Appendix 1

Modernising The Planning System:

Consultation on Draft Regulations on Development Plan Examinations

Q.1	**Do you agree that these principles should underpin the regulations and guidance for development plan examinations.**

Anything which will assist the timescale in which Development Plans are adopted is to be welcomed. However, the time taken with inquiries/ examinations is perhaps more down to the volume of objections received, rather than to the Inquiry process itself. This increase is a result of increased inclusion, and whilst this involvement is to be welcomed, it has nevertheless put additional strains on the system. This is only likely to increase with the introduction of neighbour notification. The ability for the 'person appointed' to determine how objections will be dealt with is to be welcomed, and will assist in avoiding frivolous or irrelevant objections. The move away from the presumption that there will be an inquiry, and the right to a personal appearance, is to be similarly welcomed. Hearings are indeed a much better way of considering objections, providing a less formal setting and a less confrontational environment.

There is however a danger that some of the timesaving benefits outlined will simply be displaced to an earlier stage in the programme.

For example, it may be necessary to include "Statement of Case/ Precognition" level detail in response to objections, rather than later in the process, when confirmation of objections is made. The new procedures may reduce Examination time, but add to workloads elsewhere, with no nett advantage at the end of the day.

Q.2	**Do you support the use of a new Code of Practice to set out the detailed procedures for examinations, rather than prescribing this detail in regulations?**

Yes. There is still a need to permit a flexible approach, and to preclude legal challenges on interpretation/application of regulations. There is however a need to apply some basic, broad 'rules', but this can adequately be done through Codes of Practice. The existing code was felt to work well in this respect.

Q.3	**In order to ensure an efficient process, should the draft regulations restrict the matters to which the appointed person may refer in assessing the authority's conformity with its participation statement?**

Yes. The extent of "procedures conformity" should not be allowed to impose on the land use implications of the Plan. The opportunities to challenge the Local Authority's consultation arrangements should be restricted to those in the statement. If a Council states it will advertise in local newspapers and

does so, it should not be possible for someone to object on the grounds that they do not buy that newspaper.

Q.4	**Are you satisfied that the proposed scope of the examination successfully balances the need for a speedy and efficient process, with a rigorous assessment of appropriate issues?**

Yes. The proposals should represent an improvement in "streamlining" the system. It may (as outlined at Q1) result in the displacement of some of the workload to the front end of the process, as objectors expand on the detail of their objection, (anticipating it may be their only opportunity to substantiate their objection). Local Authorities would similarly have to increase their response at this stage.

Q.5	**Specifically, where should responsibility lie for identifying the issues to be assessed in the examination?**

This should lie with the 'appointed person'. He will have a detached/ independent position and be able to identify the key issues of disagreement in the submissions by objectors, and responses from LAs. He should also be given the authority to dismiss frivolous or irrelevant objections. This would be consistent with his power to decide whether written submissions; hearing or inquiry is most appropriate.

Q.6	**Should the regulations set out a defined list of matters to which the appointed person can refer in assessing the Plan, and if so, which matters should be included in the list?**

No. There requires to be flexibility, and the ability to react to local circumstances. This does allow a Reporter to refer to documents not used by either the objector or the LA but the instances of this are likely to be minimal. A "core documents" type of list could be included within the Code of Practice to advise objectors of the sources likely to be referred to/taken into account by LAs/Reporter e.g. SPPs; PANS; Structure Plans, etc. This would purely be advisory.

Q.7	**Are there other bodies beyond those proposed in Regulations 6(4) from whom it should be possible to seek further representations.**

There may be a need on some occasion to take advice/consult with a body which is not on the list, and therefore this seems restrictive. It may be desirable to consult with Community Groups to confirm or substantiate some aspect of public opinion; whether any public meetings or formal decisions were taken, etc. This would not be possible if a prescriptive list is in place.

Q.8	**Do you agree that the proposed apportionment of examination costs is fair and workable?**

For examinations into LDPs the arrangements will continue to be as at present i.e. Local Authority incurs the costs. This can however, with the increase in Inquiry time, result in significant costs. In Moray where we have

just completed the Inquiry and are awaiting Reporters findings, we are looking at a cost of up to £100,000 falling entirely to the Authority. Any opportunities to remove/reduce some of the workload, and hence costs, is to be welcomed. Savings could be realised through the reduction of (at Reporters discretion), formal inquiry sessions and hearings along with the dismissal of irrelevant/invalid objections.

Concluding Remarks

Paragraph 19 of the consultation document refers to 'representations' as opposed to 'objections' (this terminology is also used in draft regulation).

'Representation' has generally in the past been applied to submissions made at Consultative Draft stage. 'Objections' have been submitted in response to the Finalised Plan, and have had a more formal "status".

Although Consultative Drafts will effectively be replaced by Main Issues Reports, there will still be two stages in the process at which to submit comments. It is therefore felt appropriate to retain two categories to distinguish between the status of comments submitted, and to avoid any expectations that MIR comments will be presented to the appointed person. The need for confirmation of any such views as formal objections should be retained.

As has been highlighted earlier, there is a concern that these new arrangements might result in increased workload at "Proposed Plan" stage, with objectors submitting fully worked-up justifications, in case this is their only opportunity to do so. LAs would be obliged to respond likewise, so both parties are almost producing "Statement of Case" material at an earlier stage in the process.

Increased and improved consultation, including the neighbour notification arrangements, are likely to mean a greater number of objections are received. Regardless of how these are "heard" by the Reporter, he will still be required to write up his findings and recommendations after the Examination stage has passed. This aspect will not change.

In conclusion, whilst these new proposals may improve Inquiry timescales, the Council is not persuaded, on present evidence from its recent preparation of the Moray Local Plan 2008, that they will make a significant difference to the overall time taken to replace a Plan. To do that, Regulations would have to review the fundamental principles attaching to the "rights" of non-governmental participants in the preparation of a Plan, and their capacity to inordinately delay finalisation of a Council's approved version.