public (in Scottish Executive library and /or on the Scottish Executive website)?

- Yes (go to 2b below)
- No, not at all

2(b) **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available
- Yes, make my response available, but not my name or address
- Yes, make my response and name available, but not my address

IF RESPONDING ON BEHALF OF GROUPS OR ORGANISATIONS:

2(c) Your name and address as respondees **will be** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

- Yes
- No

3. We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future for consultation or research purposes?

- Yes
- No

Signed :

Organisation :

Date :



SCOTTISH EXECUTIVE

The Scottish Executive Consultation Process

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site (www.scotland.gov.uk) enabling a wider audience to access the paper and submit their responses. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (the address is Scottish Executive Library, K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD. Telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

If you have any comments about how this consultation exercise has been conducted, please send them to:

Andy Kinnaird
Scottish Executive Development Department
Planning Division
Victoria Quay
EDINBURGH
EH6 6QQ

E-mail : [REDACTED]



SCOTTISH EXECUTIVE
Development Department

PLANNING

Rights of Appeal in Planning

Consultation Paper

April 2004



SCOTTISH EXECUTIVE
Development Department

Rights of Appeal in Planning

April 2004

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MINISTERIAL FOREWORD

With this consultation paper, we are honouring our commitment made last year in our White Paper *Your Place, Your Plan* and reinforced when we published *A Partnership for a Better Scotland*, our Partnership Agreement. We are seeking views on whether we should introduce a new provision that would widen rights of appeal in planning.

Public participation is a fundamental and long-standing element of our land use planning system. People must feel confident that they have been heard and have had their views taken into account when decisions are made about the future development of their areas. Those who have applied for planning permission, but had it refused by their council, can appeal to the Scottish Executive against that decision. In this consultation we ask whether others who are affected by planning decisions should be allowed a right to appeal.

The issues are not straight-forward; indeed they are extremely complex. Scotland needs new development; it always has done. Growing the economy is the Executive's top priority. Development helps bring jobs, services, facilities and simple home comforts that we often take for granted. Our land use planning system is charged with enabling development to happen and guiding it to the right locations, while also ensuring that inappropriate and unnecessary development does not take place. However, our planning system is not perfect. It is often criticised, in some cases rightly, for being too slow and cumbersome and for stifling jobs and opportunities. But planning decisions have consequences that are not easily reversed and it is essential that the implications of development for the economy, the environment and communities are fully and widely understood before these decisions are taken.

We are already taking steps to modernise the planning system through our consultation on modernising planning inquiries and through the progress we have made with Councils on e-planning. The consultation paper *Making Development Plans Deliver* brings forward our proposals for making development plans more effective in delivering land use change. We will also be publishing a National Planning Framework, which marks an important first step in addressing the challenges of Scotland's long-term development.

We made it clear in our Partnership Agreement that we are determined to speed up the planning process overall. In many cases it takes far too long to get from the point of proposing new development to getting a decision on whether it can proceed. And time spent waiting for a planning permission is time not spent doing business, or enjoying new facilities, or providing important public services.

Without significant reform of the system overall, extending the right of appeal in planning has the potential to create further delays. And delays do have costs for business and society. The challenge is to reduce cost and delay while ensuring that people and communities feel their voice has been heard on decisions that they believe will damage their environment or way of life. But sometimes people want an opportunity to challenge what they see as bad decisions and environmental injustice. Competing expectations of planning will be difficult to reconcile, but any new right of appeal, if there is to be one, must fit with our clear objective to improve the efficiency of the planning system. The decision on whether to extend the right of appeal will be made in the context of our wider programme of modernisation. We want a planning system that serves the needs of Scotland in the 21st Century.

On this and related consultations on the reform and modernisation of the planning system, our final decisions will be made on the basis of sound evidence. Your views are a key factor and I would urge you to engage in this debate and share your thoughts and experiences with us. Your views are important. We are listening.



MARGARET CURRAN MSP
Minister for Communities

BACKGROUND TO CONSULTATION

1.1 When an application for planning permission is refused by a council, in its role as planning authority for the area, the applicant has a right to appeal to the Scottish Ministers against that decision. An applicant can also appeal where planning permission is granted subject to conditions which the applicant finds unacceptable. The applicant may appeal where the council has failed to reach a decision on the application within the relevant timescale. However, while applicants have the right to appeal against a decision made by the planning authority, that right of appeal does not extend to others who may have some interest in whether, or on what terms, planning permission is granted, such as the owners of neighbouring property for example.

1.2 In March 2003, the Scottish Executive published *Your Place, Your Plan, A White Paper on Public Involvement in Planning*. This recognised that the question of 'third party appeal' (i.e. appeal by parties other than the applicant) in the planning system is a topical subject that involves strongly held views. However, it is also a complex issue with potentially significant implications for the planning system and beyond. Given the ongoing debate about third party appeals, the Scottish Executive concluded that there would be value in carrying out a detailed examination of the issues involved. *Your Place, Your Plan* announced the Executive's intention to carry out a full consultation

"... to examine the issues and options on third party appeals in planning in the context of the measures already proposed in this White Paper to increase public involvement."

1.3 Following the Scottish Parliament election in May 2003, the subject of this consultation was defined further on publication of *A Partnership for a Better Scotland: Partnership Agreement* which said

"We will consult on new rights of appeal in planning cases:

- where the local authority involved has an interest;
- where the application is contrary to the local plan;
- when planning officers have recommended rejection; or
- where an Environmental Impact Assessment is needed."

1.4 This commitment is stated as one of the 'supporting activities' in the *Partnership Agreement* and must be seen in the context of the high level commitment that

"We will improve the planning system to strengthen involvement of communities, speed up decisions, reflect local views better and allow quicker investment decisions."

The *Partnership Agreement* also stated other Scottish Executive commitments which some consultees may see as relevant to the issues involved in considering whether to widen the right of appeal, such as

“Growing the economy is our top priority. A successful economy is key to our future prosperity and a pre-requisite for building first class public services, social justice and a Scotland of opportunity.”

“We want a Scotland that delivers sustainable development; that puts environmental concerns at the heart of public policy and secures environmental justice for all of Scotland’s communities.”

1.5 This consultation must also be seen in the context of the Executive’s ongoing and wide-ranging programme of changes to the land use planning system. There are reforms in hand following the Review of Strategic Planning, such as our National Planning Framework and the public consultation on Making Development Plans Deliver (both of which are being published at the same time as this paper). *Your Place, Your Plan* brought forward the Scottish Executive’s proposals to strengthen and enhance public involvement at all stages in the planning system, while the consultation on Modernising Public Local Inquiries, the outcome of which is yet to be concluded, aimed to increase certainty about the ‘planning inquiry’ process and improve the experience of inquiry participants. These are relevant to the way in which members of the public can engage with the planning system and have been the subject of wide public consultation.

Purpose of this consultation

1.6 Through this public consultation, we need to explore:

- whether new rights of appeal should be created in the circumstances set out in the *Partnership Agreement* (see paragraph 1.3 above); and
- if so, how they might operate in practice.

1.7 This consultation paper considers not only whether there should be a third party right of appeal, but also whether other related changes to existing appeal rights might be necessary.

1.8 There are a number of other decision-making processes comparable to those in the planning system. This paper consults on new rights of appeal in the context of the land use planning system only. It should not be taken to imply any comment on other decision-making systems, which serve different purposes and are established under separate legislation.

1.9 The paper assumes no change to the current role of Courts and the Public Services Ombudsman, although their case loads could potentially increase if more planning decisions are made and are subsequently challenged. To a large extent, the pressure for a third party right of appeal comes from those who seek a further opportunity to review the planning merits of a case. Neither of these bodies do so, as their function and expertise lie in the fields of law and procedure. If an additional planning process were to be introduced, we consider that it must operate within the planning system.

1.10 In considering whether to widen the right of appeal in planning cases to third parties, we need to look closely both at the potential benefits and any detrimental impacts to our society. There are complex issues involved and we recognise that

there are strongly held, and often polarised, opinions on the subject. We need to consider all of the arguments very carefully. At this stage no decision has been made on the way ahead and we offer no firm proposals or opinions.

1.11 Although this paper looks at the arguments around new rights of appeal and considers some possible changes to the planning system, maintaining the status quo remains a serious option for the long term. This public consultation aims to address the core issues and thus to inform the Scottish Ministers' decision on the matter.

1.12 This consultation paper is accompanied by a Regulatory Impact Assessment, which looks at the potential areas of costs and benefits, in financial terms, should the right to appeal be extended.

CURRENT POSITION

Purpose of planning system

2.1 Scottish Planning Policy 1: *The Planning System* states that the purpose of the planning system is to guide the future development and use of land in cities, towns and rural areas in the long-term public interest. The aim is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so.

2.2 Processes should be efficient and effective. They should respect the rights of the individual while acting in the interest of the wider community. The planning system has to make hard decisions, regularly involving choices between competing objectives and priorities. Planning decisions are often controversial and they cannot always be popular.

2.3 There are a number of opportunities for people to participate in development planning and in influencing decisions on planning applications. A few key points about the distinction between the position of applicants and other parties are noted below.

Applicant's right of appeal

2.4 As mentioned in Section 1, an applicant has the right to appeal to the Scottish Ministers against a planning authority's refusal of planning permission, its non-determination of the application or conditions imposed in granting consent. This existing right of appeal should be seen in the context of the introduction of the current system of planning legislation in 1947 which, in effect, had the potential to restrict a property owner's "right" to develop their land. The appeal provision formed part of the planning process to provide appropriate scrutiny of the denial of that right to develop.

2.5 Where a planning application is decided by the Scottish Ministers rather than the planning authority, the applicant does not have a right of appeal against that decision except to the Courts on a point of law (i.e. if it is considered that a legal requirement has not been met). There is no higher authority in our planning system than the Scottish Ministers, and therefore the only scope for challenge is through the Courts. The planning merits of cases or the exercise of legitimate discretion by decision makers are not matters for the Courts to consider.

Position of third parties

2.6 Third parties have no right of appeal against planning decisions. They do however have several opportunities to influence the planning of their areas.

2.7 Planning authorities are under a statutory duty to involve people and communities when preparing structure and local plans (collectively called the 'development plan') and there are also opportunities to lodge objections and any other comments once the draft plans have been published. Where objections are lodged against a local plan and are not withdrawn, the objectors can have their views heard at a local plan inquiry before the council decides how to adopt the plan.

2.8 Everyone has the right to comment on individual development proposals. Observations on any planning application made in good time must be taken into account by the council before it reaches its decision. If that decision is refused by the planning authority and appealed by the applicant, the views expressed by third parties are also carefully considered.

2.9 Some councils hold public hearings when there are objections to planning applications at which third parties can speak and make their views known. There is no statutory requirement for councils to hold such hearings and practice differs between councils. This is considered further in Section 6 of this paper.

2.10 The Scottish Public Services Ombudsman can investigate complaints about administrative failure. Where third parties consider that planning authorities or the Scottish Executive have acted unreasonably or have not properly considered an application, they may ask the Ombudsman to look into the case.

2.11 Like applicants, third parties also have recourse to the Courts to challenge a planning decision on a point of law. This is an expensive process, although in most cases the issues that concern third parties are unlikely to be remedied by judicial means.

2.12 The Scottish Executive carries out public consultations on matters of national planning policy and on planning procedures, such as this consultation. Members of the public are encouraged to respond to these consultations and to influence the development of national policy, on which local planning policies and development control decisions will be based.

VIEWS PREVIOUSLY EXPRESSED TO THE SCOTTISH EXECUTIVE FOR AND AGAINST A THIRD PARTY RIGHT OF APPEAL

3.1 The debate over whether or not to widen the right of appeal in the planning system to third parties is not a new one, although this is the first time we have carried out a public consultation on the issue in Scotland. In the past, people and organisations have made their views on the issue known to the Executive, and this section of the paper highlights some of those arguments both for and against. The following paragraphs are not intended to be an exhaustive or detailed list of all the arguments, but instead to give a representative flavour of contrasting views. No comments made in this section of the paper should be taken to imply the opinion of the Scottish Executive.

3.2 Although the debate about third party right of appeal is often portrayed as a conflict between large scale developers and communities or individuals, most planning applications relate to fairly modest development proposals. Indeed over 40% of planning applications are received from householders, proposing minor development in or around their homes.

Views of those who support a third party right of appeal

3.3.1 Such a right would give those who consider themselves to be affected by development the same appeal right as the applicant. This is often described by supporters as providing a “level playing field”.

3.3.2 It would make planning authorities accountable for all decisions on planning applications, not just refusals, leading to more careful scrutiny of development proposals. It is sometimes argued that councils are prepared to grant planning permission for a development rather than refuse consent and face a (possibly) lengthy and expensive appeal by the applicants. If there is a possibility that a proposal could be subject to appeal irrespective of the decision that they reach, it has been argued that councils would consider applications more carefully to ensure that they reach what they believe to be the right, and defensible, decision.

3.3.3 It would encourage applicants to prepare their development proposals more carefully and engage with communities at an early stage. Taking the views of local people on board when drawing up plans could limit the risk of a permission being challenged by third parties.

3.3.4 Calls for a third party right of appeal often arise from concern about planning permission being granted for developments which are out of accord with the development plan, or about the quality of decisions made by planning authorities.

3.3.5 While interest groups (such as environmental organisations or local amenity groups) might support third party right of appeal as a point of principle, most demands from the public follow a particular decision with which they disagree. This could range in scale from a major development with a wide ranging impact to a

proposal with an impact of a very local nature, which can nevertheless be of significant concern to local people.

3.3.6 Some people who support a third party right of appeal are not opposed to the principle of particular developments, but rather are opposed to the cumulative effect of development decisions, which they believe are adversely affecting the amenity of their area and deterring investment because the area has become unattractive. Others apply the principles of environmental justice, expressing concern that poor areas get more than their fair share of unwanted developments and lack a formal voice to stop this happening.

3.3.7 Some people consider that a third party right of appeal is required to secure compliance with the European Convention on Human Rights and the Aarhus Convention¹. While some others believe that these Conventions do not specifically require a third party right of appeal, they do believe that such a right would be within the spirit of ECHR and Aarhus.

(¹ UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.)

Views of those who oppose a third party right of appeal

3.4.1 Introducing a further procedure would add delay and uncertainty to a system which is already criticised as slow and unresponsive. Significant concerns have been expressed in the past that it takes too long to obtain planning permission.

3.4.2 A third party right of appeal would add to business concerns about the planning system at a time when the *Partnership Agreement* wants planning to support quicker investment decisions.

3.4.3 Other administrations in the UK, with responsibility for the land use planning system in England and Wales, have made clear their opposition to introducing a third party right of appeal. It has been suggested that such a right in Scotland would deter inward investment by making Scotland a harder place to do business than other parts of the UK, with the risk that existing jobs could migrate.

3.4.4 'Development' is often regarded in a negative light, even though it serves the public interest by providing jobs and supporting the economy, as well as providing homes and facilities and infrastructure to support a wide range of policy objectives, for example flood prevention, waste recycling. Some people have expressed concern that a third party right of appeal would be abused through unjustified opposition to development proposals intended to serve the wider public interest.

3.4.5 Many developments which could be subject to a third party right of appeal are in support of public services, eg health, education, infrastructure. Therefore it is not just the business sector which would be subjected to delays, but also some important public sector developments.

3.4.6 Objectors might not be representative of the wider community. There will be situations where the majority of people in a community support a development, perhaps due to the generation of jobs or the provision of much-needed services or facilities, but a single objector could cause significant delay by lodging an appeal.

3.4.7 Third party right of appeal would undermine local democracy. Councillors are elected to make decisions on behalf of the community and the value of that role would be minimised if all of their decisions could be challenged.

3.4.8 A third party right of appeal would not produce the “level playing field” advocated by supporters, as it would allow communities to challenge a decision already made on their behalf by the councillors they elected. To obtain planning permission, applicants already need to convince the planning authority, which represents the community, that the development is in the public interest and that consent should thus be granted.

3.4.9 The taxpayer would bear the cost of funding additional case work required by these wider rights. Applicants would incur additional costs in defending their proposals at appeal and might also suffer for loss of business during the process. There would also be unavoidable costs to public sector bodies for their respective parts in proceedings. Third parties would also have to bear the costs falling to them.

Q1 Paragraphs 3.3.1 to 3.4.9 have identified arguments made to us previously both for and against a third party right of appeal. Do you think they accurately reflect the arguments? Are there other arguments not covered here which you wish to raise?

What are people seeking in a third party right of appeal?

3.5 In considering whether to add a new process to our planning system, we must first establish the objectives which it would be intended to fulfil, to ensure that any change meets the aspirations of the users of the system. The comments summarised above suggest that those who seek to widen the right of appeal do so for 3 broad reasons:

- principle;
- concern about aspects of the planning system; and
- a desire to overturn decisions.

Principle

3.6 Proponents of third party right of appeal argue that the availability of a right of appeal to an applicant and the absence of a parallel right of appeal for third parties is unbalanced and unfair. This point could be addressed either by introducing a third party right of appeal or by removing the applicant’s right to appeal.

Concern about aspects of the planning system

3.7 Underlying the call for parallel appeal rights, there are clearly concerns about the outcomes of the existing process in some cases. Key issues in people’s

confidence in the planning system, whether they support or oppose third party right of appeal, are:

- the robustness and relevance of the development plan; and
- the quality and transparency of decision-making by planning authorities.

A third party right of appeal is considered by some to be a solution to shortcomings in these areas by adding a further opportunity for the merits of a development proposal to be considered.

3.8 The law requires planning decisions to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The ability to depart from the terms of the development plan, if material considerations provide a compelling reason to do so, allows useful flexibility in our system. However, those affected by a grant of planning permission not in accord with the plan, particularly where that plan has only recently been adopted or approved, may be left wondering how such a decision could be reached, particularly if the decision is not properly explained.

3.9 Concerns expressed about the present decision-making system in planning include the following:

- Planning authorities do not take proper account of views expressed on plans or planning applications. This raises the question of how one judges whether adequate account has been taken. A person whose comments have not outweighed other considerations is likely to consider that adequate account has not been taken of them. While in some cases this may be so, it is also possible that those views have been thoroughly examined, but that other factors prevailed.
- Procedures are not fair and consistent. Some people regard public hearings, where these are held, as a token gesture and consider that the views of members of the public are not accurately recorded. Consistency, quality, fairness and atmosphere are cited as important factors in people's confidence that their views have been taken into account.
- There is a need for more transparent assessment criteria on which decisions are based, and for clearer explanations of why particular decisions were reached, no matter whether the decision is to grant or refuse planning permission or to impose conditions on a consent.

Addressing these concerns

3.10 The existing programme of modernising the planning system contains responses to some of these criticisms. The possible introduction of new rights of appeal must therefore be considered alongside ongoing work to modernise the planning system.

3.11 The Executive's aims in reviewing our system of development planning were set out in detail in the *Review of Strategic Planning* in 2001. These can be summarised as:

- Speeding up the preparation and approval process;
- Engaging individuals and agencies more effectively;
- Making plans shorter and more focused; and
- Focusing on delivery.

3.12 *Your place, your plan* proposed a number of improvements in handling comments on planning applications. It also proposed that a report recording the consultation responses, development plan and other material considerations and reasons for planning decisions should be made publicly available. The Executive intends to implement this proposal through appropriate amendments to the legislative framework and to prepare supporting guidance material.

3.13 It is not only the role of the planning authority that has been questioned. It is important that all parties play fair and do not create delays for their own ends. It has also been said that developers should be more accurate with the information they provide in support of their proposals. For example they should not offer jobs as part of the justification for a development and then fail to deliver those jobs. Once a development is in place, the planning system will have little, if any, ability effectively to challenge under-provision of employment.

Overturing planning decisions

3.14 It is evident that many seek a third party right of appeal because they consider that it would provide an opportunity to overturn planning decisions. However, experience from existing applicant appeals suggests that many planning authority decisions would be endorsed by an appeal. There could therefore be no assumption that new rights of appeal, even in defined circumstances, would lead to significant numbers of planning decisions being overturned. In 2002/03 around 35% of appeals by an applicant against refusal of planning permission or conditions imposed on consent were successful. The remainder were dismissed.

Q2 Do paragraphs 3.5 to 3.14 accurately reflect what supporters of a third party right of appeal are seeking in a new appeal process?

WHAT MIGHT THIRD PARTY RIGHT OF APPEAL IN THE PLANNING SYSTEM ENTAIL?

4.1 This section of the consultation paper considers what any new appeal rights might mean in practice and how appeal rights might be defined, as it is in the interests of all concerned for definitions and criteria to be as clear as possible.

4.2 In considering the options, we have been aware of examples of third party rights of appeal either in the UK or other countries. Most countries' planning systems do not have a third party right of appeal. Indeed, some do not have a right of appeal for applicants. Planning systems which do allow third parties a right to appeal follow a variety of models. For example, the New South Wales model allows objectors to appeal against certain large scale developments which are likely to have an environmental impact, which in practice applies mainly to industrial and minerals developments. The Swedish system confers the right on neighbours, who must prove they are affected by a proposal to be allowed to appeal, and the Irish system broadly speaking on those who have lodged a valid objection, but neither of those systems restrict the category of case which may be the subject of appeal. While these models give interesting pointers, they cannot be regarded as immediately transferable to Scotland as they exist in the context of planning systems which are considerably different from our own. For example, the Irish system gives little opportunity for public involvement in development planning; councillors have effectively no involvement in development control decisions; and if an application is not decided within a specified time, planning permission is deemed to be granted (rather than the deemed refusal we have in Scotland).

4.3 The Isle of Man planning system has a third party right of appeal, in the form of a 2-tier "appeal" provision. Planning applications are decided by the Planning Committee of the Department of Local Government and the Environment. Any party who submitted a representation on a planning application can seek review by the Planning Committee of the decision. If no request for review is made within 21 days, the decision is deemed final. If a review is held, there is a further period of 21 days during which an appeal may be requested. If no appeal is requested the review decision is deemed final. Such an appeal is made to the Minister of the Department of Local Government and the Environment and an independent person is appointed to conduct the appeal and report to the Minister who makes the final decision.

4.4 There is a third party right of appeal under the statutory control regime for marine developments in Shetland's coastal area and in designated harbour areas in Orkney. Through Work Licences schemes under Section 11 of the respective Zetland and Orkney County Council Acts of 1974, these councils have the power to grant licences to individuals seeking to construct, place, maintain, alter, renew or extend any works in designated marine areas. These provisions were introduced originally to control oil-related works, but have more recently been used mainly in relation to fish farming. Applicants have a right of appeal against refusal, deemed refusal of a licence or against conditions which the applicant finds unacceptable. A person who has made a valid objection may also appeal to the Scottish Ministers against the granting of a licence or against conditions applied to it. Appeals must be

made within 28 days of the date of the decision. There is no subsequent right of appeal to the Court of Session.

Which categories of planning authority decisions could be appealed to the Scottish Ministers?

4.5 The following paragraphs look at the issues raised by the 4 categories selected for consideration by the *Partnership Agreement*. They are dealt with in turn but an individual application could come within the scope of more than one category. The categories under discussion tend to imply the larger or potentially more contentious cases, but the second and third categories could include some applications by householders.

4.5.1 Cases where the local authority has an interest

- In each of 2001-02 and 2002-03 about 700 proposals were approved by planning authorities in this category. Of these fewer than 5% involved departures from the development plan.
- The existing system recognises the importance of probity in decision-making. Planning authorities are required to notify the Scottish Ministers when they propose to grant permission for a development in which the planning authority has a financial interest or an interest in the land if the development does not accord with the adopted or approved local plan or has been the subject of a substantial body of objections. The Scottish Ministers consider whether they require to intervene. In the last 3 years a total of 319 such cases were notified, of which 21 were called in by Ministers.
- There are circumstances where local authority interest might be seen as extending beyond financial or property interests. For example, if a community planning partnership (and the local authority is a key player here) agrees to a particular course of action which has planning implications, there could be concerns that the local authority had already fettered its discretion and might not be considering a related planning application on its merits.

4.5.2 Cases where the application is contrary to the local plan

- Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Deciding whether an application accords with the plan can be a complicated matter. The authority often has to weigh up a range of relevant policies, some of which may support the development, while others point to a refusal of planning permission. In addition many policies, particularly on issues such as design and conservation, are criteria based and give the planning authority a fairly wide discretion as to how they might be interpreted on a case by case basis.
- Planning authorities are currently required to notify the Scottish Ministers when they propose to grant permission for a development which they consider to be a significant departure from a structure plan approved by the Scottish Ministers or from the provisions of a local plan approved by the Scottish Ministers. This in effect concentrates on departures from the structure plan as it is rare for a local plan to be approved by the Scottish Ministers – most local plans are ‘adopted’ by the planning authority without Ministers’ intervention. On average, around 15 planning applications are passed to the Scottish Ministers each year under this

arrangement, of which one or two are called in for Ministers to decide. There is no requirement to notify the Scottish Ministers of departures from an adopted local plan.

- In 2001-02 and 2002-03 about 680 and 650 applications respectively were approved by planning authorities as departures from a structure or local plan. In each year about 1,600 applications were advertised as departures from the development plan which indicates that almost 60% of such applications are rejected. These figures reflect a wider category of case than is envisaged by the *Partnership Agreement* as it includes developments contrary to the approved structure plan as well as the local plan.
- This category was identified in the *Partnership Agreement* commitment in terms of the current system of development planning. If any new appeal rights were to apply under this category, it would be relevant to the future 'local development plans' which are to be introduced as a result of the Review of Strategic Planning.
- A development proposal is not necessarily inappropriate because it does not accord with the plan. Even a fairly up-to-date plan may not foresee everything eg fast moving changes in the economy or new national policy. It is not always the age of a local plan which indicates whether it is out of date, but rather the relevance of its policies and guidance. However, we recommend that planning authorities should review plans every 5 years. There are currently 131 adopted local plans covering Scotland. Of these, 70% were adopted more than 5 years ago. Around 20% of the total were adopted more than 15 years ago, with an average age of just under 10 years.
- Many minor forms of development such as householder proposals or minor changes of use may not be covered by development plan policies, or only dealt with in supplementary planning guidance. The plan may contain criteria-based policies which involve an exercise of judgement. Turning the spotlight on approvals contrary to the local plan could have the effect of encouraging more frequent up-dating of plans, but there will always be occasions when planning authorities are up-dating their plan but have to deal with applications in the interim.
- There are also issues around developments which, in principle, may be in accord with the development plan but where the detail of development is controversial. For example, a site may be identified for housing in a local plan but the application for housing may involve a substantially greater number of units than the local community had expected or there may be significant concerns on design which manifest themselves only when details of the development are available. However, as the proposal was in accord with the local plan, the right of appeal for third parties would not apply.

4.5.3 **Cases when planning officers have recommended rejection**

- In planning, various factors have to be taken into account and balanced. Some may support the development, others may not. There is a judgement to be made and elected members may choose to give more/less weight to a particular consideration and to arrive at a different conclusion from their officials. The current system is, however, transparent in that officials' recommendations are in the public domain, as is the decision of the council. In addition, our intention is to move to a system where councils must give clear reasons for their decisions to approve or refuse applications for planning permission.

- The majority of planning decisions are delegated to officers - on average about 75% of cases.
- Figures on the frequency of applications being approved by elected members against officials' advice are not collated nationally. However, a small sample of planning authorities have provided us with this information, identifying that approximately 0.4% of all planning applications decided in their areas fall into this category (about 1.9% of applications decided by elected members). If this trend were repeated across Scotland, we might expect there to be about 180 decisions each year granting planning permission against the advice of council planning officers.
- It is already the case that, where decisions are made against the recommendations in an officer's report and there is an appeal against the local authority's decision, planning officials may be unable to defend that decision at appeal.
- There are concerns that if a decision contrary to officials' recommendation would trigger an appeal, officials would be under considerable pressure to alter their recommendation and the system would be less transparent.
- There is also some possibility that more experienced councillors could be reluctant to serve on the Planning Committee, where the fear of triggering an appeal might create the impression of officers' recommendations being "rubber-stamped" and the value of councils' planning decisions undermined.

4.5.4 ***Cases where an Environmental Impact Assessment is needed.***

- The Environmental Impact Assessment (Scotland) Regulations 1999 indicate the circumstances in which such assessment is needed. For some types of development it is obligatory (Schedule 1 development). Examples include a crude oil refinery above a specified size and particular types of chemical installation. For another category of developments (Schedule 2 development) EIA is required if the development is likely to have significant effects on the environment by virtue of factors such as its size, nature or location. In these cases a judgement has to be reached on whether EIA is required. The EIA Regulations already provide a framework for making this judgement where there is some doubt about the need for an EIA.
- Around 40 such cases were decided by planning authorities in each of the last 2 years.
- The fact of requiring formal environmental impact assessment does not mean that the development proposal is ill-considered or inappropriate. The EIA may be the means of ensuring that environmental consequences are appropriately mitigated so that a worthwhile development can take place.
- We understand that, in the main, where there is an element of discretion about performing an environmental assessment, developers prefer to undertake EIA to ensure that any permission that is granted is robust and unlikely to fail any subsequent challenge.
- A possible reaction to the introduction of a third party appeal for EIA cases is that developers would lodge proposals which fell just below the relevant thresholds, leading to concerns about the cumulative impact of smaller developments.

Q3 If the right of appeal were to be extended to third parties, do you think it should be restricted to all or some of the four categories identified in the *Partnership Agreement*? Please give reasons to support your views.
Your response to this question will not prejudice any view you express on the principle of widening the right of appeal.

Volume of cases involved

4.6 The categories suggested in the *Partnership Agreement* could apply to around 650 approvals a year where the planning authority has an interest, fewer than 700 which are departures from the local plan, about 180 where councillors depart from officers' recommendations and around 40 which have had a formal environmental impact assessment. We would expect some duplication in these figures as there would be some applications which meet more than one of the categories. While these grants of planning permission with a potential third party right of appeal represent only 3-4% (around 1,600 cases) of total approvals, their impact on the planning system is better calculated in relation to the current appeal caseload. In recent years the Scottish Executive Inquiry Reporters Unit (SEIRU) has received around 1,000 planning and other appeals annually. Applying a third party right to these categories could more than double the Unit's caseload and would probably involve a greater proportion of large-scale or contentious appeals than at present.

4.7 Appeals are lodged by applicants against around one third of refusals of planning permission. We might expect the rate of appeal by applicants to continue, although some commentators have predicted an increase if third party right of appeal were to be introduced as they expect that applicants would be more inclined to appeal at an early stage against deemed refusal. The thinking is that, if a case is likely to go to appeal irrespective of the planning authority's decision, the applicant is more likely to lodge an appeal at the end of the 2-month period rather than wait until the application is decided some time later, starting the appeal earlier and thereby saving some time in the overall process.

4.8 It is difficult to foresee the rate of third party appeal if introduced. We might expect it to be higher than the rate of appeal by applicants as there are often many third parties in relation to each proposal, any of whom could initiate an appeal. We understand that around 3% of planning decisions are the subject of third party appeal in Ireland, while in Sweden around 15% of adopted detailed plans are appealed by objectors. The categories proposed by the *Partnership Agreement* concentrate on cases which might be relatively contentious implying that there may be a greater likelihood of the planning authority's decision being challenged. Our parallel efforts to modernise and improve the planning system are intended to increase public confidence. These may avoid the need for some appeals but will not avoid them all by any means.

Which decisions could be appealed to the Scottish Ministers?

4.9 Applicants can appeal against the decision of a planning authority to refuse planning permission or advertisement consent, non-determination of such cases or conditions applied to them. Applicants also have a right of appeal against conditions applied after the periodic review of mineral planning permissions.

4.10 The suggestion of third party right of appeal implies appeal in the categories listed by the *Partnership Agreement* against:

- planning authority approval of planning applications, but also
- planning authority refusal of planning permission, non-determination of such cases or conditions applied to them;
- planning authority approval of outline planning permissions as well as of full planning permissions in these categories;
- planning authority decisions following the periodic review of mineral planning permissions. Planning legislation provides for the modification or revocation of planning permissions if the planning authority considers that revised operating or restoration conditions are required. The legislation also provides for compensation to be paid to the operator in specified circumstances if the review leads to a restriction of working rights; and
- planning authorities giving prior approval for development under the General Permitted Development Order.

4.11 We consider that, whatever the outcome of this consultation, the following should not come within the scope of third party right of appeal.

- Enforcement. It would not be appropriate for third parties to appeal against what they perceive to be inaction by a planning authority. Apparent inaction might conceal fact-finding or negotiation of resolution. It would not be helpful if an appeal forced a planning authority into inappropriate or premature enforcement action. Genuine inaction may be a factor of resourcing, not incorrect decision.
- A deemed planning permission linked to a consent under the Electricity Act 1989. Such a consent is inextricably linked to the authorisation made by the Scottish Ministers, rather than a planning authority, under the Electricity Act.
- Decisions made under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

Q4 Which planning decisions do you think should be capable of appeal to the Scottish Ministers?

Who could appeal?

4.12 If the right of appeal were to be widened following this consultation, we would need to consider carefully which third parties would be able to appeal and whether there should be some restriction or qualifying circumstances.

4.12.1 It could be offered to **all members of public**. There is potential for a very large number of appeals.

4.12.2 *Persons with interest in the land.*

- Property rights, including holiday homes, would be an obvious defining factor. The Swedish system of third party right of appeal is based on neighbouring property interests. In Scotland there is a long-held tradition that planning is not concerned with property ownership or value. An owner must be notified when another party applies for planning permission for his land. Despite his property rights he has no right of appeal, although he has the ultimate sanction as his ownership of the land would block any development.
- Neighbours, as defined for neighbour notification? Neighbours too have an obvious interest, but in some cases they may be less affected than someone further afield. For example residents beside a new development may be less affected than those a few streets away who suddenly find themselves on the access route to the development.

4.12.3 *Those who objected to the original planning application.*

- Such people have already shown an interest in the development proposal in question. This is the Irish and New South Wales model, albeit involving the payment of a fee. Consideration would need to be given to the situation where the scheme ultimately granted permission differed from the original. Some people might be content with the original application, and would therefore not have objected, but could have concerns about the amended design and feel motivated to appeal.
- This option raises the question of whether it would encourage an increase in objections to planning applications if people need to object to secure the right to appeal, in effect reserving their future position.

4.12.4 It could be restricted to “*representatives*”.

- Community councils are often mentioned as possible third party appellants on behalf of the community. Any recognition of community councils as appellants acting on behalf of the community raises different issues from recognising community councils as appellants in their own right, such as whether elections to community councils are sufficiently public to encourage voting by residents thus ensuring that the community council is representative of the wider community. Moreover, not all communities have such a council.
- Other community organisations, such as residents’ groups, but they too may not be representative of the wider community.
- Environmental and amenity/heritage organisations. These could be nationally-based or local interest groups.

4.12.5 *Other interested parties?*

The following are some examples of possible legitimate interests.

- Those with a business interest, eg commercial competitors.
- Statutory consultees such as the Scottish Environment Protection Agency, Scottish Natural Heritage.
- National/local interest groups.
- Councillors who had either been in the minority on the planning committee which made the decision or do not serve on the planning committee.
- Local enterprise companies
- Trades unions

Rights of Appeal in Planning

Q5 If the right of appeal were to be extended, which third parties should be able to appeal and in what circumstances? Please give reasons for your answer and also, where relevant, explain why you think any of the third parties identified above should not qualify for a right to appeal.

Your response to this question will not prejudice any view you express on the principle of widening the right of appeal.

Q6 Do you support, in principle, the introduction of a wider right of appeal in the planning system? Please give reasons to support your views.

RESOURCES

5.1 Widening the right of appeal to include third parties, even in limited circumstances, could not be done without some impact on the practical operation of the planning system as it currently exists. There could be difficulties, at least in the short term, in finding additional staff resources to provide a wider appeal service. This implies that staff would need to be diverted from current activity.

Recruitment and training

5.2 Earlier parts of this paper discuss possible circumstances under which a third party right of appeal might be introduced and who would have the right to appeal. In advance of any firm decision on whether and how to introduce this, it is difficult to estimate the increase in workload in a new, extended planning appeal system. For example we understand that in Ireland around 45% of appeal cases are lodged by third parties. If third party appeals in Scotland followed this pattern, it would imply about 550 additional appeals. On the other hand all appeals in Ireland run at about 7% of the number of planning authority decisions, which in Scotland would mean around 3,500 cases. The volume of additional appeal cases could vary amongst planning authorities. However, there would indeed be an increase and we would need to address how this increased appeal case load could be processed efficiently by both the Scottish Executive and the planning authorities.

5.3 This is against a background of constantly increasing demands. The annual case load has risen from almost 40,000 applications in 1996-97 to almost 48,000 applications in 2002-03. There is an ever evolving policy framework, both in the planning field and in other areas of Executive policy and international obligations which require resources in planning. Examples are the introduction of Strategic Environmental Assessment, the implementation of the Water Framework Directive and the transfer of responsibility for neighbour notification from the applicant to the planning authority.

5.4 This has implications for the number of professional planners and administrative staff in local authorities, the Scottish Executive Planning Division and SEIRU. The numbers and the balance between professional and administrative staff will depend on the approach taken. In general it is likely to be more difficult to recruit sufficient numbers of professional staff.

5.5 Setting aside the financial cost of increasing staffing levels, which are addressed in the accompanying Regulatory Impact Assessment, we have to consider whether the new staff could be recruited. With an increase in demand for planners, planning authorities and the Scottish Executive are likely to be competing against each other to some extent for the same candidates. The private sector (both developers and consultancy firms) may also need to recruit additional professional planning staff to service this additional statutory process and would be seeking staff from the same pool as the public sector.

5.6 Most inquiry reporters are chartered planners. They also have the other skills required to carry out specific tasks, such as presiding over public local inquiries. It is doubtful whether SEIRU would be able to recruit enough professional staff with the

relevant expertise to deal effectively with a significant increase in workload. A source of additional reporters would be recruitment of local authority planners, which in turn could create recruitment and retention problems for planning authorities, leading to a reduction in the quality of the planning system generally.

5.7 Across the UK, the number of students graduating in planning has remained fairly steady in recent years, although one of Scotland's universities is no longer taking new planning students and this may have some impact on the planning workforce in the future. With an increase in demand for planners it may be that, in years to come, there will be a higher intake to planning courses at our universities. There would however be a transitional period and other factors could also affect the choice of planning as a profession. Despite the importance that is attached to up-to-date and relevant development plans there would be the perception that most local authority planners would work mainly in development control posts, reacting to planning applications and defending appeals, rather than engaging in forward planning. This might be seen by some as detrimentally affecting the attractiveness of the planning profession. Potential recruits could be attracted by other areas such as community planning if these are perceived to offer a more positive and forward-looking role than land use planning.

Impact on other areas of planning

5.8 The increasing focus on development plans which would result from an additional right of appeal should lead to a greater sense of commitment and urgency as regards updating of development plans. With a greater emphasis on the later stages of the planning system, however, there may be some pressure in local authorities and in the Scottish Executive to reallocate planning staff from development planning and policy work or the planning enforcement service to deal with the additional work on appeals.

5.9 Planning authorities are obliged to carry out their statutory duties. Any reduction of staff within the planning authority to accommodate additional statutory appeal rights could have a detrimental effect on non statutory aspects which contribute to the quality of planning, eg design considerations and pre-application discussions. There may also be pressure to divert non-professional staff from other areas of local authority work at the expense of other priorities.

5.10 By adding a further stage to the overall planning process, there would be some additional delay to a system that is already criticised by some for being too slow and unresponsive. The counter argument is that the quality of decision is more important than the speed. There is a view that a wider right of appeal would add delay to those cases which are the subject of third party appeal, but that the existence of a wider right of appeal might speed the system by encouraging applicants to produce better founded applications and to make more use of pre-application discussion to resolve contentious issues and by perhaps bringing about a slight reduction in the overall number of applications. However, the opposing argument is that applicants may not be willing to spend more time on pre-application discussions if they face the risk of a third party appeal as well. As indicated above, planning authorities may not feel they have the resources to engage in pre-application discussions.

Rights of Appeal in Planning

Q7 How do you feel the planning service at both planning authorities and the Scottish Executive would be placed to manage the likely increase in workload?

Q8 Do you think there would be any implications for the attractiveness of planning as a career if there were to be a significant increase in the appeal caseload? Please give reasons for your answer.

POSSIBLE OPTIONS

6.1 This section of the consultation paper considers some options for the way ahead. Based on the considerations in Section 5, it might not be appropriate simply to add further third party rights onto the existing planning system without considering other alterations as part of a package. We would need to consider what, if any, associated measures would be necessary to ensure the planning system is balanced, fair and effective in achieving its purpose. This section sets out some possible packages of changes through **indicative models**. These range from introducing a third party right of appeal in the circumstances described in the *Partnership Agreement* to maintaining the status quo on appeal rights.

6.2 These models are based on the principles of fairness, clarity and transparency which are a theme of the current programme of modernisation of the planning system. They also take account of the Executive's wider aspirations for the planning system which have been touched on to some extent in sections 1 and 3.

6.3 Nothing in this paper should be taken as a firm proposal for change. It serves as a means of exploring particular issues to identify a possible way forward.

6.4 Irrespective of whether you support or oppose the principle of widening the right of appeal to third parties, your views on the approaches set out in this part of the paper are important. Comments on any aspect of this section will not be taken to contradict your response to the question about whether we should introduce a third party right of appeal.

Model 1 – new right of appeal for third parties within *Partnership Agreement* categories

6.5.1 As mentioned earlier in this paper, the *Partnership Agreement* identified four categories within which new rights of appeal would be considered:

- where the local authority has an interest;
- where the application is contrary to the local plan;
- when planning officers have recommended rejection; or
- where an Environmental Impact Assessment is needed.

6.5.2 This model suggests retaining applicants' existing right to appeal. It also proposes to introduce a parallel right of appeal for third parties where the proposal or decision meets one or more of the categories listed above. In these circumstances, any person who does not agree with a planning authority's decision could lodge an appeal. However, an alternative could be to limit that right to those people who lodged valid objections with the planning authority during the application process, as is the case in the Republic of Ireland.

6.5.3 To ensure that everyone is clear about their rights in any individual planning case, the planning authority would record what, if any, appeal rights exist, possibly in

the minutes of the council/committee meeting and on the formal decision notice. These would be publicly available once the decision was reached.

6.5.4 In lodging an appeal, the appellant would make a clear statement of the grounds on which the appeal is based, in response to the clear reasons for approval, refusal or the conditions imposed by the planning authority when they decided the application. An exception to the requirement for an appellant to state clear grounds of appeal would be where an appeal is lodged on the basis of the council's failure to make a decision on a planning application. In these circumstances the appellant would not then have a statement of grounds for the decision against which to frame his appeal. In such cases the planning authority would be required to indicate whether they would have granted or refused permission within a set period of the appeal being lodged.

6.5.5 Any amendments to the appeal process to be made as a result of other aspects of our modernising planning agenda would also be relevant to third party appeals. For example, we said in *Your place, your plan* that we intended to reduce the period within which an appeal can be lodged from six months to three months, and this would apply equally to all appeals.

6.5.6 The procedure for third party appeals would mirror that of the current applicant appeals, in that they would be lodged with the Scottish Executive Inquiry Reporters Unit, and the vast majority would be decided by Reporters under delegated authority from the Scottish Ministers. Appeals would be decided following either the written submissions, hearing or public local inquiry processes. The consultation paper *Modernising Public Local Inquiries*, published by the Scottish Executive in July 2003 sought views on proposals to make the inquiry process more efficient and less intimidating. That paper also raised the question of whether the main parties to a planning appeal (i.e. currently the developer and planning authority) should retain their 'right' to an inquiry or whether the Scottish Ministers should decide whether an inquiry or hearing was necessary. A number of procedures for such a decision by Ministers were outlined. The resource implication of the current provisions for inquiries and hearings is of course relevant to the present consultation, but the issue is not being considered in any detail in this paper as it has already been the subject of that earlier consultation.

Particular issues to consider on third party appeals

Multiple appellants

6.5.7 On some occasions there would be more than one person or body seeking to appeal against a single planning decision. This could be several third parties. It is also conceivable that a developer and a third party could appeal against the same decision, for example where an applicant appeals against conditions attached to a planning permission while the third party appeals against the decision to grant consent.

6.5.8 This raises the question of how many appeals there could be against a single decision. In the Republic of Ireland, the first 'third party' objector to lodge an appeal against a decision is the 'appellant' and any other objectors wishing to become

involved take on the role of 'observers', who can make observations on the appeal. However, if the appeal is subsequently withdrawn by the 'appellant', no further action is taken and the original decision made by the planning authority stands, irrespective of the remaining interests of the 'observers'.

6.5.9 We consider that the way to handle a multiplicity of appeals against a single planning decision would be for the reporter to undertake a general review of the original decision taking all appeal submissions into account. Withdrawal of an appeal by any party would not affect the right of the other parties to continue their appeals.

6.5.10 There could be complications however for the calculation of appeal fees or any claim for an award of expenses (see below), where there are a significant number of main parties to an appeal. There would also be implications for the administration of the process set out in the Inquiry Procedure Rules as regards exchange of statements etc, which would be more complex if all parties to an appeal had equal status.

Fees to object and to appeal

6.5.11 Applicants pay a fee to the relevant planning authority when they apply for planning permission. There is no additional fee to appeal against the subsequent decision. This fee can range from £110 for minor developments such as an alteration to a dwelling house to a maximum of £11,000 for a housing or commercial development or £16,500 for a waste or mineral development. The fee is intended to contribute to or cover the administrative cost of processing the application.

6.5.12 Third parties do not currently pay a fee to make representations on a planning application, even though there is a cost to the planning authority in addressing the comments made. However, an appeal by a third party would generate a new procedure on a particular case, which would involve a cost to both the applicant and the planning authority, as well as to the Scottish Executive. We therefore need to consider whether it would be appropriate for third parties to pay fees in planning cases.

6.5.13 Again, to draw a comparison with the system of third party appeal in the Republic of Ireland, there is a fee of €20 to submit comments to the planning authority on the original application. There is also a fee of €200 for a third party to lodge an appeal against the subsequent decision plus €90 to request an oral hearing, or €50 to become an "observer". This compares with a fee for an applicant appeal of €200-600 with up to €1,800 for unauthorised commercial development appeals.

6.5.14 There would be a cost to the public purse in processing any appeal, particularly one lodged by a party who has not contributed to that cost. Appeal fees similar to those in Ireland would most certainly not cover the administrative cost of an appeal. However, it would be counter-productive to allowing members of the public a right to challenge planning decisions if any fee was excessive and therefore effectively excluded many members of the public from exercising their right.

Q9 Should a fee be payable to object to a planning application and/or to lodge an appeal against a planning decision? If so, what do you think would be an appropriate level of fee?

Awards of expenses

6.5.15 Parties involved in planning cases are normally expected to cover their own expenses. However there is an existing procedure whereby one party can be ordered to meet all or some of the expenses of another, on the grounds of unreasonable behaviour which has caused unnecessary expense. This is detailed in the *Scottish Development Department Circular 6/1990*, which notes that an award of expenses is made where:

This unreasonable conduct has caused the party making the application [for the award of expenses] to incur unnecessary expense, either because it should not have been necessary for the case to come before the [Scottish Ministers] for determination or because of the manner in which the party against whom the claim is made has conducted his part of the proceedings.

6.5.16 In the past, developers and planning authorities have rarely claimed expenses against third parties. However, it may be that they would be less likely to maintain that position where the appeal, and therefore the expense, had been generated by the third party appellants.

6.5.17 The amount payable could be significant, taking into account consultants' and legal fees etc. This raises similar issues to that of appeal fees above - but potentially on a much larger scale - should third parties feel priced out of taking up their right to appeal for fear of a need to pay expenses. On the other hand, it is important to remember that costs are awarded only in the case of unreasonable behaviour. An award is not associated with the success or failure of the appeal. However the threat of such action for people unfamiliar with the system could be a significant disincentive.

6.5.18 The cost to the Executive, and thereby to the taxpayer, in dealing with an appeal can also be significant. The Scottish Executive has powers to recover its own expenses in planning cases, although these are not currently exercised. The consultation paper, *Modernising Public Local Inquiries*, asked whether Ministers should use their power to recover costs where an appeal has been delayed or withdrawn after the inquiry arrangements have been made. This question is also relevant in the context of wider rights of appeal.

Decision-making roles for Ministers and Reporters

6.5.19 In existing practice, reporters from SEIRU are appointed by the Scottish Ministers to decide the vast majority of planning appeals under delegated authority. Only a very small number of appeals are 'recalled' for a decision by the Scottish Ministers (in 2002-03 only 11 out of 651 planning permission appeals). In a

delegated case, the Reporter will reach a conclusion and issue a decision on the appeal accordingly. Where an appeal is recalled, once the Reporter has reached that conclusion, he/she will submit a report to the Scottish Ministers, who will then consider the Reporter's findings and recommendation before reaching their own decision. In the past, Ministers have mostly accepted the Reporters' recommendations, but there have been exceptions.

6.5.20 One issue for consideration is whether all appeals should be decided by SEIRU, without the Scottish Ministers having any influence unless as a participant (or even appellant) in the case. This would shorten the timescale for those appeals which would otherwise have been recalled by the Scottish Ministers, but it would remove the direct role of elected representatives in such decisions.

6.5.21 SEIRU is part of the Scottish Executive Development Department, though its staff act independently in exercising their casework and inquiry functions. If SEIRU were to make decisions on all appeals without influence from the Scottish Ministers, this raises a series of issues about the legal status of the Inquiry Reporters Unit. These issues include: whether SEIRU should be constituted as an independent body and, if so, what form that independent constitution would take, to whom would it be accountable, how would it be managed and how would reporters be appointed.

Q10 Should the Scottish Ministers retain their role in deciding particular planning appeals, or should SEIRU decide all appeals?

Model 2 – Continue with ongoing programme of modernisation of the planning system without introducing a new appeal system

6.6.1 It remains an option that we retain the current approach to appeal rights. Third parties would thus not acquire a right of appeal against planning decisions.

6.6.2 This is not to say that there would be no change. As outlined earlier in this paper, the Executive has a continuing programme of modernisation of the planning system in hand. A decision not to alter the right of appeal should be seen in the context of changes such as those set out in the White Paper on public involvement in the planning system, *Your place, your plan*, in the consultation on Modernising Public Local Inquiries and in the proposals for modernising development planning. Proposals for change in relation to public participation and influence in the planning system include:

- Setting up local planning forums to encourage discussion and build up local interest and expertise on the full range of planning issues in an area.
- Placing the responsibility to notify neighbours of development proposals on planning authorities, rather than the existing system of relying on applicants to do this.
- Extending the timescale for people to comment on planning applications from 14 to 21 days.
- Restricting the scope for planning authorities to deviate from a reporter's recommendations following a public inquiry into objections to a local plan.

- Reducing the adversarial nature of planning inquiries and supporting greater use of the less formal 'hearings' process instead.
- Requiring action plans to be prepared for each development plan, which will set out how the plan will be delivered and provide greater transparency for communities and other stakeholders.

6.6.3 The rationale for this approach is that, through ongoing reform of the planning system, the Executive is already addressing the underlying issues of confidence in the development plan and in the ability of the public to contribute to the decision-making process. This model therefore suggests that the ongoing work to modernise the planning system and improve public participation could continue without the need to add new rights of appeal.

Model 3 – No new appeal system. Introduction of mandatory public hearings prior to determination of planning applications and additional requirement to notify the Scottish Ministers

6.7.1 This model adds 2 features to those outlined in Model 2. The introduction of mandatory hearings is a further response to concerns expressed by some members of the public about their ability to contribute effectively to the decision-making process. The strengthening of the notification arrangements in relation to development plan departures recognises concerns about the extent to which the public can have confidence that the development plan will guide planning decisions.

Introduce a statutory requirement for councils to hold hearings in defined circumstances.

6.7.2 As mentioned in section 2 some councils already hold public hearings into certain planning applications as a matter of good practice to aid their understanding of the issues before them. These hearings are not required by law, but can be held at the discretion of individual councils. Under this model we suggest that hearings should be mandatory. As hearings are resource intensive, it would not be possible to hold them for all applications. To ensure consistency of practice the circumstances in which such hearings would take place would be established at a Scotland-wide level. The aim of this proposal is to ensure that developers' and third parties' views are fully expressed and that everybody can have confidence in the process which led to a decision, no matter what the eventual decision may be. In putting this forward as an option we are aware of concerns that hearings may not add enough value to the process to justify the resource demand of introducing them on a routine basis. We would be grateful for views on this.

Code of practice for public hearings

6.7.3 There is currently no standard procedure for hearings and practice varies throughout Scotland. If hearings were mandatory, a Code of Practice would be introduced to ensure consistency of process by all councils. This would be worked up on a Scotland-wide basis and would draw on current good practice and would be likely to cover aspects such as who is eligible to make representations at a hearing, time limits for parties to state their case, grouping participants to avoid unnecessary

repetition of arguments and arrangements prior to, during and following committee hearings.

Q11 Would the introduction of mandatory public hearings in defined circumstances increase public confidence in planning authorities' decisions?

Extend notification arrangements to include development plan departures

6.7.4 In planning, the presumption is that decisions are made in accordance with the terms of the development plan, unless other material considerations outweigh the plan. People often find it frustrating that decisions are being taken which do not accord with the development plan. This raises definitional issues in that an application may seem to be supported by some policies of the development plan but be out of accord with others and a judgement has to be made about whether on balance it is a departure from the plan.

6.7.5 Planning authorities must notify the Scottish Ministers where they resolve to grant planning permission in certain circumstances, including where a development marks a "significant" departure from an approved structure plan or a local plan approved by the Scottish Ministers. This allows Ministers the opportunity to consider whether or not to 'call in' an application from the council and decide it themselves. There is however no need for a council to notify an application either where it does not consider the departure to be 'significant' or where the proposed development is a departure from a local plan which the council adopted itself (ie. it did not require the approval of the Scottish Ministers). This model raises the question of extending the terms of the notification procedure to include all development plan departures.

6.7.6 At present the Scottish Ministers generally call in planning applications where they raise issues which Ministers consider are of national significance. The current Notification Direction is designed with that in mind. If we widened the provision to take in all cases where planning authorities are minded to grant approval to applications which depart from the development plan – around 650 a year – this implies that Scottish Ministers would be considering calling in cases where there is no issue that needs consideration at national level but where there is sufficient doubt about the justification of the authority's decision to warrant further scrutiny. This is a significant shift from the current principles of notification and reasoning for Ministerial call-in.

Q12 Would extending the circumstances in which the Scottish Ministers are notified, to include all development plan departures, sufficiently address concerns about decisions being made by planning authorities against the terms of development plans?

Model 4 - New appeals system and related changes

6.8.1 This model would involve the introduction of a right of appeal for those who objected to the planning application and would make associated changes to the applicant's right of appeal. We propose 2 possible approaches to this model. First

we describe an approach which offers a right of appeal which is subject to a sift to ensure that the case is admissible. Next we set out an alternative approach in the form of a right of review before a planning authority's decision is confirmed. This would offer the same level of access to the appeal system to both applicants and objectors. The objectors to whom this right would apply would include agencies such as SEPA and Historic Scotland, divisions of the Executive and neighbouring local authorities. Finally we then set out a package of other associated changes to the planning system.

6.8.2 With the potentially very significant costs outlined in section 5, there might be a case for introducing an initial screening process for appeals. The primary considerations for screening would be the categories of application outlined in the *Partnership Agreement* along with related considerations. There may also be other reasons why appeals could be screened out, such as those in relation to development of urgent and strategic importance. Any screening process in relation to the individual merits of any appeal would need to be supported by clear criteria and guidance on its use.

6.8.3 This model addresses related policy changes to the circumstances in which inquiries would be held and to the Notification Direction. The associated changes are partly intended to release some of the resources which would be required to support additional appeals and which are unlikely to be obtainable by recruitment and partly because a fundamental change of this nature is bound to require consequential policy changes.

6.8.4 Under this model, all planning appeals (whether they be applicant or objector appeals) would be lodged with the Scottish Ministers through the Planning Divisions of the Scottish Executive, rather than with SEIRU as they are at present. Stage 1, the screening stage, would be administered by the Planning Divisions on behalf of Ministers. Only appeals which proceed to Stage 2, full consideration, would be considered by SEIRU. We propose separating the screening stage from the full consideration to ensure that users of the system have confidence that the decision on screening is not perceived to presuppose any particular outcome to the appeal. The fact that an appeal proceeds to stage 2 is not necessarily an indication that it will be successful.

6.8.5 The following paragraphs set out a possible new procedure for planning appeals. We are aware that this package may seem complicated as the explanation is fairly detailed.

Stage 1 appeals – the screening decision

6.8.6 The decision on whether an appeal should move to stage 2 would be based on the categories of case set out in the *Partnership Agreement*, ie:

- where the local authority involved has an interest;
- where the application is contrary to the local plan;
- when planning officers have recommended rejection; or
- where an Environmental Impact Assessment is needed.

The categories were written with third parties in mind. For them to operate as screening criteria for all appeals, they should be amplified by related considerations to ensure that their application would impact equitably on applicants and objectors.

6.8.7 As under existing arrangements the appellant would notify the planning authority of the appeal at the same time as lodging it with the Scottish Ministers. Other interested parties would be advised of the appeal by the planning authority. The appellant would make a clear statement of the grounds on which the appeal is based, in response to the clear statement of the reasons for the planning authority's decision, unless the appeal were against a deemed refusal.

6.8.8 All interested parties would have the opportunity to provide further comments in relation to the grounds of appeal stated by the appellant.

6.8.9 Once all comments are received, the Scottish Ministers would consider whether the appeal should proceed to Stage 2 for further consideration.

6.8.10 Clear guidance would be issued by the Scottish Ministers, setting out their policy on circumstances where an appeal is likely to proceed to Stage 2. This would serve as a guide without being prescriptive as it is likely that a number of criteria could apply to an individual appeal and their interrelationship would have an impact on whether the appeal proceeded to stage 2 for full consideration. Examples of possible criteria follow to illustrate how screening criteria might operate in relation to the terms of the *Partnership Agreement* categories.

- **Where the local authority involved has an interest.** An authority might be perceived to have an interest which would encourage it either to approve an application or to refuse it because of the likely impact on the council's own financial or land interests. Appeals of this kind would be likely to proceed to Stage 2 unless it was apparent that the council's interest was minimal.
- **Where the application is contrary to the local plan.** For the purposes of screening we propose to look instead at "whether" the application is contrary to the plan. An appeal against approval contrary to the plan or against refusal of an application which is in line with the plan would be likely to proceed unless there were evidence that the plan is significantly out of date and/or that material considerations, such as wider economic, environmental or social objectives are relevant to the decision. It would be worth considering whether this category should be widened to refer to applications contrary to the development plan as a whole to recognise the fact that structure plans and local plans do not tend to be reviewed simultaneously and may be out of line with each other in some respects.
- **When planning officers have recommended rejection.** For the purposes of screening we would look instead at whether councillors have reached a decision contrary to officers' recommendations to ensure that applicants had the same right of appeal as objectors.
- **Where an Environmental Impact Assessment is needed.** Appeals against grants of planning permission would be likely to proceed if there were

unresolved issues from the EIA. Correspondingly an applicant's appeal against refusals would be likely to proceed if it is evident that the EIA was satisfactory and there were no unresolved issues.

6.8.11 Applying these criteria would allow people the right to appeal in circumstances set out in the *Partnership Agreement*, but would not guarantee that it proceeded to full consideration. Such criteria would have to be used with care to avoid negating the right to appeal but would allow the screener to reject cases where, for example, the application was only marginally out of line with the development plan and where other material considerations had great force or where an EIA had been carried out and showed no cause for concern.

6.8.12 Other criteria which might be relevant include the following.

- The council has not reached a decision despite having all necessary information (deemed refusal).
- The reasons for a decision are not supported by the evidence set down in the council's decision notice and report.
- There may have been a flaw in the process, such as not carrying out the required consultation or notification.

Q13 Would it be appropriate to introduce a screening process for planning appeals? Please let us have your comments on relevant screening criteria.

Stage 2 appeals – full consideration

6.8.13 By the time an appeal was passed to SEIRU for Stage 2, it is expected that all relevant information would have been submitted. SEIRU would proceed to arrange a site inspection, hearing or planning inquiry as necessary. The vast majority of appeals would, as at present, be conducted by means of written submissions without the need for a hearing or inquiry, subject to the conclusions reached on the option proposed in the *Modernising Public Local Inquiries* consultation paper on the availability of inquiries or hearings.

Timetables

6.8.14 A timetable would be set for lodging appeals and other comments, and targets set for decision-making, to ensure efficient processing of appeals at both stages. Timetables are suggested below.

Stage 1 timetable

- Appeal to be lodged with Scottish Ministers (and copied to the planning authority) on standard form with full documentation and grounds of appeal fully stated within 28 days of the date of the planning authority's decision. Following consultation on public involvement in planning, we intended to reduce the period for submission of an appeal by an applicant from 6 months to 3. The potential for delays if there were a wider right of appeal leads us to propose a shorter deadline of one month for all appeals.

- Copied to others with an interest to reach them within 7 days. At present notification of an appeal has to be sent to other interested parties within 14 days, which leaves them 14 days to send in any further comments. We propose this change because those parties would then have 21 days to respond. This would be in line with our intention to allow 21 days to comment on planning applications.
- Views of other interested parties to be lodged within 28 days from notification date, ie the date on which the appeal is lodged with the Scottish Executive.
- Scottish Executive to set performance targets for consideration and decision on Stage 1 appeals, e.g. to decide 80% within one month; 100% within two months.

Stage 2 timetable

- SEIRU would set performance targets for consideration and decision on Stage 2 appeals based on the method of determination.
- The right to challenge a decision in the Courts, on a point of law only, would remain (6 weeks).

6.8.15 The above description of this model assumes that an application would be determined and could subsequently be the subject of an appeal by the applicant or by objectors or conceivably both. An alternative approach to this model would be to require planning authorities to notify the applicant and objectors of their decision on the case. The decision would not have immediate effect but would be suspended for 28 days. During that time parties would have an opportunity to request the Scottish Ministers to review the proposed decision and would require to state clear grounds for that request. If no party requested review, the decision would take effect at the end of the 28 day period. If such a request were received, the planning authority would forward the case papers to the Planning Divisions. These would contain the full views of the other parties. This would provide an alternative approach to the stage 1 procedure already described and Planning Division would consider whether the case required further consideration in stage 2.

Multiple appellants, fees, expenses and decisions by Ministers

6.8.16 The issues raised in Model 1 regarding multiple appellants for a single case, the payment of a fee, awards of expenses and the role of the Scottish Ministers in deciding appeals (paragraphs 6.5.7 to 6.5.21) are also relevant to consideration of this model. Some modifications might be needed to accommodate them to this different model.

Withdrawal of right to appeal

6.8.17 We also need to consider whether there is a case for exempting certain types of cases from a right of appeal for third parties, or perhaps also for applicants. For example a geographical area could be designated as being of strategic importance, eg. for economic reasons, for regeneration or for achievement of the National Waste Strategy. Alternatively, the appeal right could be withdrawn only for certain categories of development (e.g. national security or vital economic development).

6.8.18 Planning authorities would need to carry out thorough public consultation before any final decision is taken on withdrawing or restricting appeal rights, arguably this would have to be through the development plan, and would need to have the designation confirmed by the Scottish Ministers. This provision would be used only on an exceptional basis, as it, combined with the proposal set out below to remove the Notification Direction, would cut down on existing checks on applications.

Q14 Are there circumstances in which any right to appeal against planning decisions should be withdrawn? Please give details.

Related changes to other parts of the planning system

Remove right to an inquiry into objections to local plans

6.8.19 Development plans set out a framework for future development and use of land in their areas, including what development and how much development may take place, where it will take place and where it is unlikely to be allowed. Under existing arrangements, the development plan is made up of two parts - the structure plan and the local plan. These plans are the basis for decisions on planning applications. Planning legislation requires that all planning decisions are made in accordance with the development plan for the area, unless material considerations indicate otherwise. Objectors to local plans already have a statutory right to have their objections heard at a local inquiry or hearing.

6.8.20 Following the *Review of Strategic Planning*, the Executive intends to make certain changes to the development plan process. In particular, we intend to discontinue the two-tier system of development plans in many parts of Scotland. Instead, we will replace structure plans with City Region Plans for Scotland's four largest cities and their surrounding areas only. The rest of the country will have single-tier development plans.

6.8.21 At present, the local plan inquiry (including the administrative arrangements for the inquiry) represents a significant period of time in the planning process. This brings costs, not just to the local authority but also to other participants. It is however considered to be an important aspect of public participation in planning. However, taking into account the other options in this paper, which includes allowing third parties a right to appeal in certain circumstances, there is a question of whether it would remain appropriate to make a public examination of development plans mandatory where objections have been made.

6.8.22 The intention is that objections to either strategic or local development plans will be considered by a reporter to provide scrutiny independent of the planning authority. The consultation on Making Development Plans Deliver proposes that the reporter should be given the discretion to decide whether an inquiry or hearing into the plan is necessary. We consider that that principle makes sense in the related context of widening the right of appeal and our proposals are based on the premise that in future the reporter and not the objector would decide whether an inquiry should be held. This would bring about quicker reviews of development plans and would ensure that resources necessary for appeals were not being absorbed

unnecessarily in inquiries into those plans. The Scottish Ministers would issue guidance for determining whether an inquiry or hearing was necessary.

Revoke Notification Direction

6.8.23 Under existing procedures councils are required to notify the Scottish Ministers that they intend to grant planning permission in certain circumstances before permission is granted. The terms are set out in *Scottish Development Department Circular 4/1997: Notification of Planning Applications*, as amended. This allows Ministers the opportunity to consider whether or not to 'call in' an application from the council and decide it themselves.

6.8.24 If planning permission, which has been granted by a council, can be the subject of an appeal, it might be unnecessary to retain this notification procedure, or at least some of the categories which trigger the procedure could be withdrawn. For example, where bodies (e.g. the Scottish Environment Protection Agency) have maintained objections to a proposal, they would have the right to appeal against the decision should the council grant planning permission. An appeal right would also have to be granted to other parts of the Executive whose intervention would at present trigger notification, eg Trunk Roads Division and Historic Scotland, and to neighbouring local authorities. It would not be our intention that the influence of such bodies, who are statutory consultees for planning applications, would be diminished.

6.8.25 The present arrangements are based in the belief that it is preferable to address contentious issues as early as possible in the decision-making process. There is a considerable overlap between the type of cases notified to Ministers under the Notification Direction and the categories proposed by the *Partnership Agreement* for consideration of new rights of appeal. If new rights of appeal were introduced alongside the existing Notification Direction, the same issues could potentially be investigated twice in the course of processing an individual case, which would not be a good use of resources. For this reason we would propose revoking the Notification Direction if the terms of this model were to be introduced. In proposing this, we are well aware that some planning decisions will not be the subject of appeal and would therefore not receive the scrutiny that the Notification Direction currently provides nor that which would be provided by the use of the new appeal right.

Permitted development

6.8.26 There is a long-standing provision in the planning system that certain types of development are granted permission by Scottish Ministers without the need for a planning application to the planning authority. Such classes of development are defined in *The Town and Country Planning (General Permitted Development) (Scotland) Order 1992*. The purpose of this system of 'permitted development' is to grant a general planning permission across Scotland for developments which, because of the nature of the proposals, would almost without exception be granted. This allows resources for the planning service to be allocated to other work requiring more detailed consideration and ensures that businesses and individuals are not hampered unnecessarily by the planning system. There is a wide range of types of development, meeting specified limits or circumstances, which fall within the definition of permitted development, such as:

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- house extensions and alterations.
- gates, fences and walls.
- agricultural and forestry buildings.
- repairs to sewers, pipes, cables etc.
- developments by local authorities.

6.8.27 We propose that a wider right of appeal should be accompanied by a provision allowing planning authorities to designate further classes of development in their areas which would no longer require to be the subject of planning applications. For example a planning authority might consider that it could safely allow permitted development rights to extensions to houses as long as they did not exceed 36 square metres or 30% of the original floor area instead of 24 square metres and 20% as at present. Again, this would free up resources to accommodate new work on appeals, both because some development which is currently the subject of planning applications would no longer need to be applied for and because, as a consequence, they would not be subject to appeal.

Q15 (a) Please give us your views on each of the models outlined in this section.

(b) Can you think of any alternative package of changes to the planning system to ensure a system which is both fair and effective.

(c) How would each of these models (and any other package you suggest) impact on the resources and objectives of you or your organisation?

CONCLUSION

7.1 Whatever the opinion of any individual on the principle of widening the right of appeal in planning cases, it has to be recognised that there are strongly held and often polarised views on the subject which must be addressed. It is a complex matter with many related issues and potential implications. Any new right of appeal has to be reconciled with the *Partnership Agreement* commitment to speed up planning decisions and allow quicker investment decisions and with its statement that growing the economy is the top priority. The outcome of this consultation could lead to one of the most significant alterations to the land use planning system since the introduction of the modern system in 1947.

7.2 The issue cannot be taken lightly and decisions on the way ahead must be based on clear and reliable evidence. Please take the time to consider carefully the issues raised in this paper and respond accordingly. In particular, we would ask you to give us your views on all direct questions posed in the consultation paper and provide full reasoning for your answers. There may of course be other issues which you consider have been missed or not fully represented.

Q16 Please let us have any additional comments you wish to make, if any, on relevant matters not addressed in this paper.

7.3 This consultation paper has been prepared by the Scottish Executive with the assistance of a stakeholder group, the members of which were drawn from a wide range of sectors and interests. We are grateful for the efforts and input from the members of the group.

ANNEX A – QUESTIONS ON WHICH VIEWS ARE SOUGHT

Q1	Paragraphs 3.3.1 to 3.4.9 have identified arguments made to us previously both for and against a third party right of appeal. Do you think they accurately reflect the arguments? Are there other arguments not covered here which you wish to raise?
Q2	Do paragraphs 3.5 to 3.14 accurately reflect what supporters of a third party right of appeal are seeking in a new appeal process?
Q3	If the right of appeal were to be extended to third parties, do you think it should be restricted to all or some of the four categories identified in the <i>Partnership Agreement</i> ? Please give reasons to support your views. <i>Your response to this question will not prejudice any view you express on the principle of widening the right of appeal.</i>
Q4	Which planning decisions do you think should be capable of appeal to the Scottish Ministers?
Q5	If the right of appeal were to be extended, which third parties should be able to appeal and in what circumstances? Please give reasons for your answer and also, where relevant, explain why you think any of the third parties identified above should not qualify for a right to appeal. <i>Your response to this question will not prejudice any view you express on the principle of widening the right of appeal.</i>
Q6	Do you support, in principle, the introduction of a wider right of appeal in the planning system? Please give reasons to support your views.
Q7	How do you feel the planning service at both planning authorities and the Scottish Executive would be placed to manage the likely increase in workload?
Q8	Do you think there would be any implications for the attractiveness of planning as a career if there were to be a significant increase in the appeal caseload? Please give reasons for your answer.
Q9	Should a fee be payable to object to a planning application and/or to lodge an appeal against a planning decision? If so, what do you think would be an appropriate level of fee?
Q10	Should the Scottish Ministers retain their role in deciding particular planning appeals, or should SEIRU decide all appeals?
Q11	Would the introduction of mandatory public hearings in defined circumstances increase public confidence in planning authorities' decisions?

Q12 Would extending the circumstances in which the Scottish Ministers are notified, to include all development plan departures, sufficiently address concerns about decisions being made by planning authorities against the terms of development plans?

Q13 Would it be appropriate to introduce a screening process for planning appeals? Please let us have your comments on relevant screening criteria.

Q14 Are there circumstances in which any right to appeal against planning decisions should be withdrawn? Please give details.

Q15 (a) Please give us your views on each of the models outlined in section six.

(b) Can you think of any alternative package of changes to the planning system to ensure a system which is both fair and effective.

(c) How would each of these models (and any other package you suggest) impact on the resources and objectives of you or your organisation?

Q16 Please let us have any additional comments you wish to make, if any, on relevant matters not addressed in this paper.

ANNEX B – GLOSSARY

Appellant	Person or organisation who lodges an appeal to the Scottish Ministers against a decision made by a planning authority.
Applicant	Person or organisation proposing development, who submits a planning application to the local authority.
Development Plan	Combination of Structure Plan and Local Plan, which between them guide the future development of their areas through a range of policies, proposals and allocation of land for particular development.
Environmental Impact Assessment	As assessment of a development proposal's likely significant environmental effects. This is required in defined circumstances, as set out in the Environmental Impact Assessment (Scotland) Regulations 1999. Further information is available in <i>Scottish Executive Development Department Circular 15/1999</i> .
Notification Direction	Planning authorities must notify the Scottish Ministers where they resolve to grant planning permission in certain circumstances, before permission is formally granted. This allows Ministers to consider whether to intervene in the case. The Notification Direction defines the particular circumstances in which this should be done and sets out the process to be followed. Further information is available in <i>Scottish Office Development Department Circular 4/1997</i> (and subsequent amendments).
Partnership Agreement	<i>A Partnership for a Better Scotland: Partnership Agreement</i> . Published in May 2003, this sets out the principles which guide the Labour/Liberal Democrat coalition in developing and implementing policies for Scotland.
Planning Authority	The local council for an area or national park authority with the role of carrying out statutory planning functions.
Planning System	The statutory process which exists to guide the future development and use of land in Scotland, through a range of powers such as development planning, development consent systems, enforcement processes and other necessary checks and balances. Powers are set out in the Town and Country Planning (Scotland) Act 1997 and related legislation.

Scottish Ministers	The collective term for the members of the Scottish Executive comprising the First Minister, all other appointed Ministers, the Lord Advocate and the Solicitor General for Scotland. In planning, the use of the term 'Scottish Ministers' represents the role of the Scottish Executive in the planning system.
Third Party	Person or organisation, other than the applicant or the planning authority, who has an interest in or opinion on a particular development proposal.
Your Place, Your Plan	A white paper on public involvement in planning, published in March 2003. The paper set out the Scottish Executive's proposals to strengthen and enhance public involvement at all stages in the land use planning system, including the commitment to issue this consultation paper on new rights of appeal.

The documents mentioned above are available at www.scotland.gov.uk/planning, or by calling the Scottish Executive's Planning Division on 0131 244 7066.

ANNEX C – LIST OF CONSULTEES

Those organisations consulted on new rights of appeal in the Scottish Planning System:

A & J Stephen Ltd	Bell & Scott WS
A H Smith Associates	Bell College
Automobile Association	Bell Ingram Design
Abbey Holford Rowe	Bett Homes
Aberdeen & Grampian Tourist Board	Bidwells
Aberdeen City Centre Partnership	Biggart Baillie
Aberdeen College	Birse Community Trust
Advocates Library	Black Isle Trust
Age Concern Scotland	Blairhill Land Ltd
AIM	Blyth & Blyth Ltd
Alan Prior Consultancy	BMT Cordah Limited
An Talla (Tiree Community Hall)	Bond Pearce
Anderson Strathern WS	Borders Economic Trust
Angus Matheson Associates	Boreham Consulting Engineers Ltd
Angus Rural Partnership	Bowman Planton Association
Aniscon Limited	Brechin Partnership
Annan & Eskdale CVS	British Energy
AOC Archaeology Group	British Gas Transco
Applied Environmental Research Centre Ltd	British Holiday & Home Parks Association
Archibald Campbell & Harley WS	British Institute of Facilities Management Scotland
Architectural Heritage Society of Scotland	British Waterways
Argyll & Bute Community Planning Partnership	Brodies
Argyll, The Isles, Loch Lomond, Stirling and Trossachs Tourist Board	Bruce and Partners
Arkleton Business Centre	Bryant Homes Ltd
Arup Scotland	Bryce Boyd Planning Solutions
Asda Stores Ltd	British Telecom
Ash Consulting Group	Buchan Development Partnership
Association for the Protection of Rural Scotland	Built Environment Forum
Association of Consulting Engineers	Burness
Association of Deer Management Groups	Business Environments
Association of Scottish Community Council	Butterworths
Association of Small Towns in Scotland	Cadogan Consultants
ATIS Real Weatheralls	Cairngorms National Park Authority
Atkins Global	Cairns Limited
Audit Scotland	Caithness Partnership Limited
Ayrshire & Arran Tourist Board	Cala Homes
Ayrshire Economic Forum	Cameron Advisory Services
Ayrshire Joint Structure Plan & Transportation Committee	Cardiff University
BAA Scottish Airports	CB Hillier Parker
Babtie Group	CBI Scotland
Banffshire Partnership Ltd	CECA (Scotland)
Barbour Index Plc	Central Lobby Consultants Ltd
Barratt West Scotland	Central Scotland Countryside Trust
Bartlet School of Architecture	Chartered Institute of Building
Barton Willmore	Chesterton
Barton Willmore Planning Partnership	Chisholm & Chisholm Chartered Surveyors
Baxter Clark & Paul (Edinburgh) Ltd	Church of Scotland General Trustees
Beebe Planning	Cinema Exhibitor's Association
	Citizens Advice Scotland
	Clyde Valley Housing Association

Clydesdale Rail Action Group
Cockburn Association
Colin Buchanan & Partners
Colin Campbell Associates
Colin G Campbell Associates
Colin Hemfrey Planning
Colinton Amenity Association
College Of Estates Management
Combined Property Services Ltd
Commission for Racial Equality
Communities Committee, Scottish Parliament
Community Councils' Resource Centre
Comprehensive Design Architects
Confederation UK Coal Producers
COSLA
Council for Scottish Archaeology
Countryside Council for Wales
Craigforth Consultancy
Crieff & Strathearn Initiative
Crofters Commission
Crofting Law Group
Crouch Mining Ltd
Crown Castle International
Crown Estate
CTC Scotland
CVS Stirling
D C Coutts Associates
Dalgleish Associates Ltd
Dalmellington Partnership
David Bryce Associates
David Tyldesley & Associates
Deer Commission for Scotland
Defence Estates
Deloitte & Touche
Department of the Environment: Northern Ireland
Derek Lovejoy Partnership
Development Control Services Ltd
Development Planning Partnership
Disability Rights Commission
District Valuer Scotland North West
DLA
DMH Baird Lumsden
Donalds Chartered Surveyors
Douglas Wheeler Associates
DPDS Consulting Group
Drivers Jonas
Drummond Miller WS
DTZ Piedad Consulting
Dumfries & Galloway Economic Forum
Dunbartonshire Economic Forum
Dunblane Civic Society
Dundas & Wilson Solicitors
East of Scotland Development Forum
Edinburgh & Lothian Economic Forum
Edinburgh University Library
Edinburgh World Heritage Trust
Elite Homes
Entec UK Ltd
Environmental Design Works
Environmental Law Journal
Environmental Network Ltd
Environmental Planning Associates
Environmentally Sustainable Systems
Enviros Aspinwall
Environmental Studies Library
Equal Opportunities Commission
Faber Maunsell
Faculty of Advocates
Falkirk College
Farningham McCreadie Partnership
Federation of Small Businesses
Fife Economic Forum
Fife Rural Partnership
Fil Pumps Ltd
First City Limited
Forest Enterprise
Forestry & Timber Association
Forestry Commission
Formartine & Forveran Partnerships
Forth Ports PLC
Forth Valley Economic Forum
Forum of Private Business
Forveran Partnership
Forward Scotland
Freight Transport Association
Friends of Glasgow West
Friends of Rural Kinross-shire
Friends of the Earth
Friends of the Earth (Scotland)
Fuller Peiser
G H Johnston Building Consultants Ltd
GL Hearn
G M Thompson & Co
Gairloch & Loch Ewe Action Forum
Garden History Society
Garrad Hassan
Gazeley Properties Ltd
George Wimpey Ltd
Gerald Eve Chartered Surveyors
Gillespies
Glasgow & Clyde Valley Structure Plan
Committee
Glasgow Chamber of Commerce
Glasgow Economic Forum
Glencairn Community Trust
GPC International
Greengairs Environmental Forum & Greengairs
Action Group
Grosvenor

GVA Grimley
H J Banks & Co Ltd
Halcrow Group Ltd
Hall Aitken
Halladale Development Ltd
Halliday Fraser Munro
Harris Development Ltd
Haslemere
HBG Properties Ltd
Healey & Baker
Health and Safety Executive
Helensburgh Green Belt Group
Heriot-Watt University
Hg Planning
Highland Community Care Forum
Highland Cycle Campaign
Highland Perthshire Communities Partnership
Highlands of Scotland Tourist Board
Hi-wide
Holmes Mackillop
Homes for Scotland
House of Commons Library
House of Lords
Humberts Leisure
Hyder Consulting Ltd
I & H Brown Ltd
i-documentsystems
Innes Miller Mediations
Institute for European Environmental Policy
Institute of Auctioneers and Appraisers Scotland
Institute of Civil Engineers
Institute of Directors
Institute of Logistics and Transport
Institute of Structural Engineers: Scottish Branch
Inverness & Nairn Economic Forum
Inverness Area Community Councils Forum
Iomairt Nis
Ironside Farrar
Irvine Library
Irvine Valley Regeneration Partnership
Islay Development Company
Isle of Jura Development Trust
J Iain Hay Chartered Surveyors
J W H Ross & Co
James Barr and Son
James F Stephen Architects
Jenkins & Marr
John Ballantyne & Partners
John Codd Transport Consultant
Jones Lang Lasalle
Keppie Planning Ltd
Kier Homes Ltd
Kier Mining
Kincardine & Mearns Area Partnership
Knight Frank (London)
Laggan Community Association
Lake District National Park Authority
Lambert Smith Hampton
Lanarkshire Economic Forum
Lanarkshire Valuation Joint Board
Land Use Consultants
Lands Tribunal for Scotland
LaSalle Investment Management
Lattice Property
LAW Holdings Ltd
Law Society of Scotland
Lawrence Environmental Consultants
Lawrence McPherson Associates
Lawson Price
Leonard Giles Partnership
Lews Castle College
Littman & Robeson
Living Streets Scotland
Llyfrgell Thomas Parry Library
Loch Lomond & The Trossachs National Park Authority
Loch Lomond & the Trossachs National Park Community Partnership
Lochaber Business Support Group
Lochaber Economic Forum
Lochaber Limited
LRDP
LUCE 2000
Macarthur & Co
Macdonald Estates PLC
Machin Associates Limited
Maclay Murray & Spens
MacRoberts Solicitors
Mactaggart & Mickel Ltd
Malcolm Judd and Partners
Mappin Planning & Development
Margaret Blackwood Housing Association
Marr Area Rural Partnership
Marr, Forbes Rowan-Spencer
Mason Evans Partnership Ltd
MBSE
McClure Naismith Solicitors
McGrigor Donald
McInally Associates Ltd
McLean Bell Consultants Ltd
McSparran McCormick
Mearns Area Project
MI Drilling Fluids
Miller & Bryce Ltd
Miller Developments
Miller Homes
Ministry of the Environment- Finland
Mobile Operators Association
Mono Consultants Limited

Montagu Evans
Montgomery Forgan Associates
Montgomery Watson Harza
Moray Firth Partnership
Moray, Badenoch & Strathspey Economic Forum
Morrison Construction Ltd
Morrison Homes
Mott MacDonald
Mountaineering Council for Scotland
Mozolowski Wyse Solicitors
MWH
NAI Gooch Webster
Napier University
Nathaniel Lichfield & Partners
National Archives of Scotland
National Assembly for Wales
National Library for Scotland
National Museums of Scotland
NDR (Environmental Services)
NESTRANS
Netherton Business Centre
Network 21
NFU Scotland
Nicoll Russell Studios
Nithsdale CVS
North East Scotland Economic Forum
North of Scotland Water Authority
North Uist Partnership
North West Moray Rural Partnership
Northern Ecological Services
Northern Lighthouse Board
Novaside Homes Ltd
Official Publications Library
Ogilvie Homes Ltd
Oliver Chapman Architects
Orkney Tourist Board
Out of School Care Federation
Outdoor Advertising Council
Oxford Brookes University Library
P K Stirling-Aird W S
Pagoda Public Policy
Pairc Initiative
Partners in Planning Architecture Design
Patersons of Greenoakhill Ltd
Paul Filipek Planning & Environmental Consultant
Paull & Williamsons Solicitors
Persimmon Homes
Perth & Kinross Strategic Rural Partnership
Perth College
Peter McGowan Associates
Peter Page Planning
Peter Scott Planning Services
Pilrig Residents Association
Planning Aid for Scotland
Planning and Urban Design
Planning Magazine
Portree Regeneration Partnership
Portsoy & District Ltd
PPCA Ltd
PricewaterhouseCoopers
Proiseact Uibhist 2000
Project Planning Associates
ProQuest Information and Learning
PSW Planning
Quadrant
Quarry Products Association
Rail Property Ltd
Ramblers' Association Scotland
Rasmussen Levie Architects
Raynesway Construction
RCAHMS
RDC Scotland
Redbourn Group PLC
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Registers of Scotland
Renewable Development Company Ltd
Renfrewshire Chamber of Commerce
Renfrewshire Economic Forum
Rex Proctor and Partners
Ritchie, Dagen & Allen
RMC Russell PLC
Robert Drysdale Planning Consultancy
Robert Gordon University
Robert Kemp Borland
Robinson Associates
Roger Tym & Partners
Rohm and Haas (Scotland) Ltd
Rosehearty Project
Royal Fine Arts Commission for Scotland
Royal Incorporation of Architects in Scotland
Royal Institute of Chartered Surveyors in Scotland
Royal Town Planning Institute
Royal Town Planning Institute in Scotland
RPS Group
RSPB Scotland
Rural Stirling Partnership
ruralScotland
Ryden
S. Craig Associates
SAC Building Design Services
Sainsbury's Property Company
School of the Built Environment
Scotia Homes Ltd
Scott Wilson Resource Consultants
Scottish & Newcastle plc
Scottish Agricultural Arbiters and Valuers Association
Scottish Agricultural College

Rights of Appeal in Planning

Scottish Archaeology
Scottish Association for Public Transport
Scottish Borders Rural Partnership
Scottish Chambers of Commerce
Scottish Churches
Scottish Coal
Scottish Committee of the Council on Tribunals
Scottish Conservative & Unionist Party
Scottish Consumer Council
Scottish Council for Development and Industry
Scottish Council for National Parks
Scottish Council for Voluntary Organisations
Scottish Council of Jewish Communities
Scottish Crofting Foundation
Scottish Engineering
Scottish Enterprise
Scottish Environment Link
Scottish Environment News
Scottish Environment Protection Agency
Scottish Environmental Services Association
Scottish Estates Business Group
Scottish Federation of Housing Associations
Scottish Financial Enterprise
Scottish Green Party
Scottish Islands Network
Scottish Labour Party
Scottish Landowners Federation
Scottish Landscape Industry Group
Scottish Liberal Democrats
Scottish Mediation Network
Scottish Mountain Network
Scottish National Party
Scottish Natural Heritage
Scottish Outdoor Advertising Council
Scottish Parliament
Scottish Planning & Environmental Law Journal
Scottish Power
Scottish Public Services Ombudsman
Scottish Quality Salmon
Scottish Renewables Forum
Scottish Retail Consortium
Scottish Rights of Way & Access Society
Scottish Senior Citizens Unity Party
Scottish Socialist Party
Scottish Society Of Directors Of Planning
Scottish Tenant Farmers Action Group
Scottish Town Planning Consultants Forum
Scottish Trades Union Congress
Scottish Urban Regeneration Forum
Scottish Water
Scottish Wildlife Trust (Lothians)
Scottish Woodlands Limited
Semple Fraser WS
SESTRAN
Shanks Waste Services Ltd
Shelter
Shepherd & Wedderburn
Shetland Islands Tourism
Shetland Islands Partnership
SIAS
Smiths Gore
Snowsport Scotland
SOLAR
Souter Associates
South Lanarkshire Local Rural Partnership
Southern Uplands Partnership
SPH (Scotland) Ltd
Spokes
Sportscotland
Squire Associates
Standard Life Investments
Stewart Milne Group
Stewartry CVS
Strategic Rail Authority
Strathclyde Homes Ltd
Strathclyde PTE
Sutherland Partnership
Tarmac Northern Ltd
Taylor Woodrow Developments Ltd
Tayside Economic Forum
Tayside Police
Tenant Farming Forum
Terence O'Rourke PLC
Tesco
The American Planning Association
The Ash Consulting Group
The Boots Company Plc
The British Library
The Cairngorms Partnership
The Carl Fisher Sibbald Partnership
The Charlton Smith Partnership
The Coal Authority
The Committee of Scottish Clearing Bankers
The Crofters Commission
The Dunblane Civic Society
The Ferryhill Heritage Society
The Institute of Chartered Foresters
The National Trust for Scotland
The Noble Organisation Ltd
The Partnership for Rural Inverness & Nairn
The Planning Bureau
The Saltire Society
The Scottish Chambers of Commerce
The Scottish Civic Trust
The Scottish Coal Company Limited
The Scottish Planning, Local Government and Environmental Law Bar Group
The Showmen's Guild of Great Britain

Rights of Appeal in Planning

The Skene Group
The St Andrews Preservation Trust Ltd
The Stationary Office
Thomas Parry Library
Thorburn Lyon & Buchan
Tim Birley Consultants
Tods Murray WS
Tony Thorpe Associates
Town & Country Planning Association Scotland
TPS
Transco PLC
Tulloch Homes Ltd
Turley Associates
UHI Ltd
UK Coal Mining Ltd
UKAEA
Union of Muslim Organisations of UK & Eire
Unison
University College Dublin
University of Aberdeen
University of Abertay Dundee
University of Dundee
University of Edinburgh
University of Exeter
University of Glasgow
University of Newcastle upon Tyne
University of Nottingham
University of Queensland
University of Reading
University of Strathclyde
University of Strathclyde Law School
University of the West of England
University of Wales

Community councils
Local authorities
Local enterprise companies

Unst Partnership
Urban Design Futures
Urban Design Group
URS Corporation Ltd
Valuation Office Agency
Vance Allen Associates
Visit Scotland
Voigt Partnership, The
W A Fairhurst & Partners
W Green & Son
W I Munro Chartered Architects
W S Atkins Consultants Ltd
WA Fairhurst and Partners
Walker Group
Wardell Armstrong
Wardell Armstrong Laird Menzies
Warren Consultants
Weatheralls
Webber Shandwick
West Coast Energy Ltd
West of Four Fisheries Management Group
West of Scotland Planning Officers Forum
West of Scotland Water
Western Isles Tourist Board
William Lippe Architects
Wilson Connolly Scotland
World Wide Fund for Nature
WS Atkins
WS Society
Zoom Developments Ltd

Plus 125 individuals who had previously asked to be consulted

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