

## Appendix C

### "PLACES, PEOPLE AND PLANNING" - A CONSULTATION ON THE FUTURE OF THE SCOTTISH PLANNING SYSTEM CONSULTATION REPOSE BY SCOTTISH BORDERS COUNCIL

#### MAKING PLANS FOR THE FUTURE – CONSULTATION QUESTIONS

Key Question	Scottish Borders Council Response
<p><b>A: Do agree that our proposed package of reforms will improve development planning? Please explain your answer.</b></p>	<p>Yes.</p> <p>There is merit in the periodic re-examination of how the system operates; looking at what we do, to identify current weaknesses in the system and suggest possible amendments / improvements. It is pleasing to note that the consultation contains a number of the options identified by Scottish Borders Council in our response to Independent Review Panel. Consequently, the review is welcome and the range of options it sets out have the potential to make a real difference.</p> <p>Scottish Borders Council therefore looks favourably on the proposed changes to Development Planning and wish to engage constructively in the further development of these ideas. There are a number of issues identified which need to be addressed further, along with clarification on some points. These issues are identified in more detail in the responses below.</p>
Optional Technical Questions	
<p>1. Do you agree that local development plans should be required to take account of community planning?</p>	<p>Yes.</p> <p>However, there needs to be a reciprocal obligation on Community Planning to take account of Spatial Planning. To be effective there must be a high degree of consistency of approach and commitment from practitioners in both fields to work in a joined up and holistic manner.</p> <p>If implemented on this basis, there is real potential to improve Development Planning making Plans more responsive to community priorities and aspirations. There is the opportunity to take account of the views of a wide range of Community Planning stakeholders using their existing networks to facilitate dialogue and avoid repetition of effort. Saving us all from consultation fatigue.</p>

	<p>However it is important that Community Planning Partners recognise the purpose, focus, legal and procedural framework, of the Development Planning process to maximise the value of their contributions.</p>
<p>2. Do you agree that strategic development plans should be replaced by improved regional partnership working?</p>	<p>Yes</p> <p>The current Development Planning system has too many tiers in relation to a relatively small country such as Scotland and results in a large degree of overlap or duplication in some areas. Strategic Development Plans (SDP) have had a difficult gestulation in terms of process and output and have not been as effective as they could have been in addressing strategic issues in all parts of Scotland. In Scottish Borders Council experience, they merely pass on high level requirement for LDPs to follow and often merely replicate Scottish Planning Policy. SDP's have not been seen as providing significant added value to the Development Planning process. It is acknowledged however that other authorities may consider that they deliver greater value in other parts of the country.</p> <p>We contend that there needs to be a regional dimension to strategic planning, to bridge the gap between the National Planning Framework and Local Development Plans. This could be achieved by bringing closer together national and regional levels of planning to provide a clearer focus on the delivery of infrastructure, and to set high level supply targets on matters such as housing land. This could be delivered as suggested by regional partnership working feeding into an enhanced National Planning Framework (NPF). Regional planning partnerships could be delivered through joint working between stakeholders under the auspices of an enhanced National Planning Framework (NPF) that sets out regional targets, not aspirations.</p> <p>In principle, regional partnership working groups are a good idea. However, there is legitimate concern about how such partnerships would operate and how targets would be tailored to take account of regional differences. The wide range of interested parties likely to be involved in the partnerships, along with often conflicting wants and needs, mean that agreement on regional priorities may prove challenging and time consuming to deliver. This agreement may prove even more challenging if the requirement to work together at the regional level is not made a duty. The provision of the statutory powers alone will not deliver regional partnership working or regional planning in any meaningful way.</p>

	<p>There are also questions about the governance and financing of such arrangements, how any potential democratic deficit would be addressed and the equity of influence afforded to rural authorities such as Scottish Borders Council. There is a need for clear unambiguous guidance on procedures and the roles and responsibility of component groups and this must be set out at the outset. Further information in respect of the role of the Planners currently working at regional scale who would become involved in partnership working would be helpful.</p>
<p>2(a) How can planning add greatest value at a regional scale?</p>	<p>There is clear role for planning &amp; planners to lead regional working partnerships. They can help facilitate and manage the partnerships to ensure that spatial planning is at the forefront of regional and national policy – linking regional strategy to NPF, Strategic Transport Projects, Economic Strategy, Transport Strategy, Infrastructure Investment Plan, etc. There is the opportunity to have better alignment between the regional strategy and development/investment priorities.</p> <p>There is already a core staff within Strategic Development Plan Teams with key knowledge of strategic planning issues that can assist in development of regional strategies. There are already contacts within existing SDP teams with a range of stakeholders, including local planning authorities and private sector, and knowledge of projects within their regional context. They would be able to play a key role in the regional partnerships along with colleagues in Scottish Government,</p>
<p>2(b) Which activities should be carried out at the national and regional levels?</p>	<p>Agree with the terms set out in paragraph 1.13 of consultation.</p> <p>The activities carried out at National level should be defined clearly in guidance and could include:</p> <ul style="list-style-type: none"> <li>• Defining housing targets at national and regional level</li> <li>• Developing and producing regional strategies in NPF</li> <li>• Producing and monitoring the NPF delivery Programme</li> <li>• Setting out priorities for the Infrastructure Investment Programme</li> </ul> <p>The activities carried out at regional level should be defined clearly in guidance and could include:</p> <ul style="list-style-type: none"> <li>• Defining partnership boundaries and identifying potential stakeholders</li> <li>• Proving the evidence base for development of the regional strategy set out in the NPF and its delivery programme</li> <li>• Assisting SG in defining housing targets and regional housing allocations</li> <li>• Co-ordinating housing target delivery between authorities and monitor progress</li> </ul>

	<ul style="list-style-type: none"> <li>• Co-ordinating Infrastructure levy spend and project delivery</li> <li>• Promote linkage with Regional Transport partnerships.</li> </ul> <p>Paragraph 1.15 refers to regional transport partnerships. It is logical that there should be close working with regional transport partnership and that they should be an integral part of the regional partnership. A joint obligation to work together would assist in securing this arrangement. At this moment in time we do not feel that there is sufficient information to allow a decision to be made on whether Scottish Borders Council should be part of a SEStran “Model 3” Regional Transport Authority and whether such arrangements are necessary to address transport issues.</p>
2(c) Should regional activities take the form of duties or discretionary powers?	<p>They should be duties not discretionary powers.</p> <p>As set out in the response to question 2 above, we are of the opinion that regional activities should be duties. If there is no obligation to carry out these activities in reality they will not be done, or they will be delayed, as other local priorities take precedence.</p> <p>Given the likely differing opinions of interested groups there needs to be guidance on what weight should be given to all regional activities and also on the terms of engagement/reference of the various partners. It is worth noting that if the powers were discretionary, there is the potential for issues to become overcomplicated, too difficult, to be side lined, and for lengthy disputes to arise. This would not contribute to a more efficient planning system focussed on delivery and investment.</p>
2(d) What is your view on the scale and geography of regional partnerships?	<p>There are benefits in providing flexibility to define the scale and geography of regional partnerships. It is important to understand the complexity and variance of geographies across Scotland, as well as the diverse economic and transport patterns. It is clear that a “one size fits all” approach will not work. The links to emerging arrangements for the Edinburgh City Deal and the Enterprise and Skills Review as it relates to Southern Scotland merit further consideration and could form the basis of the Southern Scotland regional partnership. It is important that the membership of regional partnership contains bodies and agencies that can help deliver the regional strategy and extends beyond planning.</p> <p>As mentioned in the answer to 2(c) above, it is important that the terms of engagement/reference of the various partners are set out to ensure that all play an effective and meaningful role in the partnership.</p>
2(e) What role and responsibilities should Scottish Government, agencies, partners and	<p>As stated in 2 and 2(d) above, it is essential to have the involvement of a range of partners in regional partnerships to ensure the regional strategy aligns with investment priorities and can be delivered.</p>

<p>stakeholders have within regional partnership working?</p>	<p>However, their roles and responsibilities are clearly defined.</p> <ul style="list-style-type: none"> <li>• Scottish Government clearly has an important role to play as the regional strategy will be translated into the National Planning Framework. SG can assist and support the regional working groups to provide a clear national perspective on priorities throughout Scotland and about where partnership working is required to deliver national objectives.</li> <li>• Regional planning staff, as well as providing the technical and administrative core of the partnership, must have a clear executive role in the management, operation and direction of the partnership and the development of the regional strategy.</li> <li>• Statutory agencies (of all sorts) must have a binding obligation to participate in the group and for them to take account of the regional strategy in their investment programmes.</li> <li>• Other partners (private/commercial sector) should also be involved in the partnership to provide commercial sense check of options and proposals and information on their investment priorities.</li> </ul>
<p>3. Should the National Planning Framework (NPF), Scottish Planning Policy (SPP) or both be given more weight in decision making?</p>	<p>There is some merit in the National Planning Framework and SPP being part of the development plan, along with Local Development Plans, as a suite of multi-level policy documents to guide development and investment in Scotland. It is important that they are prepared in alignment and that there is sufficient consultation and scrutiny of their content. Otherwise, this process this could be seen as centralising and top heavy approach to policy/strategy development.</p> <p>It is critical that there is a specified role and involvement of the Local Authorities in the preparation of the NPF and SPP in respect of the identification of regional planning priorities and that this is clearly set out and given sufficient weight through the regional partnerships.</p> <p>It is accepted that Local Development Plans should be streamlined and not be seen as an all-encompassing rule book. However, LDP's must still be allowed to set out the policy position based on local context and circumstances. The revised NPF should concentrate on national/strategic matters and allow local development plans the scope for greater innovation and flexibility to deliver those objectives.</p>

	<p>If it is decided not to proceed to make the NPF and SPP part of the development plan then it is accepted that they should be given greater weight in the decision making process. However, as stated already Local Planning Authorities must be involved and consulted on the content of these documents.</p>
<p>3(a) Do you agree with our proposals to update the way in which the National Planning Framework (NPF) is prepared?</p>	<p>Yes. We agree with the provisions set out in paragraph 1.24.</p> <p>The proposals seem logical and it is essential that government policies and strategies are aligned. It is important that national and local government plus the regional partnerships and commercial interests see the NPF as a national corporate document and the key spatial driver for growth and development.</p>
<p>4. Do you agree with our proposals to simplify the preparation of development plans?</p>	<p>Yes. The proposals set out in 1.29 are welcome (further specific comment is made on these proposals in the answers to questions 4 (a) – (d) below).</p> <p>There is a keen need to reduce the bureaucracy associated with the production of Local Development Plans, along with a shortening in the time taken to produce them. We agree that there is merit in reducing the stages and processes required in producing a Local Development Plan.</p> <p>It is accepted that with the removal of the need to produce a MIR or consultative draft plan (as per the pre 2006 planning system) there will understandably be a need and expectation to focus on more community engagement at the early stage of the process. Can we say this when we are actually removing a lot of the beaurocratic elements of the process which will actually release resources?</p> <p>Whilst not part of the proposals, it is suggested that to be effective and to provide opportunity for input by those potentially affected by Plan proposals neighbour notification should be focused on the early stage of plan development.</p>
<p>4(a) Should the plan review cycle be lengthened to 10 years?</p>	<p>Yes.</p> <p>The proposal to have a 10 year vision for a locality in the LDP makes sense, providing certainty for communities and for those wishing to develop and invest. The change in emphasis from production of the document to delivery of outcomes is welcome. However, if these reduced production timescales are to be met then the process must be simple and straightforward. Whilst some of this change in</p>

	<p>emphasis can be achieved by legislation there is a “mind set” or culture change that is required from all parties involved in the preparation of LDP’s to pursue production collaboration and avoid the protracted delays and arguments we have seen over issues such as housing land requirement. In the circumstances, training and clear guidance is essential to ensure that the new system delivers.</p> <p>It is suggested that there needs to be an annual monitoring regime for LDP’s, so that there is an understanding of how it is delivering in terms of the operation of policies and development on the ground. This will feed into an assessment of whether a plan should be updated or it is meeting identified triggers. Whilst there may be some nationally defined triggers, such as housing land requirements, it is suggested that most ‘triggers’ for an update of the plan would to be agreed at a local level.</p> <p>Detailed guidance will be required on how to carry-out an update of the LDP within the 10 year cycle of the plan. Again, these need to be simple and proportionate to avoid unnecessary delays and a complicated procedural merry-go round.</p>
<p>4(b) Should there be scope to review the plan between review cycles?</p>	<p>Yes.</p> <p>The ability to review the plan between cycles will ensure that the plan remains up to date, flexible and responsive to change.</p> <p>As stated already in 4(a) above, detailed procedures setting out how this is done need to be set out clearly in guidance. Guidance is important to set the ground rules for making these changes. Clarification on what the potential ‘trigger’ points would be needs to be set out at national level and agreed at a local level. There would certainly need to be a trigger for housing land supply and a mechanism in place for the release/identification of any future land.</p> <p>Guidance would be required on how to deal with changes that have a more fundamental impact on the key thrust or strategy of the plan. This may need a more comprehensive approach with a range of bodies at the strategic level to set the revised of the LDP, than the proposed simple and speedy process for most trigger updates.</p>
<p>4(c) Should we remove supplementary guidance?</p>	<p>Yes.</p> <p>We agree that supplementary guidance should no longer form part of the Development Plan.</p>

Whilst statutory supplementary guidance seemed like a good idea, its production has proven problematic and they have not been as effective as hoped. We still believe that there is a role for Local Authorities to produce non-statutory planning guidance. It is clear that non-statutory planning guidance is useful and has some weight in the decision making process. To incorporate all relevant advice and guidance into the LDP would make it significantly lengthier, which is against the thrust of producing simpler and streamlined plans.

The key problem with producing SG's which form part of the LDP is that they are by their nature short lived and require updating with the next LDP period, where applicable. Sometimes this update may not actually be needed so soon and this can lead to time consuming additional work and a duplication of effort. There are examples where Supplementary Guidance has been produced as part of the LDP, but not adopted until Year 2-3 of the plan. These SG's have a very short life span, as part of the LDP. This was the case in the Scottish Borders for the production of our Housing SG, which was required to identify sites for a housing shortfall within the LDP.

SG's are not subject to the same level of scrutiny as the content of the LDP. In some cases, SG's are being produced with detailed content and the allocation of housing sites, which are not subject to the same Examination process as the plan itself. It is not considered that this is the most effective way of dealing with a housing land shortfall for example. Furthermore, this does not solve an immediate housing shortfall issue, it is being solved in year 2-3 of the LDP. These issues would be better addressed and resolved earlier on in the planning process, to ensure that LDP's are delivering an effective 5 year housing land supply from adoption. The gatecheck process would aid this and hopefully resolve the issues surrounding housing land supply targets/requirement and flag issues at an early stage. This would allow the content to form part of the LDP itself, rather than being dealt with through Supplementary Guidance, which is not in our view the best option.

We believe that there is merit in continuing to produce SPG's albeit not as part of the LDP, which can be regularly updated (if LDP's are to be a 10 year cycle) to provide guidance and further context to the policies contained within the LDP.

In terms of the proposed development of a "manual or set of advice", we accept that this may address some broader subject areas and we would not discount the worth of their production out of hand, but much of the useful localised contextual information, advice and guidance may be better placed in non-



	<p>statutory guidance produced by Local Authorities.</p>
<p>5. Do you agree that local development plan examinations should be retained?</p>	<p>Yes.</p> <p>On balance, and on a qualified basis, we agree that Examinations should be retained.</p> <p>We would strongly recommend that they are limited in scope and do not relate to all unresolved matters, or to matters that have already been addressed in the early stage “gatecheck” process. This question is the key to reducing the timescales for the Local Development Plan being adopted. The examination should only deal with national or strategic matters of concern, leaving the Local Planning Authority to deal with local matters.</p> <p>The introduction of an open-ended Examination process will not assist producing timely LDP’s and will undo the benefits of the increased engagement and consultation promoted at the early stage before the gatecheck. If the Examination were open-ended then what is the point of the gatecheck? We would be introducing an even more complicated process bookended by Examinations that may take even longer than the current process.</p> <p>If operated on the more limited basis we recommend then there is a real hope that timescales can be improved. The proposed measures, for gatechecks and national housing targets, could ensure a speedier Examination process, which is not consumed by analysing housing numbers. Aspects such as housing supply targets could be front loaded in the planning system, with the gatecheck flagging up any issues and providing time for resolutions before the proposed plan stage.</p>
<p>5(a) Should an early gatecheck be added to the process?</p>	<p>Yes.</p> <p>This would enable any issues to be identified at an earlier stage in the planning process, rather than waiting to be scrutinised as part of the Examination process. As stated in answering 5 above, this is on the basis that Examinations themselves are limited in scope and we are not in actuality introducing a second Examination.</p> <p>The gatecheck process would provide Local Authorities with an opportunity to address and resolve issues before the proposed plan stage, rather than ending up with recommendation(s) as part of the Examination process.</p>

	<p>There is a need for guidance on the operation of the gatecheck and which topics it would deal with, along with who would be involved and their terms of reference - roles and responsibilities.</p>
5(b) Who should be involved?	<p>We agree that they should be chaired by Reporters from the DPEA, as this will re-inforce the independent scrutiny of the process and ensure that it is professionally managed.</p> <p>There is reference to the proposed role of Citizen’s Panels in the Gatecheck process (paragraph 1.35). Any such panels should be accountable to the people they represent. There is potential for these panels to conflict with the role of elected Council members.</p> <p>It may be better to leave the Reporter to determine which parties can be involved in the gatecheck process on the basis of the matters to be considered and the evidence that they need to satisfy themselves that the plan is sound and credible.</p>
5(c) What matters should the gatecheck look at?	<p>The key issues the gatecheck should consider relate to the sufficient evidence to convince that the LDP will comply with NPF and SPP and the validity of submission in terms of deliverability and practicality, housing supply targets/requirements. There is greater scope to cover a wider range of topic raised through engagement process. These may vary for each LDP area.</p>
5(d) What matters should be the final examination look at?	<p>These are set out in the answer to question 5. The Examination should only relate to national or strategic matters of concern, leaving the local planning authority to deal with local matters.</p>
5(e) Could professional mediation support the process of allocating land?	<p>There can often be very fixed positions taken by communities when they are faced with accommodating further housing development. No amount of discussion or dialogue is going to change their views or remove their opposition to a development or for them to appreciate the benefits that might accrue to the area. It is a legitimate position for them to take if they feel that the impacts of the development are likely to be harmful.</p> <p>There would be no harm in considering mediation and it could prove useful in enabling these groups and other parties to positively engage with the process and Local Authorities by providing a “neutral venue”, for those discussions to take place.</p> <p>Clearly such mediators must have a neutral stance and understand the key issues to be identified and addressed.</p>
6. Do you agree that an allocated site in a local development plan should not be afforded	<p>No.</p>

<p>planning permission in principle?</p>	<p>This is qualified in that there are identified issues that would need to be addressed before it could be implemented.</p> <p>In our response to the Independent Review Panel we suggested that the automatic grant of planning permission in principle should be introduced for allocated sites for the period of the Local Development Plan avoiding the need for unnecessary applications and that this should be aligned with a “use it or lose it” clause that rescinds permission if development has not commenced within the LDP period or the site is removed from the LDP. We have given the matter further thought and wonder now whether it should be formally classed as Planning Permission in Principle or perhaps, more suitably, as a form of “deemed consent”.</p> <p>It is clear that in order to afford a site in the LDP the benefit of permission, of whatever description, there is the need to undertake a more in-depth site assessment prior to any site being allocated. There is a need to set out a set of national criteria for that assessment, so that this is carried out consistently across Scotland.</p> <p>There is, of course, the consequence of the reduction in planning application fees received by the Council for all allocations, which would result in a reduction in planning income for the planning service. However, loss of fees could be offset by the increase in planning fees suggested in the review.</p> <p>It would be necessary to define which housing allocations would be afforded the ‘planning permission in principle’ or “deemed consent”. This could be done on the basis of all sites allocated or sites above a certain threshold. There could be discretionary powers for Local Authorities to choose which sites. For rural Local Authorities, this could potentially be a large number of smaller sites.</p> <p>Local Authorities will need to monitor how long an allocated housing site should be afforded planning permission in principle status. If plans are to be 10 year cycles, sites should be effective i.e. deliverable within a 5 year period. Therefore, there would need to be a mechanism to monitor the allocations and remove the PPP should sites not come forward with a MSC application within a certain time frame – otherwise developers are effectively land banking their sites with PPP indefinitely. This is an area that might be linked to a potential trigger point for a plan update and annual LDP monitoring reports.</p> <p>There is positive benefit in adopting this approach in promoting the allocated housing allocations and</p>
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	<p>hopefully this would lead to development of the site within the plan period.</p> <p>There would need to be provision for developer contributions to identified within the LDP and be dealt with at the detailed submission stage for such allocated sites.</p> <p>Given the number of infill opportunities within rural settlements and urban areas, there may be PPP applications for infill opportunities. Applications for redeveloping potential brownfield sites would be required to pay a planning fee and be subject to the planning application process but a greenfield site would not. This could lead to an inconsistency between processes for infill/brownfield opportunities and greenfield sites in the planning system. Understandably, we want to promote allocated sites, to ensure delivery within the plan period, we should equally be promoting the redevelopment of infill sites/brownfield sites as well. There is a need to ensure the promotion of sites within the LDP through potential PPP status that is not to the detriment of potential infill/brownfield opportunities.</p> <p>There is a question about how major developments would be handled. If there is no requirement for a PAC, would the Local Authority be required to do additional community engagement? This may well be addressed by the enhanced community engagement proposed through the requirements for pre-application consultation.</p>
<p>7. Do you agree that plans could be strengthened by the following measures:</p>	<p>In general, we agree they would.</p>
<p>7(a) Setting out the information required to accompany proposed allocations</p>	<p>Yes.</p> <p>It is important that guidance sets out a clear set of minimum standards for required information. Whilst it is accepted that the information required must be proportionate, it must also have sufficient detail to allow the Council to make an informed decision about the deliverability of the site.</p> <p>The requirement for the proposer to submit a site assessment will be helpful but the objectivity of such assessments must be open to challenge. It would be surprising if all developers state that their sites are not effective within the plan period. However, we will still have the right to scrutinise these proposals so a clear list of required information would be helpful.</p>

<p>7(b) Requiring information on the feasibility of the site to be provided</p>	<p>This information would be helpful but it is not without its practical difficulties. The assessment of the economic and market appraisal information (i.e. viability) would require a level of professional scrutiny that is outwith the normal skillset of local authority planners. This could lead to disputes over the assessment of this data that would slow down the application process. Many Local Authorities would be required to utilise the services of the District Valuer, which would incur additional costs and there may be capacity issues for the DV in dealing with an increased numbers of requests for guidance.</p> <p>If the assessment were to be carried out by Local Authority planners then there would need to be a significant level of training provided, with investment from Local Authorities and Scottish Government (Improvement Service). It should be noted that regardless of the level of supporting information submitted and the site then being allocated it does not guarantee development. There are other external factors which can impact delivery and that are out with the Council's control - in particular, lack of local market demand.</p>
<p>7(c) Increasing requirements for consultation for applications relating to non-allocated sites</p>	<p>This is useful to state but perhaps merely reflects a lot of current practice. This may be helpful in reinforcing the predominance of the Development Plan that has been developed with community engagement and that any variance from that Plan must meet a very high bar to be acceptable. Such proposals on non-allocated sites must also still meet the general aspirations of the Plan and the key components of its spatial strategy.</p>
<p>7(d) Working with the key agencies so that where they agree to a site being included in the plan, they do not object to the principle of an application</p>	<p>This is helpful to state but merely reflects current practice. Sites are only allocated if no insurmountable issues are raised by consultees during LDP preparation.</p> <p>We do not see a position where less consultation would be needed for an application for an allocated site, as it is often at the detailed application stage where communities are most likely to be involved. Whilst you may accept the principle of a development, the precise proposals is where greater scrutiny will be required.</p>
<p>8. Do you agree that stronger delivery programmes could be used to drive delivery of development?</p>	<p>The change of wording from 'action programme' to 'delivery programme' is noted and will assist in changing the culture associated with plan development and implementation. However, the delivery of development is not normally within the gift of local authorities but is developer led, and subject to demand and funding. It is also dependant on a range of stakeholders signing up to the development strategy and infrastructure investment being made to release development sites identified in the plan.</p> <p>The ability of local authorities to be proactive in front funding the release of development sites and using CPO powers will be dependent on staff capacity and pressured Council budgets. This will also be</p>

	reliant of corporate and political drive to take a more proactive and interventionist role.
8(a) What should they include?	<p>Delivery programmes could include:</p> <ul style="list-style-type: none"> <li>• Infrastructure investment plans</li> <li>• Housing delivery programming</li> <li>• Annual monitoring reviews</li> <li>• Timeline for delivery of key plan stages</li> <li>• Key projects information</li> <li>• Identification of key partners and their role, in delivery of the plan</li> </ul>

**PEOPLE MAKE THE SYSTEM WORK – CONSULTATION QUESTIONS**

Key Question	Scottish Borders Council Response
<p><b>B: Do you agree that our proposed package of reforms will increase community involvement in planning? Please explain your answer.</b></p>	<p>Yes.</p> <p>We agree that the proposals will increase community involvement in the planning process, which is healthy and to be encouraged. However, there are a number of issues raised by the proposals and our commentary on these is set out in more detail below.</p>
Optional Technical Questions	
<p>9. Should communities be given an opportunity to prepare their own local place plans?</p>	<p>Yes.</p> <p>We are supportive of local communities being involved in the planning of their localities and producing plans for their place.</p> <p>The proposals for the linking community planning and spatial planning set out in the consultation already provide the basis for local place planning to be undertaken and to inform the Local Development Plan (see answer to question 1 above). We should not be introducing another layer of plan making that may be unnecessary and duplicating work already being undertaken.</p> <p>Historically achieving a collective “whole” community view on development or planning proposals has been difficult. Inevitably, the same community bodies, groups or individuals attend our public meetings. Whilst we are keen to encourage their continued participation, their views may not always represent the wishes of the wider community.</p> <p>The nature and content of these plans, if introduced, needs to be very clearly defined and their production should be clearly linked to the Community Planning process and inform rather than be part of the development plan. They should be aspirational but based in realism and practicality in terms of what is actually deliverable and be consistent with the development plan.</p> <p>Our experience of local place plans, thus far, have been documents that are overly protectionist and on occasions their proposals are not practical or deliverable (e.g. new school, new sports pitches, new swimming pool, no housing, major changes to retail policy at odds with national requirements, differing opinions on conservation area policy, etc). Consequently, parameters for such plans must be</p>

	clear at the outset.
9(a) Should these plans inform, or be informed by, the development requirements specified in the statutory development plan?	<p>We are of the view that this is a two way process. The place plan must take account of an existing development plan but could inform an emerging plan or an update of an existing development plan.</p> <p>The statutory development plan must take precedence over a place plan. There would be concerns about place plans having an elevated status as they may not be deliverable and would not have been tested or scrutinised to the same extent as the development plan.</p> <p>Timing of plan production is also important, and therefore place plans would have to work within a pre-arranged timetable in order to meet the targets set down for statutory development plans. Smaller communities may not be sufficiently resourced or equipped to achieve this; others may choose not to produce a plan at all, and therefore and regulation or guidance will need to allow flexibility to acknowledge this.</p>
9(b) Does Figure 1 cover all of the relevant considerations?	<p>Yes, in broad terms but there are a number of outstanding questions and concerns.</p> <ol style="list-style-type: none"> <li>1. There is reference made to an application being made to the local authority for a community to undertake a place plan. On what basis would this application be judged and is there a means of refusal and appeal of any decision?</li> <li>2. There is reference made to the need for local authorities to monitor Community Bodies. How would this be done?</li> <li>3. There is potential conflict of interest arising from local authority oversight of what should be an independent body/ process.</li> <li>4. There are real concerns about the resource capacity of local authorities to provide such oversight and support for communities.</li> <li>5. Are we introducing another means of appeal where the decision on the incorporation the people plan into the development plan would be decided centrally and not locally.</li> </ol>
10. Should local authorities be given a new duty to consult community councils on preparing the	Yes.



<p>statutory development plan?</p>	<p>We agree with this provision.</p> <p>We do this as a matter of course anyway. The linking of this with the community planning process (see answer to Q1 and Q9 above) and better engagement at the early stage in plan preparation is to be encouraged.</p> <p>The role of the Community Council, in relation to this process, is to act as the voice of the community; to this end there should be some provision for consultation within their communities in order to ensure that this role is fully realised.</p>
<p>10(a) Should local authorities be required to involve communities in the preparation of the Development Plan Scheme?</p>	<p>Yes.</p> <p>We do not have an objection to this proposal, as such, although development plan schemes are done to realistically set out how local authorities can deliver them. It is perhaps difficult to see, in practice, how local authorities could change timescales which are generally very tight. The preparation of the Development Plan Scheme may become more onerous than it needs to be.</p>
<p>11. How can we ensure more people are involved?</p>	<p>We are looking to use the Place Standard tool for our engagement with communities through the community planning process and it will be interesting to see if that tool allows greater involvement and better quality outputs from the consultation.</p> <p>It will be interesting to see if its use encourages more people to become involved in community engagement, and will it actually assist in eliminating consultation fatigue for communities.</p> <p>As noted above, Community Councils have a part to play in ensuring that they consult within their own communities as part of their own consultation role.</p>
<p>11(a) Should planning authorities be required to use methods to support children and young people in planning?</p>	<p>Yes.</p> <p>We would, of course, be keen to learn from other authorities and agencies as to how that has been undertaken successfully.</p> <p>Scottish Borders Council is part of the pilot project “Making Places - Bridging the gap” being run by Planning Aid Scotland” at Galashiels Academy along with representatives from Education Scotland, Scottish Government and Creative Scotland. The project aims to build ties between generations and organisations, equipping communities with the skills to survey, reflect and plan for their future and</p>

	<p>involves year 3 and 6 students. This is a pilot scheme that could be adopted throughout Scotland and get placemaking on the national curriculum.</p> <p>A key way to engage young people is through technology. An app is being developed for the Place Standard and others could follow: – 3D visualisations, placemaking gaming, which would tap into this age group more effectively than plans, reports etc. This is clearly a business opportunity for someone.</p> <p>The proposals are silent on how young people would be involved in a vote on a People Plan?</p>
<p>12. Should requirements for pre-application consultation with communities be enhanced? Please explain your answer(s).</p>	<p>Yes.</p> <p>At present the current arrangements add little, or no, value to the process and it is widely thought by communities that developers play lip service to the requirements and certainly very few meet the spirit of the requirements.</p> <p>On the current basis, this is merely a 3 month prior notice of an application being submitted. It provides for no worthwhile community feedback nor, in reality, do they influence the scope or form of a development when the application eventually comes in.</p> <p>The consultation refers to two public meetings. Is this different to the “public event” required by the current regulations?</p>
<p>12(a) What would be the most effective means of improving this part of the process?</p>	<p>There is merit in the suggestion about having two public meetings before the application is lodged. The first to present the proposals and have workshop sessions about the elements of the scheme and the second, to set out how the proposers have responded to the public feedback in a meaningful way. The second public meeting would necessarily have to be positioned toward the end of the process, with its timing and purpose set down in regulation.</p> <p>It may be possible to fit this into the 12 week period, so long as the holding of the public meeting is the trigger for the process to start, leaving sufficient time for any changes to be incorporated and represented to the community prior to the application being lodged. In reality, this may need 4 months.</p> <p>This should be done for all detailed or full major application whether they have been allocated or not,</p>

	<p>as it is the detail of the scheme that will in most cases be of most concern to the community. It is a shortcoming of the current arrangements that, given the minimum information required for a PPP application to be valid, communities and residents are effectively being denied the opportunity to comment on the detail of a proposal through this process. All they may see is a red line around a site. If it is to be truly meaningful, pre-application consultation should be required at the detailed stage of a proposal.</p> <p>We agree that training on community engagement should be provided to developers and training provided to communities to ensure that they are engaging constructively.</p>
<p>12(b) Are there procedural aspects relating to pre-application consultation (PAC) that should be clarified?</p>	<p>Clarification is required on how long a PAC remains effective. There is nothing at present which states, how long applicants and developers should wait from undertaking PAC consultation to the submission of a planning application. There can often be considerable time and potential changes made that the community have not been consulted on prior to an application eventually being lodged. A deadline of 6 months would provide an incentive to getting an application lodged and as a result development happening on the ground.</p>
<p>12(c) Are the circumstances in which PAC is required still appropriate?</p>	<p>Yes.</p> <p>If housing sites within the LDP are afforded PPP status then it is sensible that the PAC process would only be applicable for such sites at the detailed planning application stage.</p>
<p>12(d) Should the period from the serving of the Proposal of Application Notice for PAC to the submission of the application have a maximum time-limit?</p>	<p>Yes.</p> <p>As stated in Q12(b) above, a 6 month time limit may be appropriate. If there is no time limit this could undermine the purpose of the PAC consultation and engagement with the community.</p>
<p>13. Do you agree that the provision for a second planning application to be made at no cost following a refusal should be removed?</p>	<p>Yes.</p> <p>The planning authority has to process all applications and the time and costs associated with a revised application are no less than the original application. These are stand-alone applications considered on their own merits and should incur the necessary administrative fee. Our view is that a fee should also be applicable for revised applications following the grant of planning permission.</p> <p>Developers and applicants are given time throughout the planning application process to amend proposals. In some instances, the incentive of a 'free' appeal and subsequent 'free' planning</p>

	<p>application does not encourage developers and applicants to find the best resolution through the original planning application. If a fee was charged for both the appeal and any subsequent planning application, this may encourage applicants and developers to reach a solution at an earlier stage. This would ultimately save resources and time and hopefully enable quicker resolution of planning applications.</p> <p>We also agree that the fee for retrospective applications should be substantially increased for most local developments and major applications. However, in many cases retrospective householder development occurs due to ignorance of the regulations and we would not want to unduly penalise householders. However, for other forms of development where applicants and agents engage frequently with the planning system and should know better, a heavier penalty should be introduced. This would need to be supported by a strong enforcement position, in order to acknowledge that the increase in fee may itself be a disincentive to making an application, as noted below.</p>
<p>14. Should enforcement powers be strengthened by increasing penalties for non-compliance with enforcement action?</p>	<p>Yes.</p> <p>The inclusion of new powers to make the recovery of monies associated with enforcement direct action by means of charging orders is welcomed.</p> <p>The possibility of substantially increasing the financial penalties for breaches of planning control is a positive step; however the penalties should be on a sliding scale with domestic breaches at the lower end. At the upper end however they would need to be at a level that actually is a deterrent i.e. the costs of the penalty outweighs the benefit of breaching planning control. Whilst a single penalty is suitable for a householder breach, a developer should be faced with a recurring penalty to dissuade them from continuing with the works on a site.</p> <p>In addition to creditable and realistic penalties, the existing mechanism of fixed penalty notices would need to be overhauled given that the process is cumbersome and ultimately there is no power to compel payment of the fixed penalty notice.</p> <p>In England Planning Authorities are able to make use of the Proceeds of Crime legislation to recover sums of money from parties who have been convicted of a breach of planning control. The ability to deploy this in Scotland would help Councils who are faced with a major breach, say a land fill scenario where there are limited funds for direct action to deal with the situation on the ground. A successful</p>

	<p>action under the POCA legislation could allow the monies recovered to be directed to the purification of the breach of planning control.</p> <p>In terms of being able to bring forward a prosecution, the crime report which must be completed requires a date of birth for the accused party. The Planning Act does not contain provision to require this information. If this provision could be added to Section 125 and 272 of the Act this would assist greatly in relation to prosecutions.</p> <p>It would help if the clock could be stopped once a Local Planning Authority registers a breach of planning control rather than when a Notice is served. The benefit would be that there would be no risk of informal negotiations, or retrospective applications, rendering the breach time barred.</p> <p>There are occasions in which formal action is not in the public interest, however the breach still exists. If a notice could be served which was recorded against the titles to property, the onus would be on the property owner to regularise the matter at some time in the future rather than there being no resolution to the breach.</p> <p>Under the current system an applicant who wishes to make material changes to an application would require to secure a new Planning Permission for a development, thus creating two separate and distinct permissions. Under the Building (Scotland) Act if a developer wishes to make changes to the original Building Warrant a process exist within the act to allow for an amendment to warrant to be made. The amendment is not in itself a new Building Warrant but merely a change to the original warrant. The advantage of this system is that you do not end up with multiple consents for the same site and the confusion of what is actually being developed. In addition, all the conditions on the original Planning Permission would still remain valid.</p> <p>The powers contained within the 1997 Act in terms of entry warrant should be strengthened to allow for direct action whereby entry to a site / land or a building may be required on more than one day to allow the works to be undertaken. The provisions contained within the Building (Scotland) Act 2003 provide a suitable model for direct access.</p>
<p>15. Should current appeal and review arrangements be revised:</p>	<p>Yes.</p> <p>We agree that there should be some refinement and changes to the way in which LRB's operate.</p>

<p>15(a) for more decisions to be made by local review bodies?</p>	<p>The proposals set out in paragraph 2.42 appear to be sensible and will enable a greater number of decisions to be made at the local level. There will be different experience of Local Review Bodies throughout Scotland and perhaps differing response to this question. However, they have generally operated well and have not been subject to the degree of legal challenge original envisaged.</p> <p>The ability of other local consents such as listed building consents and adverts consents to be heard by the LRB, particularly when they are linked to associated planning applications, makes sense. We have had such cases where the respective decision makers have come to different conclusions on the same case. There is a need to provide certainty for both developer and community.</p> <p>The question of new evidence is one that has often taxed members and some clarity on this point would be helpful.</p> <p>It does appear in the current format that the LRB tends to give more weight to appellants case and more referrals may lead to even more decisions being overturned.</p>
<p>15(b) to introduce fees for appeals and reviews?</p>	<p>Yes, we agree that a fee should be introduced to cover the administrative costs for the appeal and local reviews. This should not be disproportionate and for Local Reviews this could relate to the cost of the planning application as the application is being considered “de novo”. For appeals, which will relate to larger scale developments an upper threshold or cost cap could be agreed.</p> <p>This may have a positive consequence in that it could encourage developers and applicants to find a resolution through the planning application process, rather than rely on an appeal decision. People may not want to lodge an appeal if they need to pay a fee, so this may encourage more people to engage and resolve issues throughout the planning application process.</p> <p>The cost of public inquiries is becoming harder to justify, in terms of time, resourcing and cost. We are of the view that there are rarely issues that cannot be fully explored through written representations or, where that is not possible, through the long-established hearing process. Hearings are less adversarial and arguably more productive as a result. However, many developers, particularly for large-scale schemes, insist on pursuing the inquiry route of appeal. Acknowledging the increasing constraints on local authorities, we propose that, where that route is pursued, and a developer is unsuccessful, they should be made liable for meeting the Council’s costs. This would limit the number of inquiries and hopefully result in more appeals being addressed through the hearing system where</p>

	that is required.
15(c) for training of elected members involved in a planning committee or local review body to be mandatory?	<p>As an authority we do not allow members to sit on either Planning Committee or the Local Review Body until they have gone through training and induction.</p> <p>There would be advantages in having a more formalised form of training and a test of competency would highlight the quasi-judicial process that members need to be aware of. There are additional administrative issues in operating a test and any associated appeal process. Would this be a national test or be locally defined?</p>
15(d) Do you agree that Ministers, rather than reporters, should make decisions more often?	<p>There have been occasions where we do not agree with Reporters decisions, but that is not to say we would always agree with Ministers decisions or feel that they would be any more reflective of local circumstances. Increasing the number of decisions made locally through the modification to the Hierarchy of Development may be a better route.</p> <p>There may be the opportunity to resolve a major LDP issues about DPEA decisions following Examinations. At present Local Authorities have limited powers to challenge recommendations (in the Borders recent examples about housing numbers and energy policy). There should be some opportunity for this to be addressed and this could be done via to request a referral to Ministers on DPEA decisions with which we disagree.</p>
16. What changes to the planning system are required to reflect the particular challenges and opportunities of island communities?	N/A

## BUILDING MORE HOMES AND DELIVERING INFRASTRUCTURE – CONSULTATION QUESTIONS

Key Question	Scottish Borders Council Response
<p><b>C: Will these proposals help to deliver more homes and the infrastructure we need? Please explain your answer.</b></p>	<p>The proposals have the potential to deliver the housing and infrastructure we need. However, there must be a degree of boldness in their implementation along with willingness of all parties to work together to delivery positive outcomes. This includes Scottish Government, local authorities, infrastructure providers, the development industry and communities.</p> <p>Of the options set out in this consultation, this will be the most difficult to deliver, as housing and infrastructure cannot merely be delivered through regulatory change or issuing guidance. They can only be delivered through the co-operation of a wide range of stakeholders that all have different economic, environmental and regulatory drivers, as well as demands and pressures at a local, national or international level. The impact of the wider economic position and the attitude of financial institutions will also have a significant influence on delivering housing and infrastructure.</p> <p>There needs to be an alignment of infrastructure investment, with Strategic Housing Investment programmes and housing land provision the National Transport Strategy (NTS) and Strategic Transport Project Review (STPR) along with the Economic Strategy.</p> <p>The options require further clarification and guidance and our commentary on these issues is set out in more detail below:</p>
Optional Technical Questions	
<p>17. Do you agree with the proposed improvements to defining how much housing land should be allocated in the development plan?</p>	<p>Housing is a national issue - we need to deliver the right number of houses, of the right quality, in the right locations throughout Scotland. Planning has a facilitative role in seeking to ensure that there is a supply of land that can be developed and this process needs to be streamlined.</p> <p>There is merit in a national housing target being established through the NPF. If this is merely a national aspiration as proposed, whilst this is helpful to a degree, it does not go far enough and is not a bold enough measure to drive housing delivery.</p> <p>At present a significant amount of time, effort and money is expended by all parties arguing about housing land requirements. This is wasteful and unnecessary. The HNDA/HST numbers game currently applied to housing is meaningless, but is expensive and disruptive in that it diverts resources</p>



	<p>from positive planning. A simplified HNDA tool with nationally agreed figures would address this but would need to be signed off by members of regional working partnerships to ensure that any such targets are reasonable and deliverable within the plan period, taking into consideration local geographies, economies and social aspects.</p> <p>An estimated range of houses required over 10 years would be sensible and tie into the revised LDP timescale.</p> <p>The NPF could translate the national target to a regional level in line with regional strategies (and associated infrastructure investment) through the regional working partnerships with allocations for each local planning authority. This would allow time and effort to be diverted to placemaking in association with setting out the detailed supply provisions, rather than arguing about numbers.</p> <p>Local Development Plans would be required to meet the national/regional targets, and be monitored to ensure that prospective demand continues to be met through the plan period. We agree that there is a need to improve monitoring of housing land availability and deliverability and that an on-line register would be useful. It would also be helpful to update the guidance on housing land audits and effective land supplies. An agreed methodology for the audit and sign off by the regional partnership would limit the potential for protracted debate.</p> <p>It would be sensible to ensure that housing figures are confirmed as part of the gatecheck process for Local Development Plans, so that this removes a major impediment to plans being delivered timeously.</p> <p>It is clear that greater detail is required on how the new system will operate.</p>
<p>18. Should there be a requirement to provide evidence on the viability of major housing developments as part of information required to validate a planning application?</p>	<p>We agree that in the allocation process through the LDP it would be necessary for the developer to provide more detailed information about whether a site is viable and deliverable. This information would also be needed to justify the continued allocation of a housing site in a subsequent review of the plan, to show that there was a reasonable prospect of the development proceeding with the Local Plan timescale.</p> <p>How this information relates to a planning application is perhaps more problematic. In most cases, vitality information is submitted with a planning application to off-set the development contributions</p>

	<p>requirement of the proposals rather than it being a positive tool to ensure delivery. It is accepted that it may highlight where particular infrastructure issues or delivery blockages are and may give a greater understanding of the development finance and market dynamic of an area, but how that can be weighted and taken account of in a planning judgement is problematic at best. Planning authorities would also need to be equipped with the ability to assess viability reports.</p> <p>It may be better to require this information for major housing applications where they do not accord with the Development Plan and there is a shortfall in effective housing land supply. This would ensure that if a justification is made to allow the site to proceed it can be proven that it will actually meet the shortfall it is purporting to address.</p> <p>There are practical issues in terms of the validation rules and screening of this information and it would be necessary to set out very clear guidelines about when such information is required and what it should consist of. We already have lots of reports submitted to accompany planning applications, we do not want another one that adds little value to the process and opens up another area for dispute and challenge.</p>
<p>19. Do you agree that planning can help to diversify the ways we deliver homes?</p>	<p>We agree that planning has an important role to play but would stress that numerous other stakeholders have a greater influence in the delivery of housing. One of the main hurdles in delivering housing is market demand, which planning authorities cannot directly influence, along with the lending practices of financial institutions and the land management approaches taken by developers and landowners.</p> <p>A significant amount of joint working goes on in the Scottish Borders between planning and housing colleagues in the Council and local Registered Social Landlords. This co-ordinated approach has enabled the delivery of delivery of the SHIP programme whereby we are delivering a healthy affordable housing programme, which will accelerate in coming years. It has also provided new housing through the Bridge Homes initiative. This joint working model is one that other authorities could also adopt.</p> <p>The Council is not a large land owner but is looking to market its surplus properties and land, under our current asset and schools review, for development or joint ventures with the private sector. We agree that there is a need for planning authorities to be more active in a delivery role to stimulate growth particularly in areas of market failure.</p>

	<p>In terms of stimulating growth and activity we are proposing to front fund (through the City Deal) significant projects including housing and employment uses within the Borders Railway corridor at Tweedbank. There is clearly a role for planning to assist in the delivery of this project.</p> <p>We agree that there might also be route whereby local planning authorities could be involved with joint venture projects with developers and communities to promote housing delivery. We would welcome a sharing of best practice on this process.</p>
<p>19(a) What practical tools can be used to achieve this?</p>	<ul style="list-style-type: none"> <li>• Identification of opportunities for release of Council land and buildings through asset review.</li> <li>• The most obvious tool the planning authority can bring to the table is Compulsory Purchase powers to help assemble sites and buy property.</li> <li>• The Scottish Land Fund and communities’ right to buy provisions.</li> <li>• The use of Compulsory Sale Orders would be a useful tool.</li> <li>• We would be interested to hear more about the land tax provisions to address issues of land - banking.</li> <li>• Greater incentives (e.g. tax relief) for developing previously developed land.</li> </ul>
<p>20. What are your views on greater use of zoning to support housing delivery?</p>	<p>We are not convinced that promoting the use of Simplified Planning Zones would dramatically increase or speed up housing delivery. They have not been used to any great extent since their inception and we are not aware that they have been used specifically for housing delivery. There must be fundamental reasons for this lack of interest by local authorities and the development industry. Perhaps, as they have no direct investment budget associated with them they are not a particularly attractive option.</p> <p>Beyond an element of “marketing value” we are unsure what, if any, value they would actually add. It will be interesting to see the outcome of the pilot schemes, as to their effectiveness and the implications for all parties’ - developers and local authorities. Will they speed up delivery or would these sites have already developed under the current or revised planning system? Will they actually improve the quality of the developments on the ground? It is very hard to envisage a SPZ that produces the type of place that Placemaking and Designing Streets wants to achieve, which is much more about breaking rules, and using differences and variations to achieve distinctiveness. Translating this into guidance in a SPZ would be challenging. It is contended that SPZs work better where achieving a sense of place is not one of the primary objectives.</p>

	<p>It is worth noting that the majority of formally allocated housing sites in the LDP have gone through a screening process and will not generally have insurmountable issues to prevent their development. Their deliverability will also be tested through the provisions required on viability and deliverability proposed in this consultation. Housing sites will have also been subject to scrutiny through the housing land audit process. The introduction of a PPP for allocated sites would also deliver a deemed permission for the developer/landowner. This along with an up-to-date suite of policy guidance on placemaking and design, and planning briefs for allocated sites, would ensure a high standard of development on the ground. Again, we would question what the SPZ would be adding to that process?</p> <p>There are a number of practical issues regarding their production and designation, along with the capacity and resources available in planning authorities to promote SPZ's. There would need to be guidance on the scale of development that would be eligible for this approach, as it would not be sensible or desirable for all types or levels of development.</p> <p>For a rural area, such as the Borders, reliant on small and medium scale developers to deliver a significant proportion of our housing completions, an SPZ would not have any real impact on increasing their capacity to deliver housing. We have few larger allocations and doubt that the re-branding of them as SPZ's would have an impact on the intrinsic reasons why they are not proceeding at this moment in time.</p> <p>The production of SPZ's would require a significant amount of preparatory work by the planning authority. The option of the developer funding a proportion of this work would be of assistance but may cause issues. Would communities trust SPZ's supported by the developer? There is likely to be a loss in the planning fees from SPZ's, particularly if these are focussed on the larger scale housing allocations where increased fees would be payable. Notwithstanding any developer assistance in their production, the local authority would still need to produce the SPZ and consider the detailed proposals to ascertain whether they comply with the SPZ.</p> <p>There are real concerns about how developer contributions would be captured and controlled in SPZ's? Consent is normally deferred until agreement is reached on the payment or payment made. How would this be handled in a SPZ?</p>
20(a) How can the procedures for Simplified	SPZ's were introduced in the 1980 and have had limited uptake. There is limited practical experience

<p>Planning Zones be improved to allow for their wider use in Scotland?</p>	<p>on their operation and there is no up to date guidance. The practicalities of the implementation and operation will most likely be fed back through the pilot programme that is proposed but it is difficult, at this stage, with the limited evidence available, to suggest how they could be improved.</p> <p>If they are to be pursued, integrating them into the LDP process would be sensible. The options set out in Figure 2 would appear to form the basis of a way forward.</p>
<p>20(b) What needs to be done to help resource them?</p>	<p>As stated in our answer to Q20 above, there may be a role for developers funding such schemes but that is not without its issues in terms of impartiality and conflicts of interest. If the move to full recovery of costs for planning services outlined in this consultation is realised and we get realistic planning fees, this may allow local authorities to invest and increase their capacity to undertake SPZ's.</p>
<p>21. Do you agree that rather than introducing a new infrastructure agency, improved national co-ordination of development and infrastructure delivery in the shorter term would be more effective?</p>	<p>Yes.</p> <p>Planning authorities currently have little control over major infrastructure provision. Trunk roads are Scottish Government, water and waste water are dealt with by a body responsible to the Government, with only education infrastructure still dealt with by the local education authority. As stated already, each of the main infrastructure providers has their own economic, environmental and financial drivers influencing their investment decisions.</p> <p>In most cases major infrastructure can be dealt with at the national/strategic level where the majority budget resource lies. The enhanced NPF could be backed by the infrastructure Investment Fund and an action programme directed by government. There is no real need for another national infrastructure agency to do this.</p> <p>The key issue relates to providing key infrastructure at a regional level and how best this could be organised and co-ordinated and parties obliged to take account of the regional development strategy in their investment decisions. To embed an "infrastructure first" approach there is a requirement for infrastructure providers to be required to take account of the Development Plan in their delivery plans and for them to engage in the planning process at national, regional and local level.</p> <p>In the short term, the establishment of the national infrastructure and development delivery group would help to improve co-ordination and provide a focus for action and agree that the actions set out in 3.33 are a good way forward.</p>
<p>22. Would the proposed arrangements for</p>	<p>Yes.</p>

<p>regional partnership working support better infrastructure planning and delivery?</p>	<p>There is potential for the new regional working partnerships, with a wider membership than just from planning and a link to NPF, to forge a role in the development of not just the regional spatial strategy but in the co-ordination of key infrastructure investment. The ability to use reliable and enhanced information through a regional audit of infrastructure capacity is sensible and would assist this process. We agree that it is important that there is a link with the Strategic Transport Project Review and other strategies, already referred to in our response to Q2, 2(a) – (e) above.</p>
<p>22(a) What actions or duties at this scale would help?</p>	<ul style="list-style-type: none"> <li>• Infrastructure capacity audit</li> <li>• Details of all infrastructure programmes being required</li> <li>• City deals</li> <li>• Assessment of where investment will deliver most benefits</li> </ul>
<p>23. Should the ability to modify or discharge Section 75 planning obligations (Section 75A) be restricted?</p>	<p>Yes.</p> <p>The ability to modify or discharge S75's provides a high degree of uncertainty about current and future infrastructure investment for both public bodies and other stakeholders. There is clearly a concern that without the certainty of the section 75 agreement funding streams being available at the required stage of a development then such investment will not be made or the development will not proceed or, at the very least, it will be delayed.</p> <p>We agree with the proposal set out in 3.40 so that obligations made toward infrastructure are respected and must be met.</p> <p>In addition, we would be willing to participate in the improvement project targeting improving the timescale for concluding S75 agreements.</p>
<p>24. Do you agree that future legislation should include new powers for an infrastructure levy? If so,</p>	<p>Yes.</p>
<p>24(a) at what scale should it be applied?</p>	<p>As stated already, national projects will continue to be promoted and funded by Scottish Government. The levy need not apply to them.</p> <p>We agree that there is a need to have a mechanism whereby regional scale infrastructure can be funded to allow the release of key development proposals set out in the NPF and the regional spatial strategies. This is beyond what can be delivered locally through section 75 agreements relating to</p>

	<p>individual developments. In the circumstances, the levy should be collected from development proposals that have an impact or effect on regional infrastructure and be additional to the development contributions secured through S75 to address local capacity problems.</p> <p>Defining the scale of development the levy should apply to is not without difficulty. It may be simpler to restrict the payment to applications of a major or national scale, or from developments on allocated sites that would cumulatively be of major/national scale (to avoid manipulation of applications to avoid payment). Alternatively, it may be possible to determine through infrastructure audit what infrastructure is required in each area and that all development within a specified growth area pays the levy toward providing this infrastructure. This would have the advantage of not placing a burden on other areas out with these identified areas.</p>
24(b) to what type of development should it apply?	It is clear that it can be applied to the majority of application types and the majority will have implications for different types of infrastructure.
24(c) who should be responsible for administering it?	A means to collect monies for this regional infrastructure needs to be simple and straightforward. There is the potential for local authorities to provide this service on a similar basis to that operated in by Councils in London administering the Community Infrastructure Levy. It would be costly and take time to set up an independent body to collect the monies.
24(d) what type of infrastructure should it be used for?	<ul style="list-style-type: none"> <li>• Education provision ( note the work already undertaken in this regard)</li> <li>• Access and transport improvements and new requirements</li> <li>• Transport</li> <li>• Water and drainage networks &amp; capacity</li> <li>• Broadband</li> <li>• Flooding</li> </ul>
24(e) If not, please explain why.	Whilst we agree to the introduction of a levy, there are some concerns that this may be seen as a further impediment to development. In many areas development contributions are already high and are argued by developers that they prejudice the feasibility of proposals.
25. Do you agree that Section 3F of the Town and Country Planning (Scotland) Act 1997, as introduced by Section 72 of the Climate Change (Scotland) Act 2009, should be removed?	Yes. Remove the requirement. This can be covered through the Building Warrant process. We should be looking to avoid unnecessary duplication and make sure that regulation is handled in the most appropriate place.

**STRONGER LEADERSHIP AND SMARTER RESOURCING – CONSULTATION QUESTIONS**

Key Question	Scottish Borders Council Response
<p><b>D: Do you agree the measures set out here will improve the way that the planning service is resourced? Please explain your answer.</b></p>	<p>Yes, detailed comments are set out below.</p>
Optional Technical Questions	
<p>26. What measures can we take to improve leadership of the Scottish planning profession?</p>	<p>Whilst the resourcing of individual local authority planning is central to the delivery of service improvement, there are common issues across all Councils, which could perhaps be addressed nationally, by, for example, providing opportunities for skills sharing and professional development. Continuing professional development is required by the professional body, but employers will need to create the capacity to allow that to happen and to assist by sharing skills and experience. The Improvement Service has been helpful in co-ordinating and facilitating workshops and this is a useful foundation on which to build future training across the profession.</p>
<p>27. What are the priorities for developing skills in the planning profession?</p>	<p>If planners are going to help facilitate the delivery of developments then necessary training is required. In light of many of the proposals set out in this consultation, a comprehensive understanding of development viability is likely to be a priority in the short to medium term.</p> <p>Beyond this, design and placemaking are key areas which, while not lacking, would benefit from strengthening to provide planners with the confidence to fully address these issues across the entire planning process.</p> <p>The drawing back of national agencies from providing specialist advice on areas such as natural and built environment has meant that these matters have had to be covered by local authority staff and it may be that training on specific technical matters would also be of benefit.</p>
<p>28. Are there ways in which we can support stronger multidisciplinary working between built environment professions?</p>	<p>As noted above, there are already opportunities for skills sharing, including through the Improvement Service. This could be achieved through informal means, for example, training by specialists from those Councils who have them, to more formal arrangements for sharing resources between neighbouring authorities.</p>
<p>29. How can we better support planning authorities to improve their performance as well</p>	<p>It is right that authorities take ownership of their own performance and the advances made nationally in speed of decision-making are a recognition of the seriousness with which the issue is taken. We</p>



<p>as the performance of others involved in the process?</p>	<p>agree with the assertion that the government’s position should be one of positive support rather than sanction. This requires an understanding of the reasons for poor performance rather than an analysis based solely on statistics. That may require a more “hands-on” assessment by the government than presently exists and a return to visits by government officers in order to fully understand these reasons. Adequate resourcing is at the heart of satisfactory performance and therefore cost-recovery through appropriate fees levels will be central to this. However, there are some other matters that would assist in this regard:</p> <p>Much of the emphasis within the consultation is on how <i>local authorities</i> can improve performance. There also needs to be some monitoring of the development industry role in the application process; slow responses during the application process or, commonly, the legal agreement process, can be used to extend the lifetime of a permission, but it is the local authority that is penalised for poor performance. It is therefore pleasing to note the suggestion in 4.24 about the potential for strengthening grounds for refusing an application where insufficient information has been provided. This should be extended to allow authorities to address so-called “legacy cases”, so that the power to withdraw applications is formally extended to Councils, where there has been a significant period of inactivity by the developer; at present, a Council refusing such an application is penalised for the delay when reporting its figures, notwithstanding the recent ability to “stop the clock”. This would also provide greater certainty to communities about the status of a development.</p> <p>The suggestion that fees should be lowered or sanctions put in place merely widens the gap between those authorities that are already performing well and those that are not, so that the result is counter-productive, when the real need is often service investment.</p>
<p>30. Do you agree that we should focus more on monitoring outcomes from planning (e.g. how places have changed)?</p>	<p>In principle, yes. It is still the case that Council performance is assessed on speed rather than quality of outcome.</p>
<p>30(a) Do you have any ideas on how this could be achieved?</p>	<p>The Planning Performance Framework has already assisted in the self-assessment of outcomes by Councils, although it is difficult to fully know how this is measured and compared nationally. The Quality in Planning Awards is helpful in this respect, although there are limitations, given the focus on nationally important schemes, when outcomes which have a considerable local impact may not justify national recognition. We already operate a biannual Design Awards scheme, which recognises quality in design, placemaking and conservation and is well-received by the development industry locally. Bringing together similar schemes on a national basis may assist in raising the profile of good design,</p>

<p>31. Do you have any comments on our early proposals for restructuring of planning fees?</p>	<p>We have provided a view in relation to the current fee consultation. We support the proposals to increase fees in certain categories of development, but are of the view that only a fee structure that fully recovers the cost of delivering the service is appropriate or justified. The recent “Costing the Planning System” exercise demonstrated that the current arrangements still fall some way short of full cost recovery. An initial increase should not be dependent on performance in the first instance, until a level playing field of cost recovery is established.</p>
<p>32. What types of development would be suitable for extended permitted development rights?</p>	<p>The General Permitted Development Order requires both consolidation and a complete overhaul to make it fit for purpose. This is also true of the advertisement regulations which are now more than thirty years old. A previous consultation on permitted development referred to the study undertaken by Heriot Watt University in 2007 in respect of the General Permitted Development Order which contained a series of recommendations that were never taken forward. We consider that many of the matters raised in that study are worthy of further investigation.</p> <p>There are too many classes requiring revision to cover here, but the key issues are listed below:</p> <p><b>Prior Notification</b></p> <p>The Heriot Watt Review concluded that the prior notification process across various different classes should be abolished. We give this recommendation our qualified support.</p> <p>The prior notification process appears to offer little added value and is confusing to customers, particularly given that proposals in the affected categories fall into a limbo which is neither permitted development nor an application process. The influence that the Council can have on a development and the amount of time available to reach a view on a proposal is too limited to enable any meaningful contribution to the process. The fact that a proposal cannot be refused also brings in to question the value of the system.</p> <p>However, if the prior notification process is abolished, it will first be necessary to reconsider the thresholds which will determine where permission is required.</p> <p>Similarly, it would also be appropriate to use the opportunity to revisit the requirement to notify Councils of proposed demolition which seems unnecessarily complex and adds little value.</p>

### **Development by Local Authorities**

Even acknowledging the relatively modest increase in the figure from £100,000 to £250,000 now in place (having regard to inflation since the original level was set), it remains our view that the determination of whether works should be permitted development on the basis of their cost is not an appropriate means of doing so; it would be clearer to specify the nature and extent of works, which would then be consistent with almost all other parts of the Order and with the wider principle of the planning system being concerned with land use rather than financial implications.

### **General Comments**

The Heriot Watt study identified a need to make the GPDO “easier to understand, interpret and use”. It also suggested an easy-read or web-based “Plain English” version to accompany it (and the recent householder circular has been a welcome case in point). These are all ambitions which we would wish to endorse, not only to make it easier to use but also as a means of reducing the scope for dispute.

Additionally, an issue which extends across a range of Classes in the Order is the cross-referencing to other areas of legislation. The classes relating to caravans are a case in point, referring as they do to a piece of legislation that is itself nearly 60 years old. It is considered that this should be avoided in order to improve the ease of use of the Order (without having to refer to other documents) but also to avoid the situation where the legislation referred to is itself out-of-date or updated and therefore is inconsistent with the aims of the Order. As such, it would be preferable to set out unambiguously those definitions or circumstances that are to be relied upon within the Order itself.

Permitted development rights to convert farm buildings to houses, as suggested, is not welcome – ecological, traffic, visual impacts etc are all issues that need properly addressed, as would the relationship of a house to an operating farm, which is already the source of repeated complaint to this Council.

It would be really very helpful if the government committed to consolidating the numerous pieces of legislation governing PD rights (non-domestic PD rights have been subject to so many amendments over the years), and notification/referral requirements, which would also have the benefit of making them user-friendly for the public.

33. What targeted improvements should be made to further simplify and clarify development management procedures?	A clear and up-to-date legislative, regulatory and guidance framework is essential to the operation of an effective system.
33(a) Should we make provisions on the duration of planning permission in principle more flexible by introducing powers to amend the duration after permission has been granted? How can existing provisions be simplified?	We take the view that sufficient flexibility already exists in the current arrangements. The rationale of reducing the time period from five years to three, brought in by the last review, was to stimulate development, and that principle is still sound. Three years should be sufficient to produce a detailed proposal and implement a scheme and, from a delivery perspective, will encourage that without providing scope to sit on permission for longer than is necessary.
33(b) Currently developers can apply for a new planning permission with different conditions to those attached to an existing permission for the same development. Can these procedures be improved?	The provision, as noted, already exists, but there has been some difficulty in the legal position when different conditions have been agreed, given that the effect is that two permissions then exist. Clarity on this situation would be welcome, which may include the scope for revocation of the original permission to avoid any uncertainty.
33(c) What changes, if any, would you like to see to arrangements for public consultation of applications for approvals of detail required by a condition on a planning permission in principle?	As noted above, it is a shortcoming of the current arrangements that, given the minimum information required for a PPP application to be valid, communities and residents are effectively being denied the opportunity to comment on the detail of a proposal through this process: All they may see is a red line around a site. If it is to be truly meaningful, pre-application consultation should be required at the detailed stage of a proposal. The challenge is that the PPP <i>is</i> the permission, so consultation would need to occur twice in order that communities and residents do not miss the opportunity to comment upon the principle of development.
33(d) Do you have any views on the requirements for pre-determination hearings and determination of applications by full council?	It is difficult to identify any real value in this requirement, which can add a considerable administrative burden. Given that the Councillor expertise rests with the appropriate planning committee, who will have received the necessary training on planning matters, there seems little to be gained in requiring further analysis by all Members of the Council.
34. What scope is there for digitally enabling the transformation of the planning service around the user need?	The planning process has been largely transformed in recent years, with the advent of e-planning and online accessibility of all aspects of the service. Those changes have been almost universally welcomed and we have been complimented on the transparent approach we take to planning service provision. There is tremendous scope to continue this momentum across all areas of the service, but support may need to be given to service users in order to facilitate full digital transformation. For example, many of the Community Councils in the Borders have very limited resources and are ill-equipped to fully respond to electronic communication and may therefore require financial assistance to engage fully with the move toward full electronic delivery.

## NEXT STEPS – CONSULTATION QUESTIONS

Optional Technical Questions	Scottish Borders Council Responses
<p>35. Do you think any of the proposals set out in this consultation will have an impact, positive or negative, on equalities as set out above? If so, what impact do you think that will be?</p>	<p>An Equalities Impact Assessment and a Children's Rights and Wellbeing Assessment have been carried out on the consultation proposals by Scottish Government and it is anticipated that there are no adverse equality implications. There are key provisions within the consultation that will have a positive impact on equalities as they will improve and enhance community engagement, assist people planning their own place, get more people involved in planning (including difficult to reach groups and young people) and improving public trust in planning.</p>
<p>36. What implications (including potential costs) will there be for business and public sector delivery organisations from these proposals?</p>	<p>There are potentially additional costs through the introduction of higher planning fees and the infrastructure levy. However, these must be balanced against a more proactive, responsive planning service and the removal of unnecessary bureaucracy and the increase in permitted development rights.</p>
<p>37. Do you think any of these proposals will have an impact, positive or negative, on children's rights? If so, what impact do you think that will be?</p>	<p>See answer to Q33 above.</p>
<p>38. Do you have any early views on whether these proposals will generate significant environmental effects? Please explain your answer.</p>	<p>In mid-2017, SG will publish a Strategic Environmental Assessment (SEA) Environmental Report. Views will be invited at this stage, in line with the requirements of the Environmental Assessment (Scotland) Act 2005.</p> <p>We do not anticipate significant impacts on carbon emissions arising from the proposals contained in this report. See 6.4 regarding SEA carried out. The proposals seek to ensure greater procedural efficiency and a move towards digital delivery of services, reducing reliance of paper/post etc.</p> <p>We are concerned that there is no reference in the consultation to the importance and implications for the natural world of the proposals within the planning review. This is a significant omission. We are already experiencing a decline in bio-diversity and an increasing fragility of our</p>

	<p>environmental assets, so it is critically important that environmental issues are given sufficient weight in the decision making process and are not overridden in the drive for development.</p>
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