

APPENDIX

- Q.1 Are you satisfied that the procedures set out in the draft regulations for adopting development plan schemes will adequately ensure that planning authorities have proper programmes in place for the review of their plans, including their proposals for consultation and public involvement?

The procedures are manageable; given the focus on annual publication of Schemes, the Council would expect a Performance Indicator commitment from the Government to respond to submissions within 28 days.

Q2/Q3/Q4/Q6 relate to Strategic Development Plans: no response.

- Q.5 Do you support the continuing primacy of the written text of the SDP (or LDP) or would a move to primacy for the Proposals Map help to strengthen the spatial dimension of the plan?

The text should have primacy.

- Q.7 Are there any other matters which the regulations should require always to be included in LDPs, or on the Proposals map?

No.

- Q.8 Are there any other information sources or considerations that planning authorities should be required to have regard to in preparing LDPs and how can planning authorities demonstrate that they have complied with these requirements?

Increasingly, Local Plans (to be Local Development Plans) are being expected to incorporate the objectives of bodies whose remit impacts on planning, but who do not have the statutory basis with which to enforce their policies or projections other than through the Development Plan system. In this respect, the wording of Regulation 13 "to have regard to" is being challenged at Inquiries by e.g. SEPA, Scottish Water, GRO(S) as meaning "will adhere to" or "will incorporate". Reporters from the Inquiry Reporters Unit appear to be interpreting in favour of the challengers (if insufficient regard has been paid) and the criteria of "consideration" of this Regulation needs to be carefully assessed to avoid ambiguity: at present such bodies are not included in the list of 'information and considerations'.

- Q.9 Are the minimum publication requirements set out in the proposed regulations adequate, or should additional requirements be included, for instance specifying a list of statutory consultees for development planning?

They are adequate on the basis that the consultation with Scottish Ministers will include (timeous) responses from Government Departments. The Health and Safety Executive need not be singled out as a separate requirement.

Q.10 Is the requirement to place a notice in the Edinburgh Gazette still useful?

No. It is long past its usefulness.

Q.11 Are the proposed circumstances where neighbour notification would be required and the definitions of neighbouring land appropriate?

They are appropriate, but the terms “in certain circumstances” and “likely to have a significant effect” are discretionary and may lead to dispute. Also, the proposal to extend notification to all those within 20m may be excessive; coterminous neighbours would be adequate, given the general wide publicity which already accompanies publication of the Plan.

The Regulations could specify which designations in a Plan must be subject to neighbour notification (e.g. only new additions, and sites designated for a specific form of development).

Q.12 Will the broad proposed definition of ‘notifiable’ modifications unnecessarily delay the plan process by subjecting too many modified plans to further consultation?

The ability to make minor (non-notifiable) modifications without necessarily securing withdrawal of a representation, is welcome.

The discretion to determine what is a minor (non-notifiable) modification, and what is major (notifiable) should rest with the Authority, and the use of notifiable modifications should, because of the onerous neighbour/representor notification requirements, be kept to a minimum.

Q.13 Do these proposed exceptions provide an appropriate degree of scope for authorities to depart from the recommendations of examination reports?

Yes.

Q.14 Are you satisfied with the proposed regulations for action programmes?

The requirement to submit updated Action Programmes to Scottish Ministers, every two years, is acceptable provided there is no intention to require ‘approval’ before continuing with the Programme implementation.

Q.15 Given its enhanced status, should the draft regulations (as opposed to advice) say more about the content and procedures for adopting supplementary guidance?

The Regulations imply that the Scottish Ministers will scrutinise whether Supplementary Guidance has been properly consulted on by an Authority. This Council intends to grant Hearings (in prescribed circumstances) to objectors to the terms of Guidance, with whom agreement cannot be negotiated with officers. The Government may wish to consider this practice as part of the regulations governing Supplementary Guidance.

- Q.16 It is The Scottish Government's view that the list of key agencies should be limited to statutory bodies regulated by Scottish Ministers but not forming a part of government. On this basis, do you agree with the list of key agencies proposed?

The list is acceptable, but see Q.20.

- Q.17 Do the proposed transitional arrangements raise any specific issues for particular plans or areas?

Yes. The requirement to produce a new Local Development Plan within 3 years of commencement date (expected October 2008) will mean this Authority having to replace its Local Plan after only 3 years and a few months.

- Q.18 Are there any potential impacts on the business or voluntary sectors that we should be aware of in finalising these regulations?

Not particular to Moray.

- Q.19 Are there any potential impacts on particular societal groups that we should be aware of in finalising these regulations?

Not particular to Moray.

- Q.20 Do you have any other comments to make on the draft development planning regulations?

In general terms, this Council wishes to register two particular concerns. These are made in the context that Moray has just recently completed preparation of a Local Plan to post-inquiry stage, and has, to a significant extent, conformed with the principles being advocated in the modernised system in for example, including an Action Programme, publishing Supplementary Guidance, and making extensive arrangements to keep all interested/notified parties informed of progress and changes.

The first is the role of Key Agencies, who are expected (in the terms used in para 88 of the consultation) to "buy-in" to the Development Plan system. There is a conflict apparent at Inquiries where some Key Agencies are using the statutory process of the Development Plan to pursue their particular policies, and require that the determination of planning applications secures their objectives. The Regulations continue – even widen – the obligation of Planning Authorities to consult, include, and "have regard to" Key Agencies and appear not to have addressed the underlying issue that the new reforms are attempting to streamline procedures, not add further duties. It has for example resulted in lengthy policy statements on waste/foul drainage/nature conservation sites in order to appease key agencies, and avoid objections.

Secondly, in removing the 'supervisory' role of a Ministerially-approved Structure Plan, the number of occasions in which elements of a Local Development Plan are required to be scrutinised by the Scottish Ministers seems excessive. The (former) Scottish Executive's/Ministers' track record for response times and approval timescales on planning matters is not good, and there is concern that the efficiency improvements occasioned by these new procedures will be lost by delays caused by these unnecessary referrals.