

MODERNISING PUBLIC LOCAL INQUIRIES: DIGEST OF RESPONSES TO CONSULTATION PAPER

- The consultation paper, Modernising Public Local Inquiries was issued in July 2003.
- This digest of responses has been prepared for the Scottish Executive by Professor Mark Poustie to help improve access to the detailed responses received.
- The aim has been to reproduce the essence of the comments fairly, grouping the material by the main stakeholder groups and the consultation questions.
- Inevitably views on some issues may be dispersed across more than one section.
- In preparing this digest every effort has been made to avoid errors of transcription, meaning, attribution, omission or otherwise and apologies are offered for any that have occurred.
- The views expressed in this digest are those of the respondents and do not necessarily represent those of the Department or the Scottish Ministers.
- References to paragraph numbers which appear in the headings used within some responses are references to paragraph numbers in the Consultation Paper.

Contents

General comments	2	Should incomplete appeals be rejected and returned to the appellant? (Q5)	2
To improve operation of public local inquiry process should focus be on time, cost, level of certainty, need to make public involvement easier or on other matters? (Q1)	24	Should maximum period for production of full statement of case be reduced from 8 weeks to 4 weeks? (Q6)	82
Should public local inquiries into planning proposals be re-named "planning inquiries"? (Q2)	39	Are there other ways of shortening the essential pre-inquiry stages? (Q7)	91
Should the right to a planning appeal inquiry or hearing be further qualified? If so Option 1, 2 or 3? (Q3)	45	Requirement to register intention to lead oral evidence by a specified date and disclosure of case in advance? (Q8)	100
Where appeal lodged against non-determination, should planning authority be required to indicate whether they would have granted/refused application within 2 weeks of appeal being lodged? (Q4)	63	Do you share view that pre-inquiry process does not allow sufficient time for proper preparation? If so, why? (Q9)	107
		Once statements of case lodged should Scottish Ministers give more explicit guidance on the essential	

issues they wish addressed in the inquiry? (Q10) 113

Should Scottish Ministers indicate material that must be considered by the appellant/applicant and the planning authority to identify areas of agreement and disagreement and be lodged as inquiry documents? (Q11) 121

Should Scottish Ministers set time limit on sisted appeals, so that these expire if case not brought to planning inquiry within 6 months of date of sist? (Q12) 128

Should Scottish Ministers recover their own costs and costs of others where appeal party fails to proceed, or appeal is withdrawn, once the inquiry arrangements have been made? (Q13) 136

Should preliminary argument be ruled out at opening of a planning inquiry? (Q14) 143

Should time at planning inquiry be programmed more rigorously in advance and parties held to that programme? (Q15) 150

Do you consider it necessary for Scottish Ministers to set more inquisitorial role for reporters? (Q16) 159

Should hearings practice be imported to planning inquiries? Does this suggest that statutory procedure rules are required for hearings? (Q17) 171

Should existing Inquiries Procedure Rules be amended to make it clear that scope to request that reporter takes account of new material after planning inquiry closed is strictly limited to change in provisions of development plan? (Q18) 181

Do you consider that hearings format represents suitable means of examining objections to strategic development plans? (Q19) 189

Do you agree that process of development planning would be improved by requiring planning

authorities to reduce objections through negotiation and mediation before calling local plan inquiry (LPI); by adopting hearing format as norm for all LPIs; and by applying other relevant improvements in practice contained in this consultation? Other suggestions for improvements? (Q20) 198

Should inquiries into planning appeals and called-in applications be dealt with separately from LPIs and from public examination of objections to strategic and local development plans? (Q21) 219

Views on other options not covered by paper that could help to make public local inquiries less adversarial but allow them to remain just as robust as means of taking decisions on major planning proposals. (Q22) 226

Additional matters raised by respondents to the consultation 240

General Comments

Local authorities

Aberdeenshire Council: That the planning inquiry system is inclusive, fair, transparent, effective and efficient is of real importance to all of those with an interest in development, particularly so to a publicly accountable organisation such as Aberdeenshire Council. The Council invests heavily of time, resources and revenue each year and, as it is its democratically reached decisions which are at stake, there is a tangible need (vested interest) to ensure that the system is as good as it can be.

In relation to Local Plan inquiries it is clear that the existing system requires to be changed to reduce delay and

reduce the adversarial style of inquiries to one focusing on an audit of a Council's responses, ie the production of reasoned justification for the Council's position. Consequently a written procedure for inquiries would result.

The City of Edinburgh Council (CEC) welcomes this consultation paper and the opportunity to consider the effectiveness of public local inquiries in the planning system. It views the issues raised in the paper within the context of the overall review of the operation of the planning system in Scotland.

CEC supports the principles of a more efficient appeal system and the general desire to reduce the use of an adversarial approach in seeking resolution of planning issues.

Clackmannanshire Council: Key Issues:

- Need to improve transparency
 - Need to have clear guidelines and statutory procedure rules (setting out the rights and obligations of all parties involved in the process) and improved procedures for enforcing these for the benefit of all, to reduce scope for abuse of the procedures. This is particularly important in the context of any proposals for hearings.
 - Need to reduce the adversarial nature of the process and place emphasis on mediation and negotiation.
 - Improve certainty about procedure.
 - Seek more focused evidence.
 - Ensure that human rights conferred by the European Convention are fully protected.
- Improve ease of access to information and provision of information to participants (many individuals and groups find the process difficult to understand and therefore find it difficult to participate effectively). Issue an "easy read" guide to the process and english forms for participating in the hearing and Inquiry processes. SEIRU website should be updated to include this information and to improve information on current workloads, copies of Reporters' Recommendations and Appeal Decisions, links to Council websites where relevant (e.g. - links to Inquiry Timetables).
 - Standardisation of documents is needed. There is considerable confusion surrounding appropriate formats and content of hearing/inquiry documents. SEIRU should introduce standardised formats/templates for SoCs [Statements of Case], Precognition and Written Statements, to be used at all inquiries/hearings. No effort has so far been made by SEIRU to provide guidance on preparation of these and this is a significant obstacle to participation in the process. Accept statement in the "Modernising Inquiries" Consultation Paper that "it is important that planning authorities and others look at how their arrangements work and that they get feedback from people using the services that they provide". However, it is even more important that SEIRU work to ensure standardised advice to ensure that the wheel doesn't have to

be re-invented at every planning inquiry.

Perth & Kinross Council: In approving the response to this Consultation Paper the Planning and Development Committee of Perth & Kinross Council wish to emphasise to the Scottish Ministers, that, in order to make the process easier for the public, the prime thrust of the modernisation of Public Local Inquiries should be to give greater emphasis to non-adversarial hearings and a more inquisitorial role for reporters.

Shetland Islands Council: In terms of planning appeal inquiries, our experience of these is limited therefore I do not feel qualified to comment in detail. However, on a general note I would suggest consideration is given to the introduction of the "Hutton" style approach to inquiries, i.e. 2 stages; Stage one establishing the salient facts -no lawyers, Stage two inquisitorial.

Western Islands Council: The Scottish Executive's consultation is to be welcomed. Many of their proposals are sensible and would appear to offer ways of making the planning inquiry process more efficient and less intimidating while retaining procedures to ensure fairness to all parties. Clearly it is to be hoped that opportunity to radically improve the way a Lingerbay- type proposal is dealt with will not be lost. Finally, it should be noted that the Scottish Executive that it will respond in the future to calls to introduce third party rights of appeal. These would offer appeal rights to those who, for example, have objected to a planning application but the planning application has then been approved. Any such provision could have serious resource consequences for the Scottish Executive and local authorities. There

will be a separate formal consultation on this in the future.

Other LA organisations

COSLA: COSLA welcomes the opportunity to comment on this consultation and notes the issues addressed form part of the wider consideration of development planning in Scotland. COSLA considers that a number of the changes proposed and the general aim behind the proposals to modernise the inquiry system, will help to resolve some of the issues raised by those calling for the widening of the right of appeal.

Public Bodies

Royal Fine Art Commission for Scotland: As a general comment, RFACFS supports the principle of public inquiries as a fundamental aspect of a robust and effective planning system. Whilst RFACFS considers there to be scope for improving the present arrangements, it would not wish to see any reduction in thoroughness and rigour associated with planning inquiries or any consequent loss of quality in the final decision. Whilst there is a definite requirement to speed up the planning inquiry process, care should be taken to ensure that opportunities are not diminished in any way for members of the public, community groups and those who may be less familiar with the formalities of the planning system.

Scottish Consumer Council: The Scottish Consumer Council welcomes the opportunity to respond to the Scottish Executive consultation paper on *Modernising Public Local Inquiries*. The purpose of the Scottish Consumer Council is to make all consumers in Scotland matter. We do this by putting forward the consumer

interest, particularly that of disadvantaged groups in society, and by working with those people who can make a difference to achieve beneficial change. The SCC's main concern in relation to the planning system in Scotland is to ensure that all consumers of this service are able to participate effectively in the development control process. Our rationale for this focus is based on the following distinctions:

- Development planning is an outcome of the democratic decision-making process and must therefore be seen largely as a citizenship issue. We do, however, have some interest in public involvement in the production of development plans.
- Development control operates within the framework of development planning in that development control decisions are taken based on the content of an area's development plan. However, development control can be seen to have a clear consumer dimension as it is the point at which consumers access the planning service, either as a first or third party.

The SCC thus takes a wide view of the 'consumer' of planning services which includes both first and third parties, and also inhabitants who do not access the system directly but can be seen to be affected by planning decisions.

Scottish Environment Protection Agency: Thank you for consulting the Scottish Environment Protection Agency (SEPA) on a proposed new approach to local inquiries. SEPA welcomes the consultation and very much supports the efforts the Executive is making to ensure the inquiry system is effective and, crucially, more accessible to those

seeking to engage in the planning system. Such changes are vital if issues such as environmental justice are to be fully addressed within planning. Generally, SEPA welcomes the proposals aimed at delivering less adversarial approaches to the inquiry process and we feel that this will make a significant difference to those who wish to engage in the planning system, as well as making inquiries more efficient.

Scottish Natural Heritage: SNH generally welcomes the proposed revisions to procedures for Public Local Inquiries. The only matter that we would wish to emphasise concerns the need to reduce the adversarial nature of inquiries. We consider that the polarisation of debate and even aggressive antagonism towards opposing views and arguments which often occurs is counterproductive to the planning process, and it is therefore of the utmost importance that steps are taken to reduce the opportunity for this to happen. The greater use of hearings is one such step and we support this proposal wholeheartedly.

The Development Industry

MacTaggart & Mickel Ltd: Whilst on the whole, our experience with planning inquiries has been relatively positive, recent examples involving Local Plan Inquiries in particular have left us disillusioned. We acknowledge that the White Paper, 'Your place, your plan' deals with the issue of limiting the scope for local authorities to depart from the Reporter's Recommendations. As a document entitled 'Modernising Public Local Inquiries', we had thought that there might have been some reference to this point as per the White Paper. We feel it would have been helpful if this had been explored more thoroughly in the Consultation Paper.

For the avoidance of doubt, our view is that for the confidence of the industry and of the planning system as a whole, the scope for local authorities to depart from Reporters recommendations should be limited. We welcome the opportunity to comment on the consultation paper, but feel that there are fundamental issues that have to be addressed in order to improve the present inquiry system. If development plans were reviewed and kept up to date, there would not be any need for some issues to present themselves at inquiry. There appears little sense in a planning appeal that examines the principle of, for example, residential development, if the land is already zoned for the aforementioned purpose in the Local Plan.

Other Businesses/Business Groups

Sainsbury's: Sainsbury's applauds measures which help make the planning process clearer, more accessible and more accountable. The development industry requires up-to-date and appropriate Development Plans. However, it is often not the Inquiry timetable that has to be speeded up but the time taken to prepare the draft Development Plans in the first place -which in some cases can take 5/6 years. Sainsbury's is of the view that for Local Plan Inquiries every effort should be made to meet Local Plan objections prior to a Local Plan Inquiry- through debate and negotiation. If this is not possible, there is a need to ensure that the evidence of all parties is fully tested and parties are held accountable. Sainsbury's believes that, where possible, the key issues / necessary procedures to be considered at a Planning Inquiry should be agreed at the outset -by all parties. This will help

make the process clearer and more accountable for all concerned.

Scottish Coal Co Ltd: As a general preliminary comment, the consultation paper introduction makes considerable reference to the needs of the public to be involved and for their rights to be protected. There is no argument against that, although it is suggested that greater recognition could be made of the fact that the majority of appeals/inquiries result from development proposals where the appellant is seeking to obtain permission to carry out a form of development which will either be to create commercial wealth or to enhance his or her residential property .A fundamental principle of planning law is one of a presumption in favour, unless there are clear and sound planning reasons for refusal. Most appellants appeal when they believe that there are not clear and sound planning reasons. As a result, it can sometimes appear that an Inquiry is purely there for the purposes of a public debate and for the public to influence the Reporter, rather than the purpose for an independent arbiter to be making a decision which also takes into account all relevant views expressed. (Comments on Question 2 also relate to this.)

Scottish Retail Consortium: Whilst we are not in a position to answer all of the questions posed in the consultation paper, I would like to draw your attention to a few key points that we would like to make regarding this aspect of the planning system. A key consideration for the SRC is that the planning system must continue to evolve to meet the changing circumstances of retail planning. The retail industry is an extremely fast moving industry, in a very competitive field, where retailers have to

continually invest in their shop fittings, and where location is of central importance. Poor location inevitably means lower sales and as 10% of Scotland's workforce [is] employed by the retail sector, poor location for the retail sector implies a negative impact on employment and on the wider Scottish economy. The service sector, especially retail, has been the engine of job creation in recent years. It is imperative that the planning system does not stifle current and future growth. With prime retail sites at a premium, it is crucial that these are allocated to the developer as quickly as possible. The SRC is concerned however that the system has become cumbersome, time-consuming and is failing to deliver greater certainty to retailers or local communities. This can often be the result of the amount of irrelevant and repetitive material presented to the Inspector. By preventing a re-run of evidence already heard then inquiries would be shortened and also cheaper. Another issue of concern to retailers in Scotland is the amount of time it takes the Scottish Ministers to issue decision letters. Reducing such delays will be an important factor in improving the efficiency of the appeals system, and building confidence in the operation of the planning system. The SRC and its members are also concerned about the time frequently taken to decide whether applications should be 'called in', adding further delay to what is already a slow process. It is particularly frustrating when the developments are consistent with an adopted or well-advanced local plan, or, in some cases, a development brief developed in partnership between the developer and the local authority. The SRC recognises that while Ministers have wide ranging powers to 'call in' individual applications, these powers should only be used sparingly. The

Minister should make clear the issues to be considered prior to the inquiry and these should be the focus of any assessment. Standards of service performance guidelines should be set for the determination of both delegated cases and those to be determined by the Minister. We also believe that performance against the standards of service should be kept under review.

Professional Organisations

RICS – Scotland: RICS Scotland would not wish to see a radical change in the current system, other than rights of third parties to stand alone when giving evidence & allowed the same opportunities to undertake cross-examination as statutory parties.

RTPI: The Institute welcomes this consultation paper and the searching attempt by the Scottish Executive to find radical ways of improving ministerial decision-making in the planning process. We particularly welcome the manner in which the Scottish Executive Inquiry Reporters Unit has promoted understanding and open discussion of the issues. The recognition of the challenge to reconcile inclusiveness in the process with the need for the planning system to facilitate the delivery of economic development is welcome and should not be underestimated. No matter how many incremental improvements to time and cost may result from this consultation, the planning process, particularly through appeal and objection resolution, remains a lengthy one and a number of the issues which contribute to the timescale are not referred to in the consultation paper, particularly the stage concerned with the actual production of the Reporter's report and any subsequent ministerial decision. We welcome the sentiments of paragraph 53 relating to the Executive's own housekeeping after an

inquiry but it is less than specific about the scope for improvements which can be made. The consultation paper does not question some traditional principles although these are more than likely to be questioned in the forthcoming debate on widening the right of appeal in the Scottish planning system. For example, firstly, the right to appeal is regarded as a "fundamental and basic right" (paragraph 13). As the right of an aggrieved applicant is now being quoted as the main reason for a quid pro quo for the right of a third party to appeal, the debate requires to take a more searching view of such principles. Indeed, one commentator has recently suggested that third party right of appeal may be justified in certain restricted circumstances, provided the right of an aggrieved applicant to appeal is also restricted. Subject to the protection of human rights (involving consideration of such things as the right to a hearing at the first decision stage) there is no reason why such a principle cannot be reviewed. Secondly, it should be clear that the proposals are clearly based on a system depending on the primacy of the development plan. This we strongly support but it is a principle which may also be questioned during the consultation on development planning. We agree with one of the concerns of the paper to reduce the adversarial nature of planning inquiries as much as possible. However, we are less inclined to recognise the intimidation of those who actually participate as supposed to the more likely deterrent which such formal proceedings can be to those who perceive them to be intimidating and are deterred from taking part at all. On these grounds, major complementary initiatives to procedural changes should be: -

a) the development of high quality guidance for wide public understanding of the process; and

b) maximum use of services to assist the general public such as planning aid and even an equivalent of legal aid.

While we note reference to mediation in connection with the questions concerning development plan inquiries, we feel that further consideration should be given to the scope for mediation in the appeal and call-in process.

Scottish Planning Consultants Forum: 1.2 The SPCF welcome the broad ranging debate underway in respect of the planning system and its improvement in Scotland. The priorities of government ministers are recognised as:

- Creating more certainty and less interpretation in the planning system.
- Making the system less complex.
- Promoting more consistency in decisions across Scotland.
- Speed up the planning system and its constituent parts of plan making, development control and appeals/public local inquiries.

Whilst the SPCF can support these in principle; it should be recognised that these priorities can and do create tensions within the planning system.

1.3 In respect of public local inquiries the priorities of:

- reducing time to make decisions,
- controlling costs,
- making public involvement easier,
- reducing the intimidating effect and ambience of inquiries, maintaining clarity and certainty , and,
- reducing the level of uncertainty about the process

are recognised as appropriate by the SPCF .

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS:

The Paper proceeds on the basis that third party appeal rights, upon which a parallel consultation process is envisaged, should be ignored. Although we have complied with this stricture, it is appropriate to record our agreement with paragraph 1 that any admission of appeal rights to third parties has wide ranging implications, including timing, cost and certainty of process, all concerns which are the claimed drivers of the present consultation. If any form of third party appeal procedure was adopted, the exercise on which Scottish Ministers are here embarked would require root and branch review, not minor adjustment.

The premise upon which the Paper proceeds (paragraph 2) is that the existing system is intimidating and inaccessible. This is not an opinion we share for reasons demonstrated in responses to certain of the questions. Significantly, the Paper offers no empirical (as opposed to anecdotal) evidence to support the premise upon which it then advocates change. Although administrative improvements to the existing system (last reviewed as recently as 1998 and acknowledged as effective -see paragraph 10) are possible, even desirable, one should be slow to impose restrictions of basic rights supported only by perceptions which may be fuelled by short term political considerations.

Our ... responses may be summarised this way:

- We entirely agree with administrative procedures designed to deliver a system which is fair, swift and certain. To the *extent* that *some* degree of flexibility is required,

Reporters should, as at present, be given some discretion although in practice we would prefer that, speaking generally, Reporters were more demanding of parties. In the context of the administration generally by SEIRU, we observe that routing all communications through a case officer (the reason for which we understand) whose functions are administrative only and do not appear to include any form of decision making does produce administrative hiccups and a certain tardiness in response times.

- The elements in the Paper which appear to emphasise the "adversarial" nature of the inquiry system prompting some form of controlled reduction in the number of enquiries and limitations upon cross examination rights are in our opinion totally misplaced. They are not based on any proper review and have all the characteristics of a short term "fix" for a non-existent problem. They are simply missing the target.

Maclay Murray Spens: Whilst we appreciate that the scope of this particular consultation is confined to Public Local inquiries, believe it is relevant to note that inquiries are part only of the broader system of planning applications/appeals which currently operates at rather less than what we would consider to be optimum efficiency. We believe it would be a mistake to imagine that modernising the inquiry process in isolation will result in that optimum efficiency being achieved. Indeed, if the over-riding

imperative is to improve and streamline the current planning system, then we would suggest that there are more pressing priorities for review in relation to other aspects of the system, principally the delays which occur in the processing and determination of planning applications, the inconsistency in the decision making process at committee level and the failure of Local Planning Authorities to properly reflect the recommendations of Reporters following Local Plan inquiries.

... Please also note that the responses given represent our own views and not necessarily those of our clients.

Paull & Williamson: We have a general comment before attempting to answer the questions that are posed. The paper sets out, among other things to make merit testing procedures less intimidating. We welcome that move and acknowledge that people can be uncomfortable with lawyers at such procedures because they tend to epitomise the adversarial format. If merit testing procedures are to remain adjudicatory, that effectively means moving to a more inquisitorial format, like a hearing. The alternative would be to move away from the adjudicatory format towards a process of mediation. That is suggested in a limited way in para 58 of the paper but research suggests that the scope for mediating planning disputes is likely to be limited. So, some form of inquisitorial procedure would seem to be the way forward. The danger of such a procedure is that you can end up sacrificing rigour for the benefits of less formality; but if an inquisitorial procedure is to have the confidence of all those engaged in planning practice, it must be able to demonstrate an ability to test thoroughly the evidence and opinion brought before it. People are also uncomfortable with lawyers in

planning procedures because they are adept at asking awkward questions and exposing weaknesses in argument and the adversarial process lends itself to this. It will be important that any migration towards an inquisitorial format is not at the expense of a proper testing of evidence and opinion.

PPCA Ltd: All planners will I am sure welcome the opportunity to comment on this important consultation paper. The appeal process and the inquiry into objections to Local Plans form a key role in providing confidence in the planning system so that there are appropriate checks and balances and above all the opportunity to scrutinise the actings of government. This is particularly important following the decisions on County Properties regarding compliance with ECHR legislation and the admissions north and south of the Border that there is a failure to comply at various stages including the appeal and local plan inquiry stages. Although the House of Lords decided that the Courts provided the ultimate protection, for the vast majority of cases parties would never contemplate Court action and must instead rely upon the inquiry system. Every effort therefore needs to be made to ensure that it is as open and fair as possible, both in process and in outcome. This consultation paper repeats the claim that inquiries must be seen to be impartial, fair and transparent. Given the admission in County Properties, this must be qualified and therefore requires greater emphasis being placed on the side of the appellant/objector than has been the case in the recent past. Is there any reason why there should not be a reversion to the statement made in the House of Commons in 1947, when the current form of planning control was first comprehensively introduced, that there is an inherent right to develop

land unless there are overriding reasons why in the public interest that development should be denied? That denial if confirmed should trigger rights to compensation in appropriate circumstances, which circumstances should be wider than the current Purchase Notice procedure. S.25 of the Act is not inimical with such a position since what it does is clarify the public interest. Where S.25 falls down is when there is a failure to ensure that the development plan is up to date, which unfortunately is often the case. The House of Lords decision as recorded in SPP1 makes it clear, however, that the primacy of the development plan is qualified in two important respects. The first is that it is the relevant parts of the development plan which apply. The second is that if the relevant parts are not up to date then they effectively become other material considerations. There is a case for reviewing the statement made in every appeal decision letter in regard to S.25 in order to ensure full compliance with the House of Lords decision. The consultation paper makes an important statement that the modern equivalent of the Examination in Public of the strategic plan is to be reintroduced in practice by the Executive. This is indeed welcome. However, without a similar statement that Reporters' Recommendations to local planning authorities following a local plan inquiry are to be binding, there will be reluctance to accept many of the otherwise worthwhile changes being suggested in the Paper. The recent case in East Renfrewshire should serve as a timely example where the Reporters' comprehensive findings were, in most part, rejected by the authority. Reporters' comments about their intention to run a local plan inquiry following the well understood rules of openness, fairness and impartiality are of course fully

accepted. However the procedure as a whole, and particularly what the Council might do with the report and recommendations, is not one which is characterised by these same precepts. Reporters' introductory comments fall very short of informing objectors of the reality that many authorities do not accept Local Plan Inquiry Reporters' recommendations. Indeed, I suggest that, following the very recent decision by East Renfrewshire Council, where a senior and much respected Reporters' recommendations following a very full and lengthy inquiry were rejected, there is very little credibility left in the procedure which Reporters have been appointed to oversee on behalf of and as an employee of the Council. Unfortunately, this consultation paper on public inquiries singularly fails to deal with the critical issue of making Local Plan Inquiry Reporter's recommendations binding on authorities. Compartmentalisation of the issues in this way lowers the value of what is otherwise a useful document. Until there is an holistic process, there can be no confidence in the system. It is suggested that it would be more appropriate if Reporters' prepared words on this topic were more open about the reality of their recommendations being accepted in the light of current experience. Objectors would then be able to consider, frankly, whether it was worth their while and their money to further their objection when there is a distinct possibility that if they persuade the Reporter of their case, the authority will simply disregard it. The Code of Practice for local plan inquiries notes in paragraph 40 the advantages that might accrue from conjoint or consecutive running of related planning appeals. Such a procedure was one, albeit imperfect, answer to the problem of the local authority sitting as both judge and jury. Now,

SEIRU, in collusion with the local authorities, has brought this practice to end. So that is not an answer. The Courts will not readily intervene although there are now rumblings about the completely unacceptable outcome of the East Renfrewshire Inquiry. What is needed is a change in the law so that Reporters' recommendations are binding. Until that happens, I respectfully suggest that the standard presentation of Reporters to procedure meetings fall short of being frank as to the likely outcome for many objectors who might otherwise naively think that this expensive and time consuming process is a democratic one. What would be of great assistance in the interim would be a statement from each authority at the commencement of the local plan process as to whether they will anticipate a future requirement and agree to be bound by their chosen Reporter's recommendations. That should not present a difficulty to most Councils as I understand they responded positively to the Executive Consultation on this issue in "your place your plan". At the very least that should now be the professional response, although I accept that officers cannot at present bind their Councils. What every student of planning learns is that the British system was founded on the clear basis that planning was a political activity. It is therefore the case that appellants need to be aware that the argument is not confined to professional views alone. As the courts consistently point out, matters of political judgement are for the policy takers, not for the Courts. It would be helpful if this Paper made that clear, thus reinforcing the need to ensure proper scrutiny of decisions proposed by local authorities, in particular where they have a vested interest. The only protection for landowners, developers and the public

is if the Executive call in applications to ensure that such scrutiny is available. It is a constant source of criticism that there is no 'policeman'. Despite the burgeoning so-called 'arms length' companies such as EDI wholly owned by in this case the City of Edinburgh Council, it is understood that the current call-in rate has not increased since the last local government reorganisation. Paragraph 51 additionally points out that many important decisions are taken outwith the planning system. A recent case is the proposed tram developments in Edinburgh where the Executive have funded the studies to Parliamentary Order stage and where the Scottish Parliament will take the decisions. The limitations are obvious where it is only through a coordinated Local Plan that the consequences of Parliament's decisions can be anticipated. For example, at the recent promotional events on the tram system by TIE (the wholly owned Company set up by the City of Edinburgh Council to deliver the system) the Company have admitted that commercial development of all adjacent Council owned land will be required to part fund the proposals. These can only be covered by the local plan. While some sites may be consistent with the now aged local plan, surely only through the parallel consideration of the proposed Edinburgh Local Plan can the proper relationship between the proposals and the procedures be examined. However, apparently the rush to get the trams approved leaves no scope for the local plan process to catch up. Many of the procedural changes proposed in the consultation document are clearly both necessary and welcome to meet the declared aims of government. For example, appellants have a responsibility to assist in ensuring timeous responses and to avoid inquiry delays. However, there is an overriding

need to set the appeal process afresh into a well understood context so that all parties are aware of the 'rules'. Briefly these should be: s.25 set in the context of the inherent right to develop land; that the appeal process cannot be divorced from political decision; and that the SPP1/House of Lords tests for s.25 should be clearly stated as the basis for assessing the public interest.

Shepherd and Wedderburn: Shepherd and Wedderburn has one of the largest litigation practices in Scotland and act in resolving disputes throughout the spectrum of civil cases. As a consequence we have extensive experience in dealing with a wide range and variety of courts and tribunals throughout the United Kingdom. It must be recognised that the resolving of planning disputes through Public Inquiries has certain unique features associated with it but it also has many similarities with other dispute resolution processes. Before going on to examine the specific questions answered we would suggest that our experience is that the current planning process is one which is generally open and inclusive and one which actively encourages participation by all. We would suggest that the inquiry process is one which is perhaps easier to engage with than any other form of public dispute resolution. For example, it is far less intimidating and easier to participate in than the small claims court procedure which is specifically designed for resolving smaller civil disputes. It also encompasses procedures and methods which assist in the process being open, fair and accessible. For example, the use of precognitions ensures that all parties have disclosure of exactly what each party's case is prior to the inquiry commencing. By contrast, most other court and tribunal procedures rely on individual witnesses coming forward

and giving evidence on the day without any clear indication of what their evidence will be. Whilst those procedures may give an indication of what evidence is to be led, it is not as clear and transparent as the planning inquiry process. Another court procedure which emphasises prior disclosure and management of the process is the Commercial Court Rules within the Court of Session. In some respects the inquiry process uses many of these procedures of prior disclosure and meetings to coordinate matters before an actual inquiry. However, in our experience, the commercial court requires far more appearances and is perhaps less streamlined than the inquiry process. Against that background, it is our practical experience that there are many features within the inquiry process which have evolved which make it a relatively advanced method of dispute resolution which is efficient and also comparatively cost-effective.

Voluntary Organisations

Friends of the Earth: Friends of the Earth Scotland has sought to respond to the questions below with reference to the principle of environmental justice: especially with regard to the questions: 'will the proposed change benefit the most disadvantaged communities in their ability to engage with, and express their interests in public local inquiries?' ...or 'can such communities and their environments be expected to benefit on balance from the proposed changes, as a result of speedier inquiries or lower costs?' Our responses reflect our experience working on planning matters with some of the communities facing severe environmental injustice in Scotland.

Friends of Glasgow West: What stands out in various contexts

throughout the paper is reference to *public participation*. To encourage this, it was suggested the inquiry should not be intimidating. Participation has always been available, but unless Inquiries can be held outside working hours not many of the public will be free to participate. "Intimidation" in an inquiry does not necessarily come from the procedure but can be part of the lawyers' technique. In my experience, when non-professionals were presenting their case the Reporter made adequate intervention to put them at their ease. As many Inquiries involve planning issues of "community" versus "developer", presenting a convincing argument will never be a comfortable process. What may be helpful is for more emphasis to put on preliminary informal hearings. These could be purely preparatory, non-adversarial, and based on prepared summaries of the main issues in non-technical language. At this stage it may be possible for impartial professionals to advise the participants of any relevant planning policies and indicate the necessary format for the statutory procedures of the formal inquiry. This may then proceed more effectively and speedily. This brings me to the other point that was frequently raised -the necessity for speeding up the process. To claim that this need not compromise quality is misleading and has no safeguards, particularly when so-called "economic" development is opposed as "inappropriate" development. For example, in cutting the time for a full statement of case from 8 weeks to 4 weeks, ordinary citizens could be greatly disadvantaged: not only are they dealing with an unfamiliar scene, but their time is limited by the on-going need to earn a living, which will also interfere with their availability for meetings with other relevant persons.

Friends of Rural Kinross-shire: Friends of Rural Kinross-shire (FORK) has made representation to a number of public inquiries, both local and those relating to wider issues. For some time we have been concerned that the procedures are very much of an adversarial nature and consequently considered intimidating to all those who are not 'professionals' and in particular individual members of the public. We are now living in an era when the community in general are taking a much more active interest in the way that their local area is developed We believe therefore that it is crucial that public local inquiries are geared to that situation and we fully endorse paragraphs 5 and 10 of the consultative paper. We welcome the opportunity to comment on the proposed modernisation of the procedures and we fully support any developments that will make it less adversarial so that neighbourhood groups and individual members of the community will feel confident enough to articulate their concerns and to contribute positively to local developments. Our aim in this paper is to summarise some of the main weaknesses that we have observed and to which our membership has drawn attention. We fully support the sentiments expressed in paragraph 10 of the consultation paper. In particular it is essential, as stated 'to create a system focused on the public interest and that is less susceptible to abuse'. The key to this is to ensure that the opportunity for public participation is maximised and that local development is based on considerations of the local environment and not driven, in the future, by the aspirations of developers.

Historic Environment Advisory Council for Scotland: HEACS

welcomes the consultation paper "Modernising Public Local Inquiries" and endorses the general perception that improvements are needed in the way that the system operates presently. It would, however, not wish to see any reduction in the rigour in which inquiries are conducted, nor in the final direction.

Mountaineering Council of Scotland: The MCofS welcomes the opportunity to respond to this consultation, which concerns an important element in the protection of Scotland's exceptional natural heritage. As a recreation body with a strong environmental ethos we regard people's enjoyment of landscape as a crucial aspect of quality of life and value of recreational experience. We also believe that our finest landscapes are the basis for our nation's tourism industry. The effectiveness of the planning system is therefore vital for providing the robust protection of our natural heritage and an efficient public inquiry system should be a fundamental aspect of that wider planning system. We should therefore state at the outset, that we support the principle of public inquiries and would not want to see them replaced by an alternative mechanism that might not achieve the same level of academic and scientific rigour or the required depth of inquiry. Our Council has only been involved in one public inquiry over the last ten years or so, but it turned out to be a very unsatisfactory experience. Our response will therefore focus on the issues surrounding the problems we encountered with that particular inquiry. The public inquiry in question considered the application by Highland Light and Power (HLP) for a proposed hydro-electricity generating scheme in the Shieldaig Forest in Wester Ross. The 4 weeks of formal meetings were

held in Gairloch around September 1997, and the inquiry reporter then proceeded to collate the evidence and produce the series of reports leading up to his final report and recommendation. Whilst those with more experience of the public inquiry process would have more comment to make on the conduct of the actual meetings and the progression of the various reports, it is the events surrounding the end of the process that caused us great concern. The problem was created when HLP withdrew their application in May 2000 within a week of the expected publication of the final report and recommendation. This was after more than three years work on part of the inquiry reporter and his team, as well as considerable input from Scottish Natural Heritage and Highland Council, plus non-governmental organisations like ourselves, and local business objectors and individual objectors. We attempted to discover the cost of the incomplete public inquiry, but were told by the Scottish Executive that this information was not available. In the absence of any official cost of the inquiry, our own estimate of the total amount of public money spent on the aborted inquiry is between £500,000 and £1m. Despite this significant public investment there was never any public benefit from the public inquiry. The public were denied the benefit of the inquiry reporter's wisdom, because the applicant was able to make a very late withdrawal and effectively veto the entire public inquiry process. Whatever the scale of the development in question there should always be scope for the developer to withdraw, but in our view the Shieldaig inquiry highlights an important need for two vital issues to be addressed. 1. We believe that a 'beyond the point of no return' clause should be included in the public inquiry process. This would

create the concept that beyond a certain point in the procedure the reporter's final report and recommendation will be published no matter what else happens. In other words, even if the developer withdraws its application the final report and recommendation will be completed and published. 2. Our second point relates to the issue of cost recovery after aborted inquiries as raised in question 13 of the consultation paper. A number of bodies incurred varying levels of expenses over the period of the Shildaig public inquiry, but there appeared to be no means of recovering those costs. Given the scale of the public expenses that we have estimated above, we believe that the consequence of unreasonable behaviour by an inquiry party should carry a responsibility for providing for the recovery of other aggrieved parties' costs. All those involved as objectors incurred significant costs, and that investment in protecting our various interests was wasted by HLP's exercise of a veto that other parties feel they have no equivalent recourse to. Our Council is concerned that the public inquiry system is open to this kind of abuse by developers if they are allowed to exercise the right to stop the process, without penalty, right up to the last minute, and effectively destroy the final report and any public benefit deriving from it. The concerns we have expressed above are exacerbated by the fact that HLP now have a fresh application in the planning system for which they are attempting to gain consent without the detailed scrutiny of a public inquiry. The shredded report from the 1997 public inquiry may well have contained crucial information that would led to a rejection of the current application, but despite the public investment in arriving at that report, the objectors are again having to work hard to block what we consider to be a

highly destructive and inappropriate planning proposal. We believe that inquiries should be more informal and less adversarial, and see merit in importing some of the less assertive practices from the hearings procedure, as long as the process achieves the same level of academic and scientific rigour, and the required depth of enquiry. There should be less emphasis on intimidation and forcing individuals to crack under pressure, and more thought given to allowing people to express themselves without threatening behaviour. Our Council believes in the value of a third party right of appeal, and if this is to be introduced into our planning system then the inquiry procedure will be required to become less adversarial.

The MCoFS supports the principle of public inquiries and would like to see this consultation leading to changes in the public inquiry process so that:

1. A point of no return clause is introduced, beyond which the process will be concluded and the final reports and recommendations published.
2. It is made possible for aggrieved parties to recover costs from aborted inquiries.
3. A third party right of appeal be introduced into our planning system and a less adversarial approach to inquiries adopted, but on the condition that inquiries still achieve the required level of rigour and depth of enquiry.

Planning Aid for Scotland: Planning Aid for Scotland provides independent advice, information, training and support on planning and environmental matters for citizens and community groups across Scotland. We are not a campaigning organisation and have no particular view to express over the current format for public local

inquiries. However, we did feel that it would be useful if Planning Aid for Scotland relayed the feedback it receives from its clients with regard to their perceptions of the current process both with regards to planning appeals and local plan public inquiries. This response is structured by way of making a number of general points which do not fit neatly as answers to the questions you asked. This is followed by a response to some of these questions where we feel our feedback would be most useful to you.

General

Many of our clients are intimidated by the public local inquiry process. They feel excluded because they are not professionally represented, whereas other parties are. They therefore perceive that they are at a disadvantage. They also perceive that the current system implicitly assumes that the Council represents the public interest. Particularly where an application has been called in, a decision made against officer recommendation or in the case of a Local Plan, where an objection has been negotiated -resulting in a different policy to which they originally supported, they perceive the above premise to be untrue. In such circumstances they feel that they are on their own against a number of parties. Clients' concerns tend to relate to the following issues

- Uncertainty as to the procedures
- Fear that a lack of knowledge will mean less weight is attached to their arguments or they will make a procedural error resulting in their arguments being ruled out of order
- Nervous about cross-examination
- Arrangements for the inquiry are made and agreed for the

convenience of the principle parties who are almost exclusively paid staff. Many clients report that they feel at a disadvantage because they are unable to take time off work to attend meetings, the sessions and get access to documents.

Planning Aid for Scotland's suggestion which would address some of the concerns would be as follows:

- Use the informal hearing format wherever possible
- Produce a CD Rom/ Video explaining the process
- Provide guidance as to how to set out evidence
- Use of the internet for depositing important documents so information can be accessed out of hours

Scottish Civic Trust: The Scottish Civic Trust was founded in 1967 and is a charity operating across Scotland. It is committed to the improvement of the built environment of Scotland and in furtherance of this, it aims to encourage: well-informed public concern for the environment of both town and country; high quality in planning and new architecture; the conservation and where necessary adaptation for re-use of older buildings of distinction or historic interest; knowledgeable and therefore effective comment in planning matters; and the elimination of ugliness whether resulting from social deprivation, bad design or neglect. The Trust is a regular participator at Public Local Inquiries (PLI) covering appeals of all types and complexities. In general, we have had no great difficulties in understanding or participating in this process, and note that the members of the Inquiry Reporters Unit are professional and impartial. We are also aware of a number of proposed changes to the PLI process that have

come through the *Getting Involved in Planning* consultation, notably, the reduction in time allowed to lodge an appeal. The Trust believes that there are a number of wider issues that need to be addressed, but have not been, in the consultation paper. Question 1 asks if "there are other important matters to be addressed". We feel that the following three points merit further examination.

1. Third Party Rights of Appeal: The first major issue that of Third Party Right of Appeal (TPRA). Strong support of the introduction of TPRA came from the *Getting Involved in Planning* consultation. A private members bill was put forward in the life of the past parliament on the introduction of these rights, and further work is underway. We point to the report produced by Green Balance et al and its recommendations as a constructive and useful starting point in this instance. In this, it recommended five instances where TPRA would apply: a) where an Environmental Impact Assessment is required; b) where a local authority has any interest in the land or development; c) where a decision is made contrary to officer's recommendations; and e) where a planning application is for a "major development". The method for dealing with TPRA in an inquiry process is important. It would not be appropriate or suitable to simply tack it on to the existing process. Although covered elsewhere in the consultation document, should TPRA be introduced, it is essential that the Reporters Unit be empowered to refuse to consider an appeal if it is frivolous or vexatious.

2. Establishment of an Environmental Court: A number of legal challenges to the status of the Reporter's Unit have or are taking place. The County Properties case via

the Alconbury judgement did not fully clarify situation with regard to Article 6.1 of the European Convention of Human Rights whereby individuals are entitled to a fair and independent hearing. The Trust is aware of a number of other challenges in the Court of Session in a similar vein. The placement of the existing Reporter Unit within a new Environmental Court removed from government would deal with this issue. It certainly means the loss of power to Scottish Ministers, but the resulting natural justice benefits outweigh that loss. We point to the operation of the Scottish Land Court in considering appeals held under the various Crofter Acts as a potential model.

3. Principle of Equality of Arms: The consultation paper rightly outlines difficulties with the adversarial approach currently found in some PLIs. This, of course, is only found when a full Inquiry is held (which is at the discretion of the appellant). There will be a continued need for more significant developments to be heard in a public forum, and that legal representation will form part of that process. Many third parties are significantly disadvantaged in these instances, especially if the first party (the appellant) is government and the third party is the only contradictor. The Trust does not believe that increased examination by Reporters would result in better inquiries. Indeed, it places a difficult burden on them as they need to ensure an unbiased stance, which could be challenged if they pursued a line of questioning too rigorously. It could also place too great a burden on a single Reporter. As such, the Trust believes that the legal principle of "equality of arms" should be applied to certain inquiries, and especially to those where the appellant is government. In this instance, government should be obliged to cover

the legal costs of a third party. This concept should be development.

4. Planning Inquiry Commission:

The concept of a Planning Inquiry Commission (PIC) emerged with the 1972 Act and survived into the 1997 Act despite the fact there has never been one held. The Trust believes that there is considerable scope for the use of PICs, especially in complex cases, and that a PIC would address many of the issues contained in this consultation paper.

Individuals

Collins: Before dealing with the specific questions posed in the consultation paper I wish to submit that the fact that some members of the public etc still do not appreciate the purposes of the planning appeal/public local inquiries system after all these years does not necessarily mean that the system/procedures are flawed. Now that so many members of the public are familiar with the judicial system I very much doubt that they are really intimidated by the involvement of lawyers and other professionals. It is often the case that they are prepared to brief their own legal and professional representatives. The existence of planning aid has gone some way to redressing the balance between local community groups and developers or local planning authorities. Given that the public are so often opposed to any form of new development it seems hardly likely that the objectives set out in para 8 of the consultation document can all be met. The public are less willing in my long experience to accept that with every right that they enjoy there is an attendant obligation. I subscribe to the main objectives of this modernising exercise set out in para 10.

Connal: Three broad points occur to me:-

1 In the vast majority of Inquiries in which I have participated the main battleground has been between developer and local (or other public) authority; the role of members of the public or community groups -on whose interests much of this Consultation Paper appears to focus -has been relatively minor. It has been my almost universal experience that members of the public and community groups wishing to participate and give evidence have received the greatest co-operation from all parties (and from Reporters) and have been treated with courtesy and consideration throughout. I find it difficult to recall circumstances in which any member of the public has been intimidated. There is a widespread practice among inquiry advocates of not cross-examining members of the public who merely wish to express a view on the merits or otherwise of a development. Some members of the public may feel "intimidated" if more detailed are challenged, but it must be recognised that from time to time these will be ill-founded or ill-informed and challenge may be necessary. Even in these circumstances I find it difficult to think of an example in which someone could properly describe themselves as having been intimidated. I do wonder whether there is a situation analogous to crime. Research has suggested, I understand, that people's lives are more affected not by crime i.e. real incidents, but by fear of crime i.e. a perception of what is thought will happen. Perhaps we need to do more to educate the public as to how things actually work in Inquiries rather than leaving them with what may be an inaccurate perception?

2 A Paper on Inquiries cannot be considered in isolation from other developments in planning processes. To give an example, the Executive will

be aware that in many instances the process of consideration of a planning application by a local authority is becoming longer and more elaborate. More authorities are adjourning for site inspections and/or hearings. I do not necessarily say that that is an adverse development. However, it does tend to extend the timetable, increase public participation and increase the scrutiny given to an application, well before Appeal.

3 A repeated call from the development industry is to the effect that procedures can be altered, and processes tinkered with but nothing will significantly alter the process of planning until a more positive attitude is adopted by decision-makers in local authorities. Instead of proceeding on the assumption that the answer should be 'no' the reverse should be true. My experience suggests that some of the difficulties which have been encountered in the conduct of Inquiries in the past, and some of the reasons why these have become prolonged and unduly adversarial, is the reluctance of some local authorities to agree anything with the developer unless they are absolutely compelled to do so, the reluctance to concede points which ought properly to be conceded and what at times seems to be a frenzied search for reasons which can be put together in order to justify a refusal. The professional independence of local authority officials might have to be strengthened. They ought to be protected if they tell councillors that there are no good reasons for refusal. I well remember one planning officer at an Inquiry telling me that his Council knew that they did not want the development but had been unable to articulate any good reasons why not; his role was to find some! This issue is real and practical, not theoretical. In one recent Inquiry, many hours were taken up on a particular technical issue.

At the end of lengthy cross-examination the witness (for the local authority) readily accepted that the issue would not give good grounds for refusal. Had that been in the precognition or made clear at the outset, a huge amount of time could have been saved. Why was that not done? I do not know directly, but informal sources indicate that the witness' brief from the local authority was to do whatever could be done to prevent the development.

Cramond: Before responding specifically to the questions in this consultation paper I think it desirable to attempt to put planning inquiries into their historical and policy context, because that context has shaped the content of my response. Town and country planning legislation had its origins in growing concern about public health and housing conditions. For example, the Housing of the Working Classes Act 1890 gave local authorities powers to make and carry out schemes of improvement for "unhealthy areas" and to order the closure or demolition of unfit houses. The term "town planning" first appeared in legislation in the Housing, Town Planning etc Act 1909, but the main concern was still with public health and housing. The graphic description of appalling housing conditions which was given in the report in 1917 of the Royal Commission on Housing in Scotland awakened social conscience to give assistance to housing in a series of Acts from 1919 onwards, starting with the Housing, Town Planning etc (Scotland) Act 1919. This was revolutionary at the time because it accepted the principle that local authorities should be given subsidies to provide houses which were to be let at subsidised rents to the "working classes". Council estates were born! (For a fuller treatment of the evolution of housing policies see *"Housing Policy In Scotland 1919 to*

1964" by R D Cramond, University of Glasgow Social and Economic Studies, Research Paper No. 1, Oliver and Boyd). The real concern was still housing and only lip service was being paid to town planning, but rapid developments in transport and suburbanisation gave rise to difficulties which led to legislation such as the Restriction of Ribbon Development Act 1935 to control the spread of development along major roads. However these measures were still seen to be inadequate, particularly when the Second World War led to a scramble for sites for new factories and a consequent need for a policy on location of industry. (For a fuller treatment of the evolution of town and country planning policies see *"Town and Country Planning in Britain"* by J B Cullingworth, Allen and Unwin). The seminal legislation therefore came in 1947 in two radical and comprehensive Town and Country Planning Acts, one for Scotland and one for England and Wales. They were truly radical because they totally changed the property rights of landowners. Every owner now needed to seek planning permission before undertaking any development or change of use on their own land. Moreover the owner would get no compensation if planning permission was refused. The Acts gave local authorities both a duty to prepare development plans (showing how the land in their area should be allocated for various uses) and comprehensive powers of detailed control of proposed commercial, industrial and residential developments. In recognition of this major curtailment of property rights the Acts gave the developer the right to appeal to the Secretary of State if he/she was refused permission. Most of these appeals have in practice been decided on the basis of written submissions but an appeal could go to what was called a "public local inquiry" if either the developer or the local planning authority so wished, and a minority have been so

handled. Hence the need for the appointment of Reporters to hold these inquiries and report to the Secretary of State for his/her decision. At first and for many years these appointments were ad hoc and on a case by case basis. All Reporters were part time and were often retired public servants with experience of planning or were qualified lawyers. Eventually however the case load became so heavy that it was necessary in 1974/5 to set up a full time, professional Inquiry Reporters Unit. It also became obvious (not least because of the urgent need to cope with the increasing demands for land based sites for the growing North Sea Oil industry) that more comprehensive guidance was needed about the conduct of these inquiries, and an Inquiries Discussion Group was set up in 1974. As Under-Secretary, Planning in the Scottish Development Department (SDD) I was in the chair and the Group included representatives of the Faculty of Advocates, the Law Society and the Scottish Committee of the Council on Tribunals. The SDD Memorandum convening this group said that its purpose was to explore ways of improving the effectiveness of the public local inquiry as part of the decision making process in planning. The three principles of openness, fairness and impartiality laid down by the Franks Committee (*Report of the Committee on Administrative Tribunals and Enquiries, Cmnd 218, 1957*) would remain cardinal, but this was not enough if the inquiry did not give the Secretary of State the basis for a prompt and constructive decision. And promptness of decision - whichever way it goes - is in the interests of applicant and objector alike. It would also be unfair if deployment of the relevant issues took longer and cost more than absolutely necessary. The Memorandum went on to suggest several issues for the Group to consider - e.g. the framework for an inquiry, the submission of written evidence in advance,

procedural meetings in advance of opening the inquiry, a more active role for the Reporter, the reduction of formality of process etc. The outcome of the Group's discussion was an agreed Report, followed by the issue of SDD Circular 14/1975 on Public Inquiry Procedures, covering a Memorandum of Guidance for both Reporters and all parties to inquiries. Particular attention was drawn to: -

(a) The importance of applicants giving full, public explanations of proposals and their effect and of planning authorities discussing the proposals thoroughly

with applicants and objectors to improve understanding, open the way to compromise and perhaps even avoid the need for an inquiry at all.

(b) The need to circulate in advance of the inquiry as much written evidence as possible and to discourage the use, for tactical advantage, of surprise evidence, with reserve sanction to treat such action as unreasonable behaviour to be taken into account for the purpose of award of expenses.

(c) The avoidance of repetitious cross-examination.

(d) The importance of the role of the Reporter in directing proceedings. He/she should not necessarily be a silent listener but should be free to seek clarification or to direct questions to issues which he will be important to the Secretary of State's decision.

(e) The desirability of maximum informality of procedure so that the ordinary interested person does not feel inhibited from making a contribution without professional representation.

The 1975 Circular stood for over twenty years until it was replaced by Scottish Office Development Department Circular 13/1997 - "Planning Inquiries and Hearings: Procedures and Good Practice". It asked all parties to:

- comply with new requirements

for pre-inquiry disclosure of information

- observe timescales fixed by the Reporter
- seek areas of agreement through earlier preparation and a constructive approach to suggestions for narrowing the range of issues be considered
- present evidence in as succinct and focused a manner as possible

It also emphasised that the Secretary of State expected Reporters to exercise tighter control over the way in which parties present their case and to intervene to avoid repetitive or irrelevant evidence. Now in 2003 there is a consultation paper *"to address weaknesses and to suggest improvements to reduce the time that it takes to reach decisions and to control the costs. We want to make it easier for the public to be involved and to reduce the intimidating effect that the involvement of lawyer and other professional advisers may have we want to reduce the level of uncertainty about the process"*. It would appear therefore that, despite the passage of 28 years, the principal aims of the 1975 Circular have not yet been achieved and some of the procedural improvements suggested then have not yet been given full effect. As the principal author and signatory of the 1975 Circular I find this deeply disappointing and suggest that the time has come to give even firmer guidance and to make abundantly clear to all parties that any failure to observe that guidance which leads to delay and/or increased cost will damage their case. I apologise for the length of this historic introduction but I think it essential to understand the origins of the land use planning system and the place of inquiries within it before the points I wish to make in response to this consultation paper can

be fully understood. So I have laboured the point that legislation on land use planning had its origins in public policy concern about social conditions and economic and transport pressures and has therefore deliberately reduced private property rights in the interest of the overall balance of benefit to the public, domain. Land use planning decisions and procedures must therefore not be seen as part of any judicial process but as an expression of the need for democratically elected central and local government to take policy decisions in the overall interest of the electorate as a whole.

At the risk of being tedious and repetitive, I return to the fundamental point which I laboured to make in my introductory paragraphs. It is that any new guidance about procedures at planning inquiries must stress at all times that land use planning procedures and decisions are part of an administrative public policy process and are in no way part of a judicial process. The final decision is not "guilty" or "not guilty", based on established factual evidence about actual past events, but is an attempt to arrive at a judgment as to where the balance of advantage is going to lie, in the overall public interest, after careful assessment of the various counter arguments, claims and speculative assessments about what might happen in the future. It is about public policy and accordingly any ordinary member of the public ought to be able to appear at a planning inquiry and have a reasonable opportunity to express a relevant opinion without having to hire the services of expensive professionals. If the system fails to secure this it has contravened the Franks principles which, despite the passage of time, I regard as still fundamental to the conduct of a planning inquiry. In

conclusion I offer quotations from two eminent authorities:-

"Lawyers who do the advocacy are still learning that they are not in a court of law and that they are participating not in a justiciable but in an administrative process. " -Sir Desmond Heap

"A public inquiry is usually part of the administrative procedure for implementing policyA Minister... is simply taking what is in the last analysis a political decision the issue he has to decide is not who is right and who is wrong, but which interest shall override the other, or whether some accommodation is possible between the two. " -R. E. Wraith and G.B.Lamb: *"Public Inquiries as an Instrument of Government"*.

Hall: Your final paragraph (page 16) of "A Guide to Modernising Public Local Inquiries" clearly summarises an admirable objective, but I feel there is a danger of striving to achieve this objective by means of too much regulation. Where practicable, clearly defined and supported Guidelines are preferable. These will run less risk of tying the hands of wise and rational Reporters, particularly in unforeseen or exceptional situations. It is a well recognised adage that the more one treats a people like children, the more they will behave like children. From having lived in Norway for 5 years, I believe our society will subscribe with greater maturity and discipline to a code that offers intelligent guidelines where possible, rather than to a fixed set of we-know-best rules. So, regulations where essential, guidelines where possible.

Smith (Robert): My general comment is this:- It seems to me that you have based your questions on an assumption that developers are the prime body that

should be catered to rather than the general public. Everything seems to point that way. It seems to me that your proposals will be very expensive and that the tax payer (both general and local) will end up footing the bill for no great increase in benefit in services, My impression overall is that the developers will be the main beneficiary of most of the changes in your discussion paper. However I can see a considerable benefit to lawyers and to bureaucrats. All in all when third party rights of appeal come about (if they do!) the mind boggles!

Politicians

Jaffrey (Councillor): I am the local City Councillor for the Donmouth Ward in Aberdeen representing 4,800 residents. The people in my Ward are constantly complaining to me as their elected representative about planning decisions arrived at by the Reporter contrary to the wishes of the citizens of Aberdeen, the Planning Committee and sometimes the full Council. In a recent decision taken by the Reporter for example 157 mature trees are to be felled and to say the people are angry is an understatement! As a City Councillor for the above Ward I would hope that you would take on board my comments “that I call on the Scottish Executive to change the appeals procedure of Scots Planning Law to make the Reporter Convenor of an Independent Committee, rather than sole arbiter to who all parties can present their case”.

Question 1 In order to improve the operation of the public local inquiry process should we be focussing on the time taken to process the appeal or called-in application; the cost, level of certainty about process; and the need to make it easier for the public to be involved, or are there

other important matters to be addressed?

Local authorities

Aberdeen City Council: The factors identified are all relevant and it would seem illogical to attempt to set priorities by giving more emphasis to one factor over another. What is crucial is that the planning issues are properly addressed. Equally it would be wrong to attempt to reduce the time it takes to reach decisions if that resulted in failure to ensure that all parties had been fairly handled. Timescales are already tight.

Aberdeenshire Council: The overwhelming content of complaint about the inquiry process [and about the appeal process in general] is from developers who have been refused planning permission and their concern is always the inordinate amount of time they perceive the process will take and the financial impact this perceived delay will have on their business. It is observed at para 56 that local plan inquiries can cause a delay in the adoption of a local plan. While it cannot be denied that there is a need for scrutiny and opportunity for representation of a plan the additional delay that this can cause in getting the plan to adoption is a material consideration. A system which results in plans to be significantly out of date before they can be adopted, or is largely retrospective as applications are submitted in advance of adoption for development sites, brings the system into disrepute. The proposals made by the Scottish Executive to change the way in which Public Local Inquiries are conducted are welcome but do not address some of the fundamental issues associated with such processes. Change could be considered within the forthcoming

Planning Act to ensure that the Public Local Inquiry system is fit for purpose in the 21st century and is capable of providing decisions and plans within a shorter timescale to provide more certainty to communities and investors. Consideration could be taken to divorce the Reporters Inquiry Unit from the Scottish Executive and become part of the Judiciary and be seen to be separate from the Executive. Questions of the competency of reporters in local plan inquiries to over-rule locally made democratic decisions could also be answered. The role of the reporter could be restricted to the question of compliance with the statutory framework, the development plan, and ‘good practice’ in the process of consultation and plan creation, rather than the planning merits of individual cases.

[T]he Elected Members wished to stress that in relation to question one it was not just the developers who had grievances about the Inquiry process but their feeling was that members of the public and Community Councils had also raised matters with them regarding the conduct of Public Inquiries, eg the Elected Members felt that for members of the public, the PLI system is intimidating, too legalistic and biased in favour of the developer and his legal team. The Members felt that members of the public did not have the same standing in a Public Inquiry as did the developer and indeed did not have the same recourse to legal expertise as the developer. The Elected Members felt that Public Inquiries in the future should be much more public centred in relation to the conduct of the Inquiry, the venue where Inquiries are held and in particular access to legal advisors.

Angus Council: All are relevant.

Argyll & Bute Council: It is accepted that cost, certainty and public involvement are key issues, although the most important must always relate to the clarity and justification of the final decision.

City of Edinburgh Council: CEC recognises the conflict between speed and public accessibility. Our own decision-making procedures at Committee have been altered recently to include more opportunity for public speaking. Procedures employed in that context seek to focus on ensuring only the most complex or controversial applications are subject to the extra time involved in arranging for short oral presentations to Committee. The same principle should be applied to determining appeals; bringing certainty to the practice of using inquiries sparingly, when hearings or written submissions could suffice (see response to Qu 3).

Clackmannanshire Council:

Development plans: No Comments (relevant only to DC PLIs)

Development control: The focus of any change to inquiries should be fairness to all and inclusion. There should be no discrimination, and the system must be shown to be non-discriminatory at all participants. This applies both to the pre-inquiry and inquiry stages. Communication, availability and provision of information, and conduct should be equitable. The system should be customer focussed. This approach is consistent with the recommendations of the Franks Committee.

Dumfries & Galloway Council: For Local Plans the focus for the local authority should be on control of the time taken to reach the Inquiry. The cost of a Local Plan Inquiry to the local authority can be a disincentive to it actually reaching that stage. The

containment of Local Plan Inquiry costs is important for the local authority and should also help to support accessibility of the process for the public.

Dundee City Council: Time, cost and certainty of process are all important. The current system however, particularly in relation to Local Plan Inquiries tends to be overly complex leading to lengthy inquiries with too much attention to detail that are ultimately unnecessarily expensive and not conducive to the participation of members of the public or their general level of understanding

East Ayrshire Council: It is considered that all aspects of the appeal system should be given detailed consideration and that improvements should be suggested wherever deficiencies in the system are identified. It is agreed that the time taken to prepare for process and come to decisions on appeals can take substantial amounts of time and that suggestions as to how procedures can be expedited would be welcomed. Reduced time periods would also, undoubtedly result in reduced costs to the Council. It is also agreed that any steps to simplify the appeals process and make it more user friendly would be of great benefit to all users of the system as would the removal of the more adversarial elements of the appeals process.

East Dunbartonshire Council: It is considered that this is a reasonable basis for undertaking the review. However, efforts to encourage increased public access to the Public Inquiry process should be accompanied by significant investment in public education (particularly in relation to identification and exclusion of non material planning

considerations that can absorb such significant amounts of time at Public Inquiries) and funding for opportunities (such as those provided by CLEAR in relation to the Local Plan process) for those wishing to participate.

East Lothian Council: We feel that the current inquiry procedure is satisfactory but can be intimidating for members of the public. It may assist if deadlines are removed for members of the public and that it is made clear at any pre-inquiry meeting that it is not essential for the public to appear in person and that they are able to present a written statement to the local inquiry. Currently, it appears from experience that the reporters only use the Inquiry Procedure Rules as guidance. It is felt that the process could be more contained if these rules were enforced.

East Renfrewshire Council: The main focus should be to simplify the process which will in turn reduce the resources required to prepare and participate in Inquiries and make it more likely that the wider public will become involved.

Falkirk Council: The priority should be a more accessible inquiry process. However, it is necessary to review existing procedures to make sure that they are providing a reasonable "return" for the time input. It is considered that the suggestions made elsewhere in the consultation paper would reduce the number of inquiries and ensure time was more focussed on areas of real disagreement.

Fife Council: The focus should centre on the inquiry process. All parties should be required to ensure that they meet their respective requirements and deadlines, and that they do not abuse the system -e.g. late withdrawals of

appeals. Any such significant abuse of the system should be penalised, perhaps in the form of costs being awarded against the guilty party.

Glasgow City Council: Whilst moves to shorten the inquiry process and reduce costs are to be generally welcomed, this should not be to the detriment of the quality of the decision making process. The key is getting the balance right. Many inquiries involve complex and/or controversial proposals and these require to be fully explored. The use of legal representation at inquiries, which can add substantially to costs, should be limited to these situations. There is the potential to address issues of public involvement and efficiency by making greater use of new technology to speed up the process e.g., the provision of computer terminals to display excerpts from documents during questioning or to convert spoken evidence into text.

Highland Council: The strengths of the present system are that it is generally perceived to be impartial, fair and transparent. The weaknesses might be summarised by the need to reduce the time period taken to reach decisions, to control the costs and to reduce the intimidating effect that the involvement of lawyers and other professional advisers may have. The Public Local Inquiry process would be improved hugely if there was a very clear focus on defined and agreed issues. In my opinion, this can only be achieved by the Reporter taking a more active and interventionist role in proceedings.

North Ayrshire Council: In our view, there should be three aims behind any reform of the inquiry system. The prime one is to maintain and, where possible, improve the quality of decisions. This has been entirely

omitted from this consultation paper, and should not be sacrificed in order to achieve the other two aims of speed (with its underlying sub-text of cost), and increased public involvement in the planning process. It is also important not to underestimate the success of the present system of Inquiries, nor to overlook the powers presently available to reporters to deal with any problems. We believe that there is little if any evidence of members of the public being intimidated at inquiries. Reporters invariably go to great lengths to assist unrepresented members of the public and to ensure that they can have their say. If there are any issues, we believe that these come from other causes. A great deal of money can depend on the outcome of Planning Inquiries and in these circumstances it is hardly surprising that parties often seek the best professional advice. In addition, Planning Law and Practice is not entirely straight forward. For example, it is this Council's regular experience that members of the public have difficulty in understanding the concept that planning deals with land use, what is or what is not a material consideration, etc. It should also be pointed out that members of the public often have an expectation of Inquiries which differs from practice. In most Inquiries, the issues will be focused upon the grounds for refusal, whereas members of the public often wish to raise wider, unfocused issues. One valid criticism is that lawyers can bring a court mentality to Planning Inquiries, arguing about points of relevancy, specification or procedure at the expense of considering the real issues. In our experience, one of the great strengths of the present inquiry system is that (unlike the courts), reporters are able to effectively deal with such nonsense. Against this background the present system works extremely well.

To a large extent this is down to the professionalism and courtesy of Scottish Executive Inquiry Reporters. In our experience they are extremely good at focusing on the key issues, in ensuring that unrepresented members of the public are able to have their say, and in allowing parties a fair hearing. A "dumbing down" of procedures will not necessarily improve the quality of decisions. In these circumstances, we feel that the Executive's priorities should be to cut the number of cases which go to Inquiry, and cut the scope and length of the matters which do go to Inquiry. It should however be borne in mind that, as the White Paper, *Your Place Your Plan* (2003) notes, more public involvement means more disputes in the Planning Forum. Accordingly, there is potential that more public involvement will lengthen Public Inquiries. Another matter which should be a priority (and has been entirely omitted from the report) is to improve the Scottish Minister's decision making process in non-delegated appeals.

North Lanarkshire Council: Time is clearly a matter that affects all parties and is often subject of complaint and therefore should be examined, as should the other factors above, however, these must be not be at the expense of the rigour of the process or the quality of the decision.

Orkney Islands Council: In looking at the current process, and relevant importance of time taken, cost and level of certainty, the need for public involvement, a combination of all of these or any other matters, it is our view that all three elements are interconnected, and the system would fall short of expectations and obligations if one was focused on, to the detriment of the others. However in the modern environment, delays in the

process, and cumbersome and bureaucratic aspects of the system are counterproductive, discouraging the involvement of the lay person and frustrating developers and investors.

Perth and Kinross Council: The main aims should be to reduce time and make public local inquiries more informal. The use of hearings should be promoted to ensure their greater use.

Renfrewshire Council: Some of these aims are mutually exclusive. Achieving one may impact upon others. Achieving certainty may significantly increase costs and making the process easier for the general public may reduce the robustness of the process. An aim should be to make it easier for individuals to make their point on a planning issue.

South Ayrshire Council: The quality of the outcome should ultimately be the primary objective.

South Lanarkshire Council: Yes. All of the issues raised are important. The main concern from the public's point of view is the length of time the process takes, the Council are particularly concerned about volumes of paperwork required and the amount of staff time taken up dealing with inquiries of all types. If Local Plan Inquiries were included the cost element would be of vital importance.

West Dunbartonshire Council: All of these are important issues which require to be considered. In addition, consideration should be given to the need to include controls over time wasting, failure to submit by deadlines and altering proposals late on in the inquiry process.

West Lothian Council: These issues are of the utmost importance in reviewing the public local inquiry process. All parties will be keen to speed up the process to reduce anxiety, uncertainty and costs. Certainly, local authorities will wish to reduce the cost of the inquiry process with minimal legal representation. The inquiry process should be made easier for the public to be involved and allow for mainstream planning officers to present the council's case.

Other LA organisations

COSLA: All of the issues raised in this question are relevant. Certainly, the focus needs to be on simplification of the process and a reduction of pressure on resources for councils especially, would be welcomed. COSLA recognizes that the public, in particular, often have different expectations of public inquiries. It is important therefore, that a simplification of the process takes place to allow them greater access to and empowerment in the process, though this must not be achieved at the cost of reducing the rights of other parties; the balance that has to be achieved here is a delicate one.

Public Bodies

Council on Tribunals, Scottish Committee: A focus on the costs involved in the process should not be at the expense of a fair and transparent system. But members wonder whether there is in fact one other important matter to be addressed, namely whether a public local inquiry is the best way to resolve the matter in all circumstances. Members suggest that mediation should be considered as away of resolving dispute, which ties in with Question 20 later in the paper.

Royal Fine Art Commission for Scotland: Although all factors are important in the process, RFACFS considers that reducing the length of time taken to reach decisions is an essential requirement. Speeding up the inquiry process alone, could impact on other areas of concern, particularly cost.

Scottish Consumer Council: We welcome the Executive's proposals to modernise public local inquiries (PLIs), in particular its commitment to make public involvement in PLIs easier and to reduce the intimidating effect that the involvement of lawyers and other professional advisers may have. The SCC thus believes that the key issues raised in the consultation paper are consistent with the consumer interest.

Scottish Enterprise: The issues listed are the important ones. The public currently have sufficient opportunity to become involved in the public local inquiry process. It may prove difficult to improve on this while retaining the general streamlining of the process.

Scottish Natural Heritage: All of these, but always bearing in mind the importance of reaching the decision that best reflects the public interest irrespective of the details of the process.

Scottish Environment Protection Agency: SEPA considers that the Executive is right to focus on all of these things. Ultimately, however, the inquiry process should be concerned primarily with the delivery of informed and quality decisions that uphold matters such as environmental protection and environmental justice. Accordingly, we suggest that the principles of certainty and making it easier for the public to be involved

should outweigh considerations about time.

The Development Industry

Bett Homes: We believe that attention should focus on the time taken to process the appeal, although the need to make the process more transparent allowing it easier for the public to be involved is also important. Each of these two issues in their own right are in conflict to each other, as speeding up the process and more people getting involved do not in our opinion go hand in hand. If full public involvement is given then there may be the danger that the process is severely expanded.

Homes for Scotland: Homes for Scotland takes the view that significant improvement can be achieved in respect of all of the above matters. The process would benefit from clear and unambiguous justifications for all decisions reached by a Reporter.

MacTaggart & Mickel Ltd: Although all the issues examined in the question are important, we feel the level of certainty is particularly important. The time taken to reach inquiry is often lengthy and can be reduced, but in our experience the decision following the inquiry is usually relatively quick. As a company, although speed is important, we would be more concerned about the quality of the decision. In terms of public involvement, we feel that the good Inquiry Reporters are well equipped to involve the public and make the process easier for them to understand.

Stewart Milne Holdings: There is a lot of emphasis on the process but there are other important matters to be addressed namely, the product.

Taylor Woodrow: TW seeks a robust and proper assessment of appeals or called-in applications. We appreciate that in order to arrive at a decision, time should be taken to ensure that all matters are considered fully. In this regard, whilst it is desirable for quicker decisions we appreciate that a balance has to be struck. In terms of certainty about the process, as a developer experienced in planning procedures, we have no pressing concern over the existing procedures. With regard to making it easier for the public to become involved, we consider that under the existing consultation procedures within planning applications, and opportunity to submit either written or verbal evidence to appeals, etc, there is already that balance. To add to this, without offering the appellant an opportunity to respond would be unfair. Members of the public have a legitimate basis from which to appear, without entering into a debate on the weight, which should be attributed to their evidence, their input is important and should be encouraged. The task is to encourage that involvement as opposed shifting the balance in terms of fairness.

Walker Group (Scotland) Ltd: While all these materials are indeed important and that undoubtedly improvements can be made, we believe that the focus of modernisation should be on the consistency of interpretation of s.25. Too often we have seen spurious decisions supporting the position of the council on the basis of 10 year old local plans. Although there is presumption of development which accords with the development plan, if there are material considerations which indicate in a particular case that the development plan should not be followed, the plan no longer has primacy. Section 25 reserves, as Lord Clyde stated in City of Edinburgh

Council v Secretary of State for Scotland (1997 SCLR 1112), “a valuable element of flexibility”. Guidance to Reporters on the application of s.25 and in particular the Edinburgh Council case should be made transparent to all.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: The length of time taken to secure planning permission, or to have a final outcome of an appeal, is often the greatest source of frustration to businesses. Consequently, we would absolutely support reducing the time taken to process an appeal, while still allowing the appellant adequate time to prepare their case. In addition, this might also involve a focus on the level of paperwork or preparation required by the appellant for an inquiry. We are also aware that the cost of planning applications and appeals can be a burden to small businesses, so any opportunities of reducing cost (or a reduction in cost in light of an unsuccessful appeal) should be explored.

Marks and Spencer plc: The Company supports focus on these important matters but is concerned that the primary objectives remain the quality of decisions, their clarity and consistency. The maintaining of public trust is also important, as much as certainty.

Sainsbury’s: Local Plan Inquiries: the local plan inquiry part of the entire local plan process is a very small element. It can often take 5.5 years to adopt a local plan compared to an inquiry period of 6 weeks. One should therefore only be concerned about the Inquiry timetable - but also the process before the inquiry.

Other Planning inquiries: Time and cost are very important to Sainsbury’s but not at the expense of evidence being fully tested. Transparency is also key- what is happening and when?

Scottish Coal Co Ltd: Main focus should be on the need to review the application, how it was determined (or not) by the Authority and for the Reporter and/or Minister to make a decision as speedily and objectively as possible. The administration and the desirability of involving the public is secondary to this prime objective of making an independent decision. Having established that, it is clearly highly desirable to streamline the process and to facilitate a procedure whereby people with relevant views can impart them without fear or confusion about the system.

Scottish Council for Development and Industry: There is a need to focus on all of the aspects mentioned above and in addition there should be a focus on the provision of a full and clear justification for the final outcome to engender confidence and certainty in the planning process.

Scottish Landowners Federation: Yes. SLF agrees that the topics listed are in fact the major public concerns on which attention should be focussed.

Tesco: Tesco believe that the objective in respect of any planning decision should be to issue that decision as soon as possible albeit for permission or refusal so that future decisions can be made. There is little merit in delay in any part of the process as this certainly can add to the appellants cost if only in interest charges accruing. Perhaps as important as speed is certainty. Rushing things through without a clear indication as to the timetables involved does little to assist anybody, least of all

third parties that maybe inexperienced of the process. Tesco agree that public involvement is important. The best way they can feel part of the process is for the Reporter to tell them from the outset how the process works but more particularly to stipulate a precise time and date on which their evidence or submissions will be heard. A good example of this was done by the Reporter Janet McNair at Arbroath. This enabled the public, many of whom have daytime jobs, to schedule their appearance for their own convenience which is clearly a beneficial element not only for them but also for other participants as one has certainty and clarity which everyone can then timetable their own activities accordingly.

Professional organisations

Law Society of Scotland: The Sub-Committee agrees that questions raised about improving the operation of the public local inquiry processes are valid ones, but in the end it is the quality of the decision making which receives the greatest attention from participants. The Sub-committee agrees, that there is some scope for improving the quality of information provided to the public and that organisational efforts could be made to make the *whole experience* of Public Local Inquiries could be less intimidating. The Sub-committee reflected upon the Victim Information and Advice unit (VIA) which could be analogy be applied to Public Local Inquiries. There could be more information provided in terms of leaflets and on the website and Case Officers and Reporters could be properly trained to make the public participants feel more at ease in what can be a stressful and occasionally difficult experience. The Sub-Committee supported more informality in the system where that could be

achieved without jeopardising the business of the Inquiry.

RTPI: We would place ease of involvement at the top of the list, followed by time, certainty and cost. Ease of involvement should also include much improved comprehension of the purpose of the relevant procedure. On the one hand, this will limit the extent to which people wish to be involved on the strength of non material views and on the other hand should improve public trust in the system which is always based first and foremost on the need to secure essential understanding and information.

Scottish Planning Consultants Forum: The SPCF support the identified areas of focus.

Scottish Planning Law and Environmental Law Bar Group: The main issues to be addressed are: (1) The time taken in the run up to an inquiry and following an inquiry and also focussing on areas which are not presently subject to a timetable e.g. the setting of a relevant date and making a decision whether or not to call in an application; (2) ensuring greater public participation in the process; (3) increasing transparency, certainty and fairness to all parties. We would point out that the public inquiry itself is the shortest part of the overall planning process when compared with the time applications are with the local planning authority or the time taken for a decision after an inquiry. However, the inquiry is the only part which permits public participation and which is therefore truly transparent and democratic. There is greater scope for reducing delay in the run up to a public local inquiry and after an inquiry, rather than the inquiry itself. Shortening public inquiries would not

have a significant effect on the speed of the process as a whole but the effect of reducing the scope for public participation might well result in legal challenge. Proposals to reduce the scope of public inquiry have been firmly rebuffed in England by the House of Commons Select Committee and there is no reason why the Scottish planning system should depart from the English one. Reducing cost is not an issue in relation to public inquiries as we consider that the present system works within very tight budgetary constraints and provides remarkably good value for money. On the contrary, the planning system is essential to the prosperity of the country and the process of allocating land uses is an extremely important one and as such, it ought to be properly resourced. Consideration ought to be given to convening a panel of three reporters for inquiries with proper administrative support. In that way planning appeals and call-ins may be brought forward to a hearing more quickly and decisions could be issued more speedily than they are at present. The present inquiry system is a unique form of appellate tribunal in that it relies on a single fact finder who sits in judgment alone with little or no secretarial support. Most other appeal tribunals sit with a chair and two wing members e.g. Social Security Appeal Tribunals, Employment Appeal Tribunal. If public confidence in the planning system is to be maintained the public part of that process, the inquiry, requires to be seen to be properly resourced and the Scottish Ministers require to be seen to be giving it the priority it deserves.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS:

It is self evident that our appeal system should be:

- administratively certain
- swift, commensurate with other considerations cost effective
- helpful and fair to those with a genuine concern to express

All of the issues raised in the question are therefore legitimate but, further to our [general] comments [...], should not be equiperated with a need for change or as necessary solutions to underlying weaknesses. In our submission, the real concerns of the business community and the public at large about transparency in decision making, quality of decisions, speed and cost (direct and indirect) have their roots in the performance of planning authorities which in turn is largely born out of funding and resource problems. This is largely, if not completely, separate from the inquiry system and itself needs critical assessment and action.

Maclay Murray Spens: It appears that the emphasis in the Consultation Paper is placed on providing a "user friendly" service for members of the public/third parties and whilst we fully endorse the objective of the Scottish Executive to make the appeal system more accessible we believe that it must properly balance public interest considerations with the need to maintain the integrity of, and confidence in, the planning system, to provide a forum for a full and properly balanced discussion of the relevant issues and thereby to encourage the economic development which is essential to the future of Scotland. We believe that, in general terms, the current system of Inquiries works satisfactorily. In regard to planning appeal Inquiries, we do not consider that the time taken to process the appeal/called-in application is a

significant factor. Generally speaking, there are not significant delays in the Inquiry process and although certain aspects may be streamlined (see for example our response to Question 6 below) we doubt this will result in substantial time saving compared to savings which would be achieved by reform of other elements of the planning system. Any reforms which bring about greater certainty in the process are to be welcomed. We are not convinced, however, that the current system of Local Plan Inquiries works as well as it should. Given that we operate in a Development Plan-led system, the importance of Local Plan Inquiries as the mechanism by which the emerging Plan can be fully and rigorously tested should not be underestimated. Due, we suspect, to pressure on resources, in our experience Local Planning Authorities are often ill-prepared for the magnitude of the task involved. We do not believe that attempting to de-formalise the process is a sensible response to that problem.

Paull & Williamson: It must be questionable whether there is much scope for further reducing the time taken to make a decision without prejudicing the rigour of the process. It would be unfortunate if the quest for speed led to decisions which were not properly thought through.

Production of shorter decisions and reports: On a related point, we are concerned about the proposal to produce shorter decisions and reports (para.10). One of the merits of the existing system is the fully argued decision-letter or report. It would be difficult with shorter decisions to demonstrate that all material considerations had been taken into account and to explain why particular considerations had not been decisive.

That may lead to a loss of confidence in the process.

Robert Drysdale Planning Consultancy: At a time when the control over development and the policy constraints on development appear to be increasing, it is vitally important that an appellant should be given every opportunity to present his case to the fullest detail and to be given a fair hearing. These principles should be applied throughout the current review process. Introducing greater haste into the process will be of no benefit to the appellant if this results in the case being unduly abbreviated or misunderstood.

Shepherd and Wedderburn: We consider that an undue focus on the time taken to process an appeal or called-in application would result in a process-driven appeal system rather than one which took an appropriate time to reach the appropriate decision. There are notable exceptions to the time periods taken for decision-making, but in the main these are largely historic cases. Our recent experience of the inquiry process has been one in which the process from lodging an appeal or a called-in inquiry to the final decision has been made in an appropriate timescale. We think the current approach is one which is delivering and there is no overriding reason why there should be substantive change in this regard. The issues of cost and the level of certainty about process are again matters which are well dealt with within the current system. In our view there is an appropriate balance in using pre-inquiry meetings where necessary and also about the timing of the inquiry and delivery of the ultimate decision. One of the difficulties and complexities associated with inquiries is the number of parties who may wish to appear at a

particular inquiry. This requires considerable organisation to hold even relatively basic administrative meetings. Again in this regard it may be appropriate to look at how other dispute resolution processes work. We appreciate that court systems are not necessarily a model to follow, but the Commercial Court Rules were seen as some of the most innovative within the court system. The fundamental approach is for a proactive management of the process from start to finish by an individual judge. This has, however, required a considerable number of appearances with the attendant cost and time involved. We consider therefore that increasing the number of meetings prior to an inquiry taking place may well not be particularly cost-effective, and would certainly potentially be a factor which might dissuade members of the public wishing to participate in the process. In terms of involving members of the public, the key issue often for them is the ability to turn up at a time which is suitable to them in order that they may participate in the inquiry. This can generally be achieved at a pre-inquiry meeting and generally members of the public are happy to be involved provided they receive pre-notification of a time and place to give the evidence. This deals with the issue of members of the public who perhaps wish to limit their involvement in the process to the giving of evidence. It does become more complicated when members of the public wish to participate fully within the inquiry process. However, we have been involved in a number of recent inquiries where the public have fully and actively participated in the inquiry process. These have included, for example, the community of Penicuik in the conjoined housing appeal in the Midlothian Local Plan Inquiry and a recent housing appeal in Bo'ness. We

believe that a simple guide should be made available to those wishing to participate in the inquiry process which gives individuals a clear indication of exactly how the inquiry process worked, and how they could get engaged and ask appropriate questions. Furthermore, if there was a genuine concern about a lack of confidence in getting involved in the inquiry process, we consider that it would be appropriate for the Executive to consider funding a post which would enable individuals to be given advice on participation in public inquiries. One of the key features which we have witnessed of good public participation is the organisation of the grouping which appears. Often groups find it easier to assist in preparing evidence and thinking about question and providing cover to appear at any inquiry. Where this level of organisation appears, it is quite clear that members of the public can make a very effective contribution and feel that they have fully participated in the inquiry process.

Community Councils

Broughty Ferry Community Council: The most important thing is the quality of the decision or development that is finally produced. Other factors such as speed/cost of decision-making, degree of public involvement are important only to the extent that they affect the final result.

Craiglockhart Community Council: Bearing in mind that most of the inquiries are related to projects with a life expectancy of at least 60 years time may not be the primary consideration although it may often seem so to appellants keen to proceed. Cost can be a greater deterrent for community groups and individuals than for appellants. It is therefore

important that the third parties in a case do not feel seriously disadvantaged by the lack of professional witnesses. The reporter's attitude to public involvement is significant in creating a good experience for participants.

West End Community Council

(Edinburgh): Yes, but main objective must be to make planning inquiries less intimidating and more accessible.

Voluntary Organisations

Architectural Heritage Society of Scotland: The key issue must be ensuring that all stakeholders in the outcome have confidence in the process, be they the general public, appellants or other interests. Frequently time is presented as the key issue for the appellant. However, more important is that they can rely on a specific programme which can then be written into the development programme as a whole with confidence. Consequently development interests recognise that, particularly for major developments, the problem faced is less a matter of time than of the uncertainty attached to the process. The best way to minimise uncertainty is to ensure that all the issues, not least those of the public interest, are competently presented for the proper scrutiny of the Inquiry. Accessibility of public interests to the PLI process is the foundation to securing confidence in the process. It is incumbent on the system to devise a manner in which the public interest can be identified and promoted within the decision-making process. This requires a clear support framework for public involvement to be implemented, and is considered in more detail in our reply to the final question. However the Society also recognises that, for successful outcomes, any public involvement

must be of an appropriately high standard, being relevant, focussed and informed. While the provision of appropriate support to facilitate such a standard of involvement brings in consideration of issues wider than just the PLI process, the Society would encourage a modernisation that prioritises access by public interests. In the recent South East Edinburgh Local Plan Inquiry, the Director of the Society was involved in the procedure styled as a 'round-table discussion'. The Society can commend this manner both for the (comparative) accessibility of the process -notably through the absence of legal interests -and the capacity it displayed for exploring the nuances of issues. Subject to the outcome and the comments of the reporters on the process, the Society is happy to recommend this style of operation as a template for future progress.

Ferryhill Heritage Society: Consider all important but feel a friendly approach from reporter is essential.

Friends of Glasgow West: What may be helpful is for more emphasis to be put on preliminary informal hearings. These could be purely preparatory, non-adversarial, and based on prepared summaries of the main issues in non-technical language. At this stage it may be possible for impartial professionals to advise the participants of any relevant planning policies and indicate the necessary format for the statutory procedures of the formal inquiry. This may then proceed more effectively and speedily.

Friends of the Earth: Whilst time is important, no PLI should be rushed just for the sake of it. FOE-S would advocate spending more time getting things right than sacrificing time at the expense of quality. Having said that,

some developers come to pre-inquiry meetings clearly not in a position to start 12 weeks later. Readiness to participate in an inquiry should be added to the list above. Outstanding matters with Statutory Consultees can drag on for some time and sometimes results in a delay to the start of the PLI itself. This is not acceptable, especially when objectors, who work hard under difficult circumstances to comply with the laid down timetable, are further disadvantaged by delays. It means that holidays booked from ones' normal employment to participate in the inquiry may be lost, witnesses are sometimes not available on fresh dates and the objectors' case is affected accordingly. We do not by any means wish to suggest that this happens in a large number of cases but it appears to occur in a significant enough number of cases to make it a real concern. Reporters will almost always defer to an advocate or some other senior legal figure in contrast to another party or individual. This clearly has a cost implication for all parties including SEIRU. Indeed we would favour powers for inspectors to summarily dismiss appeals in where the appellant is patently unprepared. In our view this tends to indicate that the original application was not adequately prepared or well considered.

Historic Environment Advisory Council for Scotland: Yes, undoubtedly, to the first part of the question; HEACS would endorse also the need to make it easier for the public to be involved.

Planning Aid for Scotland: The priority should be the need to make it easier for the public to be involved.

Saltire Society: Yes.

Scottish Civic Trust: The Trust makes a distinction between improving the operation of a PLI, and speeding up the process. Increasing access to the Inquiry process is welcome. It is, however, essential that an Inquiry seeks to consider the best evidence available, and arrives at an independent decision.

Individuals

Collins: Yes to focussing on the time and cost, and no to making it easier for the public to participate/obstruct new development.

Connal: I believe that the quality of the decision is the absolute key, preferably accompanied by a process which allows all concerned to accept that they have had a fair and full hearing. If these characteristics are present the precise time taken is less critical. I have commented elsewhere that those involved in the Inquiry process, particularly those with significant experience, become frustrated by the constant attack on the conduct of that process as if it were the cause of much of the call for a reduction in delay. Tinkering with the Inquiry to reduce time by an hour here or a day there is of little significance when set against the time taken at other stages. Sometimes there are delays in local authorities processing an application -no doubt due to resource difficulties. Total time taken from presentation of application to conclusion of the appeal would be much more significantly improved by more resources being available. At the other end of the spectrum the time taken, post-Inquiry, to deal with called-in applications is notorious. One might save an hour by some change to the Inquiry process, one could easily save a month or much more on called-in applications.

Cramond: Yes -the important issues are indeed now- as in 1975- the time taken, the cost, the level of certainty and the need for members of the public to be able to take part without feeling intimidated.

Hall: Yes, elapsed time, cost, clarity of process and public involvement all merit review. But it is also important to further promote Internet use -to notify, publish and inform. Much has been done already, but it is not enough to simply say "Well, it was on the internet, if you'd cared to look" -most people do not spend their free time surfing Government sites. Perhaps consider printing an actively managed weekly ".gov" index of relevant topics in the press (preferably boxed and issued same page, same day each week). The index, listed by subject, could give a summary title for each item of current public relevance/debate (not just planning issues) detailing the exact pages from which further information might be accessed. Similarly, all documents -such as this Consultation Paper (see page 25) might possibly be improved by having detailed web pages quoted for each reference. Similarly also for items quoted in its text, such as for *Your place, your plan* (page 19). Help your readers(?).

Lindsay: Focus should centre on the inquiry process. All parties should be required to ensure that they meet their respective requirements and deadlines, and that they do not abuse the system - e.g. late withdrawals of appeals. Any such significant abuse of the system should be penalised, perhaps in the form of costs being awarded against guilty party.

Roberts: Suggest you particularly need to concentrate on the time taken,

if you wish the public to be involved. With respect to Local Plan Public Inquiries, the certainty of process fails, as perceived by local objectors, if the Reporter's recommendations can be lightly cast aside by the planning authority,- the authors of the Plan.

Smith (Robert): Focus on time taken to process the appeal or called-in application, and the need to make it easier to be involved. In regard to the latter there is a case that can be made for a fund similar to Legal Aid, for those objectors who cannot afford professional representation (such as lawyers, counsel and planners) where the appellant employs such people.

Stark: All these objectives are important, but their relative weight will differ according to the type of inquiry. Appeals are a sign that earlier stages in the planning process have not reached a satisfactory conclusion. The priority must be to ensure that the issue is fully considered, with prompt resolution a secondary, albeit important, consideration. Mediation is a possible means of resolving some issues in a conciliatory fashion. Some call-ins reflect a national interest in the outcome, in which case time is often paramount. Others are triggered by possible local authority conflicts of interest, so transparency and the opportunity for public involvement should take priority if confidence in the system is to be retained-

- It is important that local plans are not out of date before they are adopted. However, the priority must be to construct a robust framework which commands widespread support and guides subsequent decisions. Ease of public involvement plays a key role in achieving this end, but can be difficult to reconcile with quick

processing. Mediation has the potential to assist by improving the acceptability of some proposals quickly and effectively.

- Third party appeals, should they ever be introduced, have the potential to gum up the whole planning system. Speedy processing is therefore vital. Departures from the development plan are a possible exception, where public involvement and transparency are key factors.

Watt: Yes.

Question 2 Should public local inquiries into planning proposals be re-named "planning inquiries"?

Local authorities

Aberdeen City Council: No objection in principle. In agreeing to this there is an important qualification and that is to emphasise that the term 'planning' is used in many other situations. Community Planning is one example and with its emergence there has been continuing confusion between that and Land Use Planning.

Aberdeenshire Council: Public Local Inquiries for appeals against refusal of planning permission have been known colloquially as 'planning inquiries' [usually misspelled as 'enquiries'] for many years. It would seem sensible to acknowledge this by formally changing the name.

Angus Council: Yes, I consider that this would lead to less misunderstanding on the public's part.

Argyll & Bute Council: Changing the name would add clarity, by virtue of

drawing attention to the main purpose of the inquiry.

City of Edinburgh Council: Yes, CEC supports this suggestion because it would assist in emphasising that planning decisions must be taken on specific grounds and reduce the expectation of adversarial conduct.

Clackmannanshire Council:

Development plans: No comments (relevant only to DC PLIs)

Development control: The objectives are Para 9 of the consultation paper start with a desire "to improve the experience of the public". It seems odd, then to be proposing the deletion of "public" from the title.

Dumfries & Galloway Council: Yes, on the assumption that these would be understood to be of different types, viz. appeal inquiries, local plan inquiries, et al.

Dundee City Council: No objection to change of name. It would be useful to clearly distinguish between the two types of Inquiry.

East Ayrshire Council: The proposed renaming is welcomed and worthy of support.

East Dunbartonshire Council: This appears to be a sensible suggestion and will help clarify the focus of the inquiry on material planning matters.

East Lothian Council: Perhaps Public Local Inquiries could be re-named "Public Planning Inquiries".

East Renfrewshire Council: Yes

Falkirk Council: Yes, public inquiries are held for a variety of situations and the proposal would remove any public confusion.

Fife Council: It is questionable whether changing the name would have any real effect in as much as Public Local Inquiries (PLIs) are often referred to as "planning inquiries" in the press and media. A formal change of label would however give a better customer "focus". As well as a name change the statutory adverts for PLIs could make clear the purpose of the PLI to better inform members of the public. For example, the advert for a PLI into refusal of planning permission could make it clear the PLI was to consider the planning merits of the appeal in relation to the Development Plan and other material factors. In addition it would be helpful if public information literature and letters to those intimating an interest in being involved in a PLI provided information on the purpose of the process.

Glasgow City Council: Yes, with provision for a sub-title such as local plan in order to make the exact purpose of the inquiry clear. The Scottish Executive should also issue general guidance aimed at ensuring participants have a better understanding of the nature and duration of an inquiry and the options for dealing with possible objections. This guidance would need to explain the difference between the different forms of inquiry and should be made available on the internet and provided at pre-inquiry meetings.

North Ayrshire Council: We would support re-naming Public Local Inquiries as "Planning Inquiries".

North Lanarkshire Council: It would be clearer to use the term "planning inquiry" but the word "public" should also be retained.

Orkney Islands Council: In looking at simplifying the process for the

public, and the proposed renaming public local inquiries, planning inquiries, it is our view that this minor change would indeed resolve misunderstandings as to why the inquiries take place, and the issues looked at therein.

Perth and Kinross Council: Yes.

Renfrewshire Council: Yes - sometimes the general public never participate -it can be a planning inquiry held in public.

South Ayrshire Council: It would be useful, but not essential to include the word "planning" in the title and "public" remains an important term.

South Lanarkshire Council: Yes but clear distinctions would have to be made between planning inquiries for applications and planning inquiries for local plans since different procedures apply to each. I think there is potential for the public to be confused but this may be a beneficial change in the long term.

West Dunbartonshire Council: Public local inquiries are rare in West Dunbartonshire and there is no awareness of a problem of misunderstanding about the purpose of a public local inquiry. No strong views on this matter, but the name "public local inquiry" does accurately describe the present process.

West Lothian Council: The titling of inquiries as planning inquiries is sound as it focuses on the nature of the proceedings and gives an identity to their purpose. However it is felt that the word public should not be lost from the title as this would tend to dilute the concept of public participation and inclusion.

Western Isles Council: This would be a sensible means to reduce any doubt or confusion over the purpose of an inquiry to deal solely with planning issues within the framework set by the Planning Act.

Other LA organisations

COSLA: COSLA suggests that the term "Public Planning Enquiries" should be used.

Public Bodies

Council on Tribunals, Scottish Committee: Members agree that re-naming of local inquiries could remove misunderstanding.

Royal Fine Art Commission for Scotland: RFACFS agrees with this suggestion, but subject to the proviso set out in paragraph 12 that similarly appropriate titles should be devised for cases relating to other areas of legislation.

Scottish Consumer Council: With regard to whether PLIs into planning proposals should be renamed "planning inquiries", we feel that this would help clarify the purpose of the process.

Scottish Enterprise: Yes. Consideration should be given to re-naming public local inquiries into planning proposals as 'planning inquiries'.

Scottish Natural Heritage: The name 'Public Local Inquiry' (PLI) does not indicate what such inquiries are about and a change to 'Planning Inquiry' is likely to be an improvement. However, it would also help if all interested parties, participants, potential participants and members of the public who attend an Inquiry were to be

issued with something akin to the text in paragraph 12 which sets out a clear statement of the purpose of PLIs.

Scottish Environment Protection Agency: Yes, for clarity.

The Development Industry

Bett Homes: We believe that the name is irrelevant and that there are more important issues to consider. That aside the emphasis on the word 'local' in the current name tends to suggest that the local community are part of the process, without it, there may be a perception that they are excluded.

Homes for Scotland: It is important that the name engenders public confidence in the inquiry process. Homes for Scotland would not seek to resist the proposal.

MacTaggart & Mickel Ltd: No issues with this proposal.

Stewart Milne Holdings: Yes.

Taylor Woodrow: TW have no objection to the suggested name change.

Walker Group (Scotland) Ltd: We have no serious comment but would not object to such a name change.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: We agree that "planning inquiries" would better reflect the nature of the process.

Marks and Spencer plc: The Company does not see the name of inquiries as an important issue, and while "planning inquiry" is a

commonly-used term, it is possible that renaming may introduce new misunderstandings.

Sainsbury's: A name change should help clarify the purpose and nature of planning inquiries and by doing so potentially speed up the process. However, it is important that this doesn't overly delay the process. Clear time limits should be set with guidance given to LPAs on how they should justify their reasons for refusal/approval.

Scottish Coal Co Ltd: Yes. Suggestion better reflects the fact that the Inquiry is part of the means to determine someone's planning application and take into account all relevant facts.

Scottish Council for Development and Industry: It is important to ensure that the public involvement element in the inquiry process is not lost. Renaming them "Public Planning Inquiries" may be a suitable option.

Scottish Landowners Federation: SLF agrees that public local inquiries into planning proposals could reasonably be renamed "planning inquiries". SLF can not see any downside to doing this.

Tesco: Tesco agree that this change would make it slightly clearer what the process relates to.

Professional organisations

Law Society of Scotland: Sub - Committee agrees that Local Inquiries could be re-named Planning inquiries.

RTPI: We agree that renaming is required. We would also suggest, however, that the word "inquiries" might be reconsidered. If the

expression "public local" implies an unrestrained opportunity to influence the outcome, the word "inquiry" implies a higher degree of formality. We would suggest that the term "planning hearings" should be used, generically reflecting firstly the terms of Article 6 of the European Convention on Human Rights. More significantly, it emphasises the preference for the form of hearings established in the Code of Practice as an alternative to public local Inquiries. In the event that a full Inquiry is required, we would suggest the term "formal planning hearing" should be used. The same terminology can be used in relation to (formal) energy hearings, strategic development plan and local development plan hearings.

Scottish Planning Consultants Forum: The proposal, at question 2, to rename a public local inquiry, a planning inquiry is sound. This would contribute to clarity and promote public involvement by making the language used less adversarial. Further clarification of the title could be achieved by focusing on the subject of the inquiry in brackets. For example, a planning inquiry on a local plan would be *Planning Inquiry (Local Plan)*. A development proposal inquiry would be *Planning Inquiry (Development Proposal)*. The SPCF supports the term *Planning Inquiry with further clarification*.

Scottish Planning Law and Environmental Law Bar Group: Parties, even those professionally qualified, normally refer to public local inquiries as "planning inquiries". An official change in nomenclature to reflect that would be welcome.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS:

This question is of peripheral importance. That said, on balance we favour the suggested change although it may be argued to run contrary to the stated aim of emphasising the importance of engaging the public

Maclay Murray Spens: We have no firm views on this proposal although we do think it is unlikely to have any substantial impact (given that inquiries tend to be called "planning inquiries" in practice anyway) and believe that there are more important concerns about the present system which should be addressed (as detailed in our response to Question 1 above).

Paul & Williamson: There is an issue about the role of the inquiry and changing its name will not provide the answer. It is probably right that some of those involved in inquiries see them as the heart of the decision-making process and if they 'win' the inquiry, they expect to win the decision. It would be helpful to make clear to all those involved that the inquiry is there to provide people with an opportunity to have say and to provide the decision-maker with information. But the decision remains with the decision-maker and the decision may not reflect the weight of opinion at the inquiry. Such a clarification would be helpful but it will not resolve the problem altogether. It used to be said that most people would accept an adverse decision provided the procedure leading up to the decision was seen to be fair. It must be doubtful if that remains true today. If a procedure does not deliver the 'right' decision, then the procedure is likely to be dismissed as a charade. We support the use of the term 'planning inquiry', although we do

not think it will do much to clarify the role of the inquiry.

PPCA Ltd: Yes.

Robert Drysdale Planning Consultancy:

We do not think the term is particularly confusing but have no objection to the term "planning inquiry" being adopted instead. Please note that paragraph 11 selectively quotes Section 25 of the Act. The full text of Section 25 is "*Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise*".

Shepherd and Wedderburn: Yes. It more accurately describes the process.

Community Councils

Broughty Ferry Community Council: Suggest 'public planning inquiries'.

Craiglockhart Community Council: Calling an inquiry a Public Inquiry is not a problem but does not address the worries expressed in paras 11 and 12 over public understanding of the system. 'Legitimate public concern' is a material consideration which is not always given weight by reporters and this leads the public to question whether their case has been properly assessed. Only by fully presenting an argued case in a report can the public be satisfied that the decision is justified and acceptable even when it is not as they would have wished.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: The principle of public involvement should be enshrined in the title. The Society would find that the term Planning Public Inquiries would be more acceptable.

Ferryhill Heritage Society: "Public Planning Inquiry".

Friends of Glasgow West: Renaming to "Planning Inquiry" would be helpful to members of the public who have no previous experience of the system.

Friends of Rural Kinross-shire: The main thrust of the consultation paper is to make the system of local planning more 'user friendly' to the community whereas paragraph 12 and Question 2 seem to run counter to that concept. We consider that it would have a negative effect to re- name the process as 'planning inquiries'.

Friends of the Earth: We concur with this proposal. Renaming PLIs as Planning Inquiries brings the reason for the Inquiry into focus and more accurately describes the purpose of the inquiry.

Historic Environment Advisory Council for Scotland: Yes, but subject to the proviso set out in clause 12 that similarly appropriate titles should be devised for cases relating primarily to appeals against decisions relating to the historic environment .

Saltire Society: Yes.

Scottish Civic Trust: The renaming of the process as a Planning Inquiry is not unreasonable, and therefore supportable.

Politicians & public

Individuals

Collins: I see little merit in this proposal and suspect that it will make very little difference so far as public understanding is concerned.

Connal: I am neutral on the naming of the process. I am, however, cynical about the impact re-naming will have. No doubt experiences will differ, but my own experience of parties appearing late in the process has been that they have tended to be individuals who wish to "have their say" and they have been accommodated relatively easily with little disruption to the inquiry process.

Cramond: Yes-definitely. Whenever there is a disaster or other issue of public major concern there is currently a demand for a "fully independent public local inquiry". Planning inquiries should never be confused with judicial or semi-judicial processes such as, for example, Piper Alpha.

Hall: Yes, excellent idea.

Roberts: Yes, for clarity.

Smith (Robert): Public local inquiries into planning proposals should be re-named planning inquiries.

Stark: Perhaps the key lies in the extent of changes that are made to the PLI system. A change of name often implies a radically altered product; but if changes are few, it's perhaps best to leave well alone. I feel that if any word needs changing, it is "inquiry". It has connotations far beyond the sort of user- friendly, efficient process which is aspired to -especially since we are now all too aware of the Hutton Inquiry. The essence of PLIs is that they take a fresh, independent look at an issue. This suggests to me that

"audit" or "review" might be more appropriate terms.

Watt: Yes.

Question 3 Should the right of an appellant or planning authority to a planning appeal inquiry or hearing be further qualified? If so, do you have a preference for Option 1, Option 2, or Option 3? Alternatively, do you have other suggestions that might be effective in achieving this objective?

Option 1: Irrespective of whether the planning authority or appellant request to be heard concerning an appeal, the Scottish Ministers could decide, based on indicative criteria, whether a planning inquiry would be held, or whether the appeal would be decided following a hearing, or by an exchange of written submissions; or

Option 2: Where a planning inquiry is requested by the appellant or planning authority, the Scottish Ministers could decide, based on the circumstances of the particular case, whether a planning inquiry is necessary and, if so, determine the issues to be considered by means of oral evidence, with the balance of the matters in dispute being considered by a hearing or an exchange of written submissions; or

Option 3: The appellants and planning authority could be required to make representations in support of a request for a planning inquiry. If not accepted, the case would be considered either by an exchange of written submissions or a hearing.

Local authorities

Aberdeen City Council: The right to be heard is important both to the appellant and to the planning authority and any qualification of that right should be carefully handled. It is

agreed in principle that the inquiry process should be reserved for those cases requiring oral evidence, and if changes are to be made to the current unqualified right to inquiry the issue is how to decide fairly which do and which do not require oral evidence. If changes are being made it is essential that the criteria for deciding which cases require oral evidence to be clear and that parties have an opportunity to make representations in support of, or against, an inquiry in individual cases.

Option 1 does not appear to allow parties to make representations.

Option 2 would lead to confusion and unnecessary procedural complexity.

Option 3 makes no mention of indicative criteria by which a decision as to procedure could be made.

Perhaps a combination of Options 1 and 3 would be feasible.

Aberdeenshire Council: Option 3, that the appellants and the Planning Authority should be required/allowed to make representations in relation to a request for a planning inquiry. If not accepted, the case would be considered either by an exchange of written submissions or by a hearing.

Angus Council: I consider that it should be the right of the appellant or the Planning Authority to decide. In the vast majority of cases the respective parties will seek the most straightforward option.

Argyll & Bute Council: I do not agree with any of the above options, as all three would restrict the right of appellants or the Planning Authority for a Local Inquiry. This also may be contrary to the ECHR in so far as it could limit the right to a hearing. It is therefore considered that the existing system should remain undiluted, whereby the rights of the appellant or

Local Authority to seek an Inquiry should remain unchanged.

City of Edinburgh Council:

Qualification of a right to an inquiry will assist in bringing efficiencies and setting out expectations for public involvement. Criteria defining the right should be prepared by Scottish Ministers. Nevertheless, CEC recognises, from its own experience, cases where the planning authority would wish to present a justification for the case to be considered at an inquiry. This would normally be where a more adversarial cross-examination is required to deal with conflicts of opinion or questions of fact on complex issues. CEC therefore favours option 3 which allows this justification to be put to Scottish Ministers by either the appellant or the planning authority. This option could be easily extended to third parties if such a right of appeal were to be introduced.

Clackmannanshire Council:

Development plans: There should be clear criteria on which SEIRU must base decisions on whether to consider an appeal by inquiry, hearing or written submissions. These criteria should be transparent (published) and the Council and appellant/objectors should be required to indicate how they think the appeal/objection should be handled, based on these clear principles. Where possible, only the matters which require to be heard at inquiry should go to inquiry. Where some matters could be heard using the hearing method or by written submissions, then SEIRU should establish a restriction on the evidence to be heard at inquiry. Thus, the preference in the case of Local Plan Inquiries is for a hybrid of Options 1 and 2. Agree that the "right" of an appellant or planning authority should be qualified (by criteria) in the

interests of increasing efficiency, improving inclusion in the process and reducing cost. Where the criteria are met, it is right that an inquiry or hearing format should be used. Inquiries have significant value, where necessary, in allowing evidence to be heard in a formal and structured way.

Development control: Audited evidence from seminars and other events/contacts suggests that requests for inquiries from appellants will often be driven by confidence in a successful outcome and the benefit of greater scrutiny of evidence which will support a case. This is not proper nor objective justification. The appellants or the planning authority should be required to identify the reasons for Scottish Ministers deciding on the need for an Inquiry. Experience indicates that too much emphasis is placed on disputes of fact or legal challenges as justification for all enquiries. The principal criteria should be the "complexity" of the proposal, the measure of public interest and the significance of an up to date Development Plan position. Option 3 would appear closest to this approach and is the preferred option for appeals against refusal of planning permission or listed building consent.

Dumfries & Galloway Council: For Local Plans the 'right' should be for the 'objection' to be considered and adjudicated on by a Reporter. Objectors should state their preference and reasons for written, hearing, or full inquiry. The Reporter should decide on the appropriate format for each objection but should also be able to assemble groupings of objections to be treated together in whichever format is decided. This type of approach would also be appropriate for Structure Plans.

Dundee City Council: Option 3 would seem to offer the most

flexibility. The balance of probability should be in favour of hearings.

East Ayrshire Council: There is a general misconception by appellants that additional weight is given by reporters to an appeal conducted at a public local inquiry than to an appeal conducted through the written submission procedures. Consequently, there are undoubtedly large numbers of appeals being conducted by means of inquiry which could equally well be conducted by written submissions, at great savings to both the appellant and the Council in terms of cost and time. Clarification as to the equal weight given by the Scottish Ministers to appeals conducted by both methods and the relative benefits of using written submissions procedures for more straightforward cases could do much to reduce the number of appeals being conducted at inquiry. General support is given to Option 1 suggested in the paper whereby the Scottish Ministers could decide on the method by which appeals could be determined. The assessment of how an appeal should be dealt with should be entirely transparent and set against a set of strict, agreed criteria. The Council would be particularly supportive of the use of informal hearings, wherever possible, for those appeals which are of moderate complexity. It is suggested that the Council would not be particularly supportive of Option 2 which advocates that the more complex parts of a single appeal could be dealt with at a public inquiry and the less contentious parts at a hearing or by written submissions. In such a case it may be difficult to ascertain which parts of an appeal should be dealt with by which method. Also, the introduction of such a system would undoubtedly be confusing for appellants and other users of the system and be counter-productive in

terms of what the review is attempting to achieve. Option 3, as advocated in the consultation paper could also be considered to be of some merit. In this regard, the Council may well be supportive of an approach whereby all appeals would be dealt with by written submission procedures or at an informal hearing, unless specific representations for a public local inquiry have been made by both the appellant and the planning authority. In cases where representations for a request for a full inquiry have been made by only one party, discretion to hold an inquiry could possibly rest with the Scottish Ministers, following an assessment of the appeal issues against the set of strict criteria mentioned under Option 1 above.

East Dunbartonshire Council: In the interests of speedier decision making consideration might be given to an appeal determination process whereby significant issues of widespread community concern or principle are determined at a Public Inquiry with the remainder of issues dealt with by written representations.

East Lothian Council: Perhaps a combination of Options 1 and 3 may achieve the desired results i.e. that the Scottish Ministers set out the indicative criteria on which the appellants and planning authority could be required to make representations as to which should be applied.

East Renfrewshire Council: The right to insist on a public inquiry should be restricted. Option 1, where Scottish Ministers decide on whether an Inquiry should be held, is preferred, subject to criteria. Inquiries should only be held, in exceptional circumstances for major development proposals which raise national and strategic planning issues.

Falkirk Council: In general the restriction of the right of parties to insist on a public inquiry is supported. However, there will remain issues where cross examination is in the public interest in order to thoroughly examine conflicts of opinion or fact. Options 1 and 2 would put too much responsibility on Scottish Ministers to make this assessment. Option 3 is favoured as this would allow the parties to make the case for an inquiry. It could still be open to Scottish Ministers, as suggested in Option 2, to determine which issues would be subject to oral evidence and which matters could be considered by a hearing or written evidence. It will be necessary for the Scottish Executive to publish guidance so as parties are aware in advance of the circumstances where a public inquiry is necessary.

Fife Council: Option 3 is preferred. Given the resources required by a PLI both in terms of staff time and other costs. It is not unreasonable to require parties seeking the PLI to demonstrate why an inquiry by written submission is not sufficient. Scottish Ministers could then decide based on the preliminary evidence and subsequent cases made. The approach wherein an oral examination is reserved only for complex or significant issues (with the straightforward matters addressed via written submissions) generally works well for Local Plan Inquiries.

Glasgow City Council: There is agreement with the sentiment in paragraph 18 of the Consultation Paper that "The objective is to reserve the planning inquiry process for those cases where oral examination is required to resolve complex and important arguments." Whichever option is chosen, however, it is important that the Executive issue criteria against which decisions will be

made, in order to ensure consistency. The Executive should also publish its justification for a decision against the criteria within a specified timescale. The parties should then have the right to make representations (including in the planning authority's case, the right to make representations that an inquiry should not be held). Attention is also brought to the position under Roads legislation where objectors are able to appear at an inquiry without stating their objection in advance. This is not helpful and requires an amendment to the legislation. On balance, of the three Options outlined, Option 2 is preferred, but with the inclusion of criteria against which decisions can be seen to have been taken.

Highland Council: At present statutory arrangements allow either the planning authority or the appellants to request an opportunity to be heard in respect of the appeal. I would recommend Members to support the proposal that this absolute right is removed because in many cases there is no extra benefit to be gained over and above submitting a properly argued written representation case.

North Ayrshire Council: The proposal to restrict the right of an appellant or Planning Authority to a Planning Inquiry is one of the steps most likely to improve the speed of decisions which would otherwise go to Inquiry. If third party appeals are introduced then such a restriction will be absolutely necessary. However, we question whether this will result in practice in any great reduction in cases going to inquiry. In our experience, the additional cost and delay incurred in going to inquiry already acts as a significant deterrent to inappropriate cases going to inquiry. We are also aware that hearings are not necessarily an easy option. Hearings tend to work

best where parties are represented and focus on the key issues. They are perhaps not the most suitable vehicle where there are a large number of unrepresented parties. Accordingly, while they may shorten inquiries, they may not necessarily assist in increasing public involvement. We also understand that hearings are the most difficult and time-consuming format of appeals, as far as reporters are concerned. If reform is to take place along the lines recommended, then in our view, a combination of options 1 to 3 is the best solution. We would recommend that each party should make representations in support of a request for a Planning Inquiry. The Scottish Executive should decide on the basis of indicative criteria whether a Planning Inquiry would be held and if so, on what issues. The remaining issues would be dealt with by written submissions. Another reform worth consideration would be to allow a mixing of procedures. In other words, part of a case could be heard by inquiry, part by hearing and the bulk by written submissions. We note the criteria listed at paragraph 18 as being possible reasons for a Public Inquiry. In our view there should be a good reason why it is more appropriate for an appeal to go to a Public Inquiry, rather than written submissions. An example might be a Certificate of Lawful Use Inquiry where it was necessary to test the credibility of the evidence by cross examination. The fact that the Development Plan is out of date does not seem to fall into this category. Instead, the inclusion of this as a criteria appears to be another means of exerting pressure on local authorities to keep plans up-to-date, rather than any genuine reason for a Public Inquiry. Similarly the criteria that the local authority has a financial or interest in the development, should not itself lead to a Public Local

Inquiry. Insofar as such decisions will already have been called in by the Scottish Executive, there is no question of bias. Surely the Executive should be able to deal with applications in the first instance, in the same fashion that local authorities deal with other applications.

In paragraph 10 it is noted that only the proposal which was considered by the Planning Authority and for which permission is refused must be considered in the appeal. This is supported. Otherwise parties are arguing about a moving target which has not been the subject of full consultation.

North Lanarkshire Council: Option 3 is preferred in which each case would be considered on its own merits, although it is acknowledged there would need to be some criteria set. It is also suggested that there could be more use made of hearings and that in the questionnaire to both parties, the hearing should be the second option with the public inquiry as the final option, with a justification required as to why a public inquiry was necessary and a hearing would not suffice.

Orkney Islands Council: To best address the issues involved, and establish the most appropriate forum in which to consider these issues, the 3 options to determine whether an inquiry would be required have been considered. It is our view that if criteria were laid out by Ministers to decide whether an appeal would be considered by inquiry, hearing or written submission, added clarity would be given to both appellant and local authority, and would negate any arguments between the two.

Perth and Kinross Council: The experience of officers echoes the Scottish Executive's concerns that too

much time and resources are being take up by Public Local Inquiries considering relatively minor, or straight forward issues which could be adequately dealt with by way of written submissions. Therefore in the interests of speed and efficiency Option 1 is supported. The criteria should however be published and the subject of an initial consultation exercise.

Renfrewshire Council: Yes. Option 3 is preferred subject to the Scottish Ministers publishing criteria against which representations would be judged.

Modification of proposal at appeal (para 14): This is a welcome reinforcement of a general principle as increasingly appellants and their agents seek to modify the proposal which is at appeal. To allow such modifications is anti-democratic and prejudices the right of individuals and groups to object.

South Ayrshire Council: The use of indicative criteria is a useful starting point to deciding whether a case would merit consideration at Inquiry, but with the agreement of both parties, there should still be flexibility to allow cases which do not meet certain criteria, to be heard at inquiry. (ie combination of option 1 and 3).

South Lanarkshire Council: Yes, Option 3 is the preferred option but it would be useful to have criteria as outlined in Option 1.

West Dunbartonshire Council: Parties should not be able to request a public local inquiry without good reason i.e. there should not be an automatic right. If neither party wants a public local inquiry, then an inquiry should not be imposed by Scottish

Ministers. If one party is keen to be heard, then there should be clear criteria which offer guidance on whether a public local inquiry, a hearing or written representations is the appropriate way forward. These criteria should take account of the likely complexities of the issues and the extent to which value can be added to arguments by allowing oral presentations and cross examination.

Modification of proposal at appeal (para 14): Although there is no specific question in relation to paragraph 14, the intention to reinforce the principle that only the development considered by the Planning Authority may be reviewed on appeal is strongly supported.

West Lothian Council: It is felt that the right to a planning appeal inquiry is further qualified. This will minimise appellants "loading" their presentation with senior legal representatives and consultants and will hopefully minimise the adversarial aspects of appeal and the resultant time and costs. Option 1 is preferred as it allows the Executive to be a more neutral assessor of the case where the request for an inquiry could be based on national or regional issues or complex matters. Options 2 and 3 may still lead to lengthy case making against what are felt to be unnecessary inquiries.

Western Isles Council: Of these, Option 2 appears to offer the best balance between speeding up consideration of matters of fact and simplicity and providing a forum to argue and debate matters of opinion and complexities. Although I am inclined to favour Option 2, but it should not be lost that the system as it exists at present offers more opportunity to every party to an appeal to have their say. All of the three

Options put the Scottish Executive Inquiry Reporters Unit (SEIRU) in a position to judge what should be given as oral evidence. By way of example, SEIRU could say in the case of an appeal against refusal of a telecommunications mast, matters of impact on public health are well documented, scientific and do not need to be made the subject of oral evidence. Local residents who may have objected to the mast would be able to submit all their arguments in writing, but they may feel deprived of a platform to air the strength of their concerns. On balance, I consider Option 2 would still require openness; fairness and impartiality and that the benefits it offers in speeding up the process outweigh any concerns over lack of opportunity to verbalise deeply held opinions. Such opinions could still be submitted in writing.

Other LA organisations

COSLA: There is a balance to be drawn between the need for transparency and the need to speed up the planning enquiry process. COSLA would therefore suggest a combination of Options 2 and 3. In addition, it would be important to provide a clear set of criteria against which decisions can be seen to be taken. There may also be value in this combination being extended to deal with the widening right of appeal issue.

Public Bodies

Council on Tribunals, Scottish Committee: Members understand the objective of reserving the planning inquiry process for cases where oral examination is required to resolve complex and important arguments. However the right to appeal is fundamental and changes should not be introduced which could erode the right

of an individual to be heard and to advance his or her views. Distinction needs to be drawn between a large corporate developer with unlimited resources at its disposal and an individual without access to such resources. Option 1 appears to be fairly harsh and Option 3 could be a disadvantage for an unrepresented appellant who wants to make a simple objection to a planning proposal. My Committee considers that Option 2 offers the most flexibility.

Royal Fine Art Commission for Scotland: RFACFS considers that there is a case for qualifying the circumstances under which a PLI can be requested to those cases where the presentation of oral evidence is essential to resolve complex arguments. In many cases, the PLI process offers no benefit over a properly presented and argued written submissions case.

Scottish Enterprise: Option 2 is best. Too much time is taken up at inquiries with fairly minor issues. Inquiry time should be reserved only for the discussion of major or 'unresolved' issues with all other issues being dealt with by a hearing or an exchange of written submissions.

Scottish Natural Heritage: Of the three options for change, there appears to be little difference between Options 1 & 2: Option 3 is a potential consequence of either Option 1 or Option 2. That said, we agree that it would be helpful to develop guidelines for assessing the appropriateness of holding an inquiry and regard the matters suggested in paragraph 18 as an appropriate basis for criteria. We also consider that it would be helpful if the considerations taken into account in deciding whether or not an appeal will be accepted in the first place

should be made explicit. In short, what is required is:

- a statement of the considerations to be taken into account in deciding whether or not an appeal will be accepted; and
- the development of a set of criteria to help determine whether an appeal will be decided by a PLI, a hearing or by exchange of written statements.

Appellants and planning authorities could of course have the right to argue for a PLI, while Scottish Ministers would retain the right to dismiss their arguments.

Scottish Environment Protection Agency: We have no strong view on this matter, although Option 2 would appear to represent an appropriate balance.

The Development Industry

Bett Homes: Our preference would be for Option 2: Giving the Scottish Ministers the right to decide on what aspects should be considered by Oral evidence and by Written Submission, this would leave the key aspects to be debated at the inquiry, minimising costly inquiry time. The caveat which we would place on this is that it needs to be established at the start and if during the exchange of documents/precognitions a different interpretation is unearthed then there would have to be the option to review it as Oral evidence.

Homes for Scotland: There is little support from Homes for Scotland's member companies for any alteration to the current system. With regard to the processing of planning applications for residential development, the appeal

system is clear and easily understood by practitioners. The rights of an appellant or planning authority to seek an appeal should not be constrained further. It is accepted that there may be scope to introduce an intermediate stage for small-scale householder appeals and in that regard, Homes for Scotland would not seek to resist the proposal outlined in Option 2.

MacTaggart & Mickel Ltd: We would be concerned about the ability of Scottish Ministers to choose which they felt is the most appropriate mechanism. It should be the appellants right to choose which mechanism, whether it is written submission, informal hearing or public inquiry. Perhaps to avoid unnecessary inquiries, a solution might be to discuss with the appellant the various types of appeal perhaps producing a recommendation on the appropriate mechanism for the appellant to decide. In terms of local plan inquiries, it is our experience that it is the delays caused by local authority that have a 'knock on' effect to the Reporters Unit's programming.

Stewart Milne Holdings: There is no good reason for further qualification of the right of appeal by the appellant or planning authority and we would therefore suggest there is no need for any alteration to the current system.

Taylor Woodrow: TW do not support changes to the current system. Significant investment is made on sites, and we are subsequently concerned that decisions, which rest upon unsubstantiated statements or assumptions, and not tested in a proper manner, may prejudice the merits of a site in the longer term. For clarification, TW strongly resists the suggestion that Hearings can replace proper Inquiries. Focussed cross-examination is an essential part of the

appeal process, in order to establish the robustness of parties evidence. In our experience, hearings do not allow the proper test of issues.

Walker Group (Scotland) Ltd: The inquiry process is expensive and can incur costs which run to tens of thousands of pounds (£00,000's). This is not something which appellants are likely to enter into lightly. However, we believe that the right to test the evidence at an inquiry should not be fettered in any way.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: We accept that there should be limitations on the number of inquiries; however, we are concerned that, in moving to streamline the inquiry process, the criteria for oral evidence in appeals would be reserved for "major" developments. This may rule out oral evidence in appeals by small businesses, requiring these appeals to be settled solely by written material creating further bureaucracy for these businesses. We would suggest that the criteria suggested in Option 1 should take into account the points outlined above. Alternatively, Option 2, which proposes considering each case on its merits, would be preferable. However, we accept that this option might lead to further uncertainty and delay and would not be in keeping with the general need to streamline the process.

Marks and Spencer plc: The Company does not agree with the Executive that there should be a qualification of the right to inquiry or hearing. The ability of decision-makers to exclude a cases from giving oral evidence may result in the loss of

fairness and therefore public confidence. Further, the professionally informed appellant will best placed to decide how an appeal is determined, both because they (with the LPA) will have the best understanding of the issues of all parties and they will also have a full understanding of the merits and demerits of the different processes.

Sainsbury's: Qualifying rights will help make the Inquiry system more consistent and transparent – but it is important that Sainsbury's do not lose the right to argue their case, if they so desire, at an Inquiry – and choose the key issues they feel are the most important to help them win their case.

Option 1 – danger of centralising the process away from local knowledge and circumstances. Not supported.

Option 2 – will help concentrate minds on the key issues. But again – centralises decisions away from those involved in the process. Not supported.

Option 3 – puts the onus on the appellant / LPA to justify why an Inquiry may be required. Will allow Sainsbury's to justify their case from the outset. Supported.

Scottish Coal Co Ltd: Definitely do not support Option I. The means of determining should rest primarily with the 2 main parties and by involving them directly in such decisions, this should also facilitate greater cooperation in resolving less contentious issues. Options 2 and 3 both acceptable.

Scottish Council for Development and Industry: There are difficulties with all of the above options. The first, whilst it may have some benefits as regards the speed of the process,

clearly restricts the right of appellants to select the method by which they wish the appeal to be heard. Whether it would be possible to sensibly develop a catch all set of criteria which the Executive could use to reach a decision is also debatable. Option 2 may have some benefits but again could potentially limit the rights of the appellant to develop their case by a method of their choosing. However, it may be an option for smaller scale developments as opposed to the major appeals which potentially challenge items of policy in relation to housing and industrial land requirements for example. Option 3 is likely to have the major drawback of elongating the timescales of the process substantially and has not met with a positive response from SCDI members consulted. In summary the current view is that the system as it stands is robust and that the rights of an appellant or planning authority to request an appeal should not be greatly constrained. However, there may be some scope for elements of Option 2 to be applied to smaller scale developments.

Scottish Landowners Federation: SLF favours Option 3 and would not recommend adoption of either Option 1 or Option 2.

Tesco: Tesco feel that none of the available options are acceptable and everybody should have the right to be heard at an Inquiry if they so desire. This is particularly appropriate for major developments such as those we are involved in. It is, however, equally applicable to smaller proposals for example, delivery restrictions, opening hour restriction appeals which is where the Minister might, if the opportunity arose, seek to deal with it by written representations and not an Inquiry. Our concern is that this option does not

fully explore all of the issues in the way that cross examination can. Hence Local Authorities can present evidence that is somewhat unsubstantiated, particularly where it relates to aspects such as noise and loss of amenity. Tesco believe the existing process is acceptable and appropriate.

Professional organisations

Law Society of Scotland: Sub-Committee agrees that it is a question for the Scottish Executive to answer as to when a hearing or inquiry should be suitable for oral hearing. Clear guidelines should be proposed and consulted upon prior to any change in this regard.

RTPI: As indicated in relation to further questions below we fully support extended discretion to Ministers and Reporters in the conduct of proceedings, provided there are adequate safeguards for ensuring that an appropriate level of scrutiny is given to all material evidence. We do not consider that any one option provides the best solution but a combination of the three may do so. This might work as follows: -

- a) Any request for an inquiry or hearing must be supported by the party concerned in a statement which addresses the published criteria and which identifies those issues which particularly need to be considered at inquiry or hearing (option 3)
- b) Ministers to decide on the procedure to be used, irrespective of a request. The decision to be based on published criteria (option 1).
- c) Ministers will decide on the issues to be dealt with by the respective procedures.

In proposing this approach, however, we would make three points: -

- Ministers and Reporters must consider carefully whether they have sufficient information concerning any case before deciding which process to use for any issue.
- All appeals and call-ins should involve a form of declaration to Ministers with regard to local authority interest in the case.

Scottish Planning Consultants

Forum: The SPCF have reservations in this respect. Even setting aside the requirements of the European Convention of Human Rights, we are concerned that qualified appeal rights are a difficult path to tread. This will threaten the values of fairness, transparency and openness that must underpin the system. All the options outlined for qualification are open to interpretation (and political abuse). There will always be exceptions to any criteria established that will erode qualification. The cumulative affect will be to establish the right to appeal through case experience. This will add further complexity to the system and undermine objectives relating to certainty and clarity of process. The SPCF is concerned that qualification will increase time taken to make a decision as it introduces anew hurdle in the appeal process. This will increase costs. The SPCF object to qualified appeal rights.

Scottish Planning Law and Environmental Law Bar Group:

The Group counsels strongly against any attempt to qualify long established rights of appeal. To do so would be to fly in the face of the new Human Rights culture which has grown steadily in momentum since the introduction of the Scotland Act and Human Rights Act in 1999 and 2000 respectively. We consider that any of the three options if implemented would

result in legal challenges being brought through the courts by parties denied a hearing of their choice. We understand that it is not proposed to go down this legislative route in England. The planning system nationalised the authorisation of development in 1947 and placed it under State control. We consider that it would be regressive in the extreme if the State itself were now to introduce legislation which would affect the individual's right to be heard in relation to that regime by restricting his choice of representation. At present, the mode of inquiry generally resolves itself as a matter of common sense depending on the size of the development and the number of issues raised. It has not been the Group's experience that oral evidence has been heard at an inquiry in respect of a relatively small scale development. On the contrary, where they have been held, it has been apparent that the mode of inquiry was appropriate to the development proposed. To qualify the right to a public local inquiry would therefore be a significant curtailment to a freedom currently enjoyed at present but would do nothing to address any problem of significance which exists in relation to that right.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS:
Modification of proposal at appeal (para 14): ... [W]e agree with reference to paragraph 14 of the Paper that only a proposal considered by the planning authority should be reviewed on appeal. This is the legal position in any event and we are surprised that there should be any debate on the matter.

The issue that underlies Question 3 is not (unlike many others in the Paper} a matter of administrative convenience

but a fundamental right. ... The legal position (by reference to the provisions detailed in footnote 4 to the Paper) of allowing an appellant or a planning authority a hearing and the practice of holding an inquiry if a party so desires is in our submission entirely appropriate. In particular, developers upon whom business depends (and it is business that generates economic growth and employment) who are aggrieved at a decision of a planning authority may wish to test that decision in a public forum and by cross examination. They do not wish in our experience to be denied that right by a decision of a civil servant, no matter how well intentioned. Paragraph 15 of the Paper seems to carry an implication that very small scale developments *per se* will not justify an inquiry whereas major development proposals will. We would respectfully submit that the scale of the development is not necessarily related to its complexity or, more importantly, to its importance in the mind of a landowner in whose favour the late lamented presumption in favour of development no longer applies. Further this office has several examples in the last 2/3 years where both parties to an inquiry wished to proceed by written submissions and where, for reasons wholly unexplained at the time and largely unjustified by subsequent events, Scottish Ministers resolved to take the matter to inquiry. Nor in practice is any change necessary because, as is clearly implied by paragraph 8 of the Paper, each of the methods is perceived to have its own advantages and disadvantages such that fewer than 10% of appeals currently go to inquiry. It follows that we cannot support any of the options posed by the question. To answer the last part, there is no justified objective for which any of those options or any other suggestions are necessary.

Maclay Murray Spens: We do not believe it is necessary to restrict the right of an appellant/Planning Authority to decide how they wish their appeal to be determined. In our view, the appellant/Planning Authority will be the parties who will be aware of all the relevant issues and are arguably best placed therefore to choose which procedure will be most appropriate in each circumstance i.e. a hearing, an inquiry etc. Further, given the fact that the inquiry procedure tends only to be used in a minority of cases the existing right of an appellant/Planning Authority to choose how they wish an appeal to be determined should not be restricted. Specifically we do not agree that the matter requires arbitration by Scottish Ministers.

Paul & Williamson: We have no strong views about removing the right to an inquiry provided the parties can make representations before a decision about this is made.

Modification of proposal at appeal (para 14): We agree with para. 14 of the Consultation Paper that an appeal should consider the proposal that was before the planning authority. However, it must be in everyone's interest to allow an applicant to alter a proposal to meet planning objections made to it by the planning authority or by others without having to start again. In other words, an appeal should be able to consider an improved proposal. This requires a balance to be struck between the benefits of certainty and the overall objective of securing the best outcome. It should also be made clear that an applicant can 'downsize' a proposal without having to start again.

PPCA Ltd: All of these matters are relevant and, as noted below,

appellants have a responsibility to assist in ensuring timeous responses and to avoid inquiry delays. However, there is an overriding need to set the appeal process afresh into a well-understood context so that all parties are aware of the 'rules'. Briefly these should be: s.25 set in the context of the inherent right to develop land; that the appeal process cannot be divorced from political decision; and that the SPP1/House of Lords tests for s.25 should be clearly stated as the basis for assessing the public interest. Provided that the development plan was up-to-date and that local plan inquiry Reporters' recommendations were binding on authorities, there would be less pressure to bring matters to appeal in the first place. However, there should never be any question of a right to appeal and the right to scrutinise the decision which led to it at a public inquiry or hearing. There would be no objection to Scottish Ministers deciding whether a public inquiry or hearing was more appropriate, but the system should include for representations on the decision. When lodging an appeal, parties could be asked on the form to state a preference and give reasons. The hybrid approach in Option 2 is not unreasonable provided that the principal part of the case is conducted by way of inquiry or hearing. Paragraph 19 should be expanded to deal with applications referred to Scottish Ministers as departures or because of local authority land or other interests. It is suggested that where a call-in results, there should always be an inquiry or hearing.

Robert Drysdale Planning Consultancy: We would be wholly opposed to the imposition of written representations in circumstances where the appellant wishes to have his case heard in public. In particular denial of the right to a public inquiry means that

the appellant is denied the opportunity to cross-examine witnesses for the planning authority. There are often circumstances in which the opportunity to cross-examine council witnesses is absolutely crucial to the presentation of the appellant's case. In addition it is considered that Option 2, which envisages splitting evidence into parts to be considered at hearing or inquiry and parts to be considered by written submissions, would lead to intolerable confusion. In any case only 10% or so of cases are decided by inquiry, which does not seem to suggest an abuse of the right to opt for an inquiry.

Shepherd and Wedderburn: The first question we would raise in response to this question is the extent to which there is considered to be any abuse of the current method of determining which process to embark upon. Is there any evidence to suggest that parties are requesting inappropriate processes for the nature of the subject matter involved? It is our general experience that we have not been instructed or appeared at any inquiries which we consider inappropriate for that process. However, we have conducted hearings where the process might have more appropriate been undertaken by inquiry. We consider that there is a fundamental difficulty with hearings where there are multiple parties. Simply put, our experience has been that there has not been as full and fair disclosure of cases and that it has proved difficult to hold an orderly meeting with numerous parties. We consider that certainly is an issue in considering appropriateness of hearings. We now turn to deal with the individual options.

Option 1 We think the fundamental difficulty with this approach is the sorting of the indicative criteria. Simply put, the public will perceive that there is a two-tier system, one

which deals with "more important" larger inquiries and that they are left with a lesser quality process which they are obliged to utilise. A relatively small planning matter may be very important to an individual although others in the planning system may see it as a smaller issue. This is particularly so in householder applications which many in the planning system may perceive to be minor and the effects limited. However, the consequences of the decision for the individual is maybe very significant. It also has to be remembered that the determination of a planning application is a determination of a civil right in terms of the European Convention of Human Rights. We do not wish to embark upon a significant argument about human rights but there may well be an argument about a discrimination in the ability to have the right determined if mandatory rules are introduced.

Option 2 We note the option of having hybrid cases whereby parts of the process is undertaking at inquiry and other parts by exchange of written submission. We wonder whether this is a truly efficient method of resolving issues. We would suggest that once an inquiry has been called, it may well be more efficient to deal with all the evidence in relation to matters by way of evidence rather than the hybrid system. The other difficulty which we foresee is that effectively the decision maker, at the particular point in time is having to ultimately take a decision on issues relating to the merits of the application without necessarily knowing the full implications of them. We consider that it would be particularly hard to determine which issues might be dealt with under which procedure.

Option 3 In the event that any of the options are considered, we consider that Option 3 has more merit than

Options 1 and 2, although again we are uncertain on the basis on which the distinctions would be made. It should be recalled that the introduction of the planning system effectively nationalised development control. It is against that background that certain rights were given to individuals regarding their involvement in the process and in particular the right to be heard before an independent party. We would suggest that, unless there are overriding reasons, that right to be heard should not be lost unless there is clear justifiable evidence about an abuse of the current system.

Community Councils

Broughty Ferry Community Council: Agree that the right to a planning inquiry could be usefully further qualified and the oral examination component used more selectively. Money and time could be saved. Any changes should be compatible with the possibility that third-party right of appeal might one day become a reality.

Craiglockhart Community Council: Qualifying the right to a public inquiry appears to be justified as it is not always necessary to go beyond written representations.

West End Community Council (Edinburgh): No strong preference.

Voluntary Organisations

Architectural Heritage Society of Scotland: The Society recognises that rights to planning appeal inquiries must be curtailed for operational reasons. Option 3 is preferred; it is notable that such a procedure would be suited to a system wherein third-party appeals are allowed. While Option 1 might be acceptable, this would need

to be qualified by consideration of the terms of the 'indicative criteria'. We are concerned that terms that would satisfy the variety of interests involved might prove either too vague or too onerous.

Ferryhill Heritage Society: Not bothered as long as community interests are high on the agenda. After all they have to live with the decision.

Friends of Glasgow West: Option 2 because a "hearing" which I assume is a local planning committee operation, is not included.

Friends of the Earth: Regardless of which option is preferred we are concerned that this proposal would not make the process more participative. It seems that only the developer and the Council would be asked their views. We have had some uncomfortable experiences when a Local Authority has recommended approval and the Planning Committee have gone against the recommendation in line with public views, only to find that the council officials will take no part in the appeal process. This leaves the general public effectively unrepresented. If the planning process is to be inclusive and participative, then at some point in the process the objectors should be asked their views also. Either Option 1 or Option 2 could be amended to support this objective, by adding objectors to the list of people to be consulted. In our view Option 3 is not inclusive enough at all.

Historic Environment Advisory Council for Scotland: HEACS believes strongly in reducing the adversarial approach to inquiries, and whilst it has no preference for any of the particular options set out it would endorse the principle of a low-level approach initially, through mediation,

as suggested in Question 20 and the answer given to it.

Saltire Society: Option 2 is probably preferred, although it could lead to dissatisfaction with the decision to restrict oral evidence lying solely with the Minister. Should his decision not be subject to consultation with the parties?

Scottish Civic Trust: Firstly, the Trust is concerned that the third parties have no right with any the three options. We would therefore recommend that, as a minimum, Scottish Ministers are required to consider the comments of third parties in any request for an inquiry, and give weight to those views in any further consideration to conduct a full inquiry or otherwise.

Option One -It is in the spirit of many of the suggestions in this consultation to increase the amount of up-front debate. This option imposes a very clear top-down process. Whilst we understand some appeal systems in other countries operate like this, the Trust does not believe that it is appropriate here.

Option Two -Whilst this option enables greater flexibility than option one, it is still an imposed process. We also have some concerns that Scottish Ministers determine the issues to be considered at an Inquiry, leaving others to a hearing or written evidence.

Option Three -The difficulty with this option is that it introduces another layer of bureaucracy in the form of additional representations. It is not clear if third parties/objectors would be permitted to participate in this process, but in the spirit of *Getting involved in Planning*, they should. This then introduces an additional layer of debate where none existed previously. If these options were coupled with our suggestion to establish an environmental court, then it would

make sense for the Court to be given full powers to decision that approach taken, and indeed even if an appeal by any mechanism should be considered. The Trust also believes that there should be a mechanism for frivolous and vexatious appeals to be dismissed. Firm and clear guidelines would be required. There is some evidence that developers seek to marginalize the planning application phase, and appeal at the earliest possible moment, on the grounds that it is perceived as easier to get something through an appeal than a planning committee (with the public pressure attached to it). In the frame of the current situation, Option Two is perhaps most similar to current practice, although we acknowledge the level of flexibility available on option three is positive.

Individuals

Collins: Absolutely not.

Connal: I recognise the arguments. I have seen this operating both ways. I have seen developers insisting on inquiry where, on the face of it, matters could have been satisfactorily dealt with in writing. I have also seen local authorities extracting concessions by telling developers that if they appeal they will insist on inquiry at great expense. I have seen schemes not proceed because local authorities have so insisted and developers have declined to accept that expense. On balance I favour the status quo. It may not be as bad as it sounds. The assumption seems to be that if one says "inquiry" that means a very long and elaborate affair. I have not checked the most recent statistics but many inquiries are relatively short (a day or two). The difference in time and expenditure between an inquiry of that length and an 'inquiry' conducted by extensive written submission plus site

visit may not be as great as at first sight appears. The Executive should also bear in mind that (both in Scotland and in England and Wales) the success rate for appeals at inquiry remains significantly higher than those dealt with by other methods. It seems unlikely that only the best schemes go to inquiry. That therefore suggests that the inquiry system is better than others -at least to some extent -at ascertaining the correct position. I do not favour written submissions about this. This would give rise to another layer of procedure (with prospects of judicial review!). Some of the arguments may be somewhat difficult to state in writing. For instance on quite a number of occasions it has been suggested to me that the evidence of Officer X who is the main witness and who says on paper that his case is based on such and such material can only really be exposed by careful oral examination. For a variety of reasons that kind of argument would be best not aired in exchanges of correspondence. I am not necessarily convinced that there is as much concern about this topic as has been suggested. I do not recall any instance of attending an Inquiry when, once the issues were explored, either party felt that the inquiry had not been an appropriate forum. If concern remains, one possibility might be to consider an extension of the rules on awards of expenses. Unreasonable behaviour could extend from dealing with unnecessary appeals to unnecessary insistence on Inquiry.

Modification of proposal at appeal (para 14): It may be dangerous to generalise about these matters. The more emphasis is placed on discussion and endeavours to reach agreement, the more parties are encouraged to re-think their respective positions in light of material emerging from the opposition, the more likelihood there is

that some alteration in the scheme may emerge. This ought to be encouraged, because otherwise there is no incentive for parties to depart from entrenched positions. If the inevitable result will be that a fresh application has to be lodged and the whole process started again that cannot be good for anyone. Reporters already operate practical rules to deal with these situations, particularly where all parties of substance who may wish to have an input have been involved or can be informed. A sensible pragmatic approach holding the balance between the benefits and disadvantages is operated at present.

Called-in applications (para 19): The circumstances in which applications should be taken away from a local authority for determination is a matter of considerable controversy. In my view this ought to be done more often in order to retain public confidence in the system. There is also an on-going debate as to how that whole process could be made more transparent. These issues are not the subject matter of this Paper.

Cramond: Yes -inquiries must be reserved for those relatively few cases where the subject matter definitely requires oral examination (note that I avoided the word "evidence"!). My preference would be for option 2 because I think it would be difficult to produce "indicative criteria" and because each development proposal is unique and much depends on the circumstances of the particular case.

Hall: Yes, to a certain extent:

Option 1: Yes, so long as "indicative criteria" do not become specific rigid conditions. It is essential to allow a degree of public-interest flexibility in decisions. To assist in promoting open government, it might be made a

statutory requirement of Indicative Criteria (or Guidelines) that a full and transparent explanation be required and published when any are NOT followed.

Option 2: No. Too strong. Risk of too much political influence which could be gerrymandered to suppress local opinions.

Option 3: Yes, in part. First sentence should be cut-and-pasted into Option 1. Second sentence is then redundant.

Lindsay: Option 3 is preferred. It is not unreasonable to require parties seeking an inquiry to demonstrate why an inquiry is necessary. Scottish Ministers could then decide based on the preliminary evidence and subsequent cases made. The approach wherein an oral examination is reserved only for complex or significant issues (with the straightforward matters addressed via written submissions) generally works well for Local Plan inquiries.

Roberts: Option 1 needs to be revisited in terms of (publicly?) stated indicative criteria, particularly when there are issues raised by third parties objections. Presumably this will be reconsidered in next year's proposals to modernise the planning system.

Smith (Ralph): I would confine my comments to question: 3; which asks "whether the right to a public inquiry should be "further qualified"". At its most basic, the planning system is a form of nationalisation of private property. The use of private property is controlled by the state under the planning system. Since the inception of the planning system in the United Kingdom, the constitutional safeguard has been the right to a public inquiry. This is the only way a planning authority is subject to real and serious scrutiny; only by

this method is the planning authority required to defend its policies and decisions in public. The discussion paper does not seriously attempt to make the case for qualifying the right to public inquiry. Nor does it appear to recognise the great improvements which have been made in recent years in streamlining the system. Para. 15 implies that public inquiry is an unnecessary means to determine "very small scale developments". I should be interested to have some idea as to the time taken on inquiries into such developments, relative to the system as a whole. Small developments can of course attract important issues of principle, and it would be interesting to see what the Executive's arguments actually are. The discussion paper should also be candid as to whether there is a cost cutting exercise in the background. If there is, what assurance can the public have that the means of selection of those cases deemed "suitable" for public inquiry would also be driven by budgetary constraints? I think it is inconceivable that England would abolish or qualify the right to public inquiry. In either Scotland or England there would be inevitable challenge to the House of Lords on human rights issues which, I would have thought, should have every possibility of being successful. How can proceedings be fair when an interested party is deprived of the opportunity to cross examine a contentious witness? Transparency equals public scrutiny. Suffice to say that I believe the three options referred to place the balance of power too far in favour of the state over the individual. Nothing in them will improve the quality of decisions. Paradoxically, at a time when there are proposals to increase

third party rights, the loss of the right by appellants and councils to a public inquiry would serve only to reduce third party participation. Given that SEIRU does not have formal independence from Ministers or the Executive, I would have thought it all the more important that the right to public inquiry is retained and unqualified.

Modification of proposal at appeal (para 14): I also have some concern regarding para. 14. It is intended to reinforce the principle that "different" proposals may not be considered on appeal. Experience shows that development proposals are often modified, altered and improved in the course of an appeal. This is a natural part of the process. Compromises are reached and this is reflected in alterations to the development. I feel that difficulty could arise in seeking to determine what is meant by "different", and it would be unfortunate if the system were to lose its present flexibility. There is certainly a risk of time being spent in seeking to resolve procedural issues rather than the merits of the case.

Smith (Robert): Where a group of people's, or indeed an individual's, rights may be affected by a proposal for development on a local area, that group or individual should have a right of being heard at a public inquiry. Local authorities do not know the nuances that affect a small local area. I do not think that the same should necessarily apply to national type developments, although they may overlap on occasion. Having stated that, of the 3 options presented I would support Option 3.

Stark: We must tread warily here, so as not to be open to the charge of putting the administrative convenience of a centralised body before local

interest and access to justice. By putting local views first, Option 3 seems to get closest to avoiding this trap.

Watt: Option 3.

Question 4 Where an appeal is lodged against non-determination, should the planning authority be required to indicate whether they would have granted or refused the application within, say, 2 weeks of the appeal being lodged?

Local authorities

Aberdeen City Council: No objection in principle but the timescale of 2 weeks is very tight. Factors such as Committee cycles, individual circumstances, sensitivity of issues etc often prevent timeous decisions being taken. In Aberdeen's case an Appeals Panel meets on an 'as required' basis (where appeal relates to a decision taken against officers recommendation or a deemed refusal) specifically to enable the Council's position to be established. However, depending on when notification of the appeal is received it can prove difficult to convene an early meeting of the Panel. In concluding 4 weeks would be more realistic. It is also important that parties be able to address any new guidance which may have been issued since the decision to refuse was taken, if relevant, to the subject matter of the appeal to ensure the reporter is addressed on all material issues.

Aberdeenshire Council: A time limit is certainly required in this respect, but two weeks is quite unrealistic. For the Planning Authority to give an indication of what the decision would have been had it been permitted to determine the application requires development control officials to

prepare a report for a committee which may only meet on a three weekly cycle. The minimum response time would depend upon what time in the cycle a non-determination appeal was intimated, and in Aberdeenshire, even four weeks would be difficult to achieve in many cases. It is recommended that the time limit should be set at six weeks. The majority of non-determination appeals relate to applications where the Planning Authority has requested and is awaiting essential additional information in terms of Part 3 Article 13(a) or (b) of the Town & Country Planning (General Development Procedure)(Scotland) Order 1992. It is further recommended that in such cases, the failure of the developer or his agent to provide critical additional information is recognised in some tangible way in the appeal/inquiry process.

Angus Council: In general terms I think this would not be unreasonable. However, where the application is particularly complex it may be unfair to require the Planning Authority to give a decision within such a short period of time.

Argyll & Bute Council: Whilst this on the surface seems appropriate and achievable, if the case is close to a final decision, however, it may not be possible if key information has not been forthcoming from an applicant (ie access, junction improvement, parking etc,) which would have a key bearing on the final decision. Therefore if there remains a fundamental difficulty with the application it is unlikely that a Member input or recommendation could be achieved within two weeks. Even extending the period to four weeks would not fundamentally alter a "lack of information" situation other than to advise refusal on the basis of

"lack of information". Due to the suggested time scales, such a change would require a change in delegated powers, whereby the Chairman, Vice Chairman and Local Member would need to be brought into the decision making process. On balance, I do not consider that there is a case for requiring the Planning Authority to indicate what their decision would have been as this could lead to a number of "lack of information" responses. There is also a case for considering costs against an appellant, if he has been formally required to provide additional information and failed to do so. The failure of the applicant to supply all the information to determine an application could be considered as unreasonable behaviour as the requested information could have avoided appeal in the first place.

City of Edinburgh Council: CEC considers that this is an unreasonably restrictive requirement for a planning authority. An appeal against non-determination could be made whilst a considerable amount of analysis of consultee and other material remains to be completed. Formal Committee endorsement will generally be needed for any statement of "what the Council would have decided". This will require a Committee report and be tantamount to the preparation of the planning authority's statement of case. Completion of this within a 2 week period is impractical. CEC would recommend a period of at least 6 weeks.

Clackmannanshire Council:

Development plans: No comments (relevant only to DC PLIs).

Development control: No. The planning authority may require significantly more time to determine an application, as key information (such as the views of statutory consultees for

example) may not be available to the Council at the point of an appeal being made against non-determination. Under these circumstances, without all material information required to make a reasoned decision being available, it would not be reasonable to expect the Council to make a statement of how they would be minded to determine the application. Compelling the planning authority to do this could: Undermine their case at inquiry. The planning authority could, however, choose to include their view in their statement of case precognition.

Dumfries & Galloway Council: For Local Plans / Structure Plans the authority should indicate whether it considers a particular objection can be considered more or less independently or it is relevant to the main strategy of the Plan.

Dundee City Council: Two weeks is rather a short timescale given that most authorities would require to report to Committee on this and allow for varying schedules.

East Ayrshire Council: The suggestion that the Council should give an indication, within 2 weeks of an appeal being lodged, as to whether a particular application would have been granted or refused is considered acceptable although it would generally be exceptionally difficult to place any item on the respective committee agenda within such a short timescale. East Ayrshire Council always tries to provide the Scottish Executive with a formal view as to whether the development proposal under appeal is likely to have been approved or refused. This is usually done by presenting the application to Committee for consideration, requesting a view as to how the Committee would have dealt with the

application had it been in a position to make a decision on it. This view is then sent to the Executive. As things stand at the present, these views require to be submitted to the Executive within 28 days of the appeal being lodged and great difficulties are currently experienced in obtaining the Council's views in this time period. A further reduction in this time period to two weeks would be totally impractical and extremely difficult to achieve.

East Dunbartonshire Council: Such a proposal raises a range of difficulties. With large complex or contentious applications the Planning Authority would need to undertake widespread consultation and possibly detailed technical appraisals involving specialists. Until the conclusion of this work the Authority would not be in a position to indicate whether the development was acceptable or not. Similarly if the development were to be acceptable there might not be sufficient time to identify all the conditions to be attached or if unacceptable to give sufficient detail to the reasons for refusal. The need to meet the timescales involved in the democratic process (by putting the arguments before a Planning Board could also be constrained by this "rushed" process). Such a proposal should therefore be resisted.

East Lothian Council: It is felt that a two-week deadline is far too short. It is clear that the Planning Authority must secure its position to enable it to issue the Outline Statement of Case that is generally required within 8 weeks of the relevant date. It is felt that this is a far fairer more reasonable timescale.

East Renfrewshire Council: The timescale proposed is unrealistic given the workload and resource demands facing most planning authorities. In

some circumstances such a determination might require a report to Committee. A 6 week period is more realistic.

Falkirk Council: It is a reasonable expectation that councils should come to a view on any application where an appeal is lodged against non-determination. However, 2 weeks is not a realistic timescale bearing in mind such items would have to be reported to the Regulatory Committee. It is suggested that 4 weeks is a more realistic and practical timescale.

Fife Council: The rationale behind this suggestion is understood and accepted but there may be practical difficulties for planning authorities in obtaining the necessary Committee approval of the Council's stance (unless such decisions are delegated to Officers). A four week period may be more realistic. The Planning Authority should be able to determine an application that is the subject of an appeal against non-determination after the appeal has been lodged. This would provide the PLI with a clear statement of the view of the planning authority on the proposal. A favourable outcome for the appellant could result in the appeal being withdrawn and the resultant savings in time and effort.

Glasgow City Council: City authorities, like Glasgow, have to deal with complex applications of a substantial nature (in terms of both scale of development and investment as well as possible subsequent impacts). The issues surrounding such applications can be compounded when the applicant has provided inadequate information (e.g., in respect of a Transport Assessment or Retail Impact Assessment). It is totally unrealistic to expect the planning authority, in all cases, to have determined an

application within the timescale. In the circumstances of deemed refusal, it is unrealistic to require the planning authority to reach a definitive decision on complex applications within the 2 week period proposed. A period tied into that for the Statement of Case would be more realistic. (see response to question 6) It is also inappropriate to further compound the problem by restricting the evidence that the authority can lead to the development plan.

Highland Council: Currently there is a right to appeal against non-determination of a planning application. The Council is not required to disclose its position until a short time before the opening of the Inquiry. It is suggested that there be placed a requirement in future on local planning authorities to indicate within two weeks of the appeal whether they would have granted or refused the application. In my opinion, the principle of full disclosure is appropriate but the time limit of two weeks is too short to be able to place the matter before Elected Members for their views. Further, it should be permissible to appeal against non-determination of an application by the Council if the applicant has failed to fully comply with an Article 13 directive requiring the submission of further information.

North Ayrshire Council: It is agreed that where an appeal is lodged against non-determination, that the Planning Authority should be required to indicate whether they would have granted or refused the application. The proposal in paragraph 18.2 of "Options for Change -Research on the content of a possible Planning Bill September 2003" is also worthwhile. This proposes that there should be a period of dual jurisdiction during which the

Planning Authority could determine an application. A period of 2 weeks to provide such a decision is completely unrealistic. Usually applications are not determined within the 2 month period because they are complex or because they require extensive consultations or expert reports. Effectively, an indication by the Planning Authority as to its view on an application will be akin to a determination. Certainly, it will be the subject of the same degree of scrutiny during the appeal process. In these circumstances, if authorities are unable to determine an application within the relevant period, it is unlikely that they will be able to determine it within a further 2 weeks. Indeed, for many authorities it will be impossible to put the matter to Committee during this timescale. For example, North Ayrshire Council's Planning Sub Committee meets every 3 weeks, and decisions require ratification at the Council meeting the following week.

Restructuring of parties' submissions and evidence in context set by section 25 of the 1997 Act (para 22): A number of important points are made in paragraphs 21 to 24, but do not appear to be reflected in any question. In particular:- Paragraph 22 - It is proposed to require all parties to structure their evidence and submissions in the context set by Section 25 of the Act (i.e. Development Plan and material considerations). It is agreed that this is a helpful way to focus all parties onto the key issues to be considered by Reporters. However, the difficulties inherent in unrepresented members of the public grasping these concepts should be not underestimated. In addition, if the issues in dispute have been focused by one or two grounds for refusal, then this approach may

open up consideration of all matters once again.

Restriction of appellants' grounds of appeal (para 25): The intention is to restrict the Planning Authority's case at the Planning Inquiry to their reasons for refusal and their view on material considerations disclosed by other parties. Our concern is that Reporters are also required to consider decisions on the basis of Section 25, and can consider applications afresh. Accordingly, it is important that all relevant Development Plan policies and material considerations are put to Reporters, regardless of whether they form part of the reasons for refusal. In addition, we believe that the problem of Planning Authorities adding reasons for refusal is an extremely limited one.

North Lanarkshire Council: There is normally good reason for non-determination, often information is awaited and this being the case, the planning authority could not come to a decision. Notwithstanding, given that the majority of such decisions would require to be taken by Committee, the timescale of 2 weeks is not achievable. By the lodging of the appeal against non-determination, the power to take the decision on the application passes to the Scottish Executive. Any subsequent decision by the planning authority therefore would be invalid.

Restructuring of parties' submissions and evidence in context set by section 25 of the 1997 Act (para 22): The paragraphs leading to this question propose that the planning authority's case at a public inquiry be restricted to their reasons for refusing planning permission, taking account of the up-to-date development plan position and their view on those material considerations disclosed by other parties, such as statutory consultees, supporters and objectors,

which have a bearing on their reasons for turning down the proposal. This restriction is considered inappropriate, particularly given the statement in paragraph 22 that "all of the material that the planning inquiry has to consider being presented in a more focussed and structured fashion directly related to the development plan and relevant material considerations as envisaged by Section 25 of the Act. Moreover, the restriction relating to the "up-to-date development plan" is unrealistic as in many cases there is no "up- to-date" plan.

Restriction of appellants' grounds of appeal (para 25): The above comments also apply to the restrictions proposed at paragraph 25.

Orkney Islands Council: In looking at appeals against non-determination and the requirement on planning authorities to indicate whether they would have granted or refused the application within two weeks of the appeal being lodged, it is our view that in many circumstances non-determination comes as a result of lack of resources within the Department. The suggested requirement would add yet another layer of bureaucracy to the process, which would in turn create more work for the Council.

Perth and Kinross Council: It is our practice in such cases to ask the Council to endorse the officers view and therefore our approach to the appeal. There is no objection therefore to the principle of this proposal but given the current Committee cycle a period of two weeks would be impractical. I would recommend that a period of one month would be the absolute minimum.

Renfrewshire Council: No. This is unworkable due to the unrealistic timescale for a democratic process. Committee cycles and the lead times

associated to allow democratic scrutiny far exceed the 2 week period suggested. This authority does endeavour to obtain Board authority in such cases and it does not consider the relatively few cases involving non-determination appeals justifies the proposed action.

South Ayrshire Council: It is not considered that two weeks would be long enough to indicate whether the application would have been refused or approved. Two weeks may not be sufficient to consider all the relevant information -especially in non-determination appeals which may have given little time to properly assess the application anyway. Furthermore, 2 weeks is unlikely to give adequate scope to have any meaningful conclusion to be drawn and considered by a relevant Council Committee. If such a short timescale is being proposed, then consideration of whether the proposal may have been approved or refused should be limited to whether the proposal is contrary to the development plan.

South Lanarkshire Council: It is probably not feasible to do this given that a Committee decision would be required before the Council could issue an opinion. This could not be done in 2 weeks because of Committee cycles a longer time period would be required. There are also circumstances when the authority would not want to make a determination such as when a Local plan inquiry or reporters recommendation was pending.

West Dunbartonshire Council: No. Often, non-determination is because of a lack of submission of required additional information from the applicant or a breakdown in negotiations over certain aspects of the proposal. If a view had to be offered

within two weeks, then this could only be an officer view because of Committee cycles and a Member view (which is the important view) could not reasonably be obtained if essential information is still outstanding. If pushed by an unreasonable timescale, the Authorities would almost inevitably indicate refusal to err on the safe side. Certainly, in the experience of West Dunbartonshire Council, non-determination arises not from a failure to take a decision but from dissatisfaction in the ability to put forward a comprehensive report in the absence of outstanding information.

West Lothian Council: It is agreed that authorities should give their views on applications as quickly as possible but to do so within two weeks of the appeal may be difficult if this does not coincide with the council's committee cycle. Further thought needs to be given to this to allow the council the opportunity to respond as quickly as possible.

Western Isles Council: There may be very complex circumstances surrounding such an application requiring careful consideration by Members not just officers. I think it would therefore be reasonable to seek a period of at least 4 weeks from the lodging of such an appeal before a view on whether the proposal would have been approved or refused could be given.

Other LA organisations

COSLA: In terms of obtaining council planning committee decisions, it would cause considerable difficulty for councils to respond in this suggested timescale. Council committee cycles would simply not be able to accommodate this. COSLA would recommend 6-8 weeks at least.

Public Bodies

Council on Tribunals, Scottish Committee: Members consider that this measure is acceptable to reduce time delays provided the planning authority is also required to give reasons for its decision. The limit should be expressed as, say, 10 working days rather than the '2 weeks' suggested to allow for holiday periods.

Royal Fine Art Commission for Scotland: RFACFS agrees that the principle of full disclosure is desirable. It may however be difficult for planning authorities to bring such matters before elected members for consideration in such a short timescale.

Scottish Enterprise: Yes. The planning authority should be required to indicate whether they would have granted or refused the application within 2 weeks of the appeal being lodged.

Scottish Natural Heritage: We wish to give a qualified "yes" to this suggestion because a number of caveats appear to be necessary. The first concerns the need for flexibility concerning occasions when the planning authority has not made a determination because they are waiting for further information from the applicant (e.g. information requested under the terms of the GDPO, the EIA Regulations, the Conservation (Natural Habitats &c) Regulations 1994, etc) which the applicant has failed to provide. In such cases, the application for appeal should be declined and the local planning authority only required to determine the application once the applicant has provided the information that Scottish Ministers agree is necessary for the proper determination of the application. Secondly, there

must be provision for situations where the application is novel, complex, contentious and responses from consultees are at odds with each other, suggesting the need for the various parties to debate differences of opinion or for further surveyor research. In such cases, where the planning authority has attempted to agree an extension to the period for determination and the applicant has not been co-operative, the application for appeal should not automatically be accepted. Scottish Ministers should agree with the applicant and the local planning authority a time for determination and the matter should be returned to the local planning authority. Lastly, we suggest that there should be some flexibility over the period itself, such that the two week period could be extended to four weeks on request of the planning authority when, for example, there are crucial staff shortages or absences.

Scottish Environment Protection Agency: We consider that care should be taken in this respect. It may be the case that one of the reasons for non-determination has been the time taken either to secure information from the applicant or to come to a view about the potential implications of the application. For very complex applications, this process can take more time than the two month period allows. From SEPA's perspective, it is vitally important that full assessment of the potential environmental impact of the application takes place. Accordingly, SEPA and Planning Authorities should not be forced to make very important decisions about environmental implications within such a shortened timescale, especially where it may have been the case that information about the proposal has not been timeously produced by the applicant. The requirement for Flood

Risk Assessments is a case in point. Sometimes these may not be submitted by an applicant until well into the 2 month period. In the event that extension is not agreed, the applicant may appeal against non determination. Under the proposal, this would then pressure both SEPA and the Planning Authority to make a judgment about flood risk within a very short time in order to comply with the requirement to indicate if planning permission would have been granted. Accordingly, we would urge some caution on this matter, particularly where the source of delay has been the late submission of information by the applicant.

The Development Industry

Bett Homes: We believe that this should be the case, as the Council has to be bound to some form [of] timescale as it could prejudice the appellants' case if left open ended.

Homes for Scotland: The planning authority should be required to indicate whether it would have been minded to grant or refuse the application. It is important that the view being expressed is the view of the planning authority and not just the view of an official of the authority. That being the case the time scale may have to be lengthened to reflect committee cycles used by planning authorities.

MacTaggart & Mickel Ltd: Yes, the local authority should always give detailed reasons.

Stewart Milne Holdings: Yes -but 2 weeks is a ridiculously short time period. For clarification, the decision of the planning authority should be from that of the elected members not the Director of Planning.

Taylor Woodrow: The planning authority should be required to indicate whether it would have been minded to grant or refuse the application. The position should be approved by the Planning Committee, as simply opposed the views of officers.

Walker Group (Scotland) Ltd: Early confirmation of the council's position is important and therefore there is merit in requiring the planning authority to indicate their decision. It would be important that the decision was in fact of the Committee and not the view of officials and 2 weeks might not be enough for this to occur. The value of this exercise will however be largely dependent upon the level of detail which is provided. (See response to Q7 below) Planning authorities should therefore be required to give full, clear, precise and justifiable reasons for the decision they could have otherwise made.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: Yes, 2 weeks would be preferable.

Marks and Spencer plc: The Company agrees that planning authorities should be "required to indicate what their decision on an application would have been. An early indication of the likely decision of a planning authority would be" I useful during preparation for appeal on the grounds of non-determination. However, a period of 2 weeks is overly-optimistic, given the frequent need for Committee consideration.

Sainsbury's: If an appeal is lodged against non-determination it can often be difficult to ascertain what the

Council's position is due, principally, to lack of information. Many LPA's already choose to provide a view on whether they would have granted consent or otherwise for a planning application. From experience, this helps provide a clear starting point as to the main issues and can help in providing an early resolution. However, it is important that this does not overly delay the process. Clear time limits should be set with guidance given to LPA's on how they should justify their reasons for refusal/approval.

Scottish Coal Co Ltd: Support proposal, but 4 weeks may be more practical to avoid excuses about Committee cycles.

Scottish Council for Development and Industry: The planning authority should be required to indicate their decision within an appropriate timeframe. Given the nature of the Committee system within the planning authorities there may need to be some flexibility on this. However, a 4 week period should be the designated maximum.

Scottish Landowners Federation: SLF is strongly in favour of the introduction of this requirement. It would be of great assistance to parties.

Tesco: We believe it would be appropriate for the Council to indicate what their position would have been were an application not submitted for non-determination. This will allow the Inquiry to focus upon relevant issues and avoid dealing with an exhaustive range of local issues. Two weeks post-submission of the Appeal may be too early for this to be done but it certainly could be done within four weeks.

Restriction of appellants' grounds of appeal (para 25): The suggestion, in paragraph 25, that the appellant's case should be restricted to addressing the grounds of refusal is also deeply unhelpful. This would be very unacceptable because it would appear to preclude the opportunity to advance evidence relating to other material considerations which the Council may not have considered and which support the planning appeal, for example, regeneration and other qualitative factors.

Professional organisations

Law Society of Scotland: The sub Committee agrees the 2 week period proposed for the planning authority to be required indicate whether they would have granted or refused the application is unduly restrictive. The time period should reflect the local authority committee cycle although the Sub-Committee would welcome early indication of Councils' attitudes towards grant or refusal.

RTPI: We have some sympathy with the intent here but it raises two issues of ownership and sanction. With regard to ownership, it is difficult to require the authority to make a quasi determination after an appeal has been lodged with Ministers who automatically become the decision-makers. This may change if the proposal in England for dual jurisdiction is adopted but an alternative might be for applicants to give four weeks notice of the lodging of a deemed refusal appeal which would allow the authority not only to consider what its decision might be but also to consider an actual decision while still legally responsible for the application. With regard to sanction, we would support the loss of the planning authority's right or participation in the subsequent process,

other than explaining the provisions of the development plan. An interpretation of the development plan is an essential part of the process and we would not support the option for the authority to take no part in the procedure, nor for a deemed approval to be the default situation. At the end of the day, the system is not served by penalising the authority to the extent that the quality of the final decision in the public interest may be inadequate. Other alternatives to the question as put would be extending the response period from two weeks to four weeks in view of the necessity for committee procedures in what would be controversial cases, and a requirement merely to produce a statement on the application rather than an indication of decision. If an indication of decision is required, reasons for either grant or refuse should be given. (Reasons for approval appear to be gaining support for general application in the system.)

Scottish Planning Consultants Forum: First inclinations in considering this question are to promote a deemed approval for non-determined applications. However, the SPCF believe that this would result in more appeals as local authorities would be inclined to refuse proposals as the deemed approval deadline approached. However, the requirement on planning authorities to provide an indication of their decision for a non-determination appeal introduces any unnecessary hurdle. The SPCF believe that it would be better to introduce a requirement that an applicant should indicate to a planning authority that they intend to make a non-determination appeal. The planning authority would have two weeks to provide an indication of their decision. This would provide information to an applicant on the appropriateness of continuing with the appeal. This will provide more

certainty and may reduce costs. The SPCF suggest that a pre-appeal requirement on planning authorities to indicate their decision be introduced for non-determination appeals. The issue that still remains for the consultation paper's option or the SPCF's option is one of sanction for non-compliance by a local authority. In the consultation paper's option there seems to be no sanction that could be applied if a planning authority failed to supply a decision indication within two weeks. For the SPCF's option it has been suggested that failure to comply within six weeks could result in a deemed approval. This will contribute to certainty. The SPCF suggest that non-compliance with the pre-appeal decision indication by a planning authority would result in a deemed approval sanction.

Scottish Planning Law and Environmental Law Bar Group: The question does not relate to the discussion preceding it. To address the points raised in paragraph 23, we would observe that for a planning authority to be restricted to arguing their reasons for refusal at any subsequent public local inquiry presents significant difficulties for local authorities: (a) The reasons given for refusal by the elected members is often brief and truncated, albeit based upon a report; and (b) The requirement would demand a great deal of prescience on the part of the local authority and also greater resources in order to anticipate months in advance all of the arguments that they would wish to argue at an inquiry at a time when they do not know whether an appeal will even be lodged. Any new matters introduced are covered by the statement of case and ought not to disadvantage appellants. To answer the question itself. We agree that it would be extremely helpful for a

planning authority to be obliged to indicate subsequently whether they would have granted or refused planning permission in the case of non determination.

Restriction on planning authority's right to introduce new grounds for refusal on appeal (para 23): To address the points raised in paragraph 23, we would observe that for a planning authority to be restricted to arguing their reasons for refusal at any subsequent public local inquiry presents significant difficulties for local authorities: (a) The reasons given for refusal by the elected members is often brief and truncated, albeit based upon a report; and (b) The requirement would demand a great deal of prescience on the part of the local authority and also greater resources in order to anticipate months in advance all of the arguments that they would wish to argue at an inquiry at a time when they do not know whether an appeal will even be lodged. Any new matters introduced are covered by the statement of case and ought not to disadvantage appellants.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: Our observations are these:

- we agree with the proposal for the structure of evidence and submissions in the context set by Section 25 of the Act;
- we agree equally with the principle of requiring a planning authority to implement properly the obligations of full prior disclosure, a consideration that equally should apply to all relevant persons. However the proposal, in an appeal against non determination, to restrict

the role of the planning authority at inquiry to an explanation of the development plan if they fail to issue a form of shadow notice of determination (presumably in the same format as that envisaged in paragraph 22 of the Paper) and that within two weeks of the appeal is in our view unrealistic. Sometimes a planning authority may be faced with a complex application requiring more consideration and which could be appealed immediately on the expiry of the relevant deemed refusal period. Pressure of work generally, and indeed sensible committee cycles, would dictate that a planning authority would need a much longer period but to be lodged in time to enable the proper preparation by the relevant persons of their outline statements of case or statements of case;

- we agree also with the proposals outlined in paragraph 25.

Maclay Murray Spens: We fully endorse this proposal which will give appellants and the public greater certainty.

Paul & Williamson: While structuring evidence and submissions around s.25 is a sensible idea, there is some concern about the effects of s.25. It is inevitable that there are more protective policies in a development plan than promotional policies. There is a risk that the primacy given to the development plan produces a bias against development. We support the suggestion that planning authorities should be confined to their grounds of refusal and to comments on points raised by others but there is a risk that

the wording of grounds of refusal will become less specific to provide scope for manoeuvre on an appeal. Planning authorities should be warned against this. Appellants will then confine themselves to the authority's grounds of refusal. That being so, reporters should not be permitted to make decisions based on other grounds unless the parties have been given an opportunity to comment. For example, we recall a case in which neither party had been in issue over a particular policy in the development plan listed in the planning authorities recital of relevant policies and had consequently not produced evidence with regard to that policy, only to find the reporter basing his/ her decision on that policy. If this is not accepted, appellants, to guard against this eventuality, will have to leave no stone unturned in presenting their case on appeal. Certainly, it is difficult to provide a full statement of appeal in the case of a deemed refusal when the planning authority's views are not known; so anything that can be done to accelerate a statement of the authority's position would be welcome. It is reasonable that the appellant should be similarly confined to the grounds of appeal and to comment on material considerations raised by others (para.25). What is unfair is that the appellant is required to make a full disclosure of case having only received very limited reasons for refusal and before knowing how the appeal is to be disposed of.

PPCA Ltd: If the preamble is understood, it is the intention to restrict inquiries or hearings to the reasons for refusal and, where none existed at the time of the appeal being lodged, to require the authority to determine what these would have been. This is supported and would make appeals into true appeals, where the authority's determination is being tested and so

that the appeal is not a de novo application to Scottish Ministers.

Robert Drysdale Planning Consultancy: It would not be possible for planning departments to obtain committee authorisation to confirm the authority's position on a deemed refusal proposal within a two-week timescale. Four weeks is probably a more realistic period.

Shepherd and Wedderburn: We would suggest that one of the issues which is raised in the context of non-determination appeals is exactly what the council's position is. If the time period were to be two weeks, it is unlikely that that would give sufficient time to enable the matters to be brought before an appropriate committee. We consider that it is important that in relation to all appeals, a relevant committee of the council should determine the council's position. We note the comments on the decisions of a planning authority on the grounds of appeal and would suggest that most planning witnesses do already structure their evidence in relation to the development plan on material considerations. However, the evidence of non-planning witnesses tends to be less directly related to planning policy and it would not be appropriate to try and have other witnesses become engaged with interpretations of planning policy which are clearly matters to be dealt with by planning witnesses.

Community Councils

Broughty Ferry Community Council: Yes. If the planning authority were able to say that it was going to grant permission without too many strings attached, the time/cost of an appeal would be saved.

Craiglockhart Community Council: Two weeks really is a short time if for any reason a planning authority has been unable to determine an application.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: We see difficulties with this, notably the problems that, probably, contributed to the delays initially. These might typically include the shortage or absence of necessary information, or uncertainties attached to revisions arising from attempts to address key but potentially resolvable problems. In either situation, the indicative decision would be of necessity 'rushed'.

Ferryhill Heritage Society: No. Always thought this was a dirty trick by the developer.

Friends of Glasgow West: No -The planning authority should not be exposed to pressure from manipulative practice.

Friends of the Earth: We support this proposal. It would help concerned communities considerably to know how the Local Authority would have dealt with an application. It may also help in avoiding some cost elements of the PLI.

Historic Environment Advisory Council for Scotland: Yes.

Saltire Society: This is unrealistic. 2 weeks could not be met if Committee decisions are needed. If the Committee decides that the application could be agreed with alterations this might be a

reason to suspend the Appeal timetable.

Scottish Civic Trust: The Trust has no firm view on this, other than to say that it might prove unworkable given committee meeting cycles, etc.

Individuals

Collins: Yes. Reasons should be made clear.

Connal: The answer is clearly 'yes' although the timescale might require to take into account the views of local authorities, bearing in mind that a decision to refuse an application will in general be one for committee. It may not be possible to have the matter considered by committee within the timetable envisaged.

Restriction of appellants' grounds of appeal (para 25): Expressed in the way it is there can be no objection to what is suggested. However, from a legal perspective this represents a considerable shift from the previous position, under which an appeal to the Executive opened up all or any issues for consideration, not simply the grounds of refusal and arguments advanced by the appellant. Hitherto it has always been possible for the Reporter or Executive to take the view that other issues will require to be addressed because, in law, the matter is treated as if the application had been made to the Executive in the first instance. While this has rarely occurred (I recall one inquiry where there was total agreement between developer and local authority and the Reporter specifically indicated -albeit informally -that he would not interfere with that) the nature of the change must be properly understood.

Cramond: Yes. All parties should have prepared their arguments thoroughly before the inquiry stage is reached, and there is no argument at all for withholding any part of their case. That would be totally contrary to the Franks principle of openness.

Hall: Has merit, but seems unreasonably demanding as drafted. To "...indicate whether they would have granted or refused..." is asking a lot. In some cases this may be simple, in many others, not so. It might be better to merely request they "indicate their position together with any reservations or conditions, that might have influenced their position...".

Roberts: I doubt whether this would be possible, if it has to be a decision ratified by a planning committee.

Smith (Robert): Appeal against non-determination - the planning authority should be required to say whether or not it would have granted or refused the applications within 4 weeks. (2 weeks is too short a time to comply with planning committee's time-tables.)

Stark: The most important consideration here is that full information is disclosed by all parties to the inquiry at the earliest opportunity. If this includes a "shadow" decision by the local authority, so much the better. However, the lack of such a decision is secondary. In any event, as the reporter will be bound by section 25 of the 1997 Act, it is vital that he is informed of all material considerations as well as the development plan provisions. To penalise an authority for not reaching a decision by barring it from providing useful information seems perverse.

Watt: Yes.

Question 5 Should incomplete appeals be rejected and returned to the appellant?

Local authorities

Aberdeen City Council: Agree.

Aberdeenshire Council: Yes. Where large developments and professional agents are involved there is no real excuse for an appeal being incomplete. Requests to suspend or 'sist' appeals in such cases tend to be for tactical reasons. There is a reasonable case to allow householder appeals where no professional agent is involved to be continued for a short period to enable the appeal to be validated.

Angus Council: Yes, incomplete appeals should not be entertained until they are made complete.

Argyll & Bute Council: Incomplete appeals should be returned. A Planning Authority would not be in a position to comment on a case without the full grounds of appeal (or any other information) from an appellant.

City of Edinburgh Council: CEC considers this incompatible with the desire for improved public experience in the process. Instead, appeals should be kept in a "holding" position and the criteria for completion of the process of submission be defined and a timescale set. This is commonly applied to the submission of planning applications.

Clackmannanshire Council:
Development plans: No comments (relevant primarily to DC PLIs)

Development control: Yes. A checklist to demonstrate what is or is not complete or valid would help with this.

Dumfries & Galloway Council: For Local Plans and Structure Plans a limited period should be allowed for parties to substantiate any 'holding' objection. This limitation should not override a right to address material changes which have subsequently taken place.

Dundee City Council: Yes, without a doubt! 6 months is too long a time period and we see no reason to exclude householder applications from this provision.

East Ayrshire Council: The Council would agree that incomplete appeal documentation can cause delay and uncertainty in the appeals process and it would, therefore, be supportive of incomplete appeals being returned to the appellant if all necessary information has not been received within an agreed period. The consultation paper excludes householder development appeals from this provision but no explanation is provided for this exception. The Council would consider that this provision should relate, without exception, to all appeals.

The Council would also be supportive of the provision of the White Paper, 'Your place, your plan' to shorten the period for the completion of the documentation of an appeal to 3 months rather than 6 months as at present.

East Dunbartonshire Council: Such an approach would be supported.

East Lothian Council: - In principle this proposal could be supported. Consideration would have to be given

to the situation where the Appellants (incomplete) appeal is lodged at the 6-month deadline and is then returned 2 weeks later. Would the Appellant, in practice have then lost its right to appeal?

East Renfrewshire Council: Yes.

Falkirk Council: It is not clear what it means by 'rejected'. It would not be reasonable to deny a right of appeal due to an administrative oversight in completing the appeal forms etc. The onus is on the Scottish Executive to design the administrative side of the process and notes for guidance such that the number of incomplete appeals are minimised. If on the other hand an analysis of incomplete appeals reveals that a proportion of appellants is obviously failing to fulfil their obligations then a range of sanctions including rejecting the appeal would be appropriate.

Fife Council: Yes, this would be consistent with the practice for incomplete planning applications which are not registered and may be returned to the applicant.

Glasgow City Council: Yes, with the specified timescales to lodge an appeal reduced to 3 months (from 6 months). The Executive should provide guidance on lodging an appeal and make this available on the internet.

North Ayrshire Council: We would agree that incomplete appeals should be rejected and returned to the appellant. Presumably as a matter of practice, the Inquiry Reporter's staff would request the missing material prior to any rejection.

North Lanarkshire Council: Yes, but it is considered the proposed period of 2 weeks is too short and that 4 weeks

should be given for all, including householder, and this period should allow for one reminder letter to be sent.

Orkney Islands Council: In considering [in]complete appeals and the proposal to reject such submissions to avoid delay and uncertainty, it is our view that this should indeed be the case, and that strict timescales should be adhered to for the submission of information.

Perth and Kinross Council: Both the reduction in the timescale for the submission of appeals and the rejection of incomplete appeals are to be welcomed. This should however include all appeals including householder development.

Renfrewshire Council: Yes. However, householder appeals should also be included as these are the type which is most frequently incomplete. It should be incumbent on the Inquiry Reporters Unit to provide written reasons for rejection.

South Ayrshire Council: Incomplete appeals, like incomplete planning applications, should not be accepted.

South Lanarkshire Council: Yes - appeals can be invalid for months this causes uncertainty - unclear why householders should be excluded from this there is no justification given.

West Dunbartonshire Council: Yes, including householder development.

West Lothian Council: Yes, for the reasons given above.

Western Isles Council: Reasonable time and information is offered to allow an appellant to submit a competent appeal. Returning

incomplete appeals would be consistent with the practice of rejecting invalid planning applications. I suggest that the answer to this question should be "yes".

Other LA organisations

COSLA: COSLA would be inclined to support this proposal, though we are aware of a suggestion from at least one council, that such appeals "...should be kept in 'holding' positions and criteria for completion defined and timescale set". The driver, in this instance, should be consistency, to ensure that the same message is given, regardless of whether such applications are rejected or held pending completion: appellants must also take responsibility for submission of completed appeals and need to be clear as to the action that will be taken, if this is not done.

Public Bodies

Council on Tribunals, Scottish Committee: Members have reservations about the proposals to reduce set timescales even further. The Committee believes that the early creation of a closed record, after which no new evidence can be submitted, increases the likelihood of individuals or community groups being put at a disadvantage. This could cause problems for a pursuer with limited resources when challenging larger organisations. It is noted that 'householder development' is exempted from the proposal in Question 5 but this does not appear to be a feature of other proposals. Members wonder whether the stated aim of reducing time and costs is directed primarily towards major developers and, if so, whether there is a danger that the interests of the 'man in the street' appellant are being overlooked in the

name of modernisation. In the Inquiry Reporters Unit 'Review of the Year 2002-2003', it is stated that domestic householder appeals increased by some 35% and smaller scale business and industrial proposals increased by over 60% with a decline in appeals involving major business and larger housing developments. Although members understand the Executive's desire to eliminate appeals which are lodged simply as a means of stalling, they consider that there may be occasions when the lack of some necessary information is beyond the appellant's control. The Committee therefore concludes that the maximum period for production of the full statement of case should remain at 8 weeks.

Royal Fine Art Commission for Scotland: Yes.

Scottish Enterprise: Yes. Incomplete appeals should be rejected and returned to the applicant.

Scottish Natural Heritage: Yes.

Scottish Environment Protection Agency: Yes.

The Development Industry

Bett Homes: We feel that this should not be the case as it may be a matter of interpretation as to the completeness of the appeal and clarification may be being sought.

Homes for Scotland: Homes for Scotland takes the view that no change is necessary. For this proposal to work it has to be predicated on an assumption that the planning authority has issued a decision that is comprehensive. Many decisions to refuse consent require the applicant to seek additional information and that

information is often critical to the completion of an appeal. Any alteration to the existing practice would have to be accompanied by a tightening of the requirements in respect of a planning authority's obligations in respect of the nature of information to be disclosed and the timescale for so doing.

MacTaggart & Mickel Ltd: Yes.

Stewart Milne Holdings: Any alteration to the existing practice would have to be accompanied by tightening up the requirements in respect of a planning authority's obligation in respect of the nature of information to be disclosed and the timescale for doing so.

Taylor Woodrow: TW supports this, on the basis that the respective Local Authority provides the necessary information required, and on time. Consideration in these circumstances should be given to the SEIRU determining the appeal on the basis of the information received at a pre-determined cut-off date, with no opportunity to supplement evidence by either party.

Walker Group (Scotland) Ltd: If, by incomplete appeals, you mean, signing, dating forms etc then there can be no dispute that they are in fact "incomplete". However if the determination of an "incomplete appeal" includes a subjective assessment of the quality or completeness of the ground of appeal, then we would be opposed to such a suggestion. It would however be appropriate to advise appellants of such shortcomings and set a 7 or 14 day deadline to comply or risk having the appeal rejected.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: In light of the delay caused by incomplete paperwork, it is sensible to return this to the appellant. However, this should be done within the 2-week time scale suggested and should also indicate why the appeal is incomplete, rather than simply returning it to the appellant without explanation.

Marks and Spencer plc: No. Rather than outright rejection, a short period should be allowed to make the appeal complete, to help achieve clarity and efficiency without being unnecessarily bureaucratic.

Sainsbury's: Agree- no appeal should be considered valid until all the necessary information had been submitted. But need to agree/ clarify what incomplete means? Need a standard list of matters that should be provided to validate an appeal.

Scottish Coal Co Ltd: Not unreasonable, but similar draconian measures should apply to Authorities who regularly submit incomplete information and/or miss key submission dates. They are aware at present that the Inquiry will not find against them just because they were dilatory in submitting information. This must change and in such cases, their rights to participate in the Inquiry should be severely restricted in order to provide an effective deterrent. It is unclear why householder appeals are to be excluded from this suggested change. While delays in progressing an appeal on major cases may be of concern to the local community, so too can appeals for certain householder development. If it is to be introduced,

the return of invalid appeals should be applied across the board.

Scottish Council for Development and Industry: The return of incomplete appeals to the appellant within 2 weeks is only a sensible course of action if the planning authority decision is given in a thorough and full manner. If not it is difficult for an appeal to include evidence which may subsequently be required once a fuller decision for rejection is given by the local authority. Therefore whilst this approach has attractions it would need to be very tightly monitored by the inquiry reporter. Another option might be for the reporter to retain the appeal documentation but request the extra information from the appellant and impose a strict time limit on this of one month.

Scottish Landowners Federation: In short, yes; this has the potential to save waste of time, effort and money. However, intending appellants need to be warned specifically that this procedure will be followed, if it is adopted, particularly if the time for completion of documentation is (as proposed) reduced to 3 months.

Tesco: Incomplete appeals should be returned. Ideally this would be with a proforma checklist indicating the failing.

Professional organisations

Law Society of Scotland: The sub-committee agrees that incomplete appeals should be rejected and returned to the applicant although simple issues could be identified by the Reporters' Unit and missing information requested within a limited period

RTPI: We note that this proposal does not include householder development and it may be that exceptions for householders should be considered in relation to some of the other issues in the consultation paper. It should be borne in mind for any appeals which are rejected that possible future legislation against duplicate and repeat applications will have a material impact on this proposal. We are inclined to support the proposal but it should be implemented with clear written guidance available in the refusal certificate.

Scottish Planning Consultants Forum: The SPCF consider that it would be reasonable to return incomplete appeals as raised in question 5. However this would require a time extension of the lodgement period reflecting the delay in considering and returning an incomplete appeal. This would be no more than two weeks as this reflects the return period provided in the consultation paper. The SPCF support proposals to return incomplete appeals provided the lodgement period can be extended.

Scottish Planning Law and Environmental Law Bar Group: Yes, as long as the reasons for rejection are clearly indicated when the appeal is returned, specifying additional materials which require to be supplied.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: We agree that incomplete appeals (assuming the failure is material) should be rejected and returned to the appellant.

Maclay Murray Spens: We have no difficulty with this proposal although,

in our experience, the problem is not widespread. We suggest that in situations where the rejection of the appeal would result in the appeal being time barred the appeal should be accepted but a warning letter should be issued to the appellant giving a further period of say 14 days to submit the required documentation failing which the appeal would be rejected.

Paul & Williamson: We think this proposal will just make life more difficult for appellants. Why not just send a letter drawing attention to what has been missed out and stating that the appeal will not be treated as valid until the information is submitted.

PPCA Ltd: Yes.

Robert Drysdale Planning Consultancy: Yes.

Shepherd and Wedderburn: Yes. Incomplete appeals should be rejected. However, we would suggest that if the process is to be made more user-friendly to the public, there should be a time limit on which the reporter's unit respond with the further information that is required to make the appeal complete. The danger in introducing blanket rules is that members of the public who undertake appeals, may fail to comply with requirements through misunderstanding. It would be most unfortunate if the planning system were perceived to be introducing rules which in practice are most likely to impact upon members of the public.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: Appellants should be given a short

time to complete the appeal rather than an unlimited time.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: Yes.

Ferryhill Heritage Society: Yes.

Friends of Glasgow West: Yes.

Friends of the Earth: In short, yes.

Historic Environment Advisory Council for Scotland: Yes.

Saltire Society: Yes.

Scottish Civic Trust: We agree that incomplete appeals should be rejected out of hand.

Individuals

Collins: Yes.

Connal: 'Yes', in principle, although I doubt whether this is a significant issue. Taking an analogy from court procedure, consideration will have to be given about how to treat appeals which are lodged close to the expiry date of the period for appeal (especially if that period is now to be significantly shorter and thus the likelihood of appeals near the end of the period increased). In the example set out in Paragraph 26, an appeal lodged on the last day would not be returned until it was too late for it to be re-submitted. That would have dramatic consequences. Provision might have to be made for a further short period to allow re-submission, to prevent the unsuspecting appellant

from being prejudiced (even if the original fault was his).

Cramond: Yes. [see also answer to question 4]

Hall: Yes. But it seems reasonable that a concession be added: "if date of return due to incomplete documentation lies within 2 weeks of the end of the deadline period, then a two week extension be automatically granted to permit re-submission with the missing items." This is obviously open to minor abuse, but two weeks is hardly excessive.

Roberts: Yes: but excluding householder development, as you indicate.

Smith (Robert): Incomplete applications should be rejected and returned to the appellant. Incomplete applications can be great wasters of staff time.

Watt: Yes.

Question 6 Should the present maximum period for production of the full statement of case be reduced from 8 weeks to 4 weeks from the issue of relevant notice?

Local authorities

Aberdeen City Council: 4 weeks is considered to be far too short a time. If the aim is to retain the inquiry process for cases which are likely to be complex, adequate time is needed to prepare the Statement which expands on/clarifies the position already set out in the refusal document. If insufficient time is allowed the quality of the information before the reporter is likely to suffer to the detriment of the inquiry and the decision making process.

Aberdeenshire Council: The preparation of a full statement of case for a planning inquiry is an exacting process which must be completed to a high standard in liaison with consultee services and subject to legal advice. Few Planning Authorities have the luxury of diverting staff from normal day-to-day duties during this process and meeting the present 8 week deadline is a significant challenge. Reducing this deadline by 50% would place an intolerable additional burden on Planning Authorities.

Angus Council: Given the onerous workload currently experienced by most Planning Authorities in general terms I consider this suggestion would be unreasonable. However, in respect of householder applications where matters are likely to be a little more straightforward, a reduction from eight weeks to four weeks could be achieved.

Argyll & Bute Council: I consider that there is limited scope to reduce the maximum period of production of the full statement of cases, due to current workloads and the effect that the complexity of some appeals can have on statement of cases. The eight week period should therefore remain.

City of Edinburgh Council: The planning authority's statement can require ratification by the Committee. In these cases, CEC considers that time spent at the early stage can eliminate delays later in the process. A period of 4 weeks is too short and CEC would recommend a period of at least 6 weeks (see response to qu 4).

Clackmannanshire Council:
Development plans: No comments (relevant primarily to DC PLIs)

Development control: There is scope to reduce the period for Statements of Case, without necessarily impacting on later stages of the pre-inquiry process. Appellants and planning authorities have a clear understanding of the proposals. The appellant will already have set out grounds of appeal and these must be clear and sufficiently comprehensive to meet the test of validity (see 5 above). Disclosure of statements earlier in the process will broaden participant awareness of issues and provide better opportunity for preparation of evidence.

Dumfries & Galloway Council: As soon as practical following the period for formal objections for Local Plans the local authority should publish a report on the objections and a program for the ensuing processes. For Structure Plans the Scottish Executive should adopt a similar procedure. In both cases there should be consultation with the Scottish Executive Reporters Unit.

Dundee City Council: The current timescale is adequate at most, no less than 6 weeks should be allowed.

East Ayrshire Council: The Council would not be generally supportive of the proposal to shorten the period for the submission of full statements of case from 8 weeks to 4 as a means of speeding up the appeals process.

East Dunbartonshire Council: Production of Statement of Case is not an onerous task and it is considered that a four week period should be more than adequate to identify and list the key issues in most cases.

East Lothian Council: No. The Planning Authority has to dedicate time and people to deal with an appeal and, therefore, require a reasonable

length of time to consider and prepare a statement of case. It is felt that 8 weeks is therefore reasonable and achieves a fair balance.

East Renfrewshire Council: Suggest that 4 weeks is unrealistic, could possibly be reduced to 6 weeks.

Falkirk Council: It is suggested that for a council the statement of case should be closely related to a committee report and therefore 4 weeks is a realistic timescale. As the suggestions made elsewhere in the consultation paper are aimed at reducing the number of inquiries and/or reducing the issues to be discussed the suggestion is supported. However, it should be noted that there are a very wide range of styles adopted by appellants and councils in producing statements of case. Guidance from the Scottish Executive, with examples of good practice would be helpful in ensuring that statements of case could be produced in a timely manner and were helpful to the overall process.

Fife Council: The time pressures facing planning authorities are likely to be the key consideration here. The 4 week timescale may not be able to be met in all circumstances without the availability of adequate staff resources to create the capacity to deal with the work involved.

Glasgow City Council: This is unlikely to be appropriate, particularly with complex cases involving the coordination of a large number of individuals and organisations. With the proposed tightening of the inquiry process, it will be critical to ensure that parties get their case right first time. Shortening the preparation period, therefore, could be counterproductive, unless previously agreed by all parties.

Highland Council: There is indeed some merit in a reduced period but a reduction to four weeks is likely to have a detrimental effect on the processing of current planning applications because the appeal process would have to take priority. It is therefore recommended that a six week period be instigated.

North Ayrshire Council: It is proposed to reduce the maximum period for production of the full statement of case from 8 weeks to 4 weeks from issue of the relevant notice. Whether this is a good thing will depend on the size and complexity of the Inquiry. A better solution might be to reduce the period for 4 weeks, but to make provision for a further 4 week extension on cause shown in cases of complexity.

North Lanarkshire Council: 4 weeks is considered too short for both appellants and the planning authority where professional advice is being sought eg in this authority, it is the policy that where the decision of the Committee is contrary to the recommendation of the Director, then the planning department does not present the case at a public inquiry and appropriate external consultants are employed. The 8 week period is needed.

Orkney Islands Council: To speed up the process and the proposed reduction in timescale for the production of the statement of evidence from 8 to 4 weeks, we support this change as long as this reduction was maintained by the Scottish Executive in the time taken to determine the appeal. In setting dates for Inquiries, some parties will always seek additional time. We are of the view that strict timescales should be set and adhered to, so that the process

is as fast as possible and uncertainty reduced to a minimum.

Perth and Kinross Council: Given the current caseload and the pressure to process these within the statutory period, together with holiday periods, any shortening of this period should be strongly resisted. This is particularly relevant in the case of Local Plan Inquiries where the Council has multiple objections to respond to.

Renfrewshire Council: This would be operationally difficult for a planning authority. It is difficult to schedule case officer workload as the authority has no warning of impending appeals. Current levels of planning applications are stretching the capacity of the system to cope with current requirements.

South Ayrshire Council: There is no justification given which suggests that the timescale can realistically be halved -especially where reasons for refusal of an application will need to be amplified. This is especially relevant in cases where an appeal is made against the non-determination of a planning application. In addition, the appellant may have already been preparing an appeal case during the months prior to which the appeal has to be made (up to 6 months), the Planning Authority however may have no such prior knowledge of the likelihood of an appeal being lodged.

South Lanarkshire Council: Usually the Council can get their statement prepared in time but this is time consuming and sometimes difficult. I would suggest that a minimum of 6 weeks was required to produce the full statement of case.

West Dunbartonshire Council: Preparation for public local inquiries is

an additional burden on development control officers, who already have increased workloads, performance indicator pressures and countless demands of a broad sort on their time. Eight weeks, in this context, is a reasonable time period, though there should be encouragement for submission within that deadline.

West Lothian Council: The speeding up of the process is to be greatly welcomed but a blanket reduction from eight weeks to four weeks may prejudice the council's ability to formulate a complex submission within the time period. The Executive could perhaps alternatively a set of criteria to advise the parties of dates for submission.

Western Isles Council: It is common for there to be a gap between the date an appeal is lodged and the "relevant date". The Scottish Executive has said that it will require "comprehensive reasons from the planning authority and grounds from the appellant" to be clear from the outset of the appeal process. These factors should make it straightforward to produce statements of case in the suggested 4 week period.

Other LA organisations

COSLA: COSLA is aware that councils have a range of views on this matter. The Scottish Executive has already received a copy of a recent establishment survey commissioned by the Scottish Society of Directors of Planning, indicating pressures on planning authorities in terms of current workloads. Naturally, the picture is different across Scotland, but generally speaking, planning teams would find it difficult to deal with a shortened timescale for the production of the statement for case. One suggestion that COSLA is aware of is that a shortened

timescale might be achieved, with prior agreement of all parties, but it is acknowledged that this might not be workable in every instance. Another, and perhaps more achievable compromise, might be as suggested by North Ayrshire Council, of a 4 week timescale, plus provision for a 4 week extension, where 'complexity of the case calls for this'.

Public Bodies

Council on Tribunals, Scottish Committee: Members have reservations about the proposals to reduce set timescales even further. The Committee believes that the early creation of a closed record, after which no new evidence can be submitted, increases the likelihood of individuals or community groups being put at a disadvantage. This could cause problems for a pursuer with limited resources when challenging larger organisations. It is noted that 'householder development' is exempted from the proposal in Question 5 but this does not appear to be a feature of other proposals. Members wonder whether the stated aim of reducing time and costs is directed primarily towards major developers and, if so, whether there is a danger that the interests of the 'man in the street' appellant are being overlooked in the name of modernisation. In the Inquiry Reporters Unit 'Review of the Year 2002-2003', it is stated that domestic householder appeals increased by some 35% and smaller scale business and industrial proposals increased by over 60% with a decline in appeals involving major business and larger housing developments. Although members understand the Executive's desire to eliminate appeals which are lodged simply as a means of stalling, they consider that there may be occasions when the lack of some

necessary information is beyond the appellant's control. The Committee therefore concludes that the maximum period for production of the full statement of case should remain at 8 weeks.

Royal Fine Art Commission for Scotland: RFACFS believes there is a strong case for requiring the production of a full statement within a shorter time period, although this might not be possible for major cases.

Scottish Enterprise: No. The present maximum period for production of the full statement of case should be retained at 8 weeks.

Scottish Natural Heritage: A reduction in the period of time for the production of full statements of case from eight to four weeks would certainly reduce the time taken to process appeals. However, it is possible that this measure would discriminate against those who do not have the time, professional assistance and other resources to devote to an appeal e.g. community groups, voluntary organisations, individual members of the public. This would be contrary to the intention to make inquiries more fair and accessible.

Scottish Environment Protection Agency: In SEPA's experience, for some very technical matters, putting together the statement of case can take some time in order that matters are fully considered. Bringing forward the timescale for such work *may* reduce the time available to ensure that such matters are considered. Therefore, for very technical cases, with multiple interacting issues, there should be scope for dialogue between parties with a view to extending the timescales if necessary.

The Development Industry

Bett Homes: If statements of case were requested earlier and the time between statements of case and precognitions was extended this would give all parties an opportunity to finalise their arguments etc. especially if documents are available timeously.

Homes for Scotland: Reducing timescales is a laudable objective but the house building industry's experience of working with planning authorities would lead it to conclude that planning departments do not necessarily have the staff resources to cope with increased demands on time. Introducing tighter time scales can also impact on the quality of a response when the matters under consideration are complex. Speed of response at the expense of quality of response is not conducive to good decision-making. One approach to reducing timescales could be the granting of a discretion to the Reporter to seek to have a shortened timescale agreed between the parties at the start of the process with 8 week period being maintained as a maximum period in the absence of agreement.

MacTaggart & Mickel Ltd: Yes in principle for reduction in time. If brought into force, this must apply to all parties, including local authorities and 3rd parties.

Stewart Milne Holdings: No. 4 weeks may suit SEIRU but won't suit anyone else. We also wonder in Local Plan Inquiries whether there is any need for Statement of Case to be lodged by objectors at all who already lodged objections and their reasons for doing so.

Taylor Woodrow: There is no reason to prevent the Statements of Case

being prepared timeously. Logically, it would be more beneficial if the appellant and Local Authority were to 'agree to disagree', in order that the matters to be raised at the Inquiry were only those in dispute. Whilst, early SoCs do not facilitate this process, consideration should be given to a second stage process, which confirms 'matters in dispute', or a joint statement of 'matters in agreement'.

Walker Group (Scotland) Ltd: We would certainly have no objection to the shortening of this timescale and 4 weeks should be more than enough time in which to prepare such a statement. However, we would question the value of Statements of Case coming as they do after grounds of appeal and before full precognitions are prepared.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: No. We believe that allowing 4 weeks is too short a time scale to submit all the necessary grounds of appeal (if the need for adequate information at this stage is to be more stringent), particularly if there are extenuating circumstances, such as illness or vacation. We would suggest that 6 weeks would be a fairer timescale.

Marks and Spencer plc: No. While this proposal is intended to reduce delays in processing appeals, the Company considers that 4 weeks may be insufficient to produce a full statement of case in many situations. This overly reduced period may result in lower quality statements and further problems for the Reporter/at Inquiry stage. 6 weeks would be a sensible compromise.

Sainsbury's: The problem is not with the time limits for production of statements of case but with getting dates in the diary at the earliest opportunity for the inquiry itself and assigning a reporter. The critical date should be set a number of weeks before an inquiry begins.

Scottish Coal Co Ltd: No -8 weeks probably provides a better period within which to ensure that all professional advisors have addressed the issues raised in the early documentation. The 8 week period also allows holiday absences to be catered for, particularly during the summer months.

Scottish Council for Development and Industry: The scope to reduce is dependent on many factors including current workload levels within the planning authorities and the scale/complexity of the planning application itself. Our initial view is that there should be a willingness on all parties to indicate within one week whether a shorter timescale is achievable and if so to aim towards it. However, the right to the maximum 8 week period should remain if required in any individual inquiry case.

Scottish Landowners Federation: SLF favours a reduction to 6 weeks, but with an extension of up to 2 additional weeks always subject to good cause being shown.

Tesco: We disagree that the period for production of the full statement case be reduced from 8 to 4 weeks from the issue of the relevant Notice. Our preferred approach is to actually work backwards from the date of the Inquiry so that, for example, a Full Statement should be produced 12 weeks before the Inquiry opens with Exchange of

Proofs at the current date. 4 weeks is too short because often prior to the preparation of a full statement, consultation needs to be undertaken with Counsel and very often this takes some time to put in place. What is needed is to ensure that the statement is full and is adhered to.

Professional organisations

Law Society of Scotland: Sub-Committee agrees that the present maximum period for the production of the full statement of case should be reduced from 8 weeks to 4 weeks except in the case of deemed refusal while the period could be linked to 4 weeks after receipt of the notice referred to in question 4

RTPI: We feel that the priority here is that a full statement of case should be produced to allow further stages of the process to be more effective. If securing such statements, and the opportunity for all sides to view them, takes longer at this stage, it should still save time in the longer term. We feel that reduction to six weeks might be justified but that period is not as important an issue as the principle.

Scottish Planning Consultants Forum: The SPCF would support a four week period for the production of the statement of case.

Scottish Planning Law and Environmental Law Bar Group: In principle we are in agreement with reducing time scales in the run-up to an inquiry and would support the reduction in time period for producing a statement of case. It might, however, be advisable to introduce a relaxation of the rule for major projects.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: Although in principle we have no difficulty with the objective of reducing any "delay", the proposal to reduce the maximum period for the full statement of case from eight to four weeks is perhaps unnecessary it is important that statements of case are comprehensive and are not produced against unrealistic deadlines.

Maclay Murray Spens: Generally we see no difficulty with this proposal

Paull & Williamson: Separating the precognitions and the productions can be confusing and there might be something to be said for lodging them both at the same time but allowing for supplementary precognitions and productions in response to the material lodged by other parties.

PPCA Ltd: Given the argument which led to question 4, it would only be logical to reduce the time for full Statements of Case.

Robert Drysdale Planning Consultancy: Given that generally only complex proposals become the subject of a planning inquiry, it is considered that the current timescale is appropriate for proper preparation of the Statement of Case.

Shepherd and Wedderburn: We certainly consider that for straightforward appeals the four week period should be sufficient. However, with more complicated cases there can be a benefit in having the eight week period to ensure that all topics are adequately covered and that the statement of case generally provides fair notice to other parties. We would

stress that there is a wide degree of variability in the quality of statements of case. Some parties appear to view it as an opportunity to present their case in written form and others are what we would describe as skeletal. Again we consider that, effectively, statements of case are to give an indication of the evidence that is likely to be led and the witnesses which are likely to be led. It is important that the right balance is struck between the two to achieve the objectives. We consider that it is appropriate for the reporter's unit to take a more proactive approach perhaps to seek expansion of inadequate statements of case in order that full disclosure is actually given.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: The statement of case is crucial to the process and is not a document that should be hastily prepared. However, if grounds of appeal have been prepared it should be possible to produce the necessary material in less than eight weeks in all but the most complex cases.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: No. This would only limit further potential for wider involvement, notably through stretching further the already limited resources supporting the public interest.

Ferryhill Heritage Society: Yes.

Friends of Glasgow West: No. In cutting the time for a full statement of case from 8 weeks to 4 weeks, ordinary citizens could be greatly disadvantaged: not only are they dealing with an unfamiliar scene, but their time is limited by the on-going need to earn a living, which will also interfere with their availability for meetings with other relevant persons.

Friends of the Earth: If it resulted in a more streamlined system without causing hardship or difficulty for those not familiar with the procedures involved in a PLI then we would have no objection to the proposal. However, we would advocate a pilot study to see how workable this proposal would be in reality before any blanket changes are made. We suspect that such a pilot would reveal that communities might feel further disadvantaged by such a change. Saving time at the front end of the appeal system may not be the answer. Communities who are unfamiliar with the system need time to engage effectively. On balance we would propose no reduction from the current 8 weeks.

Historic Environment Advisory Council for Scotland: Yes, except possibly for major cases.

Saltire Society: The reduced time might be acceptable in some cases but is too short for other parties than the Council -the appellant may wish to enrol professional advice which could not be effective so quickly. The position of other parties -objections by the public -would only get off the ground after the appeal is lodged and they would similarly need longer than 4 weeks.

Scottish Civic Trust: The Trust feels that these two issues are interconnected. A Statement of Case

could be required from the applicant as part of the appeal application process. The local authority, consultees and third parties could then be given 4 weeks from notification to submit their Statements. It should be remembered that the appellant is challenging a decision (or lack of one) so it is entirely reasonable that their reasons for doing so are made up front. This process would considerably shorten the pre-inquiry phase.

Individuals

Collins: Surely this depends upon the scale and impact of the proposal.

Connal: I suggest that this issue requires further investigation. At present the Statement of Case, broadly speaking, performs two functions. On the one hand it sets out what the party's case is going to be. On the other it deals with practical issues like lists of documents, numbers of witnesses, likely duration and so forth. Improved procedures at an earlier stage could lead to a situation where the first of these functions could, in appropriate cases, be dispensed with entirely and the next stage of process done in some other fashion. Time has not allowed me to elaborate but I offer the point for consideration.

Cramond: Yes. [see also answer to question 4]

Hall: Yes, ok. However, it might be worth considering the flexibility of say a 2 week extension to cover extenuating circumstances -perhaps triggered by mutual agreement (council + applicant/appellant). The point is, as a *regulation*, let us not tie our own hands so tightly that fair and open procedure is damaged by the unexpected -such as a 'flu epidemic, personal tragedy or terrorist attack.

Smith (Robert): Time could be reduced to say 6 weeks rather than the 4 you suggest. Once again professional staff in local authorities are under pressure as things are.

Watt: Yes.

Question 7 Are there other ways of shortening the essential pre-inquiry stages that could be as, or more, effective?

Local authorities

Aberdeen City Council: Pre-inquiry processes are as short as they realistically can be. The existing pre-inquiry stages are considered to be as short as they realistically can be if proper preparation to assist the inquiry process is to be carried out. Further shortening is likely to be counter productive to the process of determining proposals which may be critically important for the environment, the economy, or both.

Angus Council: Shortening pre-inquiry processes further might compromise quality of information available to reporter. In complex inquiries it is often difficult to shorten the pre-enquiry stages because of the amount of information that is required to be exchanged between parties. If an attempt were made to shorten this by disallowing information then there may be a criticism that the Reporter has not had the most appropriate information to consider the case.

Argyll & Bute Council: Enhanced use of information technology. There is the potential for using and expanding the electronic delivery of information particularly in relatively straightforward cases. However, this is dependant on each party having access to the Web and having compatible

systems, particularly for any tables, figures or diagrams that are submitted in evidence. **Need for flexible dates.** With respect to compressing any pre-inquiry dates, these need to be flexible to take account of the complexity of individual cases and should be left to the agreement of all parties involved, rather than saying that a pre-inquiry hearing must take place within "a" weeks of submitting statement of cases, as many issues can affect the setting of dates, the availability of all parties being one of the key issues.

City of Edinburgh Council: Enhanced use of information technology. CEC believes that there is opportunity in the use of electronic communication to shorten the periods used for exchange of statements of case. CEC supports measures designed to bring greater certainty to the process, particularly where it assists community involvement. In principle the expiry of a sisted appeal after a defined period is supported but CEC would like to see a fuller justification of the suggested 6 months period, since complex cases vary considerably.

Clackmannanshire Council: Development plans: Shortening pre-inquiry processes further would be counter-productive in terms of facilitating agreement with objectors. In the case of Local Plan Inquiries, it would not be advantageous to shorten the essential pre-inquiry stages since these are extremely important in gaining agreements with objectors through negotiation. Shortening this phase could be counter-productive, with larger numbers of objections going to inquiry unnecessarily.

Development control: Reduce period allowed for circulation of statements of case. The period allowed for the

preparation and circulation of Statements of Case is the one area where there is scope to streamline the process and make it shorter without prejudicing its effectiveness. Experience indicates that the period beyond the deadline for statements is always the most intensive period of work, particularly for a small authority such as Clackmannanshire where preparation for an inquiry often includes a large proportion of staff, with consequential impacts on service delivery. We would not propose any other shortening of the inquiry lead in timetable

Dundee City Council: Reduce period allowed for circulation of statements of case. Agree with reduction in period allowed for circulation of statements of case. No further suggestions.

East Dunbartonshire Council: No comment.

East Lothian Council: No, the current time scales are fair and reasonable for all parties.

Falkirk Council: Enhanced use of information technology. In practice it is usually the council which becomes responsible for preparing the core documents. For a large public inquiry this can result in significant staff time involved in collecting and copying documents. As many of these documents are standard planning texts, for example government guidance this process seems unnecessary. As many documents as possible should be capable of merely being referred to and/or made available on a central website.

Fife Council: Circulation of productions. Yes. It is suggested the issue of circulation of productions is

examined. Many documents are freely available on websites and requirement to circulate documents could be restricted to those documents not freely available in the public domain. In addition there is often duplication of submissions which could be avoided if key documents are identified early in the process.

Glasgow City Council: Reporters should take a more pro-active role in narrowing issues in dispute. The Reporters could be considerably more pro-active in their role of narrowing down the range of issues to be dealt with at the inquiry. The pre-inquiry public meeting is often too focussed on timescale and programming with not enough advice given to appellants e.g., on the role of written submissions. (see also the response to question 10)

Enhanced use of information technology. Procedures could be speeded-up by the more widespread use of electronic transmission of documents in a standardised format.

Orkney Islands Council: We would be in support of other measures to reduce the overall time taken, although in the current climate this may have knock on effects on the work load of officers.

Perth and Kinross Council: Costs for parties not submitting statements on time. No, other than costs against parties who do not submit statements in time.

South Ayrshire Council: Shortening pre-inquiry processes further might compromise quality of information available to reporter. It is not considered that the suggestions presented in the consultation paper are acceptable as a means of reducing the pre-inquiry timescales -indeed in terms of the value of time spent, it would

appear short sighted to reduce the preparation time pre-inquiry, when higher costs may be incurred in examining issues at the inquiry itself - or costs may be higher re: quality of decision if issues are not adequately addressed at all.

South Lanarkshire Council: This is where a distinction comes in between planning inquiries for development control and those for local plans. There are several things that could be improved that may apply to both:

- Better and more effective advertising
- Better publicity generally
- Enforce timescales set
- Insist on a list of participants
- Have an indication of the length of evidence to be presented by parties
- Assess all the issues beforehand and make no allowance for introduction of new evidence.

West Dunbartonshire Council: There is a need to set reasonable deadlines which will be met without adverse impact on other service delivery.

West Lothian Council: Review all parts of process and timescales. It is felt that all parts of the process and the timescales for complying with them should be reviewed on a reasonable basis.

Western Isles Council: With regards to the [...] question [7], there could be a requirement to submit statements of case within 6 weeks of the lodging of an appeal, or 4 weeks from the "relevant date" whichever is the sooner. At present "the date fixed for the holding of an inquiry shall be not later than 24 weeks after the relevant date". This is nearly 6 months. Efforts could be made to try to cut this period.

Other LA organisations

COSLA: Enhanced use of information technology. It could be useful to all parties to see an increase in the use of electronic transmission of documents associated with inquiries. It offers another opportunity to those who have access and are comfortable with the use of this means of communication, to remove delays in submitting appeal documentation.

Public Bodies

Royal Fine Art Commission for Scotland: May emerge from consultation. RFACFS considers that there may be scope for shortening the pre-Inquiry stages and that these will emerge from the present consultation.

Scottish Natural Heritage: Need for plain English guidance. Shortening the pre-inquiry stage could perhaps be helped by the production of SEIRU guidance that is less legalistic, written in plain English, and with a list of dates rather than statements such as "eight/four weeks from the relevant date".

The Development Industry

Bett Homes: Deadlines should be absolute. Deadlines should be absolute for all parties giving a level playing field for the exchange of information. This should apply for the complete process, from Statements of Case, through to Closing Submissions.

Homes for Scotland: More certainty for timing of pre-inquiry meeting. Greater certainty with regard to the timing of the pre-inquiry meeting would be welcomed and limits could be set in terms of the timeframe for setting that meeting, albeit that the

Reporter may have to be given the right to exercise a discretion under exceptional circumstances.

Specific timescales for identification of areas of agreement. It may be beneficial to seek to identify specific timescales for the parties to seek to explore "areas of agreement" but again speed of response at the expense of quality of response is not conducive to good decision-making.

Case for scrapping statements of case. Adjusting the time period for circulation of Statements of Case by 4 weeks would probably be no more than simply "tinkering at the edges" of the process. Some consideration of the value of Statements of Case ought to be addressed. As they are prepared weeks before precognitions are required they are very rarely "fully comprehensive". Homes for Scotland is aware of one recent exchange between the planning authority and the appellant where both parties listed almost every issue from "planning history" to "impact on the character of the area" as well as "traffic and infrastructure" to "previous appeal decisions" as being relevant. They both listed almost every SPP, NPPG & PAN as a material consideration and both listed multiple Structure and Local Plan policies. The Statements from both sides provided even less explanation of either parties' case than the reasons for refusal or grounds of appeal. There is a case for scrapping mandatory Statements of Case and leaving it to each appointed Reporter to consider whether, in advance of circulation of precognitions, there is any need for either party to expand on their position. A four or six-week deadline could be given for compliance with such a request.

Need for advance circulation of productions? In addition to the above Homes for Scotland would question the need for the advance circulation of documents / productions. Productions are required to be lodged before precognitions are completed which can lead to the need for lodging late productions. It would remove one of the causes of late productions and shorten the pre-inquiry time, if both productions and precognitions were lodged simultaneously.

Expediting procedures can lead to confusion and uncertainty. Notwithstanding the above suggestions, there is always a concern that expediting procedures or setting early dates can lead to confusion and uncertainty. Renfrewshire Council's current Local Plan Inquiry which is due to commence on the 2nd December 2003, almost 18 months after finalisation of the Local Plan itself, was officially notified to all objectors at a pre-inquiry meeting held on the 1 September 2003. However, the haste with which the start date was announced resulted in the timetable for the Inquiry not being issued until the 10th November 2003 and received by all parties less than 3 weeks before the start of the Inquiry. Participants to the Inquiry, which was likely to run for two months, had no idea until less than 3 weeks before the start when exactly they were timetabled to appear.

MacTaggart & Mickel Ltd: Pre-inquiry meetings. Recent experience has shown us that local authorities have proved difficult in agreeing to a pre inquiry meeting date. Even when it has been set up, some third parties who wished to be present, have failed to turn up and this has caused further administrative delays.

Stewart Milne Holdings: Reduce period allowed for circulation of statements of case. Shorten the period for circulation of parties' statement of case once they are lodged. Can productions and precognitions not be lodged at the same time?

Taylor Woodrow: Please see comments on Q6, concerning matters in dispute or agreement.

Walker Group (Scotland) Ltd: Case for scrapping statements of case. Adjusting the time period for circulation of statements of case by 4 weeks is simply tinkering at the edges of the process. Instead, the value of Statements of Case ought to be considered. As they are prepared weeks before precognition's are required they are very rarely "fully comprehensive". We are aware that in one recent exchange between planning authority and appellant both parties listed almost every issue from "planning history" to "impact on the character of the area" as well as "traffic and infrastructure" to "previous appeal decisions" as being relevant. They both listed almost every SPP, NPPG& PAN a material consideration and both listed multiple Structure ad Local plan policies. The statement from both sides provided even less explanation of either parties case than the reasons for refusal or grounds of appeal. There is such a case for scrapping mandatory Statements of Case and leaving it to each appointed Reporter to consider whether, in advance of circulation of precognitions, there is any need for either party to expand on their position. A 4 or 6 week deadline could be given for compliance with such a request.

Need for advance circulation of productions? In addition to the above suggestion we would also question the

need for the advance circulation of documents / productions. As above, productions are required to be lodged before precognitions are completed which can lead to the need for lodging late productions. It would remove one of the causes of late productions and shorten the pre-inquiry time, if both productions and precognitions were lodged simultaneously.

Expediting procedures can lead to confusion and uncertainty. Notwithstanding the above suggestions, there is always a concern that expediting procedures or setting early dates can lead to confusion and uncertainty. Renfrewshire Council's current Local Plan Inquiry which is due to commence on the 2nd December 2003, almost 18 months after finalisation of the Local Plan itself, was officially notified to all objectors at a pre-inquiry meeting Held on the 17th September 2003. However, the haste with which the start date was announced resulted in the draft timetable for the Inquiry not being issued until the 10th November 2003 and received by all parties less than 3 weeks before the start of the Inquiry. The finalised timetable was issued less than a week before the start and had less than one weeks notice of when exactly they were timetabled to appear.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: We have nothing further to add.

Marks and Spencer plc: Yes. The Company suggests that the longest delay is, between the submission of statements of common ground and the submission of proofs of evidence. This period is determined by the date of the sitting for inquiries and hearings,

which are often not available, until months into the future. This area of delay should be addressed.

Sainsbury's: Need to agree the key issues to concentrate on from the outset.

Scottish Coal Co Ltd:

Adherence to deadlines with effective sanctions for non-compliance. As above, insist that Local Authorities submit the required information within the stated periods with effective penalties if they do not.

Scottish Council for Development and Industry: There are a number of options worth considering.

Enhanced use of information technology. There must be scope to use web based technologies to enable faster circulation of information to all relevant parties. Notwithstanding any legal issues surrounding matters of authenticity then this avenue should be explored further.

Pre-inquiry meetings. Also more certainty could be given as to when the pre- inquiry meeting will take place. If the 8 weeks maximum for lodging of full statement of case remains then it would be sensible to ensure that the pre-inquiry meeting takes place within a 12 week period. This would enable the reporter to set out areas where the planning authority and appellant should reach agreement and to indicate the issues he wishes to hear at the inquiry.

Specific timescales for identification of areas of agreement. Furthermore it would then be beneficial for a further date, beyond the 12 weeks but prior to the inquiry, when the planning authority and the appellant detail to the reporter the mutual areas of agreement

and agreed planning conditions. Finally, a focus on ensuring that the areas of agreement between all parties can be maximised will clearly have benefits in minimising the amount of work and information that needs to be circulated prior to the inquiry.

Scottish Landowners Federation: No. SLF thinks that the answer to this is "probably not". Circulation of parties' cases does serve a useful purpose and the opportunity to study them can help.

Professional organisations

Law Society of Scotland: No. In the sub committees view the essential pre-inquiry stages are working efficiently and effectively and no change in this area is necessary.

RTPI: Concern about impact of shortening pre-inquiry stages at expense of getting inquiry to run efficiently and inclusively. As indicated under Question 6 above, we would be concerned that pre inquiry stages are used to provide a basis on which the inquiry process itself can be run more efficiently and inclusively, rather than being shortened at the expense of this aim.

Scottish Planning Consultants Forum: The SPCF supports a reduction for the period to produce a statement of case (see below).

Enhanced use of information technology. The opportunities for saving time that IT solutions could bring should be investigated. However, it is recognised that this may be limited as parties have significantly different levels of IT resources and support. The SPCF supports reasonable suggestions for shortening pre-inquiry stages.

Scottish Planning Law and Environmental Law Bar Group:

Time for setting relevant date should be shortened. We consider that the time taken for a relevant date to be set could be shortened.

Impose time limit for decisions whether to call in or not. In call in cases, the time for decision whether or not to call in a case should be subject to a time limit.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: Timetable inquiry for earliest realistic date. It is the function of the Reporter at the pre inquiry meeting to timetable the inquiry at the earliest realistic date. Reporters should be invited to limit the room for manoeuvre of all relevant persons in agreeing an early programme and should equally impose upon themselves that self discipline.

Maclay Murray Spens: Need for more rigorous enforcement of deadlines for planning authorities to submit their completed appeal questionnaires. We are of the view that it would assist if the time limit given for the Planning Authority to submit their completed appeal questionnaire was more rigorously enforced. We have had experience of situations where Reporters have set simultaneous time limits for submission of documents and precognitions. We do not believe that that assists the process or helps to save time.

PPCA Ltd: Restrict scope of statement of case. Yes. It is suggested that the Statement of Case should be restricted to matters other than the

grounds of appeal as, according to the logic in question 4, these constitute the planning case. The Statement of Case could then be confined to administrative matters to be lodged, say, as part of the parties' documents (ie., four weeks before the inquiry/hearing is due to commence).

Shepherd and Wedderburn: We note the proposals within the Consultation Paper to advertise the public inquiry area. We fully support this proposal.

Main parties should abide by rules but more flexibility for members of the public. We recognise that it is important that significant parties to the inquiry are given indication that they are going to participate and abide by all the rules. However, bringing in very strict rules relating to appearances in our view is most likely to affect members of the public who wish to participate in the process. Those are the groups of people that the Executive wish to encourage to participate. In the circumstances we consider that flexibility should continue to be provided to members of the public. Our experience in relation to these matters is that where members of the public group together, they are more likely to keep to inquiry timescales and participate more fully. However, flexibility has to be required to enable individuals who have perhaps misunderstood the process to still engage with the process. Our experience has been that reporters have been willing to allow third parties to come in even relatively late in the day with precognitions. Generally speaking, these do not cause a problem in the inquiry process apart from where they relate to technical matters. In conclusion, therefore, we support the view that it is important to maintain rules relating to pre- inquiry stages but there should continue to be a discretion

to the reporter to allow particularly members of the public to participate.

Requiring exchange of precognitions 4 weeks before inquiry starts might help achieve agreement on issues which might in turn shorten the inquiry process. We do not think that considerable shortening of the pre-inquiry stages is necessarily the most effective method of shortening the inquiry process. It is clear that for major inquiries considerable preparation is required and appropriate timing must be given to the preparation of documents. The other aspect which is important in the pre-inquiry stages is the potential for agreement on evidence. This often requires time. It is our experience that once the time pressures are brought to bear on parties, they tend to focus in on their own case and do not tend to find the time to consider other parties, and possible agreement. In that respect there may be some merit in requiring the exchange of precognitions four weeks before the commencement of the Inquiry.

Community Councils

Craiglockhart Community Council:

Quality of planning authority's committee report. The quality of the planning authority's Committee Report must be a factor in the time taken at pre-inquiry stage.

Voluntary Organisations

Architectural Heritage Society of Scotland:

Confidence in the process should not be sacrificed for speed. The Society does not see any ways of shortening the pre-inquiry stages that could

operate without prejudice to the process as a whole. Again, as per our response to question 1, this would entail prioritising speed of the process over confidence in the process, and merely undermine the value of the process.

Friends of Glasgow West:

Directed discussion at preliminary hearings. Direct discussion at preliminary hearings [– see answer to question 1].

Friends of the Earth: Most delays caused post-inquiry and speeding up decisions should be prioritised. We are not convinced that there is any scope for the pre-inquiry stages to be compressed further. It would appear that most of the delays occur at the other end of the process. We would prioritise assessment of ways to enable the Reporters Unit to arrive at decisions more quickly and for the executive to address the issue of delays where a Ministerial decision is involved.

Historic Environment Advisory Council for Scotland: HEACS is not aware of any, but if they emerge out of the consultation responses they should be examined.

Saltire Society: Although the initial and final stages for submissions cannot be much reduced it is believed that the total maximum period of 24 weeks should be reduced to 16 or at most 20.

Scottish Civic Trust: Appellant should be required to submit Statement of Case with as part of appeal application process. The Trust feels that these two issues are interconnected. A Statement of Case could be required from the applicant as part of the appeal application process.

The local authority, consultees and third parties could then be given 4 weeks from notification to submit their Statements. It should be remembered that the appellant is challenging a decision (or lack of one) so it is entirely reasonable that their reasons for doing so are made up front. This process would considerably shorten the pre-inquiry phase.

Individuals

Connal: Quality of process is at risk from further shortening of the process. The current position is fast approaching where further shortening of pre-inquiry procedure is difficult without periling the quality of the process. I have two thoughts:-

- **Need for lists of proposed conditions.** Can I repeat my call made elsewhere for greater pressure on local authorities to produce lists of proposed conditions? Having once had to deal with conditions - and there were a lot of them -one by one in oral evidence at an Inquiry I have seen the worst case scenario in operation! There appears to be a view in some local authorities that providing conditions which would apply were consent to be granted amounts to a sign of weakness and they should never be volunteered or produced until compulsion is applied. Conditions should be issued at the earliest possible stage so that those involved in the planning and other technical aspects for the appellant can give consideration to the conditions, indicate which are acceptable and identify areas of disagreement;
- **Pre-inquiry meetings.** There might be a case for re-visiting the

whole object of pre-inquiry meetings. These give rise to very substantial expense but some are reduced to discussions of parties' respective diaries, consideration of size of meeting rooms and other practical issues. A meeting on these points strikes me as being a very expensive way of doing business. Swifter and more practical ways could be found. If there are matters of substance to be discussed, such as a real argument over the scope of the Inquiry or difficult points over agreement of matters, there is much to be said for a pre-inquiry meeting at a slightly later stage (and for other less elaborate ways of dealing with these).

Hall: Enhanced use of information technology. Deadlines will always be in danger due to work overload / illness / incompetence / deliberate prevarication etc. Co-operative e-mail might speed things in some cases ("co-operative" here means transmissions notified by telephone and confirmed by mailed copy). Other than transmission speed, advantages of e-mail are multi-addressing and notifications of receipt.

Smith (Robert): I cannot think of shortening the existing period.

Watt: No.

Question 8 Should all parties to a planning inquiry who intend to lead oral evidence be required to register their intention to do so by a specified date; and also to disclose their case in advance on the same structured and consistent basis?

Local authorities

Aberdeen City Council: This change appears to run contrary to the aim of making the inquiry process less daunting and open particularly for lay people. It is believed that there remains the need to be more flexible on whether people choose to lead oral evidence or otherwise. Knowledge of practice at inquiries reveals that there are situations where people may intend simply to observe what is being debated but in the course of events feel motivated to speak in order to counter or clarify an issue that has been discussed. That right would not be open to them if such a procedure was introduced. Conversely, others may intend speaking but are then comforted by some clarification they hear as the inquiry proceeds and decide not to speak. The participation of less assured lay people is likely therefore to be discouraged by this requirement. As regards the arrangements for press adverts it is agreed that such notices should be placed as early as possible. This is particularly relevant to members of the public who may have to make special arrangements to attend.

Aberdeenshire Council: At the opening of a planning inquiry, the reporter and the principal parties will be well aware of who is to be giving evidence with prior disclosure of their case. These parties can often be distracted by third parties turning up on the opening day and seeking to give

evidence which often merely replicates the evidence of the main parties. Clearly, such groups and individuals should have every opportunity to present their evidence at the inquiry, but their intention should be made known beforehand and they should be subject to disclosure of their case as for the main parties. For this to be fair to these parties, public advertisement of planning inquiries would have to take place earlier than the four week minimum presently operating.

Angus Council: All major parties participating in an inquiry should be required to do this. However, it would be unfair to require members of the public to abide by the same rules. Often at major inquiries the public do not become aware until the inquiry has commenced or shortly before it is about to commence. In such instances the practice of members of the public being allocated a time slot to give evidence does not generally disrupt the inquiry to any great extent.

Argyll & Bute Council: This is required to ensure certainty in the process and to allow for reasonable and accurate programming of an inquiry. To ensure equality persons giving oral evidence should also be required to advise of the content of their evidence as required by all other parties.

City of Edinburgh Council: CEC supports the early notification and submission of standardised statements of case by the principal parties. However, the impact on third parties of such a restriction is recognised, particularly where unrepresented community groups require time and advice to prepare their case. Perhaps some flexibility is required to permit community groups the ability to present evidence to the inquiry without

the prior submission of a full written statement of case.

Clackmannanshire Council:

Development plans: See also 17 below. It is important that the regulations are changed to remove the right of anyone to speak at an inquiry without the need for prior notification. Those who wish to speak should be required to go through a procedure of declaring this and providing evidence prior to their appearance. Where people indicate that they wish to speak or put questions to witnesses "on the spot", this can disrupt the agreed structure of the inquiry and can be unfair on those presenting evidence.

Development control: The discretionary powers available to a Reporter introduce uncertainty in the process for participants. A balance has to be struck between achieving certainty, adhering to deadlines and yet not unreasonably frustrating participation. Prescribing a specified date for all parties is deemed to be a positive change subject to the caveat that those not having given the prior notice could participate, but only with the blessing of the appellant and planning authority. The obligation to disclose a case in advance should be binding on all parties, so long as it can be demonstrated that the opportunity to participate has been reasonably made known. The intention to bring forward adverts in the local press is noted. There may be scope to publicise inquiries on web sites.

Dumfries & Galloway Council: For Local Plans / Structure Plans there should not be time restrictions in respect of matters which may be material, but it should be understood by all parties that the unjustified holding back of information which may be material is liable to mean that

(as with late information in general) it cannot carry the weight which could normally be expected in the decision process.

Dundee City Council: Yes, and they should be required to prepare and circulate statements of case within a prescribed period prior to the Inquiry.

East Ayrshire Council: The Council would support these suggested requirements.

East Dunbartonshire Council: This approach is fair and equitable to the appellant, Planning Authority and is not considered to disadvantage third parties. It should therefore be introduced without delay.

East Lothian Council: Yes to both questions. In the interests of fairness, full disclosure should be given well in advance of the start date of the Inquiry.

East Renfrewshire Council: Yes, although simplified inquiry procedures should reduce the requirement to "lead local evidence" and "disclose their case." If there is to be a move towards simpler, less adversarial inquiries, then the procedures and language used to describe this needs to be carefully looked at.

Falkirk Council: The suggestion is supported for the principal parties and this is allowed for in the existing Inquiry Procedure Rules. These requirements, if extended to all parties wanting to speak, would be quite onerous for individual members of the public and some community groups. It is suggested that current practice, where discretion is left to the judgement of individual reporters is adequate.

Fife Council: Yes. This would assist in the administration and management of the inquiry, and would reduce the risk of delay from new issues and evidence being sprung on participants. It would also provide an opportunity for parties with common cases to conjoin evidence and pool their resources. Some discretion should be given to 'non-professionals' with regard to their submissions, provided that the key issues are contained in their case.

Glasgow City Council: Registering by a specific date would avoid the need to deal with late objections or other issues not identified beforehand and would be a more effective use of inquiry time. Late submissions could be dealt with by written submission. Reporters would require to be provided with formal guidance in order to ensure a standardised approach to the issue (this would also be true of any other procedural change to be introduced).

Highland Council: The Inquiry Procedure Rules allow the possibility that a party may attend the Inquiry and seek to take part without giving any prior notice. Uncertainty is increased when evidence is allowed from those who have not given advance notice of their case and other parties may be disadvantaged. The proposition is that those who wish to lead oral evidence be required to register their intention to do so by a specified date and also to disclose their case in advance on a structured and consistent basis. Third parties should have a more generous period to submit advance information so that they can consider the submissions by the main parties and perhaps associate themselves with particular evidence rather than repeat it. This seems an entirely sensible approach.

North Ayrshire Council: In practice Reporters will, at the start of an Inquiry, ask those in attendance whether they wish to speak. In none of the Inquiries before North Ayrshire Council or before Cunninghame District since 1990 (which is the length of my involvement) has this caused any problems to other parties. While this rarely raises new issues, it allows members of the community to become involved in the Inquiry process and to feel that their view has been heard. Accordingly, this is a matter on which there is need for balance between, on the one hand, the need for community involvement and, on the other, the requirement to avoid prejudice to parties. Prior to making any change to this we would recommend that the Executive obtains further evidence on the need for a change. From our experience in 30 plus Inquiries, this has never once caused a problem to either the Council or the applicant.

North Lanarkshire Council: This proposal is agreed. In cases of large numbers of, say, objectors, there may need to be consideration given to asking for several representatives to be nominated.

Orkney Islands Council: For those taking part in the presentation of oral evidence, we support the idea of introducing a registration date for those intending to appear. The disclosure of their evidence prior to the inquiry would prevent ambiguity and surprises and lead to a more constructive debate at the inquiry.

Perth and Kinross Council: The principle of improving certainty to the process is supported. As a result it is agreed that all parties wishing to give evidence to the inquiry should be bound to the same rules of prior disclosure of their case. The general

public may however feel excluded by such procedure and often only want to ask a question or give their opinion, i.e. "I don't like this proposal", or "I support the development". To exclude completely the public's right to participate on the day will only result in the alienation of the public from the planning process and may infringe on their rights under the European Human Rights Convention. It is proposed that anyone wishing to give a substantial piece of evidence be required to be bound to the rules of prior disclosure, however, the reporter should have the discretion to allow a member of the public a maximum of 5 minutes to state their views, or ask questions of a witness.

Renfrewshire Council: Yes. They should be on the same footing as all other parties.

South Ayrshire Council: It is agreed that there should be consistency in case disclosure from all interested parties.

South Lanarkshire Council: Yes - and should be made to adhere to these dates and give confirmation about who will be appearing and the scope of their evidence

West Dunbartonshire Council: Yes, if the system is to be fair and equal to all. This does, however, remove flexibility and may put off those who have not got the time or "the courage" to go through the full formal channels. Greater use of hearings might help.

West Lothian Council: Yes. It is felt that early registration by all parties would minimise confusion and uncertainty and allow the parties to prepare their case in the knowledge of what is to be defended or challenged. It is also felt that such a procedure would help minimise delays at the inquiry

itself. The Inquiry Reporters Unit faces difficulties in making arrangements for public inquiries that suit all of the parties, particularly in respect of the date on which the planning inquiry is expected to start. Representations have been made that the present inquiries procedure rules allow insufficient time for parties to prepare. Any delays to the system runs counter to the Ministers' objective of speeding up this decision making process.

Western Isles Council: It would speed up the process and be fairer to all if inquiries could be advertised at the "relevant date". Anyone wishing to take part could then be required to confirm this and exchange statements of care within, say, 4 weeks of the Notice of the Inquiry appearing in the press.

Other LA organisations

COSLA: Early registration could be seen as helping reduce confusion and uncertainty, but this should be seen to reduce flexibility in some instances. Using the hearing system might also offer individuals and community groups the opportunity to present evidence without prior submission.

Public Bodies

Council on Tribunals, Scottish Committee: Members agree that this is acceptable.

Royal Fine Art Commission for Scotland: RFACFS considers that this is desirable in the interests of increasing certainty and to prevent one party gaining advantage over another. There may, however, be merit in allowing third parties the opportunity to consider the evidence of the main

parties in advance, in order that their own cases may be more considered.

Scottish Enterprise: Yes. All parties to a planning inquiry who intend to lead oral evidence should be required to register their intention to do so by a specified date.

Scottish Natural Heritage: Yes.

The Development Industry

Bett Homes: Yes intentions should be registered at the outset and timescales adhered to be all, then no party is prejudiced by late or irrelevant evidence.

Homes for Scotland: Homes for Scotland would not seek to resist this initiative to drive in greater certainty to the process, although it is accepted that an "exceptional circumstances" discretion may have to be given to Reporters to ensure that no ones right to a fair hearing is compromised.

MacTaggart & Mickel Ltd: Yes.

Stewart Milne Holdings: Ideally yes to the first question; less sure that with regard to the second question those intending to lead oral evidence should have to disclose their case in advance. (How would they do this if they are going to only give oral evidence anyway?)

Taylor Woodrow: TW support the first part of this proposal.

Walker Group (Scotland) Ltd: The Walker Group would be supportive of this measure in order to avoid "surprises" at appeal, however we are mindful of the need to achieve best evidence and there may be good reason for introducing witnesses after

preparation of the Statement of Case and the date for completion of precognitions.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: Yes. The recommendations on this matter are sensible in the interests of a fair appeal process.

Marks and Spencer plc: Yes. The Company agrees that all parties intending to give evidence should have to register their intention and disclose their case in advance.

Sainsbury's: Believe this is done already in the majority of cases. Will help increase public confidence in the system if consistently carried out

Scottish Coal Co Ltd: Yes. Agree proposal.

Scottish Landowners Federation: SLF considers that the answer to the first part of the question is -"yes" in principle, subject to a right for the appellant or the planning authority to lead oral evidence, whether or not they have registered an intention to lead oral evidence, in reply to oral evidence lead by a party who registers intention to do so near the deadline. Without this safety net all parties in practice will register intention to protect their positions. With regard to the second part of the question, SLF's answer is a qualified "yes". It may be difficult to devise common standards for disclosure. Detailed guidance would however be useful.

Scottish Council for Development and Industry: SCDI agrees with the above proposed approach as it provides certainty and should reduce delays

when the inquiry opens. That said, the reporter should still have the final say on whether they wish to accept evidence from a party who for whatever reason has not indicated an intention to participate.

Tesco: All parties who do intend to present and lead oral evidence should be required to register their intent by the specified date and also be subject to the same rules. For example full statements of case in advance. This allows the issue to be addressed and possibly even resolved prior to the Inquiry opening hence decreasing the amount of time necessary for the Inquiry itself.

Professional organisations

Law Society of Scotland: The sub-committee agrees that all parties to a planning inquiry who intend to lead oral evidence should be required to register their intention, but is of the view that public notices of inquiries should highlight this requirement

RTPI: We agree with this in principle as it will help the inquiry process but further consideration requires to be given to how information and guidance can be distributed effectively to all interested parties at an early stage. If the measure is successful, it will provide an opportunity for greater collaboration and organisation of third parties in preparing for the inquiry and making the most of their limited resources. In time, opportunities for mediation may arise.

Scottish Planning Consultants Forum: This proposal is attractive as it provides increased clarity and certainty. The SPCF supports proposals for participation registration at inquiries.

Scottish Planning Law and Environmental Law Bar Group: Yes. However, such a stricture might require greater assistance to be provided to uninformed third parties so that their right to be heard is preserved.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: This question may be argued to impose upon third parties a degree of limitation which is partly in conflict with the stated objectives behind the Paper. In general we believe that the current procedure works reasonably well but there have been some occasions upon which third parties (who perhaps have more experience of these matters than they claim) have utilised the flexibility in the current procedure for their own benefit. On balance, and given the other proposals for change, we would answer this question in the affirmative.

Maclay Murray Spens: We agree in principle with this idea but are of the view that it will be difficult to enforce in practice (i.e. for general members of the public who may have no legal representation, to comply) and will inevitably increase the volume of bureaucracy within inquiries.

Paull & Williamson: We think this is a good idea, although some thought will need to be given to the 'public notice' so that the public are likely to see it.

PPCA Ltd: Yes. Clearly, in the light of question 4, other parties who wished to appeal would have to provide a Statement of Case.

Robert Drysdale Planning Consultancy: Yes.

Shepherd and Wedderburn: We have previously answered this question in effect in our responses to question 7. We certainly believe that it is beneficial to have processes which parties sign up to. However, again we consider there should be sufficient discretion retained by reporters to enable members of the public to participate.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: Yes, but see below on pre-inquiry process and meetings.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: While we can appreciate the concerns that give rise to these suggestions, the arrangement is intended in principle to accommodate unusual circumstances arising as part of the procedure. The situation currently operates at the discretion of the reporters, and the matter could be addressed more properly through more stringent guidelines for reporters. More substantial control has the potential to exclude significant information from the consideration of the reporter and, *inter alia*, open the Inquiry to challenge on the grounds of competence.

Ferryhill Heritage Society: Yes.

Friends of Glasgow West: Yes -to "a specified date" but structured format later [see also answer to question 1].

Friends of the Earth: Again, not all parties to an inquiry are familiar with the procedure. In as far as possible, the unit should be aware of who wishes to be heard at inquiry, but we think only the main parties should have to disclose information beforehand. We want to encourage individuals to engage with the process and are currently trying to make that involvement less intimidating. To add further demands on people who are unfamiliar with the process could deter them from participating.

Historic Environment Advisory Council for Scotland: Yes; but subject to the discretion of the reporter only in *exceptional* cases, such as may relate to material changes in legislation or circumstances which may have changed from when the application was determined.

Planning Aid for Scotland: The limited capacity of individuals and small community groups compared to professionally represented parties with paid full-time staff has to be recognised. Many groups or individuals would not have the capacity to fulfil, for example, the obligations required for 'relevant parties' under the existing rules. If there was such a requirement, it would be essential that very clear guidance was issued and time scales were fair, recognising the different capacities of the parties.

Saltire Society: Yes.

Scottish Civic Trust: The Trust does not feel that this is consistent with the aspiration of getting the public involved in planning. However, we can see the appellant's and local authority's view on this.

Individuals

Collins: The broad basis of the arguments/documents etc relied upon to support the arguments, but not the whole case.

Connal: 'Yes' -though consideration should be given to the extent of formality imposed. While there is no objection to asking a member of the public to set out clearly what he intends to deal with in his evidence, formalities involving documents with legal connotations (such as statements of case) and requirements to copy documents to numerous other parties and so forth could impede public participation.

Cramond: Yes. [see also answer to question 4]

Hall: Yes, intending parties should be required to register by a specified date, and be required to disclose the direction and principal elements of their case. However, the requirement to disclose is currently qualified in wording which seems self-defeatingly strong. The prospect of submitting a "structured and consistent" disclosure would be enough to intimidate many. It might be more person-friendly to simply state that "undisclosed elements may not be introduced at the inquiry, but may be submitted in writing for consideration within, say, a week of the inquiry closing".

Smith (Robert): This proposal would have an adverse effect on the rights of an individual in a community (especially in a rural area). Not everyone in a rural area gets local papers as well as National ones.

Stark: This proposal seems reasonable, provided that adequate

time for third parties to react is built into the PLI process in general. It should be remembered that in spite of various initiatives, the first time that many people become aware of a proposal is when the planning committee's decision becomes news in the local press. If mediation is available, it is possible that, in some instances, the desire to present oral evidence will be overtaken by more conciliatory means of achieving a party's aims.

Watt: Yes.

Question 9 Do you subscribe to the view that the pre-inquiry process set by the Inquiries Procedure Rules does not allow sufficient time for proper preparation? If so, why?

Local authorities

Aberdeen City Council: The existing rules are at the margins of allowing sufficient time for adequate preparation for any but the most minor proposals. This work has to be fitted into the rest of the work officers of the authority require to carry out. With current resources and continuing pressure to do more with less officers do not have the luxury of time dedicated only to preparation for the inquiry.

Aberdeenshire Council: The timescale at present is only a problem in the case of appeals against non-determination. To obtain the Planning Authority's view on the proposal had it been allowed to proceed to determination is dependant upon Committee dates. See comment relating to Question 4.

Angus Council: No I consider that in general the process does allow sufficient time for preparation.

Argyll & Bute Council: Time scales are restrictive at this point in time and to reduce further could result in the submission of poor evidence.

City of Edinburgh Council: CEC recognises that the existing Rules permit some flexibility and that the pre-inquiry meeting will establish the timescale taking into account the complexity of the issues.

Clackmannanshire Council:

Development plans: In the case of Local Plan inquiries, the existing timescales set out in the Code of Practice seem reasonable and adequate flexibility is built into the system. However, there is no real benefit in precognitions being exchanged later than the exchange of productions, since the two processes are very closely related. It is suggested that the Code of Practice is amended to recommend that both productions and precognitions are exchanged at the same time, preferably four weeks in advance of the start of the inquiry.

Development control: The consultation paper refers to concerns from those representing prospective developers handling major cases. Major cases will always include pre-inquiry meetings. The current framework in such circumstances are periods of 16 weeks and 24 weeks from the relevant date until the pre-inquiry meeting and inquiry respectively. Given the preparation for a planning application, the application process itself and the time period up until the relevant date, we would submit that sufficient time is available for a team to prepare evidence for an Inquiry.

Dumfries & Galloway Council: For Local Plans / Structure Plans – no.

Dundee City Council: No

East Ayrshire Council: It is considered that the allowance of further time for appellants to prepare their case would further unnecessarily delay the start of a public local inquiry and that this situation should be avoided if at all possible.

East Dunbartonshire Council: Proposals to further shorten pre inquiry procedures are considered to be problematic.

East Lothian Council: It is felt that the pre-inquiry process set by the Inquiries Procedure Rules strikes a fair balance between providing sufficient time for proper preparation and an expectation that the process be completed within a reasonable period provided that timescales are adhered to.

East Renfrewshire Council: In our experience of the pre-inquiry process, timing is tight and can be aggravated by other commitments/deadlines.

Falkirk Council: No, the existing procedures are reasonable and allow a degree of flexibility for agreeing timescales at the pre-inquiry meeting.

Fife Council: No.

Glasgow City Council: This arrangement applies to all parties and is, therefore, fair. It imposes a realistic discipline and should only be extended in exceptional circumstances if a strong case can be made (e.g., where a planning authority is being required to deal with a large number of appeals).

North Ayrshire Council: The rules allow sufficient time for proper preparation, particularly where

applicants have up to 6 months to prepare prior to an appeal being lodged. However, the problem is that the size of those with expertise in the Planning System and appeals, whether it be the Planning Bar, Solicitors with planning expertise or Planning Consultants, is relatively small. In practice the Inquiry Reporters Unit are extremely good at attempting to accommodate parties' genuine problems. At the end of the day, we suggest that this is not a matter which can easily be resolved. If parties are prejudiced by a failure to agree an adjournment, then they will always be able to take the matter to judicial review.

North Lanarkshire Council: It is considered that in general there is sufficient time.

Perth and Kinross Council: No.

Renfrewshire Council: Proper preparation often requires face to face meetings between multi-disciplinary teams of people. The practicalities of scheduling inevitably mean that the existing timescales are demanding. It is generally less of a problem for planning authorities as they usually use fewer witnesses who are also directly employed. However, the problems of preparation can be extreme in cases where the original decision was made contrary to the recommendation of officers.

South Ayrshire Council: This Council's experience is that the Inquiries Procedure Rules allow sufficient time.

South Lanarkshire Council: The Council is able to meet the timescales laid down by the inquiry process but consultants usually are at the last

minute or late -meeting deadlines should be strictly enforced.

West Dunbartonshire Council: All parties involved in Public Local Inquiries have pressures of various sorts which make meeting deadlines difficult. However, appropriate timescales for each stage of the process must be set and met.

West Lothian Council: It is felt that it is not the timetable of the pre-inquiry process that does not allow sufficient time for proper preparation but the resource of the development control team. In many instances developers appoint consultants to prepare the submission and this allows them to be fast tracked. In most cases the local authority must resource the preparation of its statement within house and with a conflicting workload which is difficult to prioritise. While the intention to speed up the process is to be welcomed there must be reservations in respect of the local authorities' resources in meeting accelerated targets.

Western Isles Council: It would be helpful if an "indication of the likelihood of a Pre-Inquiry meeting could accompany the "relevant notice". A rough indication of the likely topics could be given at this point and it could then be up to those appointed to take the Inquiry to supplement this up to two weeks before the date of the Pre- Inquiry meeting.

Other LA organisations

COSLA: The issue of time for preparation for the pre-inquiry process will be different for each party. In the case of councils, COSLA is aware that a number of councils will have agreed with the comment in this question. However, it might be worth pointing

out, as with our response to Question 6, that the staff resource available to planning authorities is a big problem. Set against the capacity of consultants with greater resources at their disposal, the pressure is greater on councils to achieve the timescales as they are currently established, regardless of the recognition that timescales have to be set for each stage of the process.

Public Bodies

Royal Fine Art Commission for Scotland: RFACFS considers that the pre-Inquiry process generally does afford sufficient time for preparation, although this might be increased depending on the scale and complexity of the case.

Scottish Enterprise: The time allowed for proper preparation set by the pre-inquiry process is probably about right.

Scottish Natural Heritage: No. If an application (or objection) is fit for purpose in the first place, then there should be sufficient time to prepare a statement of case.

The Development Industry

Bett Homes: We feel that there is insufficient time between the lodging of all parties' documents and the production of precognitions, especially if timescales are not adhered to, this could prejudice parties cases and lead to claims for expenses.

Homes for Scotland: No.

MacTaggart & Mickel Ltd: No.

Stewart Milne Holdings: There can be problems if this doesn't suit requirements of your team but in general the current arrangements do not need lengthened further.

Taylor Woodrow: TW confirm that sufficient time is currently provided in order that critical dates may be complied with.

Walker Group (Scotland) Ltd: At present we consider that there is more than sufficient time to prepare for Inquiries.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: We have no direct evidence that the current rules do not offer sufficient time, but in line with our previous comments, we would be concerned about any reduction in preparation time given the apparent emphasis on greater preparation at the pre-inquiry stage.

Marks and Spencer plc: No - the Company is not aware of insufficient preparation time being available.

Sainsbury's: Believe there is sufficient time for preparation.

Scottish Coal Co Ltd: No. Time allowed in Rules is adequate and can be achieved if both (all) parties know that extensions will not be granted. That is not the case at present so everyone works on the premise that an extension will be allowed. In general, developers want their applications determining as soon as possible whereas the refusing Authority is happy to delay and defer a decision which might overturn their own.

Scottish Landowners Federation: In short, "no".

Scottish Council for Development and Industry: Whilst SCDI does not

see scope to reduce the timescales in relation to the above, the view is that there is sufficient time under the present arrangements for proper preparation of case.

Tesco: We do not feel that the dates set for Inquiries are too short at the current time. There can be difficulty in producing extensive Proofs of Evidence but perhaps this is an issue to be addressed separately rather than extending the Inquiry process.

Professional organisations

Law Society of Scotland: The Sub-Committee is of the view that the pre-inquiry process set by the Inquiries Procedure Rules does, in the vast majority of cases, allow sufficient time for proper preparation but in some occasionally complex cases there should be scope for modification of the Procedure Rules and flexibility indicated at an early stage would be welcome in this area on cause shown.

RTPI: The planned reduction of the period for appeal from six to three months provides a major opportunity to change the perception of appeals. While information about appeals included with decision notices tends to focus on the right of appeal itself, much greater emphasis should be given to the basic process of appeal, including the need for more urgent response.

Scottish Planning Consultants Forum: The issue raised in question 9 indicates that some concern has been expressed that insufficient time is allowed for proper preparation of evidence for inquiries. Certainly, the setting of dates for precognitions way in advance of an actual appearance means that complex argument has to be marshalled on unnecessarily short timescales. This is where process can

triumph over preparation. This can become particularly onerous where several appearances at an inquiry are required; all of which have the same submission deadline. It would be appropriate to relate precognition submission to scheduled appearance at an inquiry. The SPCF would support proposals to relate precognition submission to scheduled inquiry appearance.

Scottish Planning Law and Environmental Law Bar Group: In our experience, in most cases the Procedure Rules allow sufficient time to prepare. Complex appeals obviously require longer so the system must allow for some flexibility.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: We have already touched on this subject in dealing with question 6. We do not subscribe to the view that the pre-inquiry process prevents sufficient time for preparation. In our submission what is needed is a culture change. From the point at which the appeal is lodged, it is the obligation of parties who intend to take part in any subsequent inquiry to work on their case diligently and comprehensively, not to delay active work until a week before a statement of case is required. The responsibility of parties (i.e. all relevant persons) is to organise themselves effectively.

Maclay Murray Spens: We do not subscribe to that view. Inquiry rules, as they presently stand, enable a fair and reasonable pre inquiry preparation time for all parties concerned. Insofar as problems arise, it is because parties flout the time limits but that can be addressed by enforcement rather than amendment.

Paull & Williamson: We don't agree.

PPCA Ltd: No. If applications are properly constituted then there should be no difficulty in meeting present or even shortened timetables.

Robert Drysdale Planning Consultancy: No.

Shepherd and Wedderburn: No.

Community Councils

Broughty Ferry Community Council: Don't know. But concerned that developers could string out the process. Increased efficiency is required, particularly if third party appeals ever came about.

Craiglockhart Community Council: No, but a pre-inquiry meeting should always be held if an inquiry is to take place as it provides a valuable opportunity for community groups and individuals to gain understanding of what is expected. A short video of part of an inquiry which could be borrowed would be helpful to those experiencing the process for the first time notwithstanding the courteous service provided by the administration.

West End Community Council (Edinburgh): Not necessarily.

Voluntary Organisations

Architectural Heritage Society of Scotland: No. It should be recognised that there is some discretion allowed by the reporter in the operation of the process as this is essential for its proper management. For example, if a date is not met by a party for whatever reason, we do not consider that it would be in the interest of any party

either to exclude such information from the consideration of the reporter or to start the entire process again.

Ferryhill Heritage Society: No.

Friends of Glasgow West: Sometimes [see also answer to question 6].

Friends of the Earth: Generally speaking the time allowed is reasonable. There will always be difficulties in adhering to timescales especially if an individual is involved in more than one inquiry, or cannot afford formal representation. Reporters are normally accommodating when setting the timetable if a participant already has commitments to another inquiry.

Historic Environment Advisory Council for Scotland: Generally not; but a distinction may need to be drawn for major cases involving many participants.

Saltire Society: Although the initial and final stages for submissions cannot be much reduced it is believed that the total maximum period of 24 weeks should be reduced to 16 or at most 20.

Scottish Civic Trust: We have no strong views on this.

Individuals

Collins: I suspect that sufficient time is already allowed.

Connal: My answer to this question is "not in general". However, Paragraph 21 refers to major cases. Any Inquiry system covers a range from the modest to the largest and most complex. In the latter, location and preparation of a wide range of technical evidence may take considerable time. It is also difficult to obtain commitment from

some experts before Inquiry dates are known. Requests may have to be made not only by developers but also by local authorities. The current system works flexibly by allowing more time where there is good reason for it. Increased emphasis on pre-application and post-application discussions inevitably tends to produce a situation in which particular advisers or experts become very well acquainted with the detail. It would be prejudicial to the interest of appellants (and in some cases authorities) were matters to be conducted in such a way as did not allow, where possible, for the retention of those involved in these discussions. To take a common example, traffic witnesses will often be heavily involved from an early stage in discussion with their respective technical counterparts. It would clearly be sensible to retain both participants in these discussions for the Inquiry. This could ultimately lead to a shorter and more focussed Inquiry.

Cramond: No. If the developer argues that more time is needed to prepare the case for the development, then the developer has not done his/her homework sufficiently and should not have lodged the planning application until the case for the proposed development had been fully thought through. The developer is wasting time and increasing and prolonging uncertainty. This is contrary to the Franks principles.

Roberts: No.

Smith (Robert): I do not subscribe!

Watt: No.

Question 10 Once statements of case have been lodged should the Scottish Ministers give more explicit guidance, even if no pre-inquiry meeting is held, on the essential issues that they wish addressed in evidence to the inquiry?

Local authorities

Aberdeen City Council: This recommendation is acceptable provided there can be assurance that the issues are correctly identified first time round. There is a danger that without knowing the full background a degree of subjectivity could be applied with the consequent danger of guidance being misdirected or inappropriate emphasis being given to certain issues over others.

Aberdeenshire Council: It would be helpful to all parties, particularly to community groups to receive before the start of a planning inquiry a statement from the Scottish Ministers via the Reporter, even if no pre-inquiry meeting is heard, giving evidence on the essential material considerations they expect to be addressed at the inquiry. While the logic of the argument for a shorter preparation period for most LPIs in order to speed up decision making is inescapable, the merits of contracting the same period for Local Plan Inquiries has to be questioned, if only from the perspective of Local Authority officers having to prepare for many hundreds of concurrent objections. It may be impossible for officers to adequately prepare for the inquiry if the timing is foreshortened. Objectors may only have to prepare for a multitude of objections (as well as attempting to negotiate a settlement). Only through the removal of the need for a statement of case could the process be made quicker.

Angus Council: Yes, I consider that this would shorten the length of the inquiry and would reduce the number of peripheral issues that are often raised which really have no bearing on the final outcome.

Argyll & Bute Council: Such guidance should be given, however, there is a case for having a pre-inquiry meeting as a matter of course to agree key issues, what points are "not material to the case" and for agreeing key areas of evidence. This in turn would reduce the time at an actual inquiry as the key issues for each case have been previously agreed.

City of Edinburgh Council: CEC believes that such guidance will assist all parties in the inquiry. This would be best achieved in a pre-inquiry meeting, where all parties can clarify the guidance. If the less complex cases are directed more towards a hearing format, then perhaps pre-inquiry meetings will be held for a greater proportion of cases proceeding to an inquiry. A formal structure for rebuttal of precognitions could assist in saving time during cross-examination.

Clackmannanshire Council:

Development plans: More explicit guidance is essential and should be set out clearly in writing immediately after the PIM (where one is held). Clear guidelines must be given on deadlines for exchange of precognitions and productions and on the matters to be considered at the inquiry and by which method (inquiry procedure, hearing or written submissions) for each objection. These guidelines must then be properly enforced by the Reporter. The biggest problem for inquiries at present is that principles are often agreed at the PIM but deadlines are allowed to drift or rules are not

enforced. This leads to confusion and disarray, and thus inefficiency, as the process unfolds.

Development control: It would be helpful to build in a stage between the submission of statements and precognitions which requires Scottish Ministers to identify the key issues for consideration at Inquiry. This may be particularly relevant where no pre-inquiry meeting is held, as such meetings should already fulfil this purpose.

Dumfries & Galloway Council: See '3' and '4' above. For Local Plans, Reporters should consider the advice of the local authority and indicate which objections relate to the main strategy of the Plan. It should be made clear that such objections may be only part of the overall formal objection lodged by any particular party and that 'related' objections may derive from a number of different sources. A similar approach should be adopted for Structure Plans.

Dundee City Council: Yes, the Development Plan provisions and other indisputable evidence should be identified as guidance. Would it not be simpler to hold a pre-inquiry meeting in all circumstances to agree this?

East Ayrshire Council: The Council is of the opinion that it would be beneficial for appellants, the planning authority and objectors party to an appeal to be made fully aware of the scope of the inquiry and the issues that the Scottish Ministers wish to see addressed at the inquiry. The Council would offer no objection to the Scottish Ministers making this information available to all involved parties should it be considered expedient.

East Dunbartonshire Council: With the proviso that there might be an opportunity for the list of issues to be debated prior to the commencement of the Inquiry, this approach of refining the discussion down to the really important issues would be welcomed.

East Lothian Council: It is difficult to answer this question without an example of what is meant by "more" explicit guidance. Except in the course of pre-inquiry meetings, we are not aware that there is any other guidance given out under the present system.

East Renfrewshire Council: Yes. The Inquiry should be much more focused on key issues. Guidance should be given to the parties, but should also be given to the Reporter, in cases of delegated decisions, by Scottish Ministers.

Falkirk Council: This suggestion is supported. As the main thrust of the consultation paper is to reduce the number of inquiries and to focus on areas of disagreement it is suggested that most if not all inquiries would be the subject of a pre-inquiry meeting.

Fife Council: Yes. This suggestion could be helpful in confirming the scope of issues and order of evidence. The absence of such guidance could lead to unnecessary delay at the outset of the inquiry.

Glasgow City Council: This would assist, but experience has shown that pre-inquiry meetings concentrate on the mechanics of the inquiry rather than on narrowing the range of issues to be covered. The Executive should issue restrictions to Reporters that, at the pre-inquiry stage they are required to narrow down the issues. This will require meetings to be set up involving all parties at which representations can

be made. Such a process is likely to have implications for the pre-inquiry timescale. (see also response to question 7)

Highland Council: Again this seems an entirely appropriate approach.

North Ayrshire Council: It would be helpful if Scottish Ministers gave more explicit guidance, even if no Pre-Inquiry meeting is held, on the essential issues that they wish to be addressed in evidence to the Inquiry.

North Lanarkshire Council: This proposal would be helpful.

Orkney Islands Council: Once the Inquiry process begins we would support the idea that Scottish Ministers give clear guidance on the issues to be addressed prior to the inquiry itself. This encourages non-represented members of the public taking a full and valuable part in the process, and clarifies what is expected to ensure the Inquiry is as productive as possible.

Perth and Kinross Council: The principle of the reporter giving more explicit advice on the issues to be discussed is welcomed, particularly if this extends to identifying those issues which will not be discussed either because they are not relevant to the planning case, or are not in dispute. Requiring the appellant and the planning authority to come to an agreed position on other issues is impractical, and should be replaced with "encouraging".

Renfrewshire Council: This is a reasonable suggestion as it would have the potential to reduce the time taken to give evidence.

South Ayrshire Council: Guidance will usually be of benefit. However,

care will need to be taken to ensure that such an approach does not lead to the loss of opportunity to hear other issues which may in fact prove to be of equal or higher importance once fully considered.

South Lanarkshire Council: Yes -it is vital that all parties are made aware of the issues that the Scottish Ministers want addressed rather than waiting until the inquiry begins.

West Dunbartonshire Council: This could be helpful in focusing the oral presentations on to the essential aspects which cannot readily be covered in written submissions.

Western Isles Council: Both of these measures [including question 11] should help to clarify and speed up the process.

Other LA organisations

COSLA: COSLA would welcome this suggestion, as this would provide greater clarity for planning authorities, if there were to be a narrower focus on the issues to be addressed in inquiries, and would be likely to assist in the reduction of time taken to give evidence. COSLA would suggest that it would be valuable to planning authorities to provide guidance on the types of issues that would be addressed.

Public Bodies

Royal Fine Art Commission for Scotland: RFACFS considers that this should be the case, to avoid the consideration of issues that should be more properly considered in another forum. Agreement between parties over defining matters of disagreement upon which the Inquiry should focus, should go a considerable way toward

reducing the length of the Planning Inquiry process. In order to achieve this, it is likely that Reporters would be required to take a more active role.

Scottish Enterprise: Yes. Scottish Ministers should give more explicit guidance on the essential issues that they wish addressed in evidence to the inquiry.

Scottish Natural Heritage: Yes, and it might be helpful if the advertisement of the PLI could refer to the existence of such guidance.

The Development Industry

Bett Homes: Yes if Option 2 (previous) is the way forward. This avoids irrelevant debating.

Homes for Scotland: Yes. Inquiries can only benefit from an approach that sees evidence more highly focused on the issues which are central to assisting the Reporter to reach a conclusion. All too often time is wasted by legal argument on the relevance of a particular strand of evidence or the right of a party to introduce that evidence. It is accepted that there may be circumstances when the appellant or the planning authority may wish to persuade the Reporter that additional issues are germane to the matter before the Inquiry but more explicit, early guidance would still be helpful. In addition to providing guidance in order to focus the evidence heard at the Inquiry Homes for Scotland takes the view that consideration should be given to introducing written responses to the other side's precognitions. Prior to the commencement of an inquiry, the Reporter usually lays down that once precognitions are lodged, no further precognitions or productions will be allowed. That is often difficult to enforce. On several recent occasions

following the lodging of a precognition, councils have issued, a few weeks later, a new precognition to replace the one already lodged. The purpose of the new precognition was to address points in the appellant's precognition which the Council's original document had not dealt with. The new document often largely repeats what was said in the original document but it, nevertheless, has to be re-read in full to find the points of difference. Usually, there is no time allowed in the timetable for appellants to respond. Homes for Scotland can understand the council's difficulty. Until they see the detail of the Objector's case, they can only respond to objections in a fairly general way. That being so, it appears that a stage could be introduced where each side can respond to points in the others precognitions. This would not be a new replacement precognition as happens so often at present but would be confined to the points the parties wish to challenge or to which they wish to reply. This could be combined with a written list of questions to the other side seeking to clarify any points on which there was doubt.

MacTaggart & Mickel Ltd: Our main concern with this issue is that we would not wish guidance given by Ministers to prejudice the outcome. Materially important issues to developers, for example may be left out due to the opinion of the Scottish Ministers. The Reporter is meant to give a balanced view and report accordingly, therefore requires all the facts before him/her. If important issues are missed at the outset, it may prejudice the outcome.

Stewart Milne Holdings: Yes.

Taylor Woodrow: As described earlier, TW support Inquiries focussing

upon the matters in dispute, and would have no objection to the introduction of such a proposal, provided that it did not exclude all other matters to be presented.

Walker Group (Scotland) Ltd: In addition to providing guidance in order to focus the evidence heard at the Inquiry you could introduce written responses to the other side's precognitions. Prior to the commencement of an inquiry, the Reporter usually lays down that once precognitions are lodged, no further precognitions or productions will be allowed. He then finds this difficult to enforce. On several occasions following the lodging of a precognition, a few weeks later the council issued anew precognition to replace the one already lodged. The purpose of the new one was to address points in the appellant's precognition which the original one had not. It usually largely repeated what was said in the original document but had to be re-read in full to find the points of difference. There was usually no time allowed in the timetable for appellants to respond. We can understand the council's difficulty. Until they see the detail of the Objector's case, they can only respond to objections in a fairly general way. That being so, it appears that a stage could be introduced where each side can respond to points in the others precognitions. This would not be anew replacement precognition as happens so often at present but would be confined to the points the parties wish to challenge or to provide a reply to. This could be combined with a written list of questions to the other side seeking to clarify any points on which there was doubt.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: Yes. This would make the boundaries of the inquiry clear to all parties.

Marks and Spencer plc: Such advice would be of very considerable assistance in the preparation of evidence, e.g. if it included a clear and early assessment of the issues to be considered.

Sainsbury's: Believe that all should agree on the main issues at the start of the process. These should be fully debated and agreed between the Reporter, the LPA and the appellant. See also response to Q. 3.

Scottish Coal Co Ltd: Any procedure to narrow the issues is to be welcomed and supported. Presumably any guidance on the essential issues to be addressed at the inquiry should be forthcoming from the Reporter who is to hear the Inquiry rather than, for example, a central administrative group within the Reporters Unit? Identification of these essential issues shouldn't preclude evidence being led on other issues.

Scottish Council for Development and Industry: Yes such guidance should be given if no pre-inquiry meeting is held. However, it is SCIDI's view that a pre-inquiry meeting should be held in all cases as it offers the most effective way of maximising areas of agreement, reducing uncertainty and ensuring that timescales for the process are agreed and kept to a minimum.

Scottish Landowners Federation: SLF would support this proposal provided that individual Reporters were left completely free to frame

guidance appropriate to particular cases.

Tesco: Scottish Ministers could give more explicit guidance. This is especially true where it is considered by the Department or the Reporter that a specific issue has not been covered at all or insufficiently addressed. Under this set of circumstances they should most certainly raise the issue at an early stage in order that proper consideration and evidence relating to that matter can be produced and hopefully agreed by the parties.

Professional organisations

Law Society of Scotland: The Sub-Committee cautiously agrees that Scottish Ministers could give more explicit guidance but that it is necessary to highlight the difference between guidance and direction in order to identify those issues which were considered to be essential, it may be appropriate to provide more resources to the Reporters' Unit. Guidance on essential issues would assist to focus issues at an early stage.

RTPI: We strongly support improved guidance in general and guidance would allow option 2 in a hybrid solution to Question 3 to be adopted.

Scottish Planning Consultants Forum: This provision would help crystallise the matters of issue and focus the preparation of evidence. This will aid clarity, speed up the inquiry and reduce cost. It is anticipated that the guidance would be open to review by inquiry parties to ensure their satisfaction. The SPCF supports proposals to provide guidance on the issues to be addressed at inquiry.

Scottish Planning Law and Environmental Law Bar Group:

There can be no substitute for direct advice tailored to suit individual cases. We doubt whether Scottish Ministers advice however explicit could achieve that. The suggestion also begs the question who is to deliver the advice, or are parties unfamiliar with planning matters expected to seek out the advice then read digest and understand it themselves? If there is a pre-inquiry meeting, is the burden of providing guidance of any sort to fall upon the reporter? If so, we consider that (a) that is not the proper function of a reporter and (b) his impartiality could be brought into question.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: Although it is recognised that the so called "housekeeping" matters must be organised at pre-inquiry meetings, our view is that sometimes the balance at such meetings is tilted too much in favour of these administrative chores to the exclusion of sensible discussion of the scope of evidence. Accordingly we are very much in favour of the Reporter at pre-inquiry meetings identifying and discussing with parties the scope of relevant evidence. All parties would then be clearer and there would be a consequential benefit for parties in the preparation of their statements of case and ultimately their precognitions.

Maclay Murray Spens: We do not believe this is necessary or appropriate. The current system allows for the essential issues to be identified in advance and canvassed fully in statements of case and precognitions.

Paull & Williamson: We support this proposal. It would meet the difficulty that arises where the appellant and the planning authority for example, have

no issue over traffic matters but they are raised by third parties. The difficulty would be overcome if the Reporter identified the issues about which evidence should be led at the Inquiry.

PPCA Ltd: Yes. Guidance from the Reporter is always helpful.

Robert Drysdale Planning Consultancy: We see no harm in this proposal provided that the appellant is free also to give evidence on other matters not identified by the Scottish Ministers which he considers to be relevant to his case.

Shepherd and Wedderburn: We consider that the answer to this question is very difficult in that it would require the Scottish Ministers to essentially prejudge issues which they considered essential. One of the facets of public inquiries is that the importance of issues are often established during the course of the inquiry. We consider that it would require considerable effort on behalf of the ministers to identify essential issues. Furthermore, as a matter of law, the Scottish Ministers require to consider as part of the decision-making process the development plan as a whole, and all other material considerations. One of the difficulties encountered by parties is that given the broad remit of considerations in law, it is important that every issue is adequately and properly addressed. That is an inevitable consequence of the statutory requirements for decision-making.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: Yes, but see [our response to] Q9 above.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: Yes. This could prove a useful supplement to the process, but it must not be allowed to preclude proper consideration of other issues. Nor should it attain a status that would allow it to become the target of yet another piece of irrelevant legal argument.

Ferryhill Heritage Society: Yes.

Friends of Glasgow West: Pre-Inquiry meetings should be held. [see also answer to question 1]

Friends of the Earth: We have found it helpful in the past when the Reporter participates in the formulation of the issues to be addressed. This process may also help to screen out irrelevant issues on which no inquiry could hope to turn, thereby reducing the length of the inquiry. This process must, however, be sensitive to the interests of the community concerned, to avoid creating the impression that issues of serious concern to communities might be 'screened out' and ignored.

Historic Environment Advisory Council for Scotland: Yes.

Planning Aid for Scotland: Statements of case are only required from the 'relevant parties'. Many individuals and community groups may not want or be considered appropriate to be one of the relevant parties. It would be hoped that Scottish Ministers would take into account all

representations in identifying the essential issues.

Saltire Society: It is doubtful whether these proposals could be helpful to the process: what is agreeable or relevant is the essence of the Inquiry and should not be prejudged by the Minister.

Scottish Civic Trust: It would certainly be helpful if Reporters could offer areas where they would value specific evidence, but it should not exclude other areas being explored, especially if the participating parties think it relevant. In appeals that have been the subject of a call-in, this step is essential in order to ensure clarity.

Individuals

Collins: Yes.

Connal: The answer to this question is 'no', if other steps to increase the emphasis on grounds of appeal and grounds for refusal respectively are successful. It will no longer be for the Executive or Reporter to "dictate" the issues; the issues will effectively be set by the principal parties. Where it would be useful to have more 'guidance' is on agreement on issues/evidence. There is frequently enormous difficulty in persuading local authorities to agree anything, often because they are reluctant to commit resources to so doing. They are particularly reluctant to make that commitment when it is seen to be at the instance of the developer! Reporters invariably encourage agreement. From time to time they comment adversely on failure to reach agreement. They very rarely do more than that. Greater "guidance" on what will be expected and on the consequences in the event that the necessary effort is not made would be of assistance.

Cramond: Yes. It will be helpful if all parties understand as soon as possible what issues Ministers consider to be essential. It will also reduce time and cost by eliminating unnecessary discussion of minor or irrelevant issues.

Hall: Yes, but "Guidance" should not be allowed to become prescriptive "Direction".

Roberts: Yes.

Smith (Robert): While it may be appropriate for ministers explicit guidance on certain cases, this should only be given where it does not prejudice the right of other parties.

Stark: Yes. This would greatly assist lay persons. The appropriate extent of guidance would depend entirely on the case in hand. It would need to be made clear that such guidance need not preclude the presentation of evidence on any other material consideration.

Watt: No.

Question 11 Should the Scottish Ministers indicate the material that must be considered by the appellant or applicant and the planning authority in order to identify areas of agreement and disagreement and be lodged as inquiry documents in order for the planning inquiry to start as programmed?

Local authorities

Aberdeen City Council: Agree. Such an approach would be helpful particularly in directing thought at an early stage and to eliminating unnecessary debate at inquiry on issues where agreement is possible.

Aberdeenshire Council: Similarly, it would be helpful to all parties for areas of explicit agreement and disagreement to be lodged as inquiry documents. It is difficult to see how in the current context of a local plan inquiry the needs of natural justice would be addressed if the reporter were to dictate the issues that were to be debated. Many of the issues, particularly at a site-specific level, will be by definition local concerns and the ability of a reporter to identify what there might be has to be questioned. Local issues may be overshadowed by more verbose and esoteric arguments put forward by developers. Perhaps it is more appropriate for the reporter to identify what should not be considered, ruling out, for example, arguments of principle that will already have been discussed. Agreed statements have their place in planning appeal inquiries but may not be appropriate in Local Plan Inquiries as considerable effort could be spent on trying to identify issues to which all but one of the objectors agrees. Where it is a simple case of a single appellant an agreed statement of fact may be produced relatively easily but the problems associated with achieving agreement, and time that must be taken to achieve same, probably increase with every additional objector.

Angus Council: Yes. However, if the inquiry is a complex one the areas of agreement or disagreement may be substantial. It would be unfortunate to postpone the commencement of the inquiry in order to obtain a complete list because often during the inquiry it can become apparent as to which areas are agreed or disagreed.

Argyll & Bute Council: This would aid in speeding up the process and improving clarity.

City of Edinburgh Council: CEC recognises that the existing informal guidance is of assistance but that some parties do not follow the recommendations. The early agreement of facts and the confirmation of areas of agreement and disagreement is a welcome factor in minimising inquiry time.

Clackmannanshire Council:
Development plans: The Reporter should meet with, and agree, what matters need to be considered using the sequential principle that written submissions are the favoured option, then hearings where verbal evidence is seen to be absolutely necessary, and full inquiry rules should be used only where complex or complicated matters demand it. Criteria should be established by SEIRU to which all parties, including the Reporter, should have reference in deciding the most appropriate means of considering each objection. Preparation for the inquiry should follow an informal but clear route, ensuring that all those involved have an opportunity to clarify any matters they do not understand. It is a common complaint that those attending the PIM do not understand the processes discussed and how to effectively engage in the process. Identification of areas for agreement/disagreement would be beneficial and time effective.

Development control: The general principle of the appellant and the planning authority identifying areas of agreement and disagreement is good practice. Agreed statements have in our experience assisted in focussing the terms of reference of the inquiry and we would encourage a suitable mechanism within the lead-in process to require documentation to this effect and prevent initial work ending up in a black hole. However, this additional joint working can take time. Evidence

suggests the need for frequent contacts and communications to deliver finished products. Indeed, this will have been a contributory factor to the difficulties which the consultation paper seeks to address.

Dumfries & Galloway Council: Reporters should indicate the issues of apparent disagreement which at the outset they expect that they will want to consider. This should not prohibit consideration of other areas if it appears to the Reporter that the information is material.

Dundee City Council: Yes

East Ayrshire Council: The Council would agree that considerable amounts of time can be spent at a public local inquiry by both parties establishing areas of agreement and disagreement. If voluntary arrangements to establish such areas do not achieve the desired results, it is considered that a more formal means of identifying these areas should possibly be introduced as per the suggestion made in the consultation paper.

East Dunbartonshire Council: This approach would be welcomed.

East Lothian Council: Yes but failure to produce and agree material requested should not lead to postponement of and Inquiry start date and parties should only be expected to agree on fundamental considerations. Such a postponement would create difficulties both for individuals representing the Appellants and the Council and, additionally, would doubtless affect availability of witnesses.

East Renfrewshire Council: Yes, this would help to highlight areas of

controversy on which the Inquiry should focus.

Falkirk Council: This suggestion is supported. It is already common practice and is helpful in making sure inquiry time is focussed on the main areas of disagreement.

Fife Council: Again, clarity in advance of the inquiry starting must be beneficial. The suggestion in Question 11 could form part of the guidance referred to in Question 10.

Glasgow City Council: While this may be a laudable aim, experience has shown that it is difficult to achieve in practice, with objectors often basing their case on questioning fundamental methodologies and principles. The process of reducing the areas of dispute can also only go so far, particularly when dealing with matters of interpretation rather than absolute fact. It should not be allowed to become a device for use by objectors to delay an inquiry, and/or the adoption of an up to date plan. It may be more reasonable to require that correspondence should be exchanged between principal parties setting out their views as to what can and cannot be agreed and the reasons for this (with the material being produced at the inquiry). It is also suggested that the Reporter take a stronger role to ensure that unnecessary debate does not occur on matters already determined in higher order plans e.g., approved structure plan matters.

Highland Council: Again clear identified of areas of disagreement would help to assist both programming and speed of the Inquiry.

North Ayrshire Council: It would also be helpful if Scottish Ministers had power to indicate the material that

must be considered by the parties in order to identify areas of agreement and disagreement. While the Scottish Ministers should have power to do so, we would not envisage this as a requirement of every single case.

North Lanarkshire Council: This proposal is agreed, however, it is suggested that the material be lodged no later than 2 weeks before the inquiry or if agreement between the parties is required, an earlier timescale may be necessary.

Orkney Islands Council: In conjunction with this the clarification by Ministers as to the material to be considered to establish areas of agreement or disagreement would be beneficial to the process and avoid overlap at the Inquiry.

Perth and Kinross Council: Yes.

Renfrewshire Council: This is likely to result in significant delays with few appeals starting on time.

South Ayrshire Council: The principles of this idea are agreed, but such a procedure may add to the already heavy workload at pre-inquiry stage -at the same time as the executive is suggesting that the timescale be halved to just 4 weeks.

South Lanarkshire Council: Yes. It would be very helpful and cut down on a lot of time wasting if documentation was requested and produced before the inquiry begins.

West Dunbartonshire Council: Yes, this should help.

West Lothian Council: Yes. Again such agreements on basic facts and additional information will minimise debate, time and cost for all parties. It

will also minimise confusion and anxiety to third parties.

Western Isles Council: Both of these measures [including question 10] should help to clarify and speed up the process.

Other LA organisations

COSLA: The suggestion is welcome in theory and, in COSLA's view, would be helpful in reducing confusion for third parties, but would Ministers be directing parties to have such discussions and would Ministers be directing which issues had to be discussed?

Public Bodies

Royal Fine Art Commission for Scotland: Yes, for the reasons outlined in the response to Question 10.

Scottish Enterprise: Yes. The Scottish Ministers should indicate the material that must be considered by the appellant or applicant and the planning authority in order to identify areas of agreement and disagreement and be lodged as inquiry documents in order for the inquiry programme to start as programmed.

Scottish Natural Heritage: Yes.

Scottish Environment Protection Agency: This proposal would be useful in making the inquiry run efficiently.

The Development Industry

Bett Homes: Yes, as reduces the inquiry time and focuses on the key issues, however as previously stated should there be in the course of lodging documents etc any issues

which either side thinks requires debating then this should be able to be reviewed on a case by case basis and heard via Oral Evidence if necessary.

Homes for Scotland: Yes.

MacTaggart & Mickel Ltd: Yes.

Stewart Milne Holdings: Yes- but sufficient time will have to be provided to allow for this.

Taylor Woodrow: Yes, this reflects the answers to the above questions.

Walker Group (Scotland) Ltd: In England there is a requirement to prepare a Statement of Common Ground not less than 4 weeks before the start of the Inquiry. This statement sets out the agreed factual information about the proposal. Although it is prepared jointly, it would appear to be the responsibility of the appellant to submit it. We have no knowledge of how it works in practice. Whilst I appreciate its intention is to avoid unnecessary argument and time wasting at the Inquiry, exactly how valuable will it be? Agreeing the size of a site, or other basic facts, is not going to short cut the inquiry process in any meaningful way. Furthermore, if both parties were to agree to a point of planning interpretation would it be binding on the Reporter, who is after all an expert entitled to his view and is entitled to determine the appeal as if it were a fresh application?

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: This is difficult to assess, as each case is unique. However, in the interests of streamlining the process then it would be in the interests of all

parties to reach agreement on their position on various issues, bearing in mind that this may be an agreement of disagreement.

Marks and Spencer plc: Yes - statements of common ground are very useful in saving Inquiry time, as would be the identification of outstanding areas of disagreement.

Sainsbury's: Will help clarify key issues from outset – but all parties should agree jointly. It is difficult for the Scottish Ministers to be 'parachuted in' and know what the key material will be.

Scottish Coal Co Ltd: We agree that the Inquiry time should be spent examining those issues and matters which are in dispute and which have presumably led to the refusal in the first place. We therefore agree that it would be helpful for the Reporter to indicate those matters which he feels should be subject to a statement of agreement/ disagreement. However, a reasonable time period needs to be set to allow discussions between the parties to take place to produce such a statement.

Scottish Council for Development and Industry: This should certainly be done, but it is a procedural matter which should be handled by the reporter without the need for involvement of Scottish Ministers.

Scottish Landowners Federation: In principle yes; bearing in mind, however, that it is for parties to make their own cases. Also, as in the case of the last question, individual Reporters should not be fettered in their discretion to make requisitions appropriate to particular cases.

Professional organisations

Law Society of Scotland: The Subcommittee agrees that Scottish Ministers should indicate the material that must be considered by the applicant or appellant and the planning authority in order to identify areas of agreement and disagreement.

RTPI: We support the intention in principle although there will be practical difficulties in securing full written documentation on terms of agreement and disagreement. This in itself might add to delays. Consideration should be given to ensuring that third parties with an interest in the case are kept informed.

Scottish Planning Consultants Forum: Concern that this proposal would reduce the clarity of process as matters would be agreed outside the inquiry framework must be balanced against savings in cost and time. The lodgement of agreement documents as inquiry documents could address any concerns. The SPCF support agreement documents for inquiries.

Scottish Planning Law and Environmental Law Bar Group: Where parties have managed to arrive at a consensus on certain matters, we agree that it would be helpful if this were to be set out in a formal document akin to a joint minute in a court action. This would help focus issues and save inquiry time.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: It must be in the interests of all parties to reduce inquiry time (and no doubt consequent expense) in being required to produce agreed statements on matters which, if debated properly at the pre inquiry meeting, could be shown to be justified. Our experience

is that although parties often promise to the Reporter co-operation in this regard, rarely is such material produced. This seems to be supported by paragraph 35 of the Paper. We do not object in principle to a more formal approach but Reporters would require to ensure a degree of flexibility and common sense. All of this points to a greater importance of the pre-inquiry meeting with which we are in agreement. Although not specifically posed in the question, we are uncertain about the consequence of failure which seems to be "that the planning inquiry could not start". This does not accord with the objectives of the Paper. Arguments about responsibility for the failure and potential prejudice could arise.

Maclay Murray Spens: We agree with the merit of submitting a statement of agreed matters/common ground prior to commencement of the inquiry to enable the inquiry to focus on the more controversial/complex areas and reasons for disagreement, but for the reasons given in our response to Question 10 we do not consider it appropriate or necessary for such issues to be prescribed by the Scottish Ministers.

Paul & Williamson: We have no problem with the proposal.

PPCA Ltd: Yes. But it must be clear that one party could not ransom another by failure to participate. It should therefore be open to either party to declare that no agreement was possible.

Robert Drysdale Planning Consultancy: We do not consider this suggestion to be acceptable. In our experience it is usually the planning authority which finds difficulty in responding quickly to attempts by the

appellant to reach pre-inquiry agreement on matters, and consequently a slow response by the planning authority could result in the planning inquiry being delayed through no fault of the applicant.

Shepherd and Wedderburn: Our experience over the past few years is that parties have generally co-operated more in trying to reach agreement on matters prior to inquiries. We consider that there is greater scope to seek to agree certain matters and also possibly having a pre-agreed statement on issues. The time taken to agree matters should not be underestimated and our experience is that often agreement may be reached on certain issues, but interpretation and the weight to be attached is often quite complex. We consider that it is very important that these matters are considered at pre-inquiry meetings and clear guidance is given by the reporters on matters which they would wish to agreement reached. Again, one of the difficulties about having a formalised process before the start of the inquiry is the suggestion that it should be advertised earlier and that one of the factors which the members of the public find difficult is fixing dates for inquiries. We consider it appropriate to have clear guidance given at the pre-inquiry meeting on matters to be agreed and that rather than cancelling or altering the inquiry arrangements, a provisional date [could be arranged] for a further pre-inquiry meeting in relation to those parties who have been asked to agree certain matters.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: This ought to be possible although the

work involved would vary and may sometimes lead to misleading statements.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: Yes, but with qualifications. Discretion must be given to reporters to ensure that it does not undermine the objectivity of the Inquiry or exclude matters considered by parties to be relevant to the scrutiny.

Ferryhill Heritage Society: No comment.

Friends of the Earth: Yes, it would be helpful. One would hope that the spirit intended in this proposal will remain the case if Third Party Rights were introduced.

Historic Environment Advisory Council for Scotland: Yes.

Saltire Society: It is doubtful whether these proposals could be helpful to the process: what is agreeable or relevant is the essence of the Inquiry and should not be prejudged by the Minister.

Scottish Civic Trust: The Trust's principal concern with this suggestion is the clear exclusion of third parties from this process. In some cases, the best knowledge might not be held by the applicant/appellant or the local authority, but rests with another party. If, in the lodging of the agreed information as an Inquiry document, it is permitted to challenge this information, then we would be less concerned. If this is not the case, then this process could seriously compromise other interested parties and should be abandoned.

Individuals

Collins: Yes.

Connal: This overlaps with my answer to question 10. There is clearly a shared concern on the part of many about this issue. Perhaps this could benefit from more intervention from Reporters? For instance on agreeing issues would there be any reason not to have an equivalent to a "hearing for directions"? The parties would have to appear and the Reporter could ascertain what had been done and why, if that be the case, matters had not been concluded and could direct parties as to what they ought to do next. There seems to me to be scope for intervention of this kind without the necessity of holding a full scale pre-inquiry meeting at which large numbers of people are expected to attend. Conference calls or video conferencing could be used.

Cramond: Yes - for much that same reasons as 10 above.

Hall: Yes, but wording is too strong. Replace "must" with "should". In such a case Scottish Ministers' opinions should be respected, but not have the force of law.

Lindsay: Again, clarity in advance of the inquiry starting must be beneficial. The suggestion in Question 11 could form part of the guidance referred to in Question 10.

Smith (Robert): I am not sure about this, but would observe that this may be very difficult as local authority planners seem to be overworked at the moment and whether they would have time to do this is difficult to answer. It seems to me that both question 10 and

11 will have implications for staff in the Scottish Executive too.

Stark: Mediation can be a useful means of establishing areas of agreement and disagreement in some instances, especially where communication between parties appears to have become bogged down. The mediated agreement would be lodged as an inquiry document, but all other elements of the mediation process would need to remain confidential (*see my response to question 20*).

Watt: Yes.

Question 12 Should the Scottish Ministers set a time limit on sisted appeals, so that these expire if the case is not brought to planning inquiry within 6 months of the date on which processing first stopped?

Local authorities

Aberdeen City Council: Agree with the principle of setting a timescale but the time period suggested of 6 months is too short given the 'lead in' time required for preparing the inquiry. Perhaps a degree of flexibility needs to be considered dependent on the circumstances that apply.

Aberdeenshire Council: It would appear that long-term sisting of appeals, at the request of the appellant, is the single biggest contributor to delay, with its attendant negative impacts on the community. Setting a time limit is strongly supported.

Angus Council: Yes, I agree, and six months would appear to be a reasonable period.

Argyll & Bute Council: Whilst this would appear to have some merit, each

case is different and may involve many complex issues. There could be the possibility of requiring the appellant and Local Authority to agree a maximum period and final date for the "sisting". There should be a right to apply for a further sisting that could be granted or refused depending on progress made.

City of Edinburgh Council: CEC supports measures designed to bring greater certainty to the process, particularly where it assists community involvement. In principle the expiry of a sisted appeal after a defined period is supported but CEC would like to see a fuller justification of the suggested 6 months period, since complex cases vary considerably.

Clackmannanshire Council:

Development plans: No comments.

Development control: Absolutely. One recent case for the erection of a house highlights the problems. The appellant successfully requested the sisting of the appeal on 3 occasions over an approximate period of 12-18 months, simply for reasons of legal disputes between appellant and others on rights of access. These should have been addressed beforehand and were not even central to the planning decision. The matter proceeded to inquiry, only for the appellant to withdraw the appeal on the day of commencement. Repeated requests for delay brings uncertainty, and can impact on other development proposals. It could affect the development plan process. An appellant should be allowed one request to sisting an appeal. Guidance should be given by Scottish Ministers on the circumstances where such requests are likely to be concluded favourably. A time limit must be set. Six months would be the maximum period.

Dumfries & Galloway Council: It is generally unhelpful for planning applications to become part of the Development Plan decision process. A decision to refuse an application will generally not have any adverse effect on the subsequent consideration of a related Development Plan objection. A decision to approve should be taken if the proposal is in accord with the current Development Plan and is not prejudicial to the provisions or processes of an emerging Structure or Local Plan.

Dundee City Council: Yes, but why 6 months?

East Ayrshire Council: It is agreed that, where sisting is used as a delaying or negotiation tactic by an appellant, as detailed in the consultation paper, this can represent a misuse of the planning appeal system. The Council would be supportive of the introduction of the proposed 6 month expiry date for such appeals, treating the appeals as having been withdrawn. However, in certain cases, the sisting of an appeal has been agreed by both the appellant and the planning authority, particularly where a planning application appeal site is also the subject of objection at a public local inquiry into an emerging local plan. In such cases, it would be beneficial if provision was to be made in any future guidance that this 6 month period could be extended with the agreement of both the appellant and the local authority, if considered expedient.

East Dunbartonshire Council: A six month time limit on sisted appeals would be welcomed. Consideration might also be given, at appropriate time, to introducing a similar measure for local authorities when dealing with applications which are submitted, often

without the appropriate Environmental Assessment, Transport Assessment, Retail Assessment, or other supporting documents or which are requested by the applicant not to be processed for the time being. Such applications are becoming increasingly common and are adding to the bureaucratic burden on Planning Services. Scottish Executive advice that it might be good practice to reject such applications after a specified period would be welcomed. The time limit may however result in expensive time consuming Inquiries being forced to commence while a fresh planning application is still being processed i.e. may actually lead to additional work which becomes abortive. This should be addressed.

East Lothian Council: Do not believe that there should be a time limit set on sisted appeals as this may put people off sisting and, therefore, may not permit renegotiation.

East Renfrewshire Council: Not sure what the benefits of this would be. The appeals are often sisted pending the outcome of other inquiries or appeals (eg Local Plan Inquiries). If the appeal expires after 6 months there may be unnecessary additional requirements to seek a further decision from the planning authority.

Falkirk Council: In general this suggestion is supported.

Fife Council: Yes, for the reasons outlined in Paragraph 36 of the consultation paper.

Glasgow City Council: It must be questioned whether the use of this tactic, by appellants, is appropriate in the first place, regardless of timescale. If it is to remain, however, then the

time limit should be reduced to 3 months.

Highland Council: On occasion a planning appeal is lodged and then sisted as a negotiating tactic in continuing discussions with the planning authority. Is this a misuse of the planning appeal system? The proposal is that a sisted appeal would expire after six months and thus be treated as withdrawn unless the Planning Inquiry commenced before the end of that period. Such an approach would be of assistance to planning authorities and more particularly to local residents whereby they would not have the threat of a planning appeal hanging over them for an indefinite period.

North Ayrshire Council: We agree that there should be a time limit on sisted appeals. The end date requires further thought, as it will be difficult for parties to judge when a case would be brought to Public Inquiry.

North Lanarkshire Council: This is agreed, unless before the expiry of the six month period a case can be made to justify continuation. It is considered that there could be certain cases where a continuation would probably be acceptable and such a mechanism should be put in place.

Orkney Islands Council: Similarly where appeals are submitted and then appellants ask that the process be suspended, we concur with the view that this leads to unnecessary delay, and would support the idea that a time limit be set for the re-commencement of the process.

Perth and Kinross Council: This proposal is supported with the recommendation that the time limit should be shortened to 3 months.

Renfrewshire Council: Yes.

South Ayrshire Council: The principles of this approach are accepted but there may be a conflict of timescales-for example where an appeal is lodged which coincides with the timescale of another inquiry or local plan inquiry (irrespective of whether they are of a related nature). This may be particularly relevant in terms of the workloads of smaller local authority planning departments. It is suggested that the time limit could be extended through agreement by both parties and a justification for extension being accepted by the Scottish Executive.

South Lanarkshire Council: Yes - this would prevent uncertainty and avoid unnecessary work.

West Dunbartonshire Council: Yes, there is no place for such delaying tactics.

West Lothian Council: Yes. There may be some merit in reducing the time period of six months to minimise the tactic of sisting.

Western Isles Council: It has become a tactic of some developers to appeal, ask for an inquiry and then ask for the inquiry to be delayed while they try to negotiate an acceptable scheme with the local authority. In other words, the local authority is encouraged to agree a development and so avoid the time and expense of an inquiry. The consultation document says, "However, some appellants have attempted to maintain appeals to sist for long periods, adding to the uncertainty faced by neighbouring households and businesses". Accordingly, "we propose that, once sisted, an appeal would expire after 6

months". This would be a reasonable measure to reduce uncertainty. However there may be occasions where a longer sist may be justifiable and provision should be given to allow SEIRU/Scottish Ministers to exercise discretion where all parties agree to longer sist. For example, Redland/Lafarge appealed against non-inclusion of a 1965 planning permission at Lingerbay on an official list of extant minerals consents. They were required to appeal in a certain time from publication of the list. However, at that time the Scottish Ministers had not decided their called-in (1991) planning application for a coastal superquarry. Quite reasonably, they asked for their appeal on the 1965 permission to be sisted because, if the Scottish Ministers approved the 1991 planning application, they would have dropped their appeal on the 1965 permission. The Scottish Ministers eventually refused the 1991 application and, accordingly, Lafarge asked for its appeal on the 1965 permission to be reinstated.

Public Bodies

Royal Fine Art Commission for Scotland: RFACFS considers that this should ideally be the case, although there may be particularly complex proposals which require a departure from normal procedures. It is important that appellants are aware that appeals cannot be permitted to go on indefinitely.

Scottish Enterprise: Yes. It may be worthwhile for there to be a time limit on sisted appeals.

Scottish Natural Heritage: Yes.

The Development Industry

Bett Homes: We are of the opinion that a blanket approach is not the answer. A reasoned case could be argued / presented for an extension to this period.

Homes for Scotland: The proposed timescale is too rigid and certainly too short. Time scales must vary depending on the scale and complexity of the application and the issues required to be examined at appeal. Reporters should seek to obtain the agreement of the planning authority and appellant on the time period for the "sist". If the parties fail to agree, the Reporter, having heard arguments from both sides, should set the period, which could be binding.

MacTaggart & Mickel Ltd: No. The preamble to the question does not cover different circumstances when a sist is necessary. Our recent experience includes a situation where a planning application for residential development was refused and the company reluctantly decided to go to appeal. Concurrently, the same site was the subject of representations to a Finalised Local Plan. As conjoined inquires are not favoured, the appeal was sisted pending of the outcome of the Local Plan Inquiry. The outcome of the Local Plan Inquiry was more than 6 months for the date when the appeal was lodged. In short, there is more than one reason to sist an appeal.

Stewart Milne Holdings: Probably-but 6 months is too short; suggest 2 years would be better.

Taylor Woodrow: TW considers the appeal process as a last resort, and follows the exhausting of negotiations on a planning application. In this regard, we agree that sisting appeals should be not be used as a tool to assist in the bargaining position of the

applicant. In principle, therefore we have no objection to the setting of deadlines, however we are concerned that a fixed period does not reflect the varying complexities of applications.

Walker Group (Scotland) Ltd: We do not believe that a mandatory time limit linked to the date upon which it was first lodged should be set for sisted appeals. Although we would not condone unnecessary tactical planning delays, appellants, having exercised their right to appeal against a decision of a planning authority, should not have that right removed by some arbitrary timescale for the sake of performance statistics.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: Yes. Bearing in mind the reported misuse of sisted appeals, we would support this recommendation.

Marks and Spencer plc: No. The Executive views the tactic of lodging an appeal and using the prospect of a public local inquiry as a negotiating tactic for discussions with the planning authority as misuse of the planning system. Our view however is that this is not a misuse of the planning system, any more than an LPAs failure to deal efficiently with a planning application or to issue a refusal on unsound grounds. The scope for lodging an appeal is one of the few tools the developer has, to try to make an LPA behave reasonably in some circumstances.

Sainsbury's: There are many and varied reasons for sisting an appeal. A rigid time limit cannot be applied – but should be determined on a case-by-case basis.

Scottish Coal Co Ltd: Whilst it can often be advantageous to delay a decision if a mutually acceptable solution is achievable, the suggestion made is reasonable. However, rather than the Inquiry having to start before the end of that six months, we believe that what should be required for the appellant take one of two actions by the end of that 6 month period: either they withdraw the appeal or indicate that they wish to proceed to the Inquiry. Commencement of the Public Inquiry is, in administrative terms, outwith the direct control of the appellant.

Scottish Council for Development and Industry: There is some merit in the above approach. However, the time frame may have to be more flexible depending on the nature and complexity of the application that is being appealed. In practice reporters do not need to agree to the request for a "sist". A more pragmatic way forward may be for the reporter to get the planning authority and appellant to agree to the time period for the "sist". If this is not met then the appeal would fail.

Scottish Landowners Federation: SLF recognises that this proposal has attractions. However, there can sometimes be good reason to sist for more than 6 months, and due allowance should be made for this.

Tesco: We see no reason why "sisted" appeals should not be reinstated after 6 months. However, they should be reinstated not that they expire.

Professional organisations

Law Society of Scotland: In the Subcommittee's view sisted appeals are not a particularly big issue. Sometimes a

sist in excess of 6 months is necessary particularly where a local plan is still to be formulated and the application awaits that formulation.

RTPI: We support the proposal, although the implications of possible legislation to eliminate duplicate and repeat applications may have to be considered.

Scottish Planning Consultants Forum: An expiry on sisted appeals is supported, in principle (question 12). This will prevent inappropriate appeals, reduce costs, speed up the system and provide increased certainty in the process. However, a 6 month limit seems an arbitrary selection. There are often good and reasonable reasons for sisting an appeal. The expiry of such appeals should be considered on their merits taking particular circumstances into account. The SPCF support proposals to expire sisted appeals based on the merits of each individual case.

Scottish Planning Law and Environmental Law Bar Group: In the first place, sists ought to be placed on a proper statutory footing and provision for them should be made in the Inquiries Procedure Rules. We consider that as with court actions, there should be a right for either party to apply for a sist to be recalled. Automatic expiry might not be appropriate in all cases and could result in duplication of procedures.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: We accept that long term "sisting" can be utilised unfairly and we have no difficulty with the proposal. We are bound to observe however that applicants for planning permission

have genuine and justified concerns about the speed and quality of the decision making process within planning authorities and action in that regard is necessary.

Maclay Murray Spens: Yes, we agree that a time limit of six months could be imposed for sisted appeals. We believe that this is a reasonable and sufficient time period to enable negotiations to be concluded and a decision to be reached on how the appeal is to be dealt with.

Paull & Williamson: We disagree with this proposal. It is not uncommon for a sist to be requested because the planning authority is about to produce a new Local Plan. Subsequent delays in the production of the Plan result in further requests for a sist. That doesn't seem unreasonable. If the sist is not allowed to be continued, there is a danger that the local authority will simply say that they are about to produce their Local Plan and that the appeal development is premature. It should also be pointed out that a sist will sometimes lead to an agreed outcome and that is surely desirable for all concerned.

PPCA Ltd: No. This question raises an issue which is part of the bedrock of planning practice, ie, that the determining authority is under a duty to determine a planning application. The more appropriate way of dealing with stale appeals would be to determine them following a warning. As far as sisting is concerned, one outcome of the proposal here is merely that the appeal would have to be re-lodged. Will this save time and administrative cost? Sisting is normally only agreed where the main parties agree and it seems that there are legitimate cases where even lengthy sists are required.

Shepherd and Wedderburn: We agree that there should be provision for sisted appeals to be dismissed within six months.

Community Councils

Broughty Ferry Community Council: Yes the threat of an appeal and associated delays should not be used as a negotiating tactic.

Craiglockhart Community Council: This does not sound unreasonable.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: Yes.

Ferryhill Heritage Society: Yes. Did not know of this tactic. Should be stopped.

Friends of Glasgow West: Loopholes that allow an abuse of the system, eg sisted appeals, do seem to require change in this regard.

Friends of the Earth: Absolutely. SEIRU currently has one appeal in which we are involved which had a pre inquiry meeting in Nov 2002 and is not anticipated to start until early 2004 because a Statutory Consultee raised new issues it wished to see addressed. Third parties are experiencing difficulties in maintaining their expert witnesses on board because of other commitments. It also has a cost implication because preparatory work which has been completed may have to be done again at extra expense. In such circumstances the developer should withdraw the appeal or the SEIRU

should deem it incompetent and refuse to hear it. The period of 6 months suggested seems to be appropriate.

Historic Environment Advisory Council for Scotland: Yes.

Saltire Society: Yes.

Scottish Civic Trust: The Trust supports the suggestion of time-limiting sisted appeals. However, instead of a 6 month period, we would recommend a 3 month limit, with a process for a single 3-month extension allowable on receipt of a reasonable request. The reason for this is our view that 6 months of uncertainty is both undesirable and can cause unnecessary stress for local communities.

Individuals

Collins: Yes.

Connal: It is unfortunate that the first sentence of para 36 sets the context against which this question has been asked. It is a matter of judgement in any case whether it is or is not appropriate for the further processing of a planning appeal to be deferred. I agree that this can avoid abortive work. It is relatively uncommon to have an appeal "sisted" without the agreement of both principal parties. In those circumstances, the body primarily charged with the task of representing the public interest i.e. the local authority, has agreed. What then is the evil said to be represented by sisting an appeal? There may already be sufficient powers available to deal with this. There are no specific rules which govern the practice of "sisting". In the context of other procedures (for example the Courts) one difficulty about sisting is that once something is sisted it cannot be re-awakened except by one of the parties i.e. the Court has

no power to control the process. That difficulty does not arise in the context of planning appeals. There would be nothing to prevent the Executive removing a list at any time if they thought it appropriate to do so. Ultimately could the Executive not insist on fixing further procedure, thus compelling the Appellant (and the local authority) either to go ahead with the appeal or give it up? Is there not already a power to turn away an appeal which is not progressed with? In any event it is unnecessary to legislate. If there is a real public interest in the appeal not being listed one can generally expect that to be picked up by the local authority who will oppose the list. If the Executive are convinced by that opposition, they will not allow it.

Cramond: Yes. To "list" an appeal can be an abuse of the inquiry system by indicating either that the developer has not thought through his case or is using a deplorable, delaying tactic in the hope of getting permission for an amended scheme. Developers must be discouraged from using the inquiry system as a device to exert pressure on the planning authority. The original development proposal should be the developer's genuine, preferred and firm application and not just a desirable higher option which he is prepared to abandon as a bargaining counter. In the same way, once a planning application has been finally refused the developer should not be able to lodge a somewhat modified, but basically similar, application for the same site. Such repeat applications waste time and money for everyone, create uncertainty and are basically just a device to exert more pressure on the planning authority to change its mind. This vexatious tactic might be used, for example, in areas of pressure of demand for housing such as the

Edinburgh travel to work area. The answer is for the local plan to indicate clearly what areas must be kept "green" and what (usually brownfield) may be released for development and for the planning authority to make clear that it will not yield to pressure from a particular applicant simply because he owns or has an option on a particular site and that the zoning will not be changed in advance of the preparation of a new plan. It is in short of the first importance that it should be made crystal clear to developers, and borne in mind at all times by planning authorities, that the purpose of the land use planning system is not to approve the cheapest, most profitable and/or most convenient option for the developer but to assess all the arguments for and against an application clearly and fairly and to arrive at a decision which reflects the overall balance of advantage to the public benefit as a whole.

Hall: Yes.

Lindsay: Yes, for reasons outlined in paragraph 36 of the consultation paper.

Roberts: Yes.

Smith (Robert): Yes.

Watt: Yes.

Question 13 Should the Scottish Ministers exercise their powers to recover their own costs and the costs of others where an appeal party fails to proceed, or an appeal is withdrawn, once the planning inquiry arrangements have been made?

Local authorities

Aberdeen City Council: Only where there has been unreasonable behaviour by an inquiry party.

Aberdeenshire Council: Councils can incur substantial costs in development control officers, solicitors, administrative and technical staff time, in preparation of multiple copy documents and maps and often in Queens Counsel services before the opening of a planning inquiry. This investment can then turn out to be abortive when an appellant usually for no clear reason decided to abandon proceedings. Aberdeenshire Council strongly supports appellants bearing their costs in such cases. As the reporters for Local Plan Inquiries are paid for by the local authority the issue of whether the Scottish Ministers should exercise their powers to recover costs is largely immaterial. The 'per objection' cost of a local plan inquiry is likely to be small in the context of the overall cost and it would be difficult to quantify exactly what costs are incurred by withdrawal of one objector from the process. The threat of 'costs' may be counter productive to the late negotiation of an agreed settlement or be off-putting to community groups with limited resources.

Angus Council: No, I consider that this would simply result in some appeals not being withdrawn.

Argyll & Bute Council: There may be many reasons why a case is withdrawn. If there was a financial penalty attached to withdrawing an appeal it could lead to a number of unnecessary PLIs.

City of Edinburgh Council: CEC would like to see a very clear definition of the circumstances under which such a procedure would be used. It may act against the planning authority if it has tried to use the time before an inquiry to reach a solution that then results in the inquiry being cancelled. A test of "reasonableness" should be applied.

Clackmannanshire Council:

Development plans: Costs should be introduced as a penalty for those who fail to turn up for their inquiry or hearing appearance (whether appellant/objector or planning authority). It is unfair and wasteful for parties to have to prepare for appearances only to find that they are not being contested. There is also a pressing need to set a cut-off date by which time each objector decides whether they will be going to inquiry or not. It is suggested that the default position is that it is assumed that all objections will be dealt with by written submission unless a declaration of attendance is signed by all parties and the Reporter agrees that the issue is one which should be considered by an inquiry or hearing process. Where statute provides the Scottish Ministers with powers to recover costs, they should be free to exercise this discretionary power. Of course, the test is whether the work is construed to be abortive due to the unreasonable behaviour of any party, or for some other reason.

Development control: Comments as Development Plans.

Dumfries & Galloway Council: Most members of the public and community groups have a reluctance to become involved in open ended planning processes if these could result in their becoming liable for additional costs. For Local Plans / Structure Plans it should be the case that consideration of the award of costs against parties would not normally arise, except where there is inappropriate use of the processes as a tactic in pursuance of commercial or other interests or where incorrect information has significantly affected the course of the inquiry.

Dundee City Council: Yes, Ministers should seek to recover their own costs as well as those incurred by the local planning authority, especially as the consequence of "unreasonable behaviour".

East Ayrshire Council: The Council would agree that public local inquiries can involve significant costs to all parties involved in the process. In so far as the Council is concerned, these can include substantial costs in officer time, administrative costs, the cost of materials and costs of providing avenue for the event. The Council would positively support the introduction of this provision.

East Dunbartonshire Council: This suggestion would be very welcome indeed.

East Lothian Council: Yes. This would seem a reasonable course of action provided that it does include the costs of all parties. It should help focus the mind of the Appellant in relation to pursuing an Appeal.

East Renfrewshire Council: Yes, it may help to reduce or remove instances of withdrawn appeals.

Falkirk Council: In general this suggestion is supported.

Fife Council: Recovering costs would be a disincentive to appellants who decide to withdraw their appeal without good reason (whether due to frivolous appeals in the first case, or other reasons -although such appeals could be weeded out at the pre-inquiry case stage). Care is required, however, not to punish those who may have genuine reasons to withdraw from or not proceed with appeals; for example, a developer may go out of business and be unable to dedicate time or resources to an appeal.

Glasgow City Council: This issue requires to be balanced against the threat of costs prejudicing an appellant's decision to withdrawal from an appeal, thereby unnecessarily maintaining the appeal.

Highland Council: Currently there is provision for abortive costs to be recovered by either party in the event of unreasonable behaviour. Costs can be incurred by Scottish Ministers and by others in making preparations for a Public Local Inquiry only to find that one of the parties withdraws at a very late stage. It seems entirely reasonable that Scottish Ministers but also local authorities should be able to recover abortive costs in terms of preparing evidence and in employing outside legal or other professional advice.

North Ayrshire Council: If Scottish Ministers exercised a power to recover their own costs, then they would be acting as judge and jury and in breach of human rights legislation. Accordingly in our view, the Scottish Ministers should not have power to recover their own costs.

North Lanarkshire Council: It is agreed there may be cases where there should be some form of compensation for costs if the appeal is withdrawn or fails to proceed. It is suggested that each case should be considered on its merits, but it is unclear how they would be assessed or who would take the decision to award, given the Scottish Executive themselves would be seeking costs. An alternative may be to set a fee or bond for all appeals, which would be returnable if the appeal proceeded, but retained in the circumstances described above.

Orkney Islands Council: With reference to the recovery of costs, we support Scottish Ministers in their efforts to recover costs where appeals are withdrawn at a very late stage.

Perth and Kinross Council: This proposal is welcomed.

Renfrewshire Council: It should be for the Scottish Ministers to decide as to whether to recover their own costs but the Council would welcome the possibility of their costs being recovered.

South Ayrshire Council: Such action should not be automatic, but based in consideration of whether any party has acted unreasonably, or if the reasons for not proceeding could have realistically been foreseen at an earlier date.

South Lanarkshire Council: Yes- if there was the prospect of costs being recovered by withdrawal of appeal it is less likely that spurious appeals and timewasters will be discouraged.

West Dunbartonshire Council: Yes. Again this increases certainty and ensures no frivolous public inquiry requests. Provision should, however,

be made for exceptions where, for good, clear, planning reasons, agreement has been reached on a compromise which benefits the community.

West Lothian Council: Generally speaking yes, although it must be recognised in some instances that the appeal has been withdrawn for good reason. However where unreasonable behaviour is apparent costs should be sought.

Western Isles Council: I do not see any need for change here. It is a matter for the Scottish Ministers to exercise their discretion within the power already offered under Section 265(a).

Other LA organisations

COSLA: If unreasonable behaviour is determined to be reason behind the failure to proceed or withdrawal and providing a test of reasonableness is applied and scope provided for exceptions, costs should be sought. The issue as to whether the Scottish Executive should seek their costs is a matter for the Executive; local authorities would welcome the opportunity! The scope for exceptions is important; if there is a perception that the appellant might be obliged to pay costs if an appeal is withdrawn, there is a risk that the appeal might be continued for no reason, which could create further delays in the inquiry process and possibly lead to a human rights challenge.

Public Bodies

Royal Fine Art Commission for Scotland: RFACFS considers that Scottish Ministers and local authorities should be able to recover abortive costs, particularly in the case of major development proposals where

commercial gain is a consideration of the outcome of a successful appeal. It should not apply, however, in the case of minor appeals which may be better dealt with under the arrangements defined in clauses 45-47 of the Consultation Paper.

Scottish Enterprise: No. In some cases there is no alternative but to follow the course of the 'appeal' route. This often has the effect of accelerating crucial discussions as both parties attempt to avoid the appeal inquiry itself. Even if this means discussions are still taking place up to the day before the inquiry starts this is often unavoidable.

Scottish Natural Heritage: There are advantages and disadvantages to this suggestion. Costs can be substantial and their recovery is clearly advantageous. Equally, the threat of costs being recovered would probably act as a deterrent to those inclined to use an appeal to put pressure on a planning authority to accept an alternative proposal. On the other hand, it would be a disincentive for appellants to continue with an appeal from which they might otherwise have withdrawn. On balance, we suggest the answer to this question is perhaps 'No', although the issue could be revisited at a later date once other measures have been put into practice.

The Development Industry

Bett Homes: No, we do not believe that this approach should be adopted, as there may be a valid reason behind the withdrawal, e.g. an alternative planning application on the site has been granted.

Homes for Scotland: No, unless it can be demonstrated that the appeal party has acted unreasonably in bring the

appeal in the first instance. This may require Scottish Ministers to remind appellants of the circumstances that would constitute unreasonable action.

MacTaggart & Mickel Ltd: Yes.

Stewart Milne Holdings: No -there may be very good reasons why an appeal party fails to proceed, or withdraws its appeal.

Taylor Woodrow: TW does not support this proposal, unless it can be demonstrated that the appeal party has acted unreasonably. It has been noted that few, if any claims for expenses against Local Authorities by appellants have been successful within the last few years. In this instance, clearer guidance should be articulated by the Executive, which clarifies instances where awards for expenses are merited.

Walker Group (Scotland) Ltd: No, for the same reason that applicants do not get their planning application fee returned to them where they withdraw their application or indeed, don't get costs awarded against them for making frivolous or ridiculous applications in the first place. The right of appeal is enshrined in primary legislation and this requires the existence of the SEIRU to administer and determine these appeals. This is a public service already paid for by the public. In cases of non-determination the SEIRU could try asking the planning authority for a share of the planning fee!

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: There may be a number of extenuating circumstances which require the late withdrawal of an

appeal, although we note the inference that this would only be used as a consequence of "unreasonable behaviour by an inquiry party". Nonetheless, we would not welcome a precedent of increased cost-recovery from appellants, which might further increase the financial burdens on small businesses using the planning system.

Marks and Spencer plc: This proposal can only be agreed with at worst, if there is very clear guidance for where the Executive would use these powers. It would not be acceptable or if withdrawal is because an amended scheme is approved.

Sainsbury's: Believe that there are often very good reasons for withdrawing an appeal – varies from case to case. If proven unreasonable behaviour then the accused party should be obliged to pay their costs.

Scottish Coal Co Ltd: Not unless there is very clear evidence of unreasonable behaviour by either of the parties. Withdrawal of an appeal could be occasioned by the publication of new government policy or an alteration to the development plan which results in the appeal proposal being placed in a different and potentially disadvantaged policy context. Whilst in theory such policy changes should be reasonably foreseeable by the appellant, that may not always be the case. Withdrawal of an appeal at a late stage may therefore not always be unreasonable. Even the initial stages of an appeal may produce a good decision at a considerable saving of the cost of concluding the whole process.

Scottish Council for Development and Industry: In practice there are many valid reasons why an appeal may be withdrawn, not least of these being

that the parties have reached an agreement on outstanding issues. The suggested approach could be sensible if either the appellant or planning authority acted unreasonably. However, there would need to be a clear definition and guidance given on what constituted unreasonable behaviour.

Scottish Landowners Federation: As is the case of the last question, the proposal does have attractions, not least because the knowledge that powers might be exercised would serve to discourage frivolous or hopeless appeals. However there are situations in which an appellant's circumstances or other relevant factors can change after an appeal has been initiated, perhaps in an unforeseen or even unforeseeable way, and where this has been the case, the powers should not be exercised as a matter of course; to do so would be to encourage parties to proceed with appeals which have come to be seen as inappropriate.

Tesco: This is not an easy issue, as it must relate to whether any party's action is "unreasonable" and has resulted in extensive work for any of the other parties. It may well be that an Appeal is withdrawn simply because the matter has been resolved and this in fact saves money overall, although clearly there is some abortive expenditure. We see no reason why Scottish Ministers should not be able to recover some costs where unreasonable behaviour has occurred. A solution may be that a specific date is given to all parties which indicates a date beyond which consideration of cost will occur should a party withdraw. So clearly, people have an indication as to what may be considered reasonable and what is unreasonable. Again, however, one cannot be rigid in this particularly for

an appellant negotiating a parallel scheme where the decision lies not with him but by the Authority and he or they cannot stipulate Decision or Committee dates.

Professional organisations

Law Society of Scotland: The Subcommittee agrees that Scottish Ministers should be able to exercise the power to recover their own costs, not automatically but on cause shown. This would enhance the policy approach to restrict unreasonable behaviour. The question is raised about instances where the Executive may be responsible for an administrative failure or where there is an unreasonable decision reversed by the Court. These too raise questions about recovery of costs of an abortive Inquiry.

RTPI: We are in favour of this proposal provided there is recognition of extenuating circumstances. There are a number of good reasons why an appeal party may fail to proceed in good faith. Apart from the loss of an interest in the property concerned through disposal or bankruptcy, bona fide processes such as mediation might remove the need for appeal. Ministers should adopt criteria.

Scottish Planning Consultants Forum: The exercise of powers to recover costs, as raised in question 13, when an appeal party fails to proceed or an appeal is withdrawn is reasonable as this will help focus minds to ensure that appeals are reasonable. However, decisions to delay can be made for good reasons. This power must be consistently applied in order to ensure confidence in its application. Exceptions should be rare and fully justifiable. This will aid clarity and assist in speeding up the appeals generally. The SPCF supports recovery

of costs for withdrawn appeals where good reasons cannot be provided.

Scottish Planning Law and Environmental Law Bar Group: We agree that greater use ought to be made of awards of expenses. To do so would obviate the need for many of the legislative changes proposed in the consultation paper. The necessary provisions already exist. Firmer guidance, perhaps removing the requirement to show the causal connection between a party's unreasonable behaviour and expenses incurred might make reporters more confident in making awards of expenses.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: In our submission the whole subject of expenses requires revision. As part of that exercise, there should be nothing in principle to prevent the recovery of expenses by Scottish Ministers.

Maclay Murray Spens: No, except in situations where there is clear evidence that the "appeal party" has acted unreasonably in doing so. Appeals may be withdrawn/fall through for a variety of reasons and we do not believe that it is appropriate for a general rule to apply which will penalise one particular party ("the appeal party") in every case.

Paul & Williamson: We think this proposal has merit but Ministers should consider the reasons for withdrawal- an award should not be automatic.

PPCA Ltd: No. This would be a draconian step which would inhibit the right to appeal. There are many reasons

why appeals are withdrawn at a late stage. Unreasonable behaviour should remain the basis for any award of costs. If there is such behaviour, there seems to be no reason why Scottish Ministers could not make a claim. The wording of the question is therefore too broad in its effect.

Robert Drysdale Planning Consultancy: No. If the planning authority approves an amended scheme and the need for an inquiry is removed, that is of benefit to all parties.

Shepherd and Wedderburn: We suggest that the powers of the Scottish Ministers in this regard should only be used in exceptional circumstances. There can be a number of reasons why appeals are not proceeded with. In particular, it may well be that a statement of case or a precognition actually discloses information which cannot be rectified in the context of amendments to a planning appeal and result in an appeal being refused. We would suggest that it is far better from an administrative perspective that the appeal is withdrawn rather than proceeded with in those circumstances. It may reach the stage that the party would rather have ago rather than concede the expenses. We therefore consider that it should only be utilised in extreme circumstances but that parties who withdraw an appeal post the fixing of an inquiry date should be obliged to provide reasons for the withdrawal of the appeal. This could then be used as the basis for considering whether or not their conduct had been wholly unreasonable.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: Again this sounds fair as it is a frustrating and costly occurrence for those involved.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: No. Difficulties in evaluating terms for recovery of costs militate against such a procedure. A proper system for managing the process of appeals as a whole, as per question 3, should preclude the necessity for this proposal.

Ferryhill Heritage Society: No.

Friends of the Earth: Yes. Third parties are often disadvantaged the most in proportion to other parties involved if they have expended time and money in anticipation of a start date only to find it cancelled at the last minute.

Historic Environment Advisory Council for Scotland: Yes, in the case of major development proposals where commercial gain is a consideration of the outcome of a successful appeal; but not in the case of minor appeals which may be better dealt with under the arrangements defined in clauses 45-47 of the consultation paper.

Saltire Society: Yes.

Scottish Civic Trust: The Trust agrees such powers should be exercised.

Individuals

Collins: Yes.

Connal: There are well established rules governing awards of costs by one party to a planning appeal against another. Ultimately the question of whether the Executive should seek to recover its costs and the basis on which that recovery should be made is a matter for the Executive to determine. It is however relatively unusual for the decision-making body in any process (Court, Tribunal or the like) to seek to recover costs from a participant in that process. To recover costs in all cases regardless of the circumstances would clearly impose very significant burdens both on developers and for that matter on the public purse through local authorities. In many cases there might be argument about who was to blame and for what. I am not in a position to judge whether this is a significant difficulty from the Executive's perspective, but I wonder whether it runs contrary to pressure to take a sensible decision. A party might be better to run on with an Inquiry and lose rather than pullout!

Cramond: Yes. It must be emphasised to all parties that a planning inquiry is a matter of final resort, to be undertaken only if it is impossible to reach agreement otherwise.

Hall: In general NO. The current practice of restricting cost recovery to cases of unreasonable behaviour seems about right. However, if there *is* to be wider cost recovery, there should be clear deadlines at which escalating capped sums will apply, in order to avoid litigious arguments. It is unreasonable to simply "recover costs" no matter how extravagantly they may have been accrued or how inventively they may have been accounted. To avoid further arguments, any sums recovered should be shared between Ministers and "others", pro-rata to their agreed costs. Further, the scale of

recovered costs should be reasonable - not punitive.

Lindsay: Recovering costs would be a disincentive to appellants who decide to withdraw their appeal without good reason (whether due to frivolous appeals in the first case, or other reasons- although such appeals could be weeded out at the pre-inquiry case stage). Care is required, however, not to punish those who may have genuine reasons to withdraw from or not proceed with appeals; for example, a developer may go out of business and be unable to dedicate time or resources to an appeal.

Roberts: Yes: bearing in mind the effect on Third Parties when this situation occurs.

Smith (Robert): Yes.

Stark: In general, yes. However, it would be wrong to seek recovery of costs where an appeal is withdrawn because agreement has been reached between parties as a result of mediation or negotiation.

Watt: Yes.

Question 14 Should preliminary argument be ruled out at the opening of a planning inquiry?

Local authorities

Aberdeen City Council: This recommendation appears on the surface to be attractive but in reality it will be difficult to avoid. Experience in Aberdeen is that parties do try to deal with procedural matters before the inquiry opens. In some instances, however, the issue may have arisen late in the day and can only realistically be dealt with at the start of the inquiry. It would be potentially

unfair to rule out in advance any possibility of preliminary argument.

Aberdeenshire Council: Legal and procedural argument and unavailability of witnesses can often lead to substantial delay at the start of a planning inquiry. It is sensible and desirable that such matters should be settled with SEIRU before the start of a planning inquiry. It is to everyone's advantage not to have the start of a Local Plan Inquiry clouded by questions of procedure. There is a difficulty that not all parties wishing to appear will be at each session and thus they may not be aware of any changes to procedure that are proposed and agreed.

Angus Council: This suggestion does not seem unreasonable, there is no reason why prior suggestions cannot be raised between the parties prior to the inquiry commencing.

Argyll & Bute Council: Yes it should. A pre-inquiry meeting should be able to define all procedural matters and hence eliminate the need for preliminary argument.

City of Edinburgh Council: CEC does not believe that it would be desirable to rule out such argument. Despite the desire for early agreement of procedures and facts (an 11) there may be new issues to be pursued before the inquiry commences in full. CEC would support the reporter taking a stronger role in directing the relevance of the preliminary arguments but not to the exclusion of them.

Clackmannanshire Council:
Development plans & development control: Preliminary argument can be constructive in establishing any anomalies in procedure and ensuring that all parties are agreed on procedure

to be followed. It is suggested that the need for preliminary argument is left at the discretion of the Reporter, as at present.

Dumfries & Galloway Council: For Development Plan inquiries, the case for the materiality of 'preliminary arguments' should be outlined for consideration by the Reporter at the beginning but should not otherwise hold back the Inquiry proceedings.

Dundee City Council: Yes, but all procedural issues should be dealt with pre-inquiry so that the planning merits can be dealt with immediately the Inquiry commences.

East Ayrshire Council: The Council would strongly agree that legal argument regarding procedural issues can unnecessarily prolong and delay a public inquiry and would agree that the inquiry itself should concentrate solely on planning matters. The Council would therefore agree that preliminary arguments regarding procedure should not be allowed during the inquiry itself.

East Dunbartonshire Council: While this might be welcomed, strict adherence to such a system may prove difficult due to the nature of conflicting work commitments of professional witnesses.

East Lothian Council: Ideally yes. Procedural issues that arise before the Inquiry should be dealt with in consultation with the unit, before the Planning Inquiry opens. However, this should not be a cast iron rule and left to the discretion of the reporter as there may be some circumstances where later submissions should be considered.

East Renfrewshire Council: Yes, the Inquiry is not the right place to raise procedural/preliminary issues but should instead focus on the planning merits of the proposal under consideration.

Falkirk Council: Whilst it is accepted that preliminary argument should be avoided where ever possible the suggestion is likely to transfer inquiry time into more lengthy and costly judicial reviews if important procedural points were overlooked.

Fife Council: Yes. Preliminary arguments should be ruled out in all but exceptional cases. Most procedural issues can and should be dealt with at the pre-inquiry stage.

Glasgow City Council: In most cases, this should form part of the pre-inquiry process and should only be allowed in exceptional circumstances (which would need to be defined).

Highland Council: At a number of planning inquiries an opening statement is made setting out the arguments that are to be developed by evidence from witnesses. Except in exceptional circumstances it seems unnecessary for the appellant to set out what his case will be, call the evidence and then sum up. The first stage could appropriately be deleted.

North Ayrshire Council: If preliminary argument is ruled out at the opening of a Planning Inquiry then the same matters will merely surface at regular intervals throughout the Planning Inquiry. Accordingly it is simplistic to rule out preliminary argument at the opening of a Planning Inquiry. Preliminary argument on proper matters can assist in focusing issues. If there is a problem, it is a problem of solicitors or counsel with a

court mind set, adopting a court approach with its emphasis on matters of procedure and form, rather than substance. While it will never be possible to exclude since arguments based on prejudice and lack of prior notice and issues, in my experience Reporters are able to effectively resolve such issues.

North Lanarkshire Council: To rule out preliminary arguments at the opening of the inquiry is "too hard and fast" a rule. They may raise a matter so fundamental that the Inquiry should not proceed. Clearly it is not ideal that such matters be left to such a late stage as the opening of the inquiry, but there may be reasons why they could not have been raised before then.

Orkney Islands Council: Once the Inquiry begins preliminary arguments and 'sabre rattling' lead to delay and should indeed be ruled out, since the aim of the Inquiry is to glean information on the main issues of disagreement. Strict adherence to this may lead to a reduction in this approach by those participating, so streamlining the whole process.

Perth and Kinross Council: Yes.

Renfrewshire Council: Yes. This has the potential to result in major time and cost savings.

South Ayrshire Council: Ideally this should be the case. If such an exclusive clause cannot be included in the relevant procedural rules, then it would certainly assist if it were made clear that parties employing preliminary argument at the opening of a planning inquiry as a tactic would severely risk liability for an award of costs.

South Lanarkshire Council: Yes - usually used as a delaying tactic by advocates and QC's.

West Dunbartonshire Council: Yes. The inquiry is set up to deal with the planning issues. Debate over other matters should take place prior to the start of the inquiry and should be ruled out of the proceedings.

West Lothian Council: There should be formalised rules for the clarification and agreement of information and material or indeed the identification of dispute between the parties. All parties should arrive at the commencement of the inquiry clear as to the procedures and the timetable of the inquiry. Failure to do so should result in costs arbitrated by the reporter's unit.

Western Isles Council: Both of these suggestions [including q 15] seem acceptable and sensible.

Other LA organisations

COSLA: The consensus noted in the council responses available to COSLA appears to be that preliminary argument should be ruled out, though there should be provision for exceptional circumstances and that it would be helpful to have formalised rules, to give clarity and to set out a timetable understood by all concerned.

Public Bodies

Royal Fine Art Commission for Scotland: Yes.

Scottish Enterprise: In an ideal world it would be good to delete preliminary argument at the start of an inquiry. However, as in 13 above it often comes about as a result of late

negotiations. If there is a preliminary argument at the start of an inquiry at least it gives the inquiry a context. If this stage was to be ruled out there may be the risk of the context being lost.

Scottish Natural Heritage: Yes, with the caveat that what has been discussed, agreed or remains in dispute should be documented, discussed with the Reporter, amended to reflect the Reporter's views and issued to all participants in the Inquiry prior to its commencement.

The Development Industry

Bett Homes: Preliminary arguments could be via written submissions to the reporter (copied to relevant parties) one week before the start of the inquiry and ruled upon on the first day of the inquiry, this should avoid lengthy legal debates at the start of the inquiry.

Homes for Scotland: There should be a presumption against preliminary agreements at the beginning of the inquiry and they should only be allowed where the matter to be addressed could not have been foreseen at the pre-inquiry meeting, which would be a more appropriate time for any preliminary argument.

MacTaggart & Mickel Ltd: No views on this.

Stewart Milne Holdings: No-there should be scope for this though if they could have been made before the inquiry starts at for instance a pre-inquiry meeting, that should be done.

Taylor Woodrow: The Inquiry forum is not an appropriate place to air legal matters. Where matters are raised, and not resolved, the Reporter should allow

consideration to all matters, with separate submissions provided in respect of legal matters to be taken into account separately.

Walker Group (Scotland) Ltd: We would be opposed to the ruling out of such preliminary arguments because there may well be a legitimate reason for it. We recently had experience of trying to engage a Reporter, prior to the start of the PLI, in a debate about whether a "sequential test" for a restaurant was required. The Reporter would make a ruling, adding that it was for the appellants to determine their own case. Because it was clearly fundamental to the Council's argument, although not part of their reason for refusal and they had never actually asked for it, we found it necessary to lead a preliminary argument that a sequential test was not required, however, if the Reporter found that one was required then the Inquiry would have to be adjourned and indeed evidence and witnesses recalled. We found it necessary to have that preliminary argument before the leading of any evidence because the Reporter would not comment prior to the commencement of the Inquiry. In the event, the preliminary argument led to a ruling that the test was indeed not necessary and allowing the evidence to proceed without threat of an adjournment at a later stage. In this case the use of preliminary argument served a significant purpose and itself avoided a potential delay to the Inquiry.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: We accept that this recommendation would help speed up the inquiry, once underway. However,

it is surely possible that some procedural arguments may arise once the inquiry has started and we would therefore suggest that this could best be dealt with on a case-by-case basis by the reporter.

Marks and Spencer plc: If possible, this is agreed, but it may be inevitable that some preliminary arguments re procedural issues can only be resolved at the opening of an Inquiry/during proceedings.

Sainsbury's: All necessary procedures should have been agreed before the planning Inquiry begins.

Scottish Coal Co Ltd: Yes, providing there is a clear mechanism within the timescales for raising such issues with the Reporter's Unit beforehand. The Reporter may also have to adjudicate at this early pre-inquiry stage on the procedural matters such as, for example, whether documents or other material submitted late should be accepted. Exceptional circumstances should never be ruled out but the Reporter should be given ultimate power, without fear of challenge, to accept or reject any proposal made outside, the pre-inquiry mechanism.

Scottish Council for Development and Industry: The greater use of hearings practice is welcomed but the decision to opt for this approach in each case would need to be mutually agreed between the main parties as being an acceptable method of deciding all or part of the appeal. It would be best to avoid the use of statutory procedure rules for such hearings and an agreed "Code of Practice" approach would be preferable. It is considered that this would cut down on legal wrangling and hence delays in the system.

Scottish Landowners Federation: SLF agrees with the thrust of paragraphs 38 and 39 of the paper; the procedure for notifying the Unit that procedural points are to be taken needs some detailed discussion, particularly with the Faculty of Advocates and the Law Society.

Tesco: Preliminary arguments should not be ruled out at the opening of an Inquiry. Issues may arise very late in the day, which can only be addressed at that time. However, where there are procedural issues which are known well in advance then most certainly they should be raised in writing with the Reporter's unit and certainly written notice given as to the nature of those procedural challenges.

Professional organisations

Law Society of Scotland: The Sub committee is of the view that preliminary argument should not be ruled out. Instead the guidance should be amended to encourage issues to be raised in correspondence with the Reporters unit.

RTPI: We support this proposal which should become more feasible with the earlier proposals for full disclosure of the case. Clear guidance on dealing with procedural issues before the inquiry should be issued.

Scottish Planning Consultants Forum: Procedural clarification should be sought prior to the commencement of the inquiry either at a pre-inquiry meeting or through consultation with the Reporters' Unit. In exceptional cases, a Reporter could hear procedural argument outside of an inquiry itself. Inquiries should focus on the planning merits at hand. This would contribute to certainty of process and promote better public

involvement. There would also be benefits in terms of cost and time. The SPCF supports ruling out procedural discussion at inquiries.

Scottish Planning Law and Environmental Law Bar Group: We emphatically reject any curtailment of the right to be heard at a public local inquiry and refer to the discussion at the beginning of this response.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: We entirely subscribe to the view that preliminary legal argument on the first morning of an inquiry (of which no effective notice has been given to any other party) is wholly unreasonable and counter productive. However one cannot wholly rule out preliminary argument. Matters of importance may have arisen on that very morning or shortly before. Against the background of full and timely disclosure (reinforced by the changes envisaged) which includes the availability of full precognitions at least two weeks before an inquiry, the occasions will be rare when any such preliminary argument is justified. Guidance along these lines should be given to Reporters.

Maclay Murray Spens: No. In our experience, there are occasions where important preliminary/procedural issues arise at a late stage and we believe that time spent at the start of an inquiry in resolving these often helps to foreshorten the Inquiry process. Having said that, parties should be required to raise any preliminary issues in writing before the start of the inquiry as and when they arise.

Paul & Williamson: We would agree that as much warning as possible

should be given of procedural issues so that they can be resolved in advance of an Inquiry. We do not, however, think that it would be possible to rule them out altogether. There are likely to be matters that crop up at the outset and which require consideration.

PPCA Ltd: Yes, in principle. But late actings could give rise to the need for late procedural points and if dealt with 'elsewhere' will still lead to a delay to the inquiry or hearing. It is suggested that this subject is better dealt with under the heading of unreasonable behaviour.

Robert Drysdale Planning Consultancy: Preliminary discussions are usually held with the purpose of assisting the Reporter. To rule them out would be unduly inflexible.

Shepherd and Wedderburn: We consider that there are a number of issues which are posed by this question and we do not think there is a simple answer. In relation to major inquiries, often the preliminary parts of an inquiry help to assist in framing how the inquiry is to proceed and how issues can be resolved. Similarly, preliminary arguments can arise relatively late in the day and often relate to the way in which evidence, whether by way of production of precognition, has been lodged. In this respect often there may be an argument that the precognition discloses new material which was not foreshadowed in the statement of case. We consider that if it is perceived that preliminary arguments are causing a considerable disruption to the system, there should be a procedure within the rules to enable parties to have a pre-inquiry determination of preliminary matters. However, we consider that the consequence of this is that one would have to give greater time between the

lodging of documents and the precognitions and the commencement of the inquiry, thus lengthening the process. However, there may be some merit in considering the initial timetabling of a possible preliminary arguments hearing, particularly in significant inquiries.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: Is this possible?

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: Yes.

Ferryhill Heritage Society: Yes.

Friends of the Earth: Often this is of little value except for the purposes of posturing on behalf of clients and adds little to the Inquiry.

Historic Environment Advisory Council for Scotland: Yes.

Saltire Society: Yes.

Scottish Civic Trust: There are times when preliminary argument seems frivolous and unnecessary. However, there is some evidence that this is the creation of the Reporters themselves, who have rejected calls for a pre-inquiry meeting to discuss a point of principle or law. As such, we would object to a blanket ban on this, but would recommend that such arguments be considered prior to the start of any PLI. A time limit to lodge a request for

this needs to be in place and something like two weeks seem reasonable.

Individuals

Collins: Yes.

Connal: I agree with the sentiments which lie behind the proposition but I have doubts as to its practicability. I have suggested a more interventionist approach by Reporters in the run up to the Inquiry. One consequence ought to be to "flush out" issues likely to cause preliminary difficulties. Time would have to be made for these to be determined in advance of the Inquiry (whether in writing or following oral submissions). If that more interventionist style is adopted the need for the proposed rule might diminish. Previous experience is that in many cases the developer, (who by this time has been pressing for his development for some time) is the one anxious to proceed and it is local authority or opposition groups who are keen to cause delay. If the less negative approach which I suggest were to be adopted again this might have an impact on the perceived difficulty. There might also be an argument for being firmer over awards of costs. For instance, a party making constant legal submissions, all of which are rejected, might be found liable in the costs occasioned by the submissions -particularly if they could have been resolved earlier. That could be done as part of the existing regime on costs. Inevitably there is a caveat. Inquiries do not take place in a vacuum. They take place in the real world and in the real world things change, matters emerge which, in some cases, ought to have emerged earlier, and in others could scarcely have been anticipated. Some of these may have to be resolved at the start of the inquiry and indeed the start of the inquiry

might be the logical place to resolve them.

Cramond: Yes. Procedural issues should never form part of a planning inquiry. This simply wastes time and irritates other parties and members of the public.

Hall: Yes.

Lindsay: Preliminary arguments should be ruled out in all but exceptional cases. Most procedural issues can and should be dealt with at the pre-inquiry stage.

Roberts: Yes.

Smith (Robert): Yes.

Watt: Yes.

Question 15 Should time at the planning inquiry be programmed more rigorously in advance by reporters, and parties held to that programme witness by witness?

Local authorities

Aberdeen City Council: This would be helpful but care needs to be taken to ensure that all parties are dealt with fairly and are given sufficient time to express their case.

Aberdeenshire Council: Because of the large number of different issues that need to be considered in a Local Plan Inquiry there is a real risk that without strict timetabling the length of the process could be increased significantly. However, there is no justification for 'clocking' objectors; if an issue deserves more time then it should be given. This decision should rest entirely with reporters.

Angus Council: It is difficult to precisely programme the timetable for inquiries, particularly major inquiries. Often the length of time taken by a witness is dependent upon cross-examination.

Argyll & Bute Council: The reporter should have rights to intervene and also the rights to clarify issues, as a vital part of their role in the process.

City of Edinburgh Council: CEC welcomes this suggestion but considers that it should be piloted to examine the impact on the quality of evidence heard. There would be concern if parties were able to subsequently challenge the proceedings on the grounds of inadequate time to cross-examine the witnesses. The Central Edinburgh Traffic Management proposals Inquiry is seen to have been an exemplar in respect of rigorous programming.

Clackmannanshire Council:

Development plans: Programming should be more rigorous, it is a failure of the present system that Reporters sometimes allow agreed timetables for PLI preparation to drift. However, it is accepted that evidence at PLI can take longer than expected since it can be hard to accurately estimate the time required for presentation and examination. It should remain for the Reporter to control the amount of time each case will require, in consultation with the planning authority and objector, as occurs at present. In general, the principle of reserving days at frequent intervals during the inquiry period for "overspill" seems to work effectively.

Development control: This Authority has not had any recent experience of a public local inquiry running for an abnormal period of time. We are,

however, aware that this can happen, either because of the number of witnesses involved, the number and complexity of issues to be addressed that have not been subject to agreement (see 11 above) and the extent and often over-zealous nature of cross-examination and re-examination. If the experience of England and Wales has met with a favourable response from participants, it is worthy of consideration. A programmed structure will assist in focussing the minds of witnesses and those leading evidence.

Dumfries & Galloway Council: For Development Plan inquiries a provisional running order should be published at the outset and updated as the Inquiry progresses. A sound investigation of the matters should take precedence over strict adherence to the original timetable.

Dundee City Council: Yes.

East Ayrshire Council: The over-running of inquiries into time originally allotted to others giving evidence, can be extremely disruptive to proceedings, cause serious inconvenience to other participants and unnecessarily delay the inquiry itself. It is therefore agreed that a programme for the inquiry should be agreed by all parties prior to the commencement of proceedings and that the agreed timetable should be strictly adhered to. However, if considered expedient by the Scottish Ministers or by reporters conducting an inquiry, provision could be made for additional evidence to be presented to the inquiry, subject to the agreement of all parties concerned, at the end of the allotted inquiry programme. It is considered that significant savings to an inquiry timetable could also possibly be achieved if all written precognitions

could be taken as read by the reporter, thus saving time that would otherwise be spent in a full reading and presentation of such documents by the parties concerned.

East Dunbartonshire Council: This is welcomed.

East Lothian Council: No. A certain amount of flexibility in relation to programming should be retained. More rigorous programming could be prejudicial to parties' cases.

East Renfrewshire Council: Yes, although the importance of this may be diminished if a more informal, hearings- style approach is adopted for PLI's.

Falkirk Council: This suggestion is supported. It is frequently the case that parties not involved in the whole proceedings have to waste a lot of time waiting to appear. Any programme would have to be agreed in advance and applied with appropriate discretion so as not to prejudice legitimate cross-examination.

Fife Council: Yes. This would be desirable but it may not always be practical. I note that there is evidence from England and Wales that this can work and it may, therefore, be worth piloting in Scotland. However, strict compliance could result in some parties feeling that they were being restricted in giving their evidence.

Glasgow City Council: This lies within the remit of the Reporter already. It would be unreasonable, however, to require parties to stick to an 'imposed' programme where it might clearly prejudice their case. The Reporter should also maintain a tight reign on the inquiry, particularly during cross-examination.

Programming would also be helped by removing the ability of those who had not previously 'registered' from speaking (see response to question 8) and in more clearly narrowing down the issues best dealt with by oral evidence (see response to question 3).

North Ayrshire Council: To hold to a Planning Inquiry programme witness by witness, will merely prejudice those who are still to cross examine. At present Reporters have power to cut out duplication and irrelevant matters and this is more than satisfactory. If necessary, the powers of Reporters to control proceedings should be strengthened.

North Lanarkshire Council: This is generally agreed in principle, but an amount of flexibility would need to be built in to allow for cases to be fairly presented and questioned.

Orkney Islands Council: In hearing the evidence it is important that all parties receive a fair hearing. Timetabling to avoid some parties over running would be helpful, although setting out equal times for various parties may not be necessary.

Perth and Kinross Council: This is to be welcomed and will allow for better management of staff time.

Renfrewshire Council: Yes, but there may be difficulty in judging how long cross examination of witnesses may take.

Delay due to unavailability of key individuals: This could be a problem where Counsel are involved unless programming is rigidly adhered to.

South Ayrshire Council: This is strongly supported. However care will be needed to ensure there is sufficient

flexibility to ensure that all relevant information is carefully examined.

South Lanarkshire Council: Yes this would hopefully focus cross-examination into a much shorter time period. Questions could be more straightforward if there was a time restriction with less straying from the subject.

West Dunbartonshire Council: Yes. It is generally in everyone's interest to deal with the issues in a tight, organised fashion and realistic programme targets should be set and stuck to in order to improve efficiency and credibility.

Delay due to unavailability of key individuals: In relation to paragraph 41, it is fully agreed that it is not acceptable for delays because intended representatives cannot attend. Tighter programming will make dates clearer and these must be held to or again, credibility of the planning process is brought into doubt.

West Lothian Council: While the council would not wish the rules of timetabling to be over-rigorous and unwieldy it must be acknowledged that *more* strict timetabling is necessary, and that if parties stray from this unreasonable costs could again be awarded against them.

Western Isles Council: Both of these suggestions [including q 14] seem acceptable and sensible.

Other LA organisations

COSLA: There is general agreement that stricter timetabling is needed though there are some calls for flexibility. One reasonable suggestion would be to run a pilot exercise, to determine impact, but COSLA

recognises the need to operate realistic targets for managing the inquiry process.

Public Bodies

Royal Fine Art Commission for Scotland: In general, yes; but the timetable should not be so prescriptive that key evidence, that may not have been anticipated, is not heard, to the detriment to the course of the Inquiry.

Scottish Enterprise: An attempt could be made to programme time at the inquiry more rigorously but not sure how practical this would be.

Scottish Natural Heritage: Yes, although the time to be scheduled by parties must be agreed by those giving evidence and those wanting to cross-examine that evidence. For instance, SNH may consider a day at the PLI is sufficient, while those wanting to examine SNH's evidence may consider that three days are necessary, e.g. a half-day for SNH to give its evidence and two and a half days for other parties to examine this evidence. SNH may or may not accept the necessity for three days and the Reporter should propose an acceptable compromise.

Scottish Environment Protection Agency: This is broadly supported.

The Development Industry

Bett Homes: Ideally yes as it would save witnesses hanging around, however in practice this may discriminate parties by being subject to irrelevant cross-examination wasting Inquiry time.

Homes for Scotland: Homes for Scotland would support in principle the introduction of more rigorous

programming. However it has always to be borne in mind that the legitimate purpose of cross-examination and re-examination is to test evidence and that process should not be weakened by over restrictive time constraints. It is always open to Reporters to curtail evidence where they believe it is not assisting them to clarify the issues they are being asked to address.

MacTaggart & Mickel Ltd: Yes - programming should be more rigorous but must still have some degree of flexibility .Our experience is that Reporters are accommodating to slight changes in sequence of appearances at inquiry .Furthermore, local authorities often do not allocate enough inquiry time at Local Plan Inquires and have to be guided by other parties.

Stewart Milne Holdings: Ideally yes but process should not be weakened by over restrictive time constraints.

Taylor Woodrow: The curtailing of needless evidence, and focussing upon salient points of each case is to be commended, and our submission supports the focussing upon matters in dispute. However, the rigorous testing of witnesses should not be limited during cross- examination.

Walker Group (Scotland) Ltd: We have no difficulty with more rigorous consideration of programming provided it does not undermine the principles of best evidence and the right to thoroughly test evidence. Cutting short evidence to introduce other parties simply because they are "timetabled" to appear could have consequences for the testing of evidence with witnesses having to be recalled. Ultimately there may not be any saving of time by rigorous enforcement of programme timetables.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: Given the time constraints upon small businesses, a more rigorous programme would be beneficial, though there may be times when (for whatever reason) interruptions or delays to the programme will be necessary.

Marks and Spencer plc: Agreed, but the right to be heard must not in any way be undermined and the approach must recognise and allow for the fact that the time needed to present and test a case or issue cannot be forecast with complete accuracy in advance.

Sainsbury's: It is often difficult to be exact about timetables -but sticking to a timetable is likely to help save time and money. If all necessary procedures have been agreed beforehand this should not be a problem.

Scottish Coal Co Ltd: Generally yes, but Reporter needs flexibility to pursue, either directly through questioning or by allowing additional time for cross examination, an important line of evidence if he/she considers it worthwhile.

Delay due to unavailability of key individuals: It can be the case that it is members of the public or local interest groups who in fact are unavailable to appear on particular days for whatever reason. It is therefore not only members of the public who are inconvenienced by programme adjustments. Reporters must be allowed to use discretion to all parties if unforeseen events make attendance by a witness on a particular day impossible.

Scottish Landowners Federation: In general yes, although if a seam of pertinent evidence is seen to have been struck, it should generally be worked, even where that does result in some delay.

Delay due to unavailability of key individuals: In general, SLF agrees that a more rigorous approach is needed. However, that would have to recognise that there is a hierarchy of calls on professional time, e.g., if through no fault of his or her own a Senior Counsel is required to appear in the High Court or the Court of Session, on a conflicting date, that would have to take precedence, and where someone has to be absent on a particular date for a substantial personal reason e.g. to undergo surgery, that should be respected and an adjournment allowed (in that case even where the procedure is elective given problems with waiting times.)

Tesco: Tesco do not think it would be feasible to specifically and rigidly apply times for witnesses in the Inquiry. However, the Reporter could take a much more proactive role in moving things forward when they consider that the issue has been sufficiently addressed. It is, for example, pointless Counsel seeking for a witness to deliver a specific answer when clearly that party rightly or wrongly does not wish to respond in that form. The Reporter can make it clear that they understand the point and also the witness's response. This is a key issue in respect of Inquiries where the Reporter can be much more involved in the overall process. This means pushing those cross examining to move forward indicating that they understand the point or if they do not they can undertake the cross examination themselves and this

perhaps relates more particularly to the next question.

Professional organisations

Law Society of Scotland: The Sub committee agrees that co-operation in programming the planning inquiry is a reasonable expectation of all parties involved however, programming should not be so rigorous as to restrain reasonable cross-examination.

RTPI: We believe that any programme should be indicative and should be kept under review. Reporters should have the power to change the programme for good reason but should always have regard to the convenience of expert witnesses and third parties who need/wish to attend relevant parts of the inquiry only. Options to deal with the overrun of evidence at any stage are to resume at the end of the inquiry or to revert to written submissions.

Scottish Planning Consultants Forum: This is generally supportable as it provides clarity of process and it has the potential to make time and cost savings. However, there is a concern that a too rigorous application of an inquiry programme could be detrimental to a full discussion and examination of evidence presented. This could undermine public involvement and clarity. Consequently, it would be appropriate to prepare indicative programmes. These should build in contingency time to allow full examination as appropriate. It would be the reporter's responsibility to manage the programme in response to developments as an inquiry progressed. The SPCF would support indicative programming of inquiries managed by reporters.

Scottish Planning Law and Environmental Law Bar Group:

This is a suggestion which also swims against the Human Rights tide. If programming results in the curtailment of any party's evidence, howsoever caused, they will have been denied their right to be heard. Procedures are employed at present whereby parties to an inquiry provide an estimate of the time which they will require to present evidence. Experienced parties are generally able to provide estimates with reasonable accuracy at present. For there to be public confidence in the inquiry system, parties must be afforded the opportunity to present their case in full as they see fit. If a witness is unduly lengthy or gives irrelevant evidence, the sanction lies with the award of expenses, not with the curtailment of basic freedoms.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS:

Programming of inquiry time is notoriously difficult. We do not believe that the proposal is realistic or would achieve its purpose. Reporters should be more demanding of parties at the inquiry as and when matters are progressing, not in advance. Although this is linked to another question, repetitive or long-winded examination in chief (remembering that the basis now is leading from summary precognitions), cross-examination and re-examination should be limited by the Reporter if he/she judges it necessary at the time. Within the bounds of common sense witnesses should be available at the appropriate time.

Delay due to unavailability of key individuals: Key personnel (paragraph 41) should simply be available; we

agree with the general approach in that regard.

Maclay Murray Spens: No. There is a very real danger that in doing so the relevant issues before the inquiry are not properly tested. Reporters already have powers to prevent irrelevant or repetitious evidence or cross-examination. This is sufficient.

Paul & Williamson: We doubt whether an inflexible approach here is either desirable or realistic. Most parties tend to be accommodating.

PPCA Ltd: No. There are attempts to do this at local plan inquiries, but the net result is that the inquiry has to adopt the critical path at the outset, thus removing the opportunity for later compression of the timetable.

Delay due to unavailability of key individuals: The argument in paragraph 41 may be sound in some cases. However, it is third parties who routinely say that cannot get off work, etc., ask for evening meetings and so forth. If these too are to be banned then that would be helpful.

Robert Drysdale Planning Consultancy:

Definitely not. Rarely is it possible to estimate the time likely to be taken to present a case until all parties' precognitions have been released two weeks in advance of the inquiry. Furthermore the response by witnesses to cross-examination cannot be predicted in advance, and claims or concessions made by witnesses during cross-examination may result in the need to introduce additional lines of questioning. To curtail such a requirement could cause serious disadvantage to the appellant's case.

Shepherd and Wedderburn: Our recent experience of pre-inquiry meetings has been that the issue of programming has been discussed in some detail and indications have been given. However, the length and nature of cross-examination can only be determined once a precognition has been lodged. It is our general experience that inquiries have been running to those timetables. A general observation would also be that the length of time that witnesses are taking has reduced with the use of summary precognitions and also the cooperation of the parties, for example, in some inquiries the necessity to read out the summary precognition has been dispensed with where there are no members of the public involved. We would suggest that too much time spent timetabling can actually be counterproductive in that it is very difficult to achieve until the nature and detail of the evidence is known. We would also suggest that rigorous timetabling often produces inflexibility. If, however, it is considered appropriate and inquiries are programmed rigorously then it is of vital importance that witnesses are required to answer the questions which they are asked and not embellish the answers. At most public inquiries the length of time taken in giving of evidence is considerable expanded by witnesses adding considerable riders to the evidence which has been given. The purpose of cross-examination is to test the witness. In that regard, even though the witness may not particularly like the questions that they are being asked, it is for the cross-examiner to determine the nature and subject matter of the questions, subject of course to the appropriate control of the reporter. Too often witnesses do not answer the question which is asked and that is a matter which considerably delays the inquiry process.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: Timing should be more certain than is sometimes the case at present but it cannot be too rigid because all witnesses do not proceed at the same pace, and witnesses should not feel pressured.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: No. To ensure that the matter has been properly scrutinised there must be some flexibility in the process so that unexpected or unusual circumstances can be accommodated. Otherwise such situations would lead to an undermining of the procedure and public confidence in it. In general, in our experience Reporters have been properly supportive and pragmatic in their responses to programming issues arising with all parties to Inquiries, and typically these have not led to significant delays.

Ferryhill Heritage Society: Yes.

Friends of the Earth: In so far as practical, this is desirable. However there are times when unexpected events get in the way and there should be a degree of flexibility. Cross examination of witnesses can take a varying degree of time and it is not always possible to accurately predict the length of time required. Given this, perhaps Reporters need to be more assertive in the conduct of the Inquiry

and move matters on to ensure the thorough but efficient scrutiny of the proposal before them.

Historic Environment Advisory Council for Scotland: In general, yes; but the timetable should not be so prescriptive that key evidence that may not have been anticipated is not heard, to the detriment to the course of the inquiry.

Planning Aid for Scotland: This would be helpful. Many of our clients have reported the difficulty in taking time off work and travelling to the venue only to discover that they were not called and had the inconvenience of having to repeat the arrangements.

Saltire Society: This suggestion is not practicable; it is not possible and certainly not desirable to attempt to anticipate the development of issues of oral evidence.

Scottish Civic Trust: It is the Trust's experience that the programming of witnesses takes place, to a lesser degree already. We do agree that greater certainty in the time spent at the inquiry is beneficial. However, timetable issues come into play as a result of cross-examination, which is less predictable. We would find it unwise to cut such examination short, or seek to curtail reasonable debate for the sole interests in accurate timekeeping.

Individuals

Collins: Yes.

Connal: This question raises two overlapping but distinct topics. There can be no objection to endeavouring to programme evidence provided it is understood by all concerned that estimates are just that i.e. estimates.

They may turn out to be inaccurate through no fault of any party and adjustments will then have to be made. In cases programmed in advance I have understood the general practice to be that any overspill should not inconvenience other parties -so if the Community Council is scheduled to appear on the Wednesday but evidence about nature conservation or whatever has not concluded, it is evidence on nature conservation which moves and the Community Council would appear as scheduled.

Cramond: Yes. The Hutton inquiry - though not a planning inquiry -shows that time can be programmed, and parties held to that programme, even when very senior people indeed, with enormous demands on their time, have to appear. The very certainty of a timetable should in fact make it easier for anyone appearing at an inquiry to arrange his/her diary commitments accordingly.

Hall: Yes, reasonable adherence to a timetable is desirable -but give the reporter space to manoeuvre; moderate over-runs should be permitted/controlled at the reporter's discretion.

Lindsay: This would be desirable but I question the practicality. I note that there is evidence from England and Wales that this can work and it may, therefore, be worth piloting in Scotland.

Roberts: Yes.

Smith (Robert): Due to the incidence of individuals who may wish to take part in a public local enquiry, I believe that your proposal might work with people represented professionally, but that it would be rather more difficult to do so with individuals. However it may be

possible to invite individuals to use an allotted space, say half a day, or more as necessary by numbers.

Watt: Yes.

Question 16 Do you consider that it is necessary for the Scottish Ministers explicitly to set a more inquisitorial role for reporters?

Local authorities

Aberdeen City Council: This would be of benefit if it allowed facts to be established in a less confrontational manner. Experience in Aberdeen has been that Reporters have not always controlled excessively hostile cross-examination of witnesses.

Aberdeenshire Council: A feature of planning inquiries for many years has been the ‘court room’ tactics of parties endeavouring to obtain particular responses from witnesses. This can be time consuming, particularly if subject to cross-examination from more than one party, and ineffective. A more probing role for the reporter would be a much more effective way of establishing the veracity of evidence. A more inquisitorial role for reporters can only be a good thing within Local Plan inquiries, allowing them to probe the key issues of the particular objection. It is not clear whether this would have an adverse impact on the resourcing of Local Plan Inquiries as the additional time taken in preparation by reporters is likely to be matched by the reduction in time taken to consider and examine witnesses. This advantage may be lost by the additional time required to prepare the report.

Angus Council: Reporters generally do have an inquisitorial role although not on an interventionist basis. It may place Reporters in a difficult position if

they were continually being required to intervene during the cross-examination process.

Argyll & Bute Council: The reporter should have rights to intervene and also the rights to clarify issues, as a vital part of their role in the process.

City of Edinburgh Council: CEC supports a more assertive role for reporters in managing the process of cross-examination. It recognises that if a more inquisitorial role is set for a reporter, then additional support will be required to suitably record the proceedings.

Clackmannanshire Council:

Development plans: Each Reporter's style differs. It is considered that their key role is to listen to the evidence presented and ask any necessary questions to fill in the gaps in evidence presented or examination of witnesses. It is not accepted that requiring Reporters to be more probing would be particularly helpful, although greater standardisation in the degree of intervention/participation by Reporters in examination would be helpful.

Development control: Perhaps the most notable contrast between public inquiries and hearing process in the role of the Reporter in each scenario. One might reasonably ask why this role should be so diverse. Individual Reporters will adapt their own approach. Some may interject more than others, but there is no compelling argument to dilute the adversarial approach which forms the foundations upon which cases are built.

Dumfries & Galloway Council: For Development Plan inquiries an approach which is enquiring as well as testing of the evidence may be expected to be more effective than written or adversarial formats and

should be generally appropriate. It is assumed that Reporters would adopt a style of enquiry which is suited to the particular circumstances, such as community member, or prospective developer, or expert witness.

Dundee City Council: Yes, it is often the case that the most pertinent and searching questions are put by the Reporter and this could be more extensive.

East Ayrshire Council: As stated in the consultation paper, the adversarial approach taken at many public inquiries can be intimidating for some participants and the introduction of any measures that reduce this adversarial element are to be welcomed. The adversarial approach is not considered to be an appropriate method for addressing planning related issues. It is understood that inquiry reporters already have powers to influence the direction of questioning at an inquiry and to ask pertinent questions of those participating. The Council is of the opinion that the inquisitorial approach should be further formalised and that the adversarial approach should be positively discouraged and, if considered appropriate, prohibited on the grounds that witnesses are likely to be less guarded and evidence is likely to be more forthcoming.

East Dunbartonshire Council: Such an approach appears to work extremely effectively in the less formal sessions of Local Plan Public Inquiries and would be welcomed.

East Lothian Council: It would be helpful if, in an attempt to clarify facts, the Reporter took a more inquisitorial role although interruption by the Reporter during cross-examination can be disruptive.

East Renfrewshire Council: Yes, this is essential if real changes are to be made to the way in which PLIs are carried out. The need for a formal system of evidence and cross examination should be done away with and replaced with a Reporter-led inquisition into the main areas of dispute. The use of court-style proceedings unnecessarily extends the timescale for PLIs, especially Local Plan Inquiries, and hence the cost and potential for greater public involvement. It should not be necessary for a Reporter to rely on cross examination between the parties to arrive at the material facts.

Falkirk Council: This suggestion is supported. It is important to recognise that this will be a different role than reporters currently perform and training and other means of support will be required for reporters to perform this new role in a satisfactory manner.

Fife Council: Yes. This could be beneficial as cross-examination is sometimes approached as a means of seeking to discredit the person giving the evidence rather than seeking to establish facts. It should be at the Reporter's discretion to be inquisitorial if that is felt to be beneficial to his/her understanding of the cases. The inquiry is, however, called by appellants and the onus should be on the principal parties to lead evidence and cross-examine.

Glasgow City Council: More explicit advice is required from Ministers on the role of the Reporter at inquiries, particularly if a more inquisitorial role is to be set. It is important that, at the start of the inquiry, the Reporter lays out the key questions to which they expect answers. It is then critical that the Reporter does not go outwith the

bounds of these questions and the objections being considered. Reporters should also be required to remain neutral in their approach to the issues being examined and in the questions being asked. The key purpose of the questioning should remain the need for the Reporter to gain a fuller understanding of the issue(s) leading to the inquiry and not to introduce new issues/options.

Highland Council: This is certainly an area where the present system could be substantially improved. The whole purpose of an Inquiry is to get to the issues. Unnecessary and adversarial cross-examination rarely achieves that objective. It therefore would be appropriate for the Reporter to take a much more active role in seeking to establish facts and opinion rather than allowing the parties to undertake lengthy examination and cross-examination.

North Ayrshire Council: We do not accept that it is necessary for the Scottish Ministers explicitly to set a more inquisitorial role for Reporters. At present Reporters adopt an inquisitorial role if it is necessary to clarify any issues. The present situation works very well and there is no need to change it.

North Lanarkshire Council: This proposal is agreed, including the training as suggested in paragraph 43, and with guidance issued to all parties.

Orkney Islands Council: We would also support the idea of the Reporter asking more probing questions prior to any cross examination to glean the necessary information. This would indeed reduce the need for lengthy cross-examination, which to some lay persons, is the most daunting part of the process.

Perth and Kinross Council: The Council also welcomes the setting of a more inquisitorial role for the reporter as this may save time during cross-examination in addition to making the process more user friendly for the public.

Renfrewshire Council: The Reporter should be free to ask any relevant question of a witness and if this requires specific guidance then this should be provided.

South Ayrshire Council: It is agreed that Reporters should be able to act in an inquisitorial role, but there is a danger in creating duplication - especially where cross-examination may be seeking to highlight different emphasis of a similar point through this cross examination. Reporter Inquisition should be reserved for instances where, after cross examination, the reporter considers that additional questioning is essential for his/her full consideration of the proposal, Reporters already perform an inquisitorial role in a reasonable way: there is no need for further guidance on this.

South Lanarkshire Council: Yes - this could focus cross-examination and reduce time taken by advocates with witnesses.

West Dunbartonshire Council: It should not be necessary to explicitly set such a role. The reporter plays an important role and must be able to satisfy him/herself that all required information is obtained. This may or may not require a measure of inquisitorial approach. Proceedings should avoid prolonged and allegedly clever points scoring, which has no bearing on the critical planning issues and which the reporter can see through

and largely ignore in drawing up his decision letter.

West Lothian Council: It is felt that there is scope for such an inquisitorial role as this may persuade witnesses to be less dogmatically defensive about statements thus minimising unnecessary and repetitive cross examination. It is felt that there should be a reduction in the adversarial approach as this can often extend inquiry time with the parties feeling it necessary to score points rather than addressing the critical issues before the inquiry. This would result in a saving in time and cost to all parties. It may also help minimise legal costs where parties feel it necessary to be represented by what may be an excessive legal and professional team.

Western Isles Council: It is considered that the present arrangement works well and does not burden the reporter with the task of having to prepare to lead the "inquisition" of all parties. The commitment of Scottish Ministers to "expect reporters to be more interventionist in managing the process of cross-examination to ensure that this assists the identification of the critical issues" is nevertheless welcomed.

Other LA organisations

COSLA: This suggestion would be welcome, especially if it helps to minimise unnecessary cross-examination, reduce costs and help convince parties of the need not to employ costly legal representation. However, COSLA notes the concerns of some councils about the need for the reporter's neutrality and his/her ability to be able to be satisfied that all the required information about the appeal has been obtained.

Public Bodies

Royal Fine Art Commission for Scotland: RFACFS generally agrees with this suggestion, although considers that it is equally important that reporters are trained or have experience in the particular field of the Inquiry and that valuable time is not wasted on matters of clarification. RFACFS considers it entirely appropriate that Reporters should take a more active role in seeking to establish the key facts of the inquiry.

Scottish Enterprise: It is not necessary for the Scottish Ministers to set a more inquisitorial role for reporters.

Scottish Natural Heritage: We agree that the culture of PLIs, especially aggressive cross-examination by QCs, is intimidating and prevents participation by creating unwillingness to give evidence and be cross-examined. Moreover, it could give rise to the impression that only participants who can afford legal representation are truly able to have their views presented. We agree that to deter said behaviour, reporters should intervene more forcefully. In addition, perhaps the Faculty of Advocates and the Law Society of Scotland should be invited to devise a code of conduct for lawyers at PLIs.

Scottish Environment Protection Agency: We consider that the Reporters have a significant role to play in facilitating the shift away from an adversarial approach, but recognise the issues this would raise in terms of resources and training for the SEIRU. We consider that an inquisitorial role that reduces the need for extensive cross examination would be a positive step.

The Development Industry

Bett Homes: This would be one option, however their remit must be explicit from the outset.

Homes for Scotland: There is perhaps a need to encourage Reporters to be more inquisitorial in respect of determining the weight that can be given to evidence. There is a body of anecdotal evidence beginning to emerge that would suggest that Reporters tend to accept at face value a policy position formally approved by a planning authority and that they are not inclined to question the rigor of the process used to drive out that policy position. This is particularly the case where a planning authority relies upon supplementary planning guidance where the policy formulation process has not benefited from testing at a public inquiry. One further suggestion related to pre-inquiry procedure could be the preparation of a "Statement of Determining Issues" by the Reporter. The absence of any dialogue with the Reporter requires the appellant to address all of the issues comprehensively and thoroughly, often resulting in an appellant labouring on a point with which the Reporter may not take issue. It should be open to the Reporter to set out the determining issues in order to focus on the main concerns as they see fit. This would reinforce the position of the Reporter as adopting a more inquisitorial role.

MacTaggart & Mickel Ltd: No. Reporters are not precluded from intervening or adopting a more inquisitorial role.

Stewart Milne Holdings: Yes especially with regard to supplementary planning guidance which has not been scrutinised at a Local Plan Inquiry.

Taylor Woodrow: It is of considerable concern to TW, that supplementary guidance is being increasingly used to justify and articulate policy, and delivery mechanisms. It is observed that Local Plans increasingly contain generic policies on implementation and monitoring, leaving the detail to technical papers or SPGs. The issue for LPIs are apparent. The policies from SPGs are applied within Local Plans without justification or back-up, this is because the Supplementary Guidance is not before the Reporter for examination. SPP1 calls for SPGs to be the subject to consultation. However, Councils in the main, approve such SPGs out with the formal planning consultation or rigour attributed to matters. They are approved by the Council, but can only be tested via planning appeals, which are not the correct medium for such analysis. This is an undue reliance upon the Inquiry process, as Reporters cannot recommend ways in which the criticisms can be resolved, as their remit is the application at hand as opposed the processes which have been used to arrive at a particular policy conclusion. The proper forum for the testing of SPGs is via the Local Plan Inquiry. Until they are tested in this context, they should be afforded little weight.

Walker Group (Scotland) Ltd: We have no difficulty with Reporters adopting such an approach, provided it is not to the exclusion of evidence which the appellants which to present to the Reporter and which he/she may not have thought of. One further suggestion related to pre-inquiry procedure could be the preparation of a Statement of Determining Issues by the Reporter. The absence of any dialogue with the Reporter requires the

appellant to address all of the issues comprehensively and thoroughly, often resulting in an appellant labouring on a point which the Reporter may not take issue with. Why shouldn't the Reporter set out the determining issues in order to focus on the main concerns as they see fit? This would reinforce the position of the Reporter as adopting a more inquisitorial role.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: It is fair to say that many people who take part in an inquiry feel intimidated by the cross-examination process, so a greater participative role for the reporter might help to alleviate this.

Marks and Spencer plc: Agreed. Reporters should be prepared to take a more to set a more inquisitorial role.

Sainsbury's: Believe it is important that reporters remain impartial and do not take sides. The Reporters job is to extract the key issues / debates of a particular case / local plan and not to intimidate witnesses.

Scottish Coal Co Ltd: Cross examination is vital. The balance is right at present with the well understood principle that professional witnesses are examined more robustly than members of the public who are dealt with more sensitively. If there are any problems, it is because the Reporter may not have advised the advocates accordingly or intervened at an early stage. Reporters could usefully set this rule out at the pre-inquiry hearing for all to hear. Nevertheless, all those who appear at an Inquiry to give evidence regardless

of who they are should be advised that their evidence is there to be tested.

Scottish Landowners Federation: SLF thinks that the answer to this question should be "yes". In practice Reporters are skilful in judging how much intervention by them is necessary to ensure that evidence is brought out and tested, and issues identified and debated. Being more inquisitorial enables reporters to get to the point more quickly.

Tesco: The Reporters must take a more proactive role within the process and Janet McNair was an effective example of this at Arbroath, which assisted the overall Inquiry, and some witnesses greatly.

Professional organisations

Law Society of Scotland: The Sub committee would support the development of a more inquisitorial role for reporters, subject to appropriate guidance training and resources towards better quality decision making.

RTPI: This should continue to be a matter of guidance and not statutory procedure. We support the increasingly proactive role of Reporters who should continue to have full discretion to curtail repetitive or non-material evidence in a public inquiry. Nevertheless, it would be inappropriate to lay down specific rules to prevent cross-examination for clarification as sometimes, indeed, evidence may not be clear in its relevance. Particularly if earlier proposals in the paper are implemented, it will become clear that the right of appeal does not become the right of inquiry and that the purpose of selecting a mode of investigation into appeal is to assist Ministers in coming to their decision. They should therefore be

entitled to request Reporters to act in the best interests of this aim.

Scottish Planning Consultants Forum: A more inquisitorial role for reporters, as suggested at question 16, is not appropriate. It is for the parties involved in the inquiry to present and test evidence. It is for the reporter to balance the arguments and reach a decision. In undertaking cross-examination of witnesses a reporter may open themselves up to accusations of bias, a lack of transparency and unfairness. In particular, this would threaten clarity of process. Of course, it would be reasonable for a reporter to seek clarification from a witness. The SPCF object to a cross-examination role for reporters.

Scottish Planning Law and Environmental Law Bar Group: The fallacy underlying the discussion of the adversarial approach has been discussed at the beginning of this response. It appears accepted from the discussion in paragraphs 42 and 43 that the concern raised is not in fact a real one ("there have been few such incidents in recent years" and "even though there is little evidence of this occurring"). The Group does not believe that the Scottish Ministers should explicitly set a more inquisitorial role for reporters. As we understand it, Hearings in respect of which a reporter sets the agenda and adopts a more inquisitorial role, place a heavy burden on the reporter even although they are the mode of inquiry generally employed for minor or straightforward cases. In our view to make the reporter inquisitor at an inquiry and in effect to prepare all of the cross examination himself would place an intolerable burden on him and would have the inevitable consequence that parties would feel that their points of view had not been properly put

across. We understand this to be a recognised defect in the inquisitorial system as it operates on the Continent. Clarification of evidence is within a reporter's existing rights but it is not reasonable to expect him to be in a position to ask all of the substantive issues of all of the main witnesses. Lawyers are in any event especially well qualified to focus questioning down to critical issues and as we understand it, reporters are grateful for their input where this is achieved.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: This key question is linked to and raises fundamental concerns. We take no issue with the narrative of paragraph 42 of the Paper which may fairly be described as an endorsement of the current regime. We wish to make these points against the basic principles as outlined in paragraph 42:

- Nowhere do we see any evidence that witnesses are being intimidated. One cannot possibly change a system on the basis of a perception by Scottish Ministers.
- Ordinary members of the public are rarely cross examined although sometimes they are asked some gentle questioning. If any party to an inquiry, be it a lawyer, planner or anybody else adopts an aggressive posture to a non-expert witness, it is the function and responsibility of the Reporter to stop it immediately. No change is necessary here
- It may be that members of the public, unused to appearing in a public forum, will be intimidated at the thought of appearing at the inquiry. For

any change to be considered it would be necessary to conduct proper surveys of the actual experience of witnesses at inquiries.

- "The existing rules provide all of the powers that are necessary to allow Reporters to take a more assertive approach" (paragraph 44). Given the terms of paragraphs 42-44 the question seems wholly unnecessary. We would expect however, in deciding in any particular inquiry how best to conduct themselves, that Reporters would already have been well trained in knowing the purpose of cross examination and be able to exercise sensible judgement in avoiding intimidating repetitive unfocussed and long winded performances.

Maclay Murray Spens: We question the need for this proposal. Reporters already have the power, should they wish to exercise it, to undertake questioning of witnesses and, in our experience, regularly avail themselves of it.

Paull & Williamson: There is a problem with the adversarial format of Inquiries. It tends to lock the parties into a confrontational attitude. This may be unavoidable because people often hold strong views about development proposals and there may be no room for compromise. But the format tends to contribute to a feeling of hostility between the parties and resembles a dispute over rights rather than a debate about what is best in the public interest. While this may not be a problem for professional witnesses, it can be a problem for third parties. On the other hand, it is very important that evidence should be properly tested; we

have all seen seemingly robust evidence which has looked much weaker after cross examination. Nonetheless, the art of cross-examination with the use of tone of voice, coercion and closed and leading questions can be inimical to clarification, explanation and elucidation. We would like to see reporters playing a more inquisitorial role but we can see the difficulties for them in assuming such a role. They will also have to be careful to remain neutral which could be difficult if they are taking on the role of probing the evidence. Perhaps it might help if there was more forceful guidance to lawyers about their treatment of witnesses at an inquiry. Mind you, such guidance might usefully also be directed at some third parties who can be very rude and say such outrageous things that it is difficult to be polite with them. Proper probing of evidence is vital; the question is whether this can be achieved in a more relaxed way and this is really down to the attitude of those involved.

PPCA Ltd: No. As the relevant paragraphs point out, Reporters are at present not precluded from intervening or adopting a more inquisitorial role.

Robert Drysdale Planning Consultancy: It is our experience that Reporters are invariably thorough in their questioning of witnesses, and will always investigate any issues not covered by any of the participating parties. It is not necessary for Ministers to prescribe to Reporters the appropriate level or depth of their questioning.

Shepherd and Wedderburn: We note that this topic under the Consultation Paper is under the adversarial approach. We consider that cross-examination of witnesses is at the heart

of the public inquiry process. It ensures that the evidence which is presented is properly tested and ensures the most robust evidence for decision-makers. We note the suggestion that it may be appropriate for reporters to adopt a more inquisitorial approach. Our experience is very mixed in this respect. Some reporters adopt a highly inquisitorial approach during the whole inquiry whilst others are content to be more passive. We would suggest that guidance that suggested that the reporters adopt an inquisitorial approach is likely to be counterproductive. We consider it is important that reporters maintain their independence as part of the inquiry process. It is inevitable that an over inquisitorial approach will ultimately result in reporters undertaking cross-examination. That in itself often requires questions to be asked in a manner which would suggest a lack of independence. For example, in criminal cases judges' decisions can be overturned if they adopt an over inquisitorial approach and their independence is overstepped. Our experience is that some of the most effective reporters balance their role of arbiter and decision-maker with asking appropriate questions. A good example is as provided by reporters who often quietly intervene during a course of cross-examination to clarify a matter with the witness. Often the witness will make a concession to the reporter to a neutral question which they are not prepared to give to the cross-examiner. This is the type of approach which we would suggest is most appropriate for a reporter. It does, however, require a balance and a certain level of training. We would strongly recommend that reporters are not issued with guidance that they should be the main questioner in a public inquiry. We suggest this will compromise their independence and

often the individual reporter will become more focussed on asking questions than potentially listening to evidence. The role of a reporter is a very difficult and complex one in that they have to act as arbiter in the proceedings and also obtain the best evidence. We suggest that an appropriate balance has to be struck between the differing roles and that an overemphasis on one is likely to detract from the ability of the reporter to remain truly independent and obtain best evidence. We recognise that some individuals appear to spend most of their time seeking to use cross-examination to aid their understanding. This often is exemplified by the individual cross-examiner asking bland explanatory questions of a precognition. Our experience of this type of questioning is that it is most likely to come from inexperienced legal practitioners who do not undertake a volume of planning work or alternatively planning professionals who have no training in cross-examination. We as a firm invest in training for all our contentious staff in advocacy training and view it as fundamental to the development of our staff. We believe that it is quite right and proper for a reporter to intervene if cross-examination is not genuinely cross-examination. We also note the comment about reporters intervening to ensure that cross-examination assist identification of critical issues. We would caution against a view that every question requires to be directly related to a critical issue or formulating a recommendation. Good cross-examination often has to lay an appropriate groundwork before reaching critical conclusions. That is an essential part of cross-examination and in relation to professional witnesses, is often fundamental to an effective cross-examination. We would suggest that there is a difference

between bland explanation and seeking understanding, and effective groundwork in preparing an cross-examination.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: Yes, there is a benefit in closer questioning by reporters provided means are found of recording evidence.

West End Community Council (Edinburgh): No.

Voluntary Organisations

Architectural Heritage Society of Scotland: This matter is intimately related to, and dependent upon, the process of reshaping PLIs as represented in part at least by this consultation. If the adoption of a more inquisitorial role could preclude or reduce the need for legally-based cross-examination, the Society would support the principle. However the duty of evaluating issues alongside their detailed scrutiny could be unduly onerous for reporters. The Society would recommend that, in accordance with the 'round-table' style referred to above, the reporter be charged first with examining in a public forum the issues raised by interested parties. The support of a dedicated legal adviser promoting scrutiny might prove useful in such circumstances, and if this could lead to the exclusion of private legal advice -in the fashion apparently operating in the current Fraser Inquiry into the Scottish Parliament Building - then this might improve the entire process significantly.

Friends of Rural Kinross-shire: We fully support the views expressed in paragraphs 42 and 43 of the consultation paper and in response to Question 16 we do not consider it necessary for reporters to have more inquisitorial role. It is essential that reporters use their existing powers in two ways, firstly to closely examine individual objections that may have a frivolous content, and secondly to elicit from professionals whether they have consulted community bodies and taken account of the effects their case may have outside their own interests. However what has to be borne in mind is that in the majority of cases members of the community have no experience of been subjected to public questioning by professionals and this is undoubtedly the most intimidating part of the whole inquiry system. It is crucial that this process is examined with a view to providing a more satisfactory environment for individuals to present genuine concerns. We believe that our recommendation in Section 3(i) above would improve the situation by taking account of community concerns at an early stage of the process and thereby obviating the need for individuals to give evidence at an inquiry.

Ferryhill Heritage Society: Leave it as it is. But training would be useful.

Friends of the Earth: Yes. Reporters have a lot of experience and issues raised by third parties can and should be raised on occasion by the Reporter. Currently Reporters do act on behalf of individuals who are less acquainted with the system, to articulate their concerns by asking questions of witnesses. This is most helpful where it occurs. Perhaps we should change the system entirely to one which is inquisitorial rather than spending hours on cross examination of issues that are

not going to affect the overall outcome of the inquiry. Advocates and other members of the legal profession can spend hours on small issues that are often not materially significant and so will not add anything to the proceedings. One practical option might be that issues and concerns raised by objectors should be presented to the Reporter and he/she should spend more time asking questions in areas that concern him thereby cutting out a lot of unnecessary cross examination.

Historic Environment Advisory Council for Scotland: Within limits; what is perhaps more relevant is that the reporters are trained or have experience in the particular field of the inquiry, and valuable time is not wasted on matters of clarification, or education even.

Saltire Society: [It] is agreed that Reporters should feel able to adopt an inquisitorial mode: this could sharpen the relevance of evidence and shorten the Inquiry.

Scottish Civic Trust: This question carries with it a number of issues that needs careful assessment. Firstly, there have been challenges to the compatibility of Reporters as civil servants and the rights of individuals under Article 6.1 of the European Convention of Human Rights (now enshrined as the Human Rights (Scotland) Act) requiring an independent and impartial tribunal. This issue becomes more important in principle if the Reporter is only making a recommendation to Scottish Ministers. The difficulty in explicitly requiring a more inquisitorial role is that it may push the Reporter into territory that is beyond "independent and impartial". There are occasions when it is necessary for a Reporter to

take on this role, especially if a local authority is supporting a scheme and third party objectors are unable to attend an inquiry. Strict timetabling does help in this instance. Perhaps greater use should be made of the power requiring witnesses to attend.

Individuals

Collins: Yes.

Connal: I answer this question "yes and no"! I do not believe there is a place for changing the general approach from adversarial to inquisitorial. The parties best know their own cases. The existing system under which it is the responsibility of the parties to bring out their arguments and to challenge their opponents' (with the Reporter having the opportunity to clarify or investigate points) appears to work well. I note that here is it acknowledged that there is little evidence of intimidation or the like actually occurring. There has been some attempt to change the approach. There are dangers in that line. The Reporter may not, at the particular stage of the Inquiry, yet have had an opportunity to grasp the relevance or value of a particular point that a party wishes to make. Increasing emphasis on the grounds of appeal and grounds for refusal -and the evidence presented by parties to support these -will tend to diminish not increase the Reporter's "individual" role. I offer an example of how another approach could cause difficulty. A point was being pursued with a local authority witness by the cross-examiner. The cross-examiner's clients believed this was a point of substance and went some way to undermine the local authority's opposition to the development. That would have been the submission at the end of the day. After a lengthy period, a concession was extracted from the

witness. At that point the Reporter intervened along the lines of "I am sure Mr X did not mean to say that" with following questions. That, apart from being unfair to the developer, tended to suggest that the Reporter had already reached conclusions on the point. Reporters already control the nature and extent of cross-examination by preventing repetition. They might focus on two areas which could shorten procedure. Firstly, some cross-examination becomes extended because a witness will not agree something which plainly ought to be agreed (perhaps because that witness feels obliged to stick to a "script"). A good Reporter ought then to intervene -preferably before the exchanges become too prolonged -and extract the correct answer himself from the witness. Often this leads to an immediate concession because the witness is 'happy' to concede to the Reporter what he was reluctant to concede to his opponent! Secondly, it does sometimes occur that a line of questioning proceeds where it is difficult to understand what relevance it has to the key matters at issue. Again, a good Reporter will intervene -whatever the opposition does -to ascertain why it is thought to be relevant.

Delay due to non-availability of key individuals (para 41): No question is specifically directed to this paragraph. It states a conclusion. I know of no basis on which it can be said "the public" have in practice been materially inconvenienced given my experience of the role "the public" generally play in Inquiries. If the local authority as guardian of the public interest is able to accommodate alterations and other significant parties are not inconvenienced materially, what can the objection be to alterations? The sentiment of resolving

matters in advance is an appropriate objective. However, from time to time this turns out not to be possible. This may arise more frequently in more complex cases, sometimes where witnesses of considerable renown are to appear. Demands on their time may make it difficult for them simply to be "on call".

Cramond: Yes. The idea of an inquisitorial role for reporters has been recommended for the last 28 years. It is high time it was put into practice - especially where individuals are not being professionally represented, may therefore feel intimidated, may be unaccustomed to speaking in such a public forum, may be relatively inarticulate and accordingly are not adequately presenting or clarifying their case.

Hall: Yes.

Roberts: Yes: Might lessen some of the arrogance often displayed by some advocates acting for both main parties involved!

Smith (Robert): Not as a generality although it would be appropriate when dealing with certain advocates, and their snide remarks.

Watt: No.

Question 17 Should hearings practice be imported to planning inquiries when it represents the most effective means of determining the matters in dispute? Does this enhanced role for the hearings process suggest that statutory procedure rules are required?

Local authorities

Aberdeen City Council: A hybrid model such as suggested is thought to be confusing and unhelpful. How would the choice be made as to which parts of the appeal follow the inquiry process and which parts the hearing process? It would be simpler either to follow the inquiry process or the hearing process. Greater use of hearings would be welcome particularly in relation to smaller proposals where there is a lot of public interest. The hearing process for such appeals may be more successful in engaging the public without detriment to examination of the planning issues. It would perhaps be consistent to have statutory procedure rules for this format as well as for inquiries.

Aberdeenshire Council: The number of hearings which have been held in Aberdeenshire to determine appeals against the refusal of planning permission is small, but the experience has been valuable and it is considered that many cases which presently are determined at planning inquiries could more efficiently be dealt with by hearings. Typically, these are cases where there are no or few third parties. Introducing some of the less formal hearing practices into planning inquiries could be beneficial, particularly to speeding up proceedings. This does not suggest that statutory procedure rules for hearings are required. The proposed

move towards a presumption that procedure would take the form of a hearing rather than an adversarial process within local plan inquiries is whole-heartedly welcomed as an interim or partial solution. It is evident that this would do much to reduce the time taken to deal with each objection and could shorten the time taken in inquiry considerably if the status quo remains. It is also liable to result in greater 'common sense' rather than alternative interpretations of guidance being applied. Clarity from the Executive will be required to assist the identification of those circumstances where a formal examination and cross-examination will be required. If an informal hearing process is adopted there may be some merits in this being conducted in front of a panel of reporters rather than just one, particularly for those issues that are complex or, at the end of the day could be decided by a personal preference. A panel of planners is an alternative. Experience has shown that even reporters make mistakes and consideration by a panel may reduce that risk considerably.

Angus Council: Often at major inquiries where matters are in dispute a Reporter simply requires respective parties to resolve the issue between them during an appropriate break. It may be difficult to introduce hearing practices into the planning inquiry process when the parties have chosen specifically to have a planning inquiry and not the hearing.

Argyll & Bute Council: This should be a matter of agreement between parties with appropriate "guidelines" if necessary.

City of Edinburgh Council: CEC supports this suggestion as being compatible with the principle of

reducing the adversarial approach. A development of statutory procedure rules for hearings would be essential.

Clackmannanshire Council:

Development plans: Hearings should be used in preference to full inquiry procedure wherever possible and appropriate, but it is essential that there are detailed guidelines prepared clearly setting out hearing procedure. In particular, those items dealt with as written submissions should not be allowed to evolve into hearings where authors of submissions attend inquiry sessions (as has been the case in the past). Consideration should be given as to how hearings can be less adversarial and more informal, possibly involving a "round the table" approach with the emphasis on mediation and examining the scope for resolving differences wherever possible. The aim should be to incorporate an element of arbitration or mediation into the hearing process.

Development control: Hearings are a successful means of exchanging oral evidence on non-complex cases. In practice, the preparation of an agenda does not always lead to a structured exchange of contributions, and while the informality of the occasion may help those members of the public and other who might be intimidated by inquiry proceedings, it does not follow that the practice of hearings would be more effective in resolving matters in dispute. The interjection of Reporters should prove an adequate means of resolving disputes or at the very least, recording any difference of opinion.

Dumfries & Galloway Council: For Development Plan inquiries,- yes. See '16' above. For hearings, guidance rather than statutory procedure rules would be appropriate. This would support the flexibility which is a characteristic strength of this format.

Dundee City Council: If this is deemed appropriate by both parties.

East Ayrshire Council: The introduction of a new hearings process to conduct both planning application appeals and development plan issues is strongly supported by the Council. It is considered that the majority of all appeals which are not dealt with by written submission could be better addressed by this method. Such an approach would be considerably less adversarial, less intimidating for participants and be cheaper and easier to conduct and arrange than a full inquiry. It is agreed that some guidance and advice from the Scottish Ministers regarding the operation of such hearings may well be of benefit to all users of the system.

East Dunbartonshire Council: A less formal round the table debate replacing the "witness stand" and formalised adversarial approach often adopted when lawyers are, frequently unnecessarily, required to take a lead role, would be welcomed.

East Lothian Council: Who would make the decision as to whether a hearing is the most effective route? The Scottish Ministers would need to give guidance that could be followed to ascertain whether it would be more sensible to have a hearing rather than an inquiry.

East Renfrewshire Council: Yes, the Council would strongly support the more widespread use of informal hearings as outlined in the response to Question 16. Clear procedures and guidelines should be developed for this. A simpler, more user friendly approach to hearings without the need for legal representation would be a significant improvement and would

encourage greater involvement by members of the public, who often feel that the system is weighted towards developer and commercial interests.

Falkirk Council: This suggestion is supported. It would be necessary to alter the procedure rules to reflect this change.

Fife Council: Yes, if this were to prove more effective (as discussed in paragraph 46 of the consultation paper). It is unclear why statutory procedure rules would be required but if that is a necessary requirement then yes.

Glasgow City Council: It is agreed that there is scope to introduce hearing practice to deal with the less complex/controversial cases. More information/guidance would be required, however, should the intention be to break major inquiries down into two parts i.e., a hearing element and a more formal element. Such an arrangement could involve increased workload (including additional administration), timescale and financial costs. This is particularly the case when there are a number of objectors to a policy or proposal and they have different views on the procedure they wish to use. The same Reporter would have to be allocated to deal with the hearing and inquiry elements of the same issue to ensure consistency. The same concerns apply as to those on the inquisitorial approach as outlined in the response to question 16. To ensure the full benefit of the non-adversarial approach in the hearing format, there should be no legal involvement at the actual hearing. Further examination should, therefore, be given to the implications of using such an approach. Above all, the resultant inquiry procedures should be simple to understand and to operate.

Highland Council: Currently between a full Planning Inquiry and a written representations procedure there is also the opportunity for a planning hearing. Hearings involve a significantly less adversarial approach in the way that the evidence is tested and validated. The use of this procedure in a larger number of cases would assist in reducing the adversarial conflict. The Council had experience of such an approach in respect of planning appeals in Portree some years ago and there is no doubt that the efficiency in which the appeal was processed was much improved by this approach. Time and cost were saved. There is no suggestion that the quality of the final decision is diminished by such an approach and the greater use of hearings should be very much welcomed. Indeed, serious consideration should be given to making hearings the norm with Public Local Inquiries only convened where other approaches are not appropriate.

North Ayrshire Council: If hearings are to be expanded then statutory procedure rules are required for such hearings.

North Lanarkshire Council: This would be appropriate, but it is unclear who would make the decision in each case as to what represents "the most effective means of determining the matters in dispute" and whether this would be based on a set of criteria. There is concern that parties could disagree on the most appropriate practice. It is suggested that this enhanced role would give rise to a need for statutory procedure rules.

Orkney Islands Council: Coupled with this aim of reducing formality, the Council would also support the idea of using the hearing procedure where

appropriate, although some procedural guidance on this would be necessary to clarify the position to all parties.

Perth and Kinross Council: In order to make Planning Inquiries more accessible to the general public, Perth & Kinross Council strongly advocates that both Planning and Local Plan Inquiries should be conducted by hearings wherever possible. ... The recent experience of officers who have been involved in hearings has confirmed that those members of the public involved have welcomed the more informal approach.

Renfrewshire Council: Yes, but if used more frequently, the rules need to be clearly set out.

South Ayrshire Council: This suggestion is supported. Indeed the Council's experience of the hearings process is very positive.

South Lanarkshire Council: Yes there should be a statutory procedures rules for all inquiries regardless of type -a hybrid between inquiries and hearings would be the most appropriate but criteria would be need to be set to distinguish between when a hearing would be appropriate and when an inquiry would be required.

West Dunbartonshire Council: There has been no experience in West Dunbartonshire of hearings but they appear to have great potential and could/should be used more often than has been the case. For the proposed hybrid model to work, clear rules would have to be devised to ensure that, amongst other aspects, the hearing element (which encourages involvement of local people in a less intimidatory environment) is not played down (rubbished) by those

involved in the more formal public local inquiry aspects.

West Lothian Council: In the first instance it is felt that more public inquiries could be held as hearings without any form of hybrid arrangement. It is felt however that there is scope for developing such a hybrid procedure. This would be advantageous in terms of time and cost saving and make the process less adversarial thereby making it more friendly to third parties. It would also allow local authorities to be represented by mainstream staff rather than senior officers. The Executive must define rules for these procedures as it may lay itself open to legal challenge on a matter of procedure rather than consideration of a material aspect of the evidence.

Western Isles Council: These suggestions seem to offer a sensible balance and the move to more regular use of hearings is welcomed. Introduction of statutory procedure rules for hearings as well as inquiries would provide clarity and ensure consistency and compliance.

Other LA organisations

COSLA: Although there have been concerns expressed by some councils, about increased workload, COSLA believes that councils will, in general terms, welcome this proposal, subject to clarity about no legal involvement in such hearings and the provision of clear procedural rules.

Public Bodies

Council on Tribunals, Scottish Committee: This Committee supported the introduction of the less formal hearing process and members were satisfied that the Code of Practice

allowed the system to operate satisfactorily. However they agree that if the hearing process is to have an enhanced role, a statutory footing may eliminate potential problems. For this to be effective, it will be essential for any new rules to be communicated fully and carefully and for a User's Guide to be published.

Royal Fine Art Commission for Scotland: RFACFS considers Planning Inquiries should be more informal and less adversarial in approach and in this respect considers that some of the less assertive practices associated with the hearings procedure could be adopted for use by the planning inquiry process. The adversarial approach can be particularly intimidating, especially for third parties, and is inappropriate for many matters that currently go through the planning inquiry process. The greater use of hearings is also likely to reduce time and costs associated with more formal PLIs.

Scottish Enterprise: Hearings practice should be imported to planning inquiries when it represents the most effective means of determining the matters in dispute.

Scottish Natural Heritage: In principle, the suggestion of using hearings practice within inquiries sounds attractive. However, there is some potential to create confusion by mixing two styles. Perhaps, in the first instance, the use of hearings should be promoted (if need be, by the production of statutory procedure rules), in the hope of reducing the number of appeals being heard by Inquiry. The matter could be reviewed at a later date.

Scottish Environment Protection Agency: As set out above, SEPA supports measures to reduce the adversarial nature of planning inquiries. Accordingly, if the practice of hearings can be imported to planning inquiries in certain cases then this should be encouraged. It may be inevitable that some sort of statutory procedure is required to facilitate this; however we consider that, if required, these should aim to enable a more informal approach.

The Development Industry

Bett Homes: Statutory rules should apply if this approach is adopted, this makes it a level playing field for all. We believe however that the Public Inquiry process still has a valid and has an important role to play.

Homes for Scotland: Homes for Scotland would not resist the use of hearings although a decision to use this approach should not be imposed and should only be used with the consent of all parties. A formally adopted Code of Practice might assist the process of determining whether or not a hearing would be an acceptable way to proceed. Homes for Scotland's member companies have a mixed experience of hearings. Given that no formal evidence is presented or indeed tested under cross-examination the written material requires to be fully comprehensive. It may be necessary for a Reporter, preparing for a hearing, to review the material and provide clear guidance of the issues considered to be relevant.

MacTaggart & Mickel Ltd: Yes, as long as there is no danger on informality diluting facts. Agree that if hearing process is to have an enhanced role there should be appropriate statutory rules.

Stewart Milne Holdings: Yes -but only as part of the hybrid model mentioned in Para 46.

Taylor Woodrow: TW does not support the used of hearings in order to resolve matters in dispute. Hearings do not, in our view, imply a proper examination of the issues and does not permit cross-examination. When considering the significant investments made to bring sites forward, it is unacceptable that a Reporter can formulate a view on a matter, which is not tested, thereby leading to the refusal or rejection of a proposal.

Walker Group (Scotland) Ltd: Our experience of hearings is not good and we do not consider that they are the most effective means of determining matters. (see response to 20 below) Given that no formal evidence is presented or indeed tested under cross-examination the written material requires to be fully comprehensive. Experience to date with Statements of Case suggest that they are rarely full or comprehensive. The Reporter, preparing for a hearing may be advised to review the material and provide clear guidance of the issues they consider to be relevant. Furthermore, hearings can degenerate into an unstructured debate with confusion over who is answering questions and in what capacity i.e. as expert witness?

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: We would support a greater role for the more informal hearings format. If the use of this format were to be greatly increased then, in the interests of clarity and fairness, it may be appropriate to provide statutory

rules, though this could detract from the existing "user-friendly" format.

Marks and Spencer plc: This would be acceptable only if the principal parties agree to this approach before the Inquiry. Statutory procedure rules would be required for hearings, which should be used more and, on a formal basis for appeals/instead of inquiries.

Sainsbury's: There is a need to ensure that the evidence of all parties is fully tested and parties are held accountable. If it is believed that a hearing is the best way of doing this then Sainsbury's support this move.

Scottish Coal Co Ltd: No fundamental objection to whatever process is adopted to elicit facts, reject the spurious or unsustainable and reach an objective decision quickly. The hearing should be subject to statutory rules in respect of the procedures to be adopted.

Scottish Council for Development and Industry: The greater use of hearings practice is welcomed but the decision to opt for this approach in each case would need to be mutually agreed between the main parties as being an acceptable method of deciding all or part of the appeal. It would be best to avoid the use of statutory procedure rules for such hearings and an agreed "Code of Practice" approach would be preferable. It is considered that this would cut down on legal wrangling and hence delays in the system.

Scottish Landowners Federation: An initial hearing could be useful in identifying those cases in which the issues are in short compass. Where either party demonstrates that there are large or complex questions at stake, or that the relevant question cannot be

fairly answered without taking evidence, then the hearing could be adjourned and a full planning enquiry could follow.

Tesco: We see some merit in importing Hearing Practice into the Inquiry and think these need not necessarily be governed by Statutory Rules providing the Reporter is clear on the objective and the parameters that exist for those participating.

Professional organisations

Law Society of Scotland: The sub committee is of the view that there can be a role for a mini hearing in an inquiry setting. However, there may be concerns about when mini hearings would be helpful and what issues would be identified for discussion at such hearings. The Sub-committee would cautiously encourage the development of the use of hearings in such a context, particularly when the public are involved. There should be statutory procedure rules for such circumstances and Annex F of the current guidance, which is the sole advice on hearings, urgently requires updating and clarification.

RTPI: We would encourage the Executive to develop a hybrid approach in the interests of efficiency and effectiveness (see our response for Question 3). We understand the caveat that hearings might not always be appropriate, especially in the case of call-ins. Nevertheless, they should not be automatically ruled out. Whereas more specific provisions may be made in statute to permit Ministers a choice of mode of taking evidence into an appeal or call-in, including a hybrid approach, we do not have a firm view on whether the actual criteria for hearings should be included in statutory rules.

Scottish Planning Consultants Forum: This has advantages in reducing time and cost. Hearings are likely to support better public involvement. However, two options for considering appeals (i.e. inquiry or hearing) do reduce clarity of process. Having said this, there is a place for hearings in the inquiry system. Opting to use a hearing should be at the request of an appellant. In order for consideration of this to be made, clear procedural rules will be necessary. Scottish Ministers should retain a power to require a formal inquiry where issues are too complex for a hearing. The SPCF support the introduction of hearings with clear procedures where the option to use a hearing rests with the appellant.

Scottish Planning Law and Environmental Law Bar Group: This question presupposes the answer. Of course hearings practice should be imported into inquiries when it represents the means of determining the matters in dispute, the question is *whether* it would. As stated above in answer to question 16, the hearings procedure ought only to be used for minor and straightforward appeals. Transferring its use to inquiries would be unduly burdensome for reporters and not in the best interests of the parties to the inquiry.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: We agree with the first sentence of paragraph 45 that hearings are effective in straightforward cases with a small number of parties. Their success will automatically increase their popularity but (see answer to question 3) we are opposed to a change in practice which would result in

Scottish Ministers imposing hearings where an inquiry was requested. We doubt that the hybrid system referred to in paragraph 46 is particularly realistic. In any event it should be appreciated that hearings are not, in procedural terms, an easy option to replacing inquiries. For hearings to be effective they require to be conducted by a Reporter who is highly experienced through the inquiry system. They are in our judgement more difficult to chair than are inquiries. It should also be appreciated that parties at hearings will wish to engage lawyers. Our answer to the question, given the foregoing, is that the hearings process would be improved by statutory procedure rules but we do not believe that the practice of shoe-horning hearings practice into the inquiry system will work.

Maclay Murray Spens: We agree that there is a role for the hearings procedure. However, by no means is it appropriate in every case. Nor is that question determined solely by the scale of the proposal under appeal. Our concern is that parties who are not fully appraised of all the relevant facts would effectively be determining the most appropriate means of examining these -in our view it should still be left up to the appellant and the Planning Authority to decide which procedure is most appropriate after due consideration of the individual circumstances.

Paull & Williamson: We quite like the idea of engaging the local community in the appeal process through a hearing, even if an inquiry is being used for the technical evidence. But does this run the risk of creating second class citizens? And how will the appellant be able to answer some of the more outrageous comments made

by the public during the hearing process?

PPCA Ltd: Yes. There is scope for the best components of both inquiries and hearings to be used, including hybrid inquiries. Rules however would then strike at the relative informality that would result. Cross-examination at hearings should not be ruled out and there should be an opportunity for professional representation. Prior to local plan pre-inquiry meetings there is now considerable pressure being put on objectors to agree to no legal representation in advance. This sort of practice should not be allowed to creep into the appeals process.

Robert Drysdale Planning Consultancy: Our own experience of the hearings procedure (South East Edinburgh Local Plan Inquiry) is that [it] is not noticeably less formal than the conventional approach. The key requirement is that the right of the parties to cross-examine each others' witnesses must always be protected.

Shepherd and Wedderburn: We note the suggestion that hearings practice could be imported into planning inquiries in part. We consider that hearings often can be appropriate where the issues in dispute between parties are relatively narrow ones and are ones which are between a relatively few number of parties. It is very difficult to hold a hearing with a large number of parties involved. Similarly, often members of the public find the lack of process prior to a hearing difficult. The impression that is given at a hearing is that everyone can just turn up and have a discussion about the merits of an appeal. However, if one looks at the rules it is quite clear that prior disclosure is clearly required. In practice, however, often evidence emerges during the course of a hearing

which was not necessarily anticipated but which questions are asked upon. In our submission, therefore, the hearings procedure is one which is suitable where the numbers in parties are reduced and the issues narrow ones. We believe that there would be a very suitable role for hearings in determining, for example, condition appeals. In this respect we would recommend that there should be a statutory change which allowed an appeal against conditions or requirements for a section 75 agreement to a fast tracked hearing system. At the current time an appeal against a condition opens the whole permission up to consideration and as a consequence there are very few appeals against conditions in isolation. This often subsequently results in a subsequent application and possible appeal under section 42 of the Act. As a consequence, often planning authorities can hold developers to ransom over both conditions and section 75 agreement. We would suggest a mechanism should be introduced to provide a balance to that effect. We would suggest that the consequence is that it is likely that an appropriate balance would be achieved.

Community Councils

Broughty Ferry Community Council: Yes; don't know.

Craiglockhart Community Council: Hearings would be useful in some cases. Rules are needed if the hearing is not to degenerate into a cosy chat!

West End Community Council (Edinburgh): Yes to both questions.

Voluntary Organisations

Architectural Heritage Society of Scotland: Yes. We would not object to statutory procedures if they are recommended by appropriate parties, though in principle we would prefer a more flexible approach. Again we would support further consideration of the opportunities for developing 'round-table' procedures.

Ferryhill Heritage Society: No. Having observed at a recent planning hearing, I feel that unless the right questions are asked I would feel the process flawed. Having been involved in several public inquiries and also as an observer, much prefer present system where one can cross question statements made by the other side.

Friends of Glasgow West: Unlike the role of the "hearing" format for Strategic Development Plans (Q 19) the "hearing" format as an alternative to a public inquiry in decision-making is too limited by time and lack of expertise to be efficient in major controversies. Such limitations can extend to unintentioned bias when influenced by generalised and ill-informed opinion. I am assuming that a "hearing" referred to as an alternative to a PLI would be as practiced by the local planning committee.

Friends of the Earth: We have no objection to the importation of the hearings process. However we believe it appropriate that the decision (on what appeals would be suitable) is made by the SEIRU and not the Scottish Executive. Guidance on what categories of appeal might be dealt with in this way would be useful. By logical extension statutory procedure rules would be required.

Historic Environment Advisory Council for Scotland: HEACS is strongly of the view that the adversarial process adopted at public local inquiries is inappropriate for matters affecting the historic environment; in response to the second question the process should not be hijacked by the legal profession and so procedural rules would require to be established.

Planning Aid for Scotland: The hearing format is considered to be a superior format in terms of encouraging greater public access and should be used wherever possible.

Saltire Society: It is hard to believe that an ad hoc hybrid approach such as is suggested could be practicable and not leading to confusion and dispute.

Scottish Civic Trust: The Trust supports greater use of hearings to in the appeal process. However, there are occasions when a more formal process is beneficial. Perhaps it is in these cases that the Planning Inquiry Commission could be introduced. The question here is who decides when a hearing or a more formal inquiry is to be held? Statutory Procedure rules will be required to determine this.

Individuals

Collins: Yes.

Connal: There might be difficulties in running an amalgam of Inquiry and Hearing because it would be difficult to lay down boundaries between one and the other. On the other hand these may not be insuperable. Limited rules for Hearings **might** be of assistance although to some extent the beauty of Hearings is that there are no rules -or more properly -that the conduct of the Hearing is adjusted to the nature of the

particular exercise. I do not have extensive experience of Hearings but I note from case law that they have caused occasional difficulty in England and Wales (where they are used to a greater extent) because of issues emerging which are not properly investigated by the Reporter. On a purely personal basis I can envisage Hearings being of assistance in smaller cases where all that is really required is for the relevant parties to feel that they have had an opportunity of ensuring that the Reporter understands the point they are trying to make. In other cases, oddly enough, I believe that a greater role for lawyers -rather than a smaller one -could arise. In one case, I appeared for one party, a senior member of the Bar appeared for the other. Prior to involvement, there had been extensive written exchanges dealing with a large number of issues. A Hearing was ordered. By dint of discussion between us many points were either abandoned or not pressed at the Hearing. The lawyers were then able to impose a degree of structure and control over their respective clients at the Hearing in order to facilitate a discussion and bring out the relevant issues. In retrospect I doubt that that would have been possible without senior lawyers on each side.

Cramond: Yes. Hearings practice is in line with Franks principles and could improve public participation. Statutory procedure rules may be required, depending on the view taken of the adequacy of the Code of Practice.

Hall: Yes, to importing Hearings practice to inquiries. Statutory procedure rules? -No. Rather give the *reporter* statutory powers to govern a flexible situation.

Roberts: Yes.

Smith (Robert): Yes, may be helpfully imported into planning inquiries and if that is done it would be sensible to have a statutory procedure.

Stark: Hearings procedure would sit particularly well with mediation. A mediated agreement would be a good basis for much of the structured discussion of issues (although it should be noted that the mediator could take no part in such discussions).

Watt: Yes, with statutory procedure rules for the use of hearings practice within the inquiry process.

Question 18 Should the existing Inquiries Procedure Rules be amended to make it clear that the scope to request that a reporter takes account of new material after the planning inquiry has closed is strictly limited to a change in the provisions of the development plan?

Local authorities

Aberdeen City Council: No objections in principle but this should be extended to include new statutory guidance and any new relevant legislation issued after the inquiry has closed. Additionally there is a case to include material changes in circumstances which directly apply to the appeal but were unforeseen at the time of the inquiry.

Aberdeenshire Council: Emphatically yes, the introduction of new evidence late in the inquiry process causes undue delay. It is also noteworthy that such late evidence tabled by appellants is often information that was sought by the Planning Authority early in the life of the application to which the appeal relates.

Angus Council: Yes, I would agree with this proposal.

Argyll & Bute Council: This has proved a difficult area in the past whereby objectors or appellants often submit "new information" after the closing of the inquiry. It would be difficult to make hard and fast rules and if such submission were "material or not" as this is very much case dependant. This needs to be left to the discretion of the Reporter but with the Reporter being required to advise why he considers any new evidence to be "material or not".

City of Edinburgh Council: CEC recognises the conflict between an efficient process of decision-making and the need to ensure that a quality decision is reached based on the most up-to-date evidence. From past experience, issues other than changes to the development plan can arise, for example evidence relating to recently issued housing land audits. Clarification of permissible new material is desirable but it should be broader than that suggested.

Clackmannanshire Council:

Development plans: Agree. Scope for introducing new evidence after the inquiry has closed should be limited and permitted in exceptional cases only.

Development control: It is essential firstly that the Inquiry Procedure Rules emphasise that any exchange of information must only take place in exceptional circumstances, with the blessing of the Reporter, appellant and planning authority, whether or not it relates to the provisions of the development plan or otherwise. Has any work been done to quantify the magnitude of the issue? If it is a recurring matter, the situation does

need to be pinned down with absolute clarity on what would be permitted. Whether the exceptional circumstances would relate only to development plan is a matter we would leave Scottish Ministers to decide upon.

Dumfries & Galloway Council: For Development Plan inquiries there should not be a restriction on information which in the opinion of the Reporter is or could be material. However, (as in response '8' above) it should be understood by all parties that the unjustified holding back of information which may be material is liable to mean that (as with late information in general) it cannot carry the weight which could normally be expected in the decision process.

Dundee City Council: Yes.

East Ayrshire Council: The Council would most strongly agree with the views expressed, and for the reasons given in the consultation paper, that no new evidence should normally be allowed to be presented for consideration after the formal closure of an inquiry. The practice of introducing new material at that stage can seriously delay a decision being taken on an inquiry, reduce certainty in the operation of the system and significantly increase costs for all parties concerned if the inquiry has to be reopened. However, it is accepted that a change to the provisions of a development plan is the prime material consideration in the determination of any planning issues addressed at an inquiry. The Council would therefore be supportive of any change to the development plan being accepted in evidence after the close of the inquiry, in order to properly address the issues under consideration.

East Dunbartonshire Council: The submission of additional [material] after the end of the Public Inquiry is not considered to be a common abuse of the system but it is accepted that in the interests of fairness it should be strictly constrained. An additional consideration might however be, in cases where it is the activities of the appellant on the site in question that the subject of the appeal (e.g. enforcement appeals) and those activities continue during the period between the closure of the Public Inquiry and the Reporter's decision, that information on these activities may be considered to be very relevant to the Reporter's decision. In such circumstances it should be entirely proper for such information to be made available to the Reporter.

East Lothian Council: If the Inquiries Procedure Rules were to be amended to allow the reporter to take account of new material after the planning inquiry has closed- should it just be restricted to a change in the provisions of the development plan? Does this not fly in the face of section 25 of the Town and Country Planning (Scotland) Act that states "where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise".

East Renfrewshire Council: Yes, this would help to prevent unnecessary delays in issuing a decision.

Falkirk Council: This suggestion is not supported. There are potentially a whole range of issues that could be material and limiting this to the development plan would be unduly restrictive. If this change was made it is suggested that there would be an

increase in judicial reviews. The current practice where it is left to the discretion of the reporter is considered to be adequate.

Fife Council: Yes, unless evidence comes to light of grossly inaccurate evidence having been tabled at the inquiry.

Glasgow City Council: Such measures should help to speed the decision making process and are, therefore, supported. It is assumed that reference to the development plan means an adopted development plan, if not then clarification is required as to which stage and circumstances apply.

Highland Council: Finally in respect of planning appeals, there is a suggestion that the rules in respect of considering new material after the closure of the Inquiry should be tightened to limit it solely to a change in the provisions of the development plan. I would recommend to Members that this may be overly restrictive and that there may be other material considerations that should be permitted to be submitted if they are pertinent to the appeal before the Reporter.

North Ayrshire Council: It is agreed that the procedure rules should be amended to make it clear that new material submitted after the Planning Inquiry is closed is strictly limited to a change in the provisions of the Development Plan. It should also be made clear that Ministers should not be entitled to take into account any factual matters which were not before the Reporter. It is, however, appreciated that Ministers are perfectly entitled to take policy matters into account, whether before a Reporter or not.

North Lanarkshire Council: It is considered that any new government

policies and guidelines and anything that is considered a material consideration should be included.

Orkney Islands Council: Any additional material to be considered following the close of the Inquiry should be limited to matters of change in the provisions of the development plan, and we support this approach.

Perth and Kinross Council: These proposals are to be welcomed.

Renfrewshire Council: Yes, but only if relating to an approved Structure Plan or adopted Local Plan.

South Ayrshire Council: The decision of the inquiry should be based on facts and information solely pertinent at the time of that inquiry. This is providing there is a relatively short gap between close of inquiry and decision.

South Lanarkshire Council: Yes- this would make for shorter timescales after the inquiry -there is a tendency under the present system for issues to be raised and re-raised and for objectors to try any tactic to confuse and complicate proceedings.

West Dunbartonshire Council: Yes. The main reference point is the development plan and if it changes (for example, through approval of a structure plan after closure of the inquiry, with a modification which has implications for the appeal) then it would be wrong not to acknowledge this. Otherwise, no new material should be accepted.

West Lothian Council: There may be information which is material to the determination of the appeal but this should only be given consideration if all parties are agreeable to that

information being put in front of the reporter. Otherwise the council is in agreement that only changes in the provision of the statutory development plan should require the inquiry to be reconvened. It is agreed that it would be for the discretion of the Scottish Ministers and the reporter to determine the need for the inquiry to re-open.

Western Isles Council: This would seem, again, to essentially be sensible. However, the Scottish Executive may wish to offer the presiding Reporter a degree of discretion. For example, there may be a relevant decision in the Courts which could follow closure of an inquiry but precede issue of a decision by the Scottish Ministers. It may ultimately be less costly in both time and money to allow the inquiry to re-convene to evaluate the implication of such Court decision.

Other LA organisations

COSLA: There is support across councils for this proposal, in principle. The range of issues identified by councils to qualify this support mean that COSLA cannot give a clear-cut response on this question.

Public Bodies

Royal Fine Art Commission for Scotland: In principle, yes, although there may be other material considerations that require to be brought to the attention of the Reporter.

Scottish Enterprise: Don't consider there is a problem with the way the process is run at the moment.

Scottish Natural Heritage: Whilst we recognise that an explicit restriction on new material being introduced post

inquiry is desirable, we consider that the restriction should not include changes in the development plan, the discovery of information relevant to the discharge of legal obligations (e.g. under the terms of the Wildlife & Countryside Act, the Nature Conservation Bill/Act, European Directives, etc.) and new or newly consented development with the potential for significant cumulative impacts. For example, a restriction of the kind proposed could result in a newly discovered and important species not being taken into account or disregard for cumulative impacts on the landscape arising as a consequence of a development given permission by a neighbouring authority in association with the proposal being appealed.

Scottish Environment Protection Agency: This proposal is supported.

The Development Industry

Bett Homes: Once the inquiry has closed no new evidence should be allowed as parties have not had the opportunity to test / question this evidence

Homes for Scotland: No. There are circumstances when new policy or advice published by the Executive can inform the decision making process. It should be open to the Reporter to take submissions from all parties and thereafter determine what weight should be given to the new material.

MacTaggart & Mickel Ltd: Yes. There must be a line drawn at the end of the Inquiry.

Stewart Milne Holdings: No -if new material becomes available and it is clearly relevant, this should be taken

into account even if it means reopening an Inquiry.

Taylor Woodrow: As stated earlier, no new evidence should be presented following the close of the Inquiry. New matters should only be those relevant to SPPs, which in any case are clear policy statements, which do not require further submissions from parties.

Walker Group (Scotland) Ltd: No. There may be occasions when Govt. policy, advice or circular guidance may be relevant in addition to non-statutory guidance and advice from the planning authority itself.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: We would support this recommendation, but would again caution that from time to time unforeseen circumstances may arise which may require the late submission of new material.

Marks and Spencer plc: No; there can be other (but only) significant changes to circumstances of which the Reporter would need to be aware, and the opportunity given to parties to submit further evidence.

Sainsbury's: Do not agree. Other issues can arise which have only become clear as a result of the Inquiry process and require to be tested. Another application could have been approved in the meantime which is contrary to the Development Plan – and has direct implications for an appealed application.

Scottish Coal Co Ltd: Agreed in principle. However, there is a risk to be overcome that an Authority could

accelerate a quasi-development plan amendment in order to support its position and influence a decision. The most fair method would be to determine the appeal on the basis of the facts pertaining at the end of the Inquiry -not some time afterwards.

Scottish Council for Development and Industry: In most situations the above approach would be acceptable. However, where there is for instance new guidance or policy or indeed legislation from Government that would have a material bearing on the scope of the inquiry, then the reporter should have the discretion to decide whether such new information would be admissible. Clearly in such a case this new information would not have been translated into the development plan but nonetheless could be important in the context of the inquiry.

Scottish Landowners Federation: In short, yes.

Tesco: There should be significant limitations into what can be submitted to follow the Inquiry. The Inquiry is the process by which all evidence should be submitted and it is felt, as questioned, there is only changes in National Policy which should be considered. Any changes to the Development Plan process or the Policies should have been addressed during the Inquiry process itself providing the decision is taken relatively quickly.

Professional organisations

Law Society of Scotland: The Subcommittee is of the view that the existing Inquiries Procedure Rules should not be amended as proposed, in the interests of quality decision making. Existing rules are sufficient.

RTPI: We support the general principle that the scope for new material should be restricted. It may be difficult to restrict application to a change in the provisions of the development plan in view of the status of other material considerations in Section 25. There are recent examples where government policy or plans, EU Directives or global market conditions have significantly changed after the inquiry has closed. A procedure might be introduced, however, for Ministers to make a formal procedural decision on whether new material reflects material changes in circumstances.

Scottish Planning Consultants Forum: The question seeks to limit such consideration to changes in development plan provisions. All material to be considered by an inquiry should be presented during the inquiry. No new material should be accepted after the inquiry has closed. In the event that a significant change of any kind occurs that would be likely to influence the outcome of an inquiry, the inquiry should be reopened to allow all parties to consider the change and present their arguments to the reporter. This will ensure certainty of process and promote better public involvement. There are adverse impacts on time and cost. However, these must be balanced against the benefits of absolutely restricting new considerations by a reporter outside of the inquiry. The SPCF support the restriction on the consideration of all (including changes in the provision of the development plan) new material after an inquiry closes.

Scottish Planning Law and Environmental Law Bar Group: The Group agrees that there should be finality to the planning inquiry. Apart from changes to the development plan, new evidence ought not to be

permitted after the inquiry unless it relates to a material change of circumstances which has occurred after the close of the inquiry and could not reasonably have been known to parties during the inquiry.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: We are wholly opposed to the system that seems to allow Scottish Ministers the opportunity to take into account post inquiry evidence and we entirely agree with the new proposals. We are bound to observe however that it is important to reduce the time between the inquiry itself and the decision making process and we are disappointed that there is no specific question in regard to the performance of Scottish Ministers. Much focus on this Paper is given to reducing the time taken to reach an appeal decision. It is somewhat ironic that the best known examples of public disquiet at delay are caused largely if not exclusively in cases in which the decision is not delegated. In our submission in non delegated cases the Report from SEIRU should be distributed to parties immediately it is available. This would be a useful compulsion in ensuring that Scottish Ministers do not then take months or longer within which to reach their own decision.

Maclay Murray Spens: We disagree with this proposal. It may become apparent that new material may be relevant in light of evidence led at the inquiry and such new material may only become available for submission after the inquiry has closed. However, we agree that any new material must be "new" in the sense that it does not relate to a matter that was, or should have been, raised at the inquiry.

Paull & Williamson: It seems artificial to confine the decision following an inquiry just to the evidence produced at the inquiry, particularly if circumstances have changed which would make the decision a nonsense. Unfortunately, things do not stand still and we think, if new policy matters are to be taken into account, there is no logic in excluding new material considerations. It would need to be made clear that bringing forward new matters which have arisen since the inquiry should be confined to those that are material rather than trivial and that this practice is expected to be exceptional.

PPCA Ltd: Yes. But should release of the latest government guidance not also be included?

Robert Drysdale Planning Consultancy: We have had experience of Reporters taking account in their decisions of new government guidance issued after the close of the inquiry. We consider that if the Reporter intends to take any account of new guidance, he should afford all the parties to the inquiry the opportunity to provide their comments on the implications arising from the new guidance, so far as is relevant to the case.

Shepherd and Wedderburn: We consider that changes in national policy should also be potentially subject to further submission and possible reopening of the inquiry.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: Material to be taken into account should be very limited, and notified to participants.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: No, as the desire to retain confidence in the outcome of the inquiry, even if it has closed, should be prioritised.

Ferryhill Heritage Society: Yes.

Friends of the Earth: We do not see it as beneficial to make such an amendment. It is unlikely that possible changes to a draft development plan would not already have been raised within the realms of the recent inquiry and consideration and discussion would have taken place concerning possible changes. More importantly, there are other significant factors that could affect post inquiry evidence. For example, new SPPs and other guidance can equally be published after an inquiry closes that may have a bearing on the outcome. Moreover, such a change might not be proper as the Executive has an involvement in approving such plans (as in the case of Structure Plans these and could therefore be seen as a conflict of roles. Restricting correspondence in this way would not be an improvement to the system.

Historic Environment Advisory Council for Scotland: In principle, yes.

Saltire Society: This restriction is reasonable except that the Reporter should have discretion if there is an

event outside the powers of the parties to influence, which materially affects the issue being considered.

Scottish Civic Trust: We agree with this suggestion.

Individuals

Collins: No.

Connal: The issue raises a difficult balance between the factors referred to in para 48 (increasing certainty etc) and the need to be fair to parties. In some instances it will be said that the effect of excluding such material is decisive in the result. If the material would have produced a different result, is it fair that it cannot be introduced (particularly if powers to turn away repeat applications will make it difficult for a renewed application reliant on the new material to be subsequently presented)? Another issue which arises is one of definition. On balance I can see strong arguments in favour of excluding material which could have been presented but was not. What however of material which could not for some reason or another have been known of or made available? What of new circumstances? Even in criminal appeals these can sometimes be admitted. An example may help to illustrate the point. Under the proposal hinted at in Question 18 a change in the statutory development plan would give rise to the possibility of re-opening the issue. What if the local authority were to produce, post-inquiry, a non-statutory policy document which was said to be relevant? I am not sure there is a great need for change to the present law.

Application of planning inquiry rules in associated procedures (para 52): I agree that there is advantage in

continuing to apply planning inquiry rules to other associated procedures.

Consideration by the Executive after the inquiry (para 53): This is a matter which has been the subject of constant complaint by those involved in the planning process. It remains to be seen whether improvements can be delivered. If so, in major projects they are likely to have far more impact on overall timescale than any changes to inquiry procedure.

Cramond: Yes.

Hall: No, I fear this proposal potentially runs counter to public interest. It should be possible to submit new or missed information in writing after the inquiry has closed. Ideally it would have to be submitted within a deadline -say within a week. If accepted for consideration (not automatic) it should be immediately copied to council, applicant/appellant and internet. Council and applicant/appellant should have a further week in which to send a counter-submission. The resulting max delay of about two weeks is not excessive and will help deflect accusations of insensitive bureaucratic restriction.

Roberts: Yes.

Smith (Robert): No, this, if introduced, could lead to accusations of defective decision making. After all a public inquiry is supposed to represent to the people a considered verdict and if evidence can be given it should be, even if late. The reporter should advise all parties to the enquiry that he will not accept late evidence, unless he is notified ahead of the inquiry or at least before the inquiry is supposed to close.

Watt: Yes.

Question 19 Do you consider that the hearings format represents a suitable means of examining objections to strategic development plans? If not, what other model do you suggest?

Local authorities

Aberdeen City Council: Public local inquiries into local plans have consistently proved to be a complex and lengthy process. They are required to assess a myriad of issues and frequently are the subject of large numbers of objections. Inquiries can last for many weeks tying in already over-stretched resources and incurring excessive costs for both local authorities and objectors. They can be extremely intimidating particularly for members of the public not accustomed to giving evidence in such situations. It is agreed therefore that the examination of objections to a development plan should be achieved in a way, which encourages wider participation without being overly legalistic and confrontational. Similarly the hearings format is probably more flexible and helpful towards achieving his paper's wider aims. A successful model which has interested this authority is the use of a 'panel approach' where the local authority is represented by a group of appropriate officials, where anyone of them can respond at that point in time to a question without having recourse to source the relevant information or await later evidence by the appropriate witness.

Angus Council: Yes, the proposal to adopt the hearings format should be pursued for Strategic Development Plans in order to avoid, or reduce where possible, the adversarial approach which has become increasingly evident at Local Plan

Public Local Inquiries. As the successor to Structure Plans, it will be important to encourage an open exchange of information and views on objections to Strategic Development Plans among interested parties, including importantly, engaging the local community on strategic planning issues. The conclusions on the Review of Strategic Planning that a public examination of the objections to Strategic Development Plans is to be mandatory, highlights the need to ensure the focus remains on strategic planning issues arising from the main areas of dispute. This suggests that the role of Reporters will be crucial in leading the discussion and setting parameters for the hearing.

Argyll & Bute Council: The hearings format would be suitable for examining the majority of objections to strategic development plans. However, where the objections relate to major matters of policy on for example provision of housing or industrial land then the inquiry format would still be most appropriate to enable a proper testing and cross examination of evidence.

City of Edinburgh Council: CEC considers that, in general, a hearing based on the focused "Examination in Public" approach for structure plans, would be a suitable means of examining objections. However there may be issues to be examined that would benefit from the more adversarial cross-examination of an inquiry to deal with conflicts of opinion. This should not be ruled out.

Clackmannanshire Council:
Development plans: This question cannot be easily answered in advance of a final decision on how the strategic aspect of the planning system will be structured in future. It is unclear

whether the suggestion is that EIPs could be replaced with hearings, or whether the suggestion is that this will apply only to existing structure plans, future regional plans or future local development framework type documents. It is unlikely that the key underlying strategic issues could adequately be dealt with using the hearing process for structure plans. However, introduction of a full inquiry process for examination of strategic plans could result in considerable delays in the approval of such plans, adding expense and slowing the system down.

Development control: Not applicable.

Dumfries & Galloway Council: Yes. For Local Plans the hearings format could be the most suitable means of examining objections within particular localities. It would be for the local authority and reporter to identify and agree the localities.

Dundee City Council: The formal and largely adversarial nature of most Inquiries is undoubtedly a discouragement to the involvement of the general public in the process.

East Ayrshire Council: With the public examination of strategic development plans likely to become mandatory it is agreed that suitable arrangements require to be put in place to consider objections received in respect of such plans. It is further agreed that the proposed Hearings procedures advocated earlier in the consultation paper could well be an appropriate means of dealing with these objections.

East Dunbartonshire Council: Informal round table format was taken during some of the Sessions of the East Dunbartonshire Finalised Draft Local

Plan Public Inquiry. These were considered to be extremely time and cost efficient and, often in the absence of legal representatives, the Planning Authority and objectors were able to have an informed and non confrontational discussion with the Reporter. The merits of this approach are considerable particularly in making the debate clearer and more open to the wider community and it should be welcomed.

East Lothian Council: Yes. The inquisitorial nature of a Hearing is to be encouraged in relation to examining objections to strategic plans.

East Renfrewshire Council: Yes, there is no reason why hearings should not be an appropriate format for considering objections to strategic development plans. It is important to speed up the appeal process if these plans are to be kept up to date and regularly refreshed.

Falkirk Council: This suggestion is supported. It is considered that the hearings format is appropriate for examining objections to strategic development plans.

Fife Council: Yes.

Glasgow City Council: While this is supported, it should be recognised that a hearing can also lead to major delays to the development plan process and be a significant cost to the local planning authority. Hearings, therefore, need to be tightly defined and limited to key strategic issues only, in the same way as is proposed for more formal inquiries. There are also likely to be challenges to strategic development plans concerning principles and methodology, which may be difficult to handle through a hearing format due to their complexity. In such

circumstances an examination in public may be more appropriate.

North Ayrshire Council: The hearings' format could represent a suitable means of examining objections to Development Plans, if rules on hearings procedure were produced.

North Lanarkshire Council: This proposal is agreed as there is much to be gained from de-formalising the process in terms of effectiveness and efficiency. The efficiency improvements are very obvious and can be quantified in reduced time and expense. Effectiveness is perhaps more difficult to assess but the present 'first choice' adversarial arrangements in Local Plan inquiries is a very real disincentive to non-professional involvement and thus poorer because of it. Any change that promotes inclusion should therefore be encouraged. In terms of procedural detail as set out in the subsequent bullet points. While points 2 and 3 are acceptable, the usefulness of any requirement to demonstrate measures that have been undertaken to reduce objections beyond a mere statement of fact is questionable. Anything more perhaps requiring a finding of adequacy on behalf of the Reporter would inevitably lead to dispute and Court Action adding further to delay and frustration. Any such arrangement should be carefully drafted to avoid any such possibility.

Orkney Islands Council: In advocating the hearings format for planning appeals, we would also support this less formal approach to considering representations and objections to the development plan. A less formal approach would be more appropriate to communities who represent themselves, offering a fair

but less intimidating forum for the presentation of evidence.

Perth and Kinross Council: The proposal to encourage hearings is to be welcomed.

Renfrewshire Council: Yes if it results in shorter and more focussed consideration of planning objections.

Shetland Islands Council: Hearings are to be encouraged with the Reporter asking probing questions.

South Ayrshire Council: The Council would agree with the provision of paragraphs 54 and 55 of the consultation paper that a hearings format is beneficial for an EIP .

South Lanarkshire Council: I cannot imagine how complicated a hearing into objections to strategic development plans would be nor the length of time that could take. Issues could also be raised at a local level where policies within a local plan which built upon strategic policy could be raised.

West Dunbartonshire Council: Procedural requirements build in delays to the approval of structure plans. Examinations in public take up enormous staff resources, add costs and time to the procedures and, it could be argued, add little value to the finalised plan. Whatever format is determined for public examination, it has to be time constrained to focus on contentious matters of a strategic nature with land use implications. A hearings-based approach would hopefully offer an appropriate way of allowing all relevant issues to be properly aired timeously so that the plan could move to approval as quickly as possible.

West Lothian Council: A key issue here is ensuring that production of the strategic development plan is not delayed unnecessarily through protracted consideration through the inquiry process. Any delay in preparation of strategic development plans will have a knock on impact on the already lengthy local plan (to be renamed local development plan) process. If an examination of the strategic development plan is necessary, then the hearings format may have some merit. However, it should not be assumed that evidence presented will be straight forward, particularly in the case of land supply issues. Moreover, the content of the strategic development plan will frame the content of local plans. Consequently, the conclusions from any consideration needs to be, more than ever, robust and correct. This may necessitate full inquiry consideration of at least some parts of the strategic development plan.

Western Isles Council: Given this, the use of a hearing would certainly have the advantage of making the process less formal and intimidating than a public local inquiry. However, it would probably make sense to provide a process similar to that proposed earlier in the consultation document, namely one that allows as much as possible to be dealt with in a hearing but, for issues that require robust scrutiny, to have a formal inquiry. As suggested for local plan inquiries (para 58, second bullet point) there could be a presumption in favour of a hearing process, but any party could ask (say, no later than 4 weeks before the inquiry starts) for issues to be subject to a formal inquiry procedure. The Reporter could be allowed discretion to accede to or refuse such requests or to require an inquiry into any point(s) he deems appropriate.

Other LA organisations

COSLA: As with Question 18, councils voice general support for this proposal, but again, the qualifications suggested do not provide COSLA with the opportunity for a defined response.

Glasgow and Clyde Valley Joint Structure Plan Committee: Circular 6/1985 'Code of Practice for the Examination in Public of Structure Plans' sets out the procedure Examinations in Public (EIP). The purpose of the EIP is to consider information and advice on matters which the Scottish Ministers feel are necessary in order to reach a decision on a structure plan. In the EIP procedure questioning is led by the Chairperson, or panel, in the form of a discussion of issues, with selected participants who can make a significant contribution to the discussion of issues. The issues on which discussion is necessary will include those which arise out of conflicts between policies or an 'unresolved controversy'. It is not, however, intended to provide an opportunity for wide ranging debate on other matters. Circular 17/1998 'Tribunals and Inquiries Act 1992, Planning and Compulsory Purchase Order Inquiries and Hearings: Procedures and Good Practice', sets out the code of practice for hearings. The hearing takes the form of a structured discussion led by the Reporter and is aimed at reducing the adversarial approach of public inquiries. It can cover all or only a few of the issues where discussion would be helpful. The Circular suggests that a hearing would not be appropriate for considering complex policy matters, and the current consultation document also indicates the procedure could be used for less contentious issues. The

consultation document suggests that the hearing format could provide a good model for the examination of issues in a manner that could allow wide participation without the risk of becoming a litigious contest. The risk of any more inquisitorial approach would add further delays to the approval process. It is recommended that Joint Committee respond to this consultation to support the use of hearings in the approval process on Structure Plans.

Public Bodies

Royal Fine Art Commission for Scotland: Yes.

Scottish Enterprise: The hearings format is probably the best means available of examining objections to strategic development plans.

Scottish Natural Heritage: The hearings format would appear to have advantages for considering both strategic development plans and local plans. However, given the complexity and number of issue and objections, thought will be needed concerning how hearings could be used to best effect. For example, there may need to be a series of linked hearings, heard by the same Reporter, with each addressing either a specific issue in the plan or a geographic area in the plan, and bringing together those parties with an interest in that issue or area.

Scottish Environment Protection Agency: This proposal is supported.

The Development Industry

Bett Homes: At present the Scottish Ministers have the option to hold an examination in public for Structure plans, this is rarely used. The

opportunity to challenge assumptions and policies within structure plans is often lost therefore any steps towards a dialogue and exchange of views is welcomed. We do not feel that this is acceptable an all instances and the inquiry process has an important role to play.

Homes for Scotland: The hearings format may be appropriate under certain circumstances. However, where strategic development plans are seeking to direct the location of investment in strategically important areas relating to infrastructure provision, industrial and commercial development and investment in housing, proposal should continue to be tested by cross examination of evidence. A move away from the rigor of testing by cross-examination is likely to diminish the private sector's confidence in the Inquiry system as a basis for improving policy formulation. It has been suggested that one of the benefits of cross-examination for the Reporter or decision maker is the quality of evidence brought about by the mere anticipation of cross-examination. One of Homes for Scotland's member companies had recent experience of a hearing being adopted for a re-opened Local Plan inquiry. In that case, officers who had supported the appellant's case originally, came to the hearing to "explain" the Council's position which had in fact rejected the advice of the officers. It became clear that answers to questions posed at the hearing were, although supportive of the Council's case, in fact contrary to the officers' own professional opinion. Furthermore, the company in question considered that the lack of precognitions and indeed anticipation of cross-examination had an adverse impact upon the quality of the evidence.

MacTaggart & Mickel Ltd: It is critical that an Examination in Public must be held for structure plans. If the hearings format were followed, it would require the appropriate statutory rules (see question 17). We have no particular issue with the EIP being conducted as a hearing. Over time, if it is felt that this method is not working, it should revert to an inquiry.

Stewart Milne Holdings: No -there should be a panel to hear objections and cross-examination must be allowed.

Taylor Woodrow: As stated above, TW objects to the use of hearings as an appropriate forum to resolve matters relevant to significant commercial investments. It is commended that Scottish Executive intend that Structure Plans are subject to mandatory Examination in Public. The importance of Structure Plans for guiding development and infrastructure investment has a major impact upon emerging Local Plans. It is observed, especially in the Lothians, that the proposed replacement structure plan over-emphasises specific locations within the strategy, almost as site specific proposals. This manipulation of structure plan policy excludes public discussion on the merits of the plan, and replicated within subsequent local plan inquiries, with the approved structure plan accepted without question. This leaves Local Authorities open to the accusation that they are manipulating the structure plan to exclude informed public debate in the forward planning of their area. Whilst hearings are one way of analysing such plans, we remain concerned that the forum suggested does not permit a robust test of the assumptions and issues relevant, given the long lasting

significance in terms of informing Local Plan decisions.

Walker Group (Scotland) Ltd: We have concerns about the use of the Hearing format on the grounds that it does not guarantee a full and comprehensive consideration of the issues. It has been suggested that one of the benefits of testing evidence by cross-examination for the Reporter or decision maker is the quality of evidence brought about by the mere anticipation of cross-examination. Walker Group recently had experience of a hearing being adopted for a reopened Local Plan Inquiry. In that case, officers who had supported the appellant's position originally, came to the hearing to "explain" the Council's position which had in fact rejected the advice of the officers. It became clear that answers to questions posed at the hearing were, although supportive of the Council's case; in fact contrary to the officers own professional opinion. It was unclear if officers were providing expert evidence, for which there are issues of Professional Code of Conduct, or simply conveying the Council's position to the Reporter. Furthermore, we felt that the lack of precognitions and indeed anticipation of cross-examination had an adverse impact upon the quality of the evidence, in particular that of the planning authority.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: We would support the use of the hearings format.

Marks and Spencer plc: There should be scope for both hearings and inquiries, depending on the issue being debated.

Sainsbury's: There is a need to ensure that the evidence of all parties is fully tested and parties are held accountable. Hearings can allow open date and discussion and be more user-friendly – but should not be at the expense of the above paragraph.

Scottish Coal Co Ltd: A hearings format would be appropriate for public examinations into structure plans, but they would have to be carried out in a fairly structured and formal way. Because of the nature of strategic policy matters, discussions in such hearings are likely to be heavily focused on such matters as interpretation of national guidance, rather than perhaps the more detailed, site specific matters which would occupy a planning appeal hearing.

Scottish Council for Development and Industry: The hearings format would be suitable for examining the majority of objections to strategic development plans. However, where the objections relate to major matters of policy on for example provision of housing or industrial land then the inquiry format would still be most appropriate to enable a proper testing and cross examination of evidence.

Scottish Landowners Federation: It will be a suitable format in some cases, but not in others where the issues may require a full scale enquiry; any changes to the system should not deny resort to a full enquiry where this would be appropriate.

Tesco: The Hearing format can be a suitable means of examining objections to Strategic Development Plans particularly if the Reporter becomes involved in debating the issue. In fact, this may be a preferable way to discuss what are likely to be

simply alternative views of the same situation. Here one is unlikely to reach agreement as the role of the Reporter is primarily as an Arbiter between two opposing views.

Professional organisations

Law Society of Scotland: The Sub-Committee is of the view that which specific procedure used does not actually have a great impact so long as it allows all aspects of strategic development plans to be considered. The process however should be much more transparent.

RTPI: We believe that the hearings model is the only feasible one for strategic development plan inquiries. Hearings would provide an opportunity for all objections to be considered, contrary to the highly selective approach of the Examination in Public model, while they would also avoid the inevitably interminable proceedings were cross-examination to be permitted. We believe that strategic development plan hearings would benefit from being conducted by panels of Reporters with the use of assessors.

Scottish Planning Consultants Forum: This is welcomed and supportable as it:

- Provides certainty of process.
- Promotes better public involvement.
- Should be cost effective.
- Ought to speed up decision making.

Scottish Planning Law and Environmental Law Bar Group: We do not agree that the hearing format necessarily represents the most suitable means of examining objections to strategic development plans. Where parties have long term strategic

interests which they wish to safeguard or promote, they should be entitled to be heard and represented in the normal way. If a proposed policy is uncontroversial then obviously that is a matter which could be progressed by the reporter himself.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: Although we do not approach this with certainty, we do see the potential benefits from applying the hearings format to the examination of objections to strategic development plans.

Maclay Murray Spens: We strongly disagree with this proposal if the intention is to impose the hearings format in every case. In our view, the hearing format will not be appropriate in cases involving complex evidence/issues where only an inquiry would allow for a proper examination of the evidence. Given the primacy afforded to the Statutory Development Plan under the 1997 Act, objections should be considered by formal inquiry where appropriate.

Paull & Williamson: We think the hearings format could provide a model for the testing of a structure plan. However, the model puts a considerable onus on the reporter and it would be necessary to provide appropriate support so that the reporter can chair the proceedings and probe the opinions advanced while a full note is being taken of what is said. The adequate probing of opinions will be important, particularly for example on matters such as housing land supply and demand, if there is to be confidence in the procedure.

PPCA Ltd: Yes. The hearings format probably closely follows the Examination in Public format that was used in Scotland many years ago.

Robert Drysdale Planning Consultancy: Yes, again subject to the right for parties to cross-examine witnesses for other parties.

Shepherd and Wedderburn: We consider that given the statutory basis which the development plan now has, the examination of both strategic development plans and local plans is of fundamental importance. In many respects the examination of these documents is now more important to the planning process than the determination of individual appeals. It is certainly our experience that over the past four to five years there has been increased importance attached to the formulation of local plans. The Executive has been keen to promote open, transparent and accountable government. We consider that at the heart of this there should be an adequate opportunity to fully test development plan policies and proposals. We would suggest that the number of challenges to Structure Plans and their alterations over the last few years have demonstrated a significant frustration with the lack of the ability to fully participate in the Structure Plan making process. It should be remembered that Scotland is a fairly peripheral location within the European Union and the United Kingdom. As a consequence, there are numerous developers who choose not to make investment in Scotland because it is peripheral and the market is small. We would suggest that it is very important that the developers who choose to consider Scotland as a potential location for investment deserve a better deal than currently exists. Simply put, there is

considerable frustration at the current Structure Plan process and the lack of the ability to properly test this strategic document. We suggest that it is fundamental to the system that there is proper and adequate examination of key issues associated with development plans. We note that the Ministers have indicated that there will be public examination of strategic plans going forward and we strongly support that. One of the difficulties associated with holding hearings in relation to the issue is that hearings are hard to conduct where there are numerous parties involved. This is particularly so in relation to complex matters. We would suggest that it should be open to ask appropriate questions and to get adequate answers to those questions in relation to key strategic plans. We consider that those promoting strategic plans should be prepared to justify the reasoning behind the key policies. There could well be a hybrid situation where effectively the promoters of the strategic development plan would be open to question on key issues and the reporter would be entitled possibly to ask objectors for clarification on points or provide evidence by way of precognition. We would suggest that whatever procedures are invoked a discretion is retained by the Reporter to determine the appropriate procedure given the nature of the evidence that is likely to be required to resolve the issues in dispute.

Community Councils

Broughty Ferry Community Council: Yes; don't know.

Craiglockhart Community Council: Looking back there was merit in the examination in public if the matters

explored could be more closely defined.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: Yes, but again promotion of the procedure involving 'round-table discussions', referred to above, would be a useful supplementary model.

Historic Environment Advisory Council for Scotland: Yes.

Saltire Society: It would certainly be desirable that Councils use mediation with as many issues as possible and file remaining issues could well be dealt with at a Hearing.

Scottish Civic Trust: Hearings might be suitable method of examining objections to strategic development, but it depends on the nature and scale of them. Hearings would best suit a topic-related approach, such as housing or minerals.

Individuals

Collins: No. The English Examination in Public system has worked well providing the Panel Chairmen takes a firm hand in 'leading' the discussion etc.

Connal: I do not agree that an Inquiry is or is widely perceived to be intimidatory. I do agree that planning appeals or called-in planning applications should not be considered within the objection process. I am not particularly troubled about the label attached to the process of examination provided it allows for a thorough examination, where appropriate. Some

flexibility will be required. The paragraphs leading to this question are couched in terms which appear to anticipate extensive public involvement, whereas past experience has been that public involvement in strategic plans is limited. This may mean that the processes appropriate for examination of strategic plans require to be approached in a different fashion (that might of course change if there is greater public participation in the future). One of the repeated criticisms - voiced, in particular, in litigation on this topic - over the way in which strategic plans have been considered is the absence of scrutiny with the degree of rigour necessary either to demonstrate the soundness of a provision or to expose its flaws. There seems no reason in principle why a procedure could not be adopted which allows for such scrutiny. Time has not allowed detailed consideration of the point but one possibility - which might also assist in avoiding repetition - would be to appoint a "lawyer to the Inquiry" (as is done in some general public inquiries both North and South of the Border), with one role being to "cross-examine" witnesses on matters likely to be of interest. That lawyer could be more rigorous, in all probability, than the Reporter sitting to hear the Inquiry would either be trained to be (or would wish to be!). It would also allow the Reporter to observe the reaction of the witness without having to think what his next question was at the same time! It will often be the case that very high value interests are involved in the impact of strategic plans. It seems only right that some opportunity must be given to those interests to present material to the Reporter in what they believe is a way best designed to convince the Reporter of their point of view (subject to all the usual constraints and no doubt subject to such testing by cross-

examination or otherwise as is thought appropriate). Whether this can be regulated to avoid what is described as a "litigious contest" remains to be seen.

Hall: Yes, excellent proposal.

Roberts: Yes:- worth giving it a try.

Smith (Robert): Yes.

Stark: Yes. It would be unmanageable to rely on adversarial tactics in a strategic development plan context. The old model of EIP, where issues and participants were selected for discussion, left many feeling frustrated at the lack of opportunity to question or defend some issues.

Watt: Yes.

Question 20 Do you agree that the process of development planning would be improved by requiring planning authorities to reduce the volume of objections through negotiation and mediation before calling a local plan inquiry; by adopting the hearing format as the norm for all local plan inquiries; and by applying other relevant improvements in practice contained in this consultation. Do you have any other suggestions for ways in which the process might be improved?

Local authorities

Aberdeen City Council: It is dangerous to 'require' planning authorities to reduce the volume of objections. A great deal is done in Aberdeen to try to negotiate withdrawal of objections. The matter is not entirely in the authority's control as an objector may not wish to withdraw the objection for whatever reason; objections could be opposing so that it would not be possible to

negotiate one away without increasing the opposite objections; care is needed to ensure that negotiated solutions do not so change the plan that the interests of others are adversely affected, eg someone may have thought 'x' was appropriate and so did not object but would want to object to the negotiated solution. Fewer objections might not necessarily lead to shorter inquiries. The hearing format is considered helpful. It is not thought useful to include the ideas raised in Question 11 if the intention is to hold up the inquiry if areas of agreement and disagreement are not produced for each objection. Many individual objections are made to local plans and it may well not be practicable to attempt such an exercise with a very large number of individuals.

Aberdeenshire Council: As noted above the degree of consultation and consensus building inherent in development plans suggest that they are a different beast from planning appeal inquiries or called-in applications. As such there may be considerable merits in treating these differently from planning appeal inquiries and called in applications that deal with the planning merits of a proposal rather than the planning merits of an allocation or a policy. Frequently local plan inquiry time is wasted debating the local application of national guidance. Interpretation of national guidance needs to take into account local specifics and much of the effort that is expended in consultation on local plans is aimed at achieving a common view as to how that guidance is interpreted. While it would be entirely appropriate for reporters to comment on whether the requirements of the guidance have been met it would be wrong for them to seek [to] an appropriate local interpretation of that guidance in response to a single

objector. The Review of Strategic Planning advocates mandatory hearings into the content of the plan and this is seen as an appropriate way forward for this particular issue. The current mechanisms for the approval of Structure Plans is inappropriate and lacks transparency, certainly in the way that the process was managed in the North East. It is appropriate to ask whether an 'add on' at the end of the plan making process is the most appropriate way for grievances to be aired and whether it makes any contribution to a participatory process. Perhaps if there were only limited opportunity for overturning finalised plans potential objectors would become more involved with the earlier stages [of the] process.

The requirement on authorities to demonstrate how they have tried to reduce the number of objections to the plan is an element of best practice, which could be universally embraced. Whether this is likely to have a significant impact on the number of objections is questionable. Negotiation and exchange of views should take place during the preparation of the plan itself and not as an afterthought in the last stages of the plan. Last minute compromises are likely to create inconsistencies within the plan itself as the implications of the change are glossed over in the final countdown to inquiry.

Angus Council: From experience in preparing the Angus Local Plan, including the Inquiry stage, it is clear that while efficient and effective management can help to speed up plan production, there are limits as to what can be achieved while affording full opportunity for the submission, discussion, consideration and response to objections. It is unrealistic to expect that negotiation and mediation alone, which may be useful in their own right,

will automatically reduce the volume of objections. Indeed it is inevitable that Local Plans will continue to raise important matters generating local controversy. Steps can be taken, however, to address some objections as was the case with the Angus Local Plan where three rounds of pre-inquiry modifications were published in parallel with arrangements leading up to the Public Local Inquiry. This allowed full account to be taken of progress on negotiations with objectors, significantly reducing the final number of outstanding objections to be debated in full at the Inquiry. Experience with the Angus Local Plan Public Local Inquiry also confirmed that a structured discussion in which Reporter(s) perform a greater inquisitorial role enabled a more focussed and succinct presentation of cases by all parties avoiding duplication, repetition and unnecessary "points scoring". This strongly favours adopting the hearing format. The importance and weight attached to Local Plan Inquiries by all parties has increased over recent years and has generally been reflected in longer Inquiries considering more objections. There is, however, a need to balance the importance of the Inquiry stage in the plan led process against continuing calls to speed up the preparation and adoption of Local Plans. In this context the hearings format provides an opportunity to focus on the key planning issues arising from the main areas of dispute.

Argyll & Bute Council: Yes, [as per 4.19] the use of the hearing format to reduce objections via negotiation and mediation would be an acceptable approach. Full explanation of decisions contained within the development plan would also aid this process. Again I would caution against a blanket use of the hearing format as issues of major

policy should be dealt with via an inquiry.

City of Edinburgh Council: CEC supports the principle of informality in local plan inquiries. In particular, this assists community involvement. The use of negotiation to reduce the number of objectors reaching the inquiry stage has been used effectively by this Council. However, it is recognised that some objections cannot be negotiated and it would be a waste of resources to pursue these when an inquiry is required. The proposal that the hearing format be taken as the presumed method is supported, although as above (Qu 19) it is recognised that there may be issues to be examined that would benefit from a more adversarial cross-examination in an inquiry. This should not be ruled out. CEC also supports the transfer of principles for appeal inquiry procedures into the local plan inquiry format subject to the concerns expressed above (Qus 13, 14, 15, 16 and 18).

Clackmannanshire Council:

Development plans: Agree. The emphasis should be moved away from the present adversarial approach towards a more informal negotiation and mediation approach. Consideration should also be given to how advocacy could be more effectively provided for those who wish to participate in the system but cannot afford consultants or lawyers (through funding and development of Planning Aid services for example), in order to promote inclusion in the process. Hearings and written submission should become the norm for most Local Plan PLI matters, subject to the criteria suggested above. This would allow improved efficiency in the process while promoting participation for those who are

unfamiliar or intimidated by the procedures.

Development control: Not applicable.

Dumfries & Galloway Council:

Local authorities should be able to demonstrate that they have assessed objections in terms of the possibility that they might be reduced or withdrawn by negotiation. Mediation could be helpful in certain cases but may not be broadly applicable because the primary concern of the local authority will have to be the integrity and coherence of their Plan. For Development Plan inquiries the hearing format should be encouraged.

Dundee City Council: Most Local Plans now attract a substantial number of objections. While planning authorities try to negotiate in as many instances as possible it is clear that under the present system there is still a substantial incentive for many, particularly commercial interests, with professional agents to wish to proceed to a local inquiry. Local planning authorities in most instances make strenuous efforts to negotiate as many objections as possible and there is no objection to any requirement to demonstrate the measures that have been taken to reduce objections prior to the Inquiry. Many objectors, however, can be extremely intransigent, are often highly suspicious of the planning authority's motives and wish to have an independent consideration of their objections. There is no doubt that fewer objections would make for shorter inquiries that would 'allow the oral process to be concentrated on issues that are critical to the delivery of the development strategy' however most objectors are of the opinion that their objections fall into this category. There needs to be a much more

rigorous filter applied to potential objections to disqualify the many irrelevant, incompetent and frivolous submissions in the first instance, a greater scrutiny of the relevance objections when submitted and a firmer line by Reporters in how they are dealt with before and at Inquiry. The current system does not encourage the withdrawal of objections as a result of negotiations no matter what changes may be proposed by the Planning Authority to try to accommodate them. No sanction or stronger means of persuasion are available to facilitate this. In addition it should be recognised that changes themselves do not necessarily result in less objectors and can, in many instances, simply generate further objection. At present all objections tend to be treated with equal weight. If negotiation is to succeed it must be clear that time will not be allocated at Inquiry for minor issues. If the hearings procedure is to be more widely adopted it must be mandatory for certain types of objection and strongly advised in most other cases. The role of negotiation and mediation is, while important, presently limited in effectiveness and much more fundamental measures are required if the volume of objections reaching inquiry is realistically to be reduced.

East Ayrshire Council: With regard to the various points raised in this question, the Council, as a matter of established practice, always makes every attempt to reduce the volumes of objections to a development plan through negotiation and mediation prior to the start of a local plan inquiry. Such an approach can considerably reduce the length of an inquiry and, consequently, the Council is supportive of such a requirement being formalised. The Council would also be supportive of the hearings format being

adopted as the norm for all local plan inquiries for the reasons given in the response to question 17 above. It is also agreed that the process of dealing with local plan inquiries could also be significantly improved by adopting other relevant improvements relating to planning appeals discussed in the consultation paper. It is considered that significant savings to an inquiry timetable could also possibly be achieved if all written precognitions could be taken as read by the reporter, thus saving time that would otherwise be spent in a full reading and presentation of such documents by the parties concerned.

East Dunbartonshire Council: This Council has consistently sought to negotiate and apply mediation practices to remove objections prior to Public Inquiries. While this has met with a measure of success, it must be recognised that a significant body of objections, particularly in relation to development proposals for greenbelt land, cannot be negotiated away. It must be recognized however, that introducing formal mediation and negotiation procedures and reporting stages into the Local Plan preparation timescale, is likely to lengthen pre-inquiry timetabling. At a time when the Executive are strongly advocating the shortening of timescales for Plan production overall, it must take into account the realism that increased public participation and mediation takes. If the Executive are to introduce additional requirements, then PLI preparation timescales (as contained in PAN49) should accordingly also be lengthened. Proposals to adopt a Hearing format are however welcomed. In addition advice to Reporters to take a more proactive role in the Inquiry proceedings, control the more excessive and repetitive lines of questioning adopted by objectors' legal

representatives, and direct objectors in relation to non material issues, would go a very significant way to improving the efficiency of Public Inquiries.

East Lothian Council: No. This proposal is too onerous on and time consuming for a Planning Authority. Experience suggests that negotiation will remove only a small percentage of objections. Yes. The Hearing format should be the norm for all Local Plan Inquiries.

East Renfrewshire Council: This is a wide ranging issue that needs to be looked at in conjunction with proposals to modernise development planning. There are also potentially implications of a third party right to appeal is introduced to the planning system. Certainly the move to a more informal, hearing style for Local Plan Inquiries would be welcome. However, other issues including the role of Reporters, the status of Reporters' recommendations also need to be looked at. In my view this is too important an issue to be dealt with in a single question as part of this consultation. I would suggest that the whole issue of Local Plan Inquiries needs to be looked at in the context of the need to simplify, modernise and speed up the whole process of getting a Local Plan prepared and adopted. The present system makes it very difficult, if not impossible, to have full, up to date Local Plan coverage and in many ways marginalises planning as a system which is always trying to catch up with real world changes. It is important to look at Local Plan Inquiries in that context and not separately.

Falkirk Council: The adoption of the hearing format and the other improvements suggested in the consultation paper is supported. The

premise surrounding the first point is not accepted. It is the practice of Falkirk Council to attempt to resolve objections where ever possible. This cannot be taken too far however without undermining the integrity of Local Plans. It is also the case that there are many occasions when the initial proposals are supported by third parties but compromises agreed through negotiations between the council and an objector are not. It should also be noted that in Falkirk Council's experience a significant number of objections are withdrawn prior to the inquiry starting. It is therefore unfair for the consultation paper to single out planning authorities as being responsible for there being an excessive number of objections.

Fife Council: Yes, but this will inevitably have a knock-on effect on the pre-inquiry period if objectors and planning authority cannot agree. The balance is usually: the likelihood of agreement between parties versus the plan preparation timetable. A hearing is, by definition, less adversarial and therefore welcomed.

Glasgow City Council: Negotiation - It is agreed that planning authorities should be encouraged to meet objectors with a view to resolving objections before an inquiry starts. This was done for the Glasgow City Plan. In order to avoid objectors using this procedure to delay the planning process by acting unreasonably, negotiation should remain voluntary.

Mediation -More information is required on this process and who pays before a considered opinion can be given. Whilst it is unlikely to resolve the more significant objections, it may be useful in narrowing the scope of the objection/s.

Hearings format -See responses to questions 3, 10, 15, 16 and 17.

Other relevant improvements -The improvements proposed for planning appeals have relevance for public local plan inquiries.

Highland Council: Under present arrangements those who object to the provisions of a Local Plan have a statutory right to request a Local Inquiry or hearing. However, Local Plan Inquiries now routinely last for many months -during the last two years each of seven Local Inquiries lasted for some 4-7 weeks and a further four lasted between 10 and 22 weeks. The reasons for the length of Local Plan Inquiries include the large number of objections that must be dealt with and the increasingly frequent adoption of an adversarial inquiry format to hear them. Many contemporary Local Plan Inquiries are far removed from the intention of a relatively informal exchange between the interested parties concerning the future use and allocation of land that is in the best interests of the local community. The public often finds it difficult to engage in the process. Moreover, the current expectations of planning authorities for a succession of Local Plan Inquiries (which are likely to prove both long and costly) far exceed the capacity of the inquiry system to deliver. The consultation paper acknowledges that the Executive is working with South Lanarkshire and Highland Councils on pilot projects to inform thinking on how to streamline and modernise Local Plan preparation. It is vitally important that such an approach is not then bogged down by the continuation of the present Local Plan Inquiry process. Three suggestions are made:

- Planning authorities should do more to explain and negotiate with potential objectors before the Inquiry is called. They would then be required to demonstrate the measures that

had been taken to reduce objections at the commencement of the Local Plan Inquiry. Inevitably fewer objections would enable shorter Inquiries.

- There should be a presumption that the procedure at the Inquiry would take the form of a hearing unless a special case is made that formal examination and cross-examination is necessary to deal with the subject matter of a particular objection.
- It is proposed to apply the principles of the improvements and practice contained elsewhere in this consultation document by agreement within parties in order to secure a better process as soon as possible.

Whilst the second and third bullet points have much to commend them, I think that the consultation paper fails to recognise that local authorities already do much to minimise the number of objections that have to be pursued at the Local Plan Inquiry. I have to be persuaded that further negotiation would diminish the level of unresolved objections. If an objector is seeking to have land within his control allocated for development but the planning authority considers that it contravenes the provisions of the Structure Plan or the philosophy of the evolving Local Plan, then it seems to me that no effort at negotiation is likely to resolve that position until the arguments are put in from of the Reporter. Accordingly, I do not see great scope for adoption of this particular idea.

North Ayrshire Council: We do not agree that the process of development planning would be improved by requiring Planning Authorities to

reduce the volume of objections through negotiation and mediation. This authority, like most other authorities, does attempt to negotiate with potential objectors. However, in our experience most objections deal with housing land release and are often fundamental issues of principle, not susceptible to negotiation. For example, the forthcoming North Ayrshire Mainland Local Plan is scheduled for 8 weeks at Public Inquiry, 6 weeks of which relate to housing. It should also be borne in mind that a resolution of one party's objection will, in the context of local plans, invariably produce objections from other parties. Mediation cannot, by definition be compulsory and it is a waste of time to make it so. One of the main means of shortening Local Plan Inquiries would be to qualify the right of objectors to an Inquiry, as suggested in Question 3. Again it is being suggested that there should be a clear list of indicative criteria prepared by the Scottish Executive which would guide local authorities in considering whether to grant a hearing, Inquiry or written submissions. The local authority would also make this decision in consultation with the Reporter. Given the increasing length of Local Plan Inquiries, this appears to be the only meaningful means of shortening Inquiries and making determinations quicker.

North Lanarkshire Council: No further suggestions.

Orkney Islands Council: We support all attempts to reduce the formality of the whole process regarding development plans, and welcome any move to promote discussion and mediation outside the formal Inquiry.

Perth and Kinross Council: As indicated above, Perth & Kinross

Council is generally supportive of the proposals to improve procedures and to place a greater emphasis on the use of hearings. Accordingly, the proposals to adopt the hearing format as the norm for all local plan inquiries and to apply other relevant improvements in practice contained in the consultation document are acceptable. However, the proposal that planning authorities "must work harder to reduce the number of objections" is impractical. Experience with the Kinross Area Plan has indicated that in many cases time spent negotiating has been counter productive. Negotiation can only work where there is room for compromise; in many cases the planning authority and the public at large are totally opposed to any compromise. In cases where the Council has agreed to a modification it has resulted in a greater number of objections. The time for meaningful negotiation is before the Finalised Plan is published. There is greater scope for reducing time at inquiries by giving the planning authority the ability to reject objections falling into the following categories:

- Where the objector does not clearly indicate the nature of their objection and specify how they wish to see the Plan modified. As with planning appeals the objector should be given two weeks to provide the missing information.
- Where the objection is considered to be frivolous. A recent example of this was an objection to a new school proposal where one of the objector's reasons was that a change in the composition of the Scottish Executive would result in pupils leaving school at 14 thus relieving capacity problems with the current school.
- Where objections have been considered before and there is no material change in circumstance.
- Objections to nationally agreed model policies.

Renfrewshire Council: Not necessarily so as some objections are incapable of resolution without compromising fundamental issues for either the objector or the planning authority. However, a hearing format would help to reduce the current adversarial and confrontational element of the process. This would require the Reporter to adopt an inquisitorial role. The consequence would be a robust examination of the proposals by the person making recommendations to the planning authority whilst avoiding the narrow self interest of the objecting parties. The process is currently guided by statute and guidance and is greatly in need of overhaul. At present the process is set out in the 1997 Planning Act, the 1983 Regulations and accompanying Circular, PAN 49, NPPG 1 and the Code of Practice for Local Plan Inquiries and requires consolidation and rationalisation to remove inconsistency and uncertainty.

Shetland Islands Council: If objections can be resolved satisfactorily by the Planning Authority, this should be encouraged, however, in some cases the involvement of an independent third party is necessary. A hearing allows the system to be seen to be transparent and fair.

South Ayrshire Council: Whilst accepted in principle, it is not considered that additional negotiation and mediation would have a significant impact on reducing the volume of objections requiring to be heard at

Inquiry. Most issues which proceed to inquiry are those involving strong opinion or which may have significant financial implications. Negotiation is unlikely to resolve these matters. The benefits of the hearing process in relation to local plan inquiries are recognised.

South Lanarkshire Council: In an ideal world yes -negotiation prior to an inquiry would be the answer -however this is sometimes not possible due to deadlines that require to be met for documents, statements etc. A lot of pre-inquiry work makes negotiation difficult -would need to have better laid out rules that state clearly that negotiations have to take place. A further complication would be if objectors simply refused to negotiate which has happened in the past.

West Dunbartonshire Council: This Council has consistently attempted to reduce the number of objections to the local plan before a local plan inquiry. This reduces both the costs and the duration of the inquiry. The publication of pre-inquiry modifications is a key stage in the development planning process and the negotiated approach is strongly supported by this Council. The hearing format for local plan inquiries should be strongly encouraged. This Council has striven to pursue an informal approach to local plan inquiries by discouraging legal representation and attempting to resolve areas of dispute through the involvement of planning professionals only, but has met with reluctance on the side of some objectors to embrace such an approach. This is despite there being no evidence to suggest that having legal representation actually provides additional information to the reporter. A more inquisitorial approach would allow the presentation of

information to the reporter, may encourage greater public involvement in a process they currently feel excluded from and would result in benefits to the local plan product.

West Lothian Council: Preparing for and conducting a local plan inquiry is a major undertaking in staff time. It also has very significant financial implications. It is, therefore, in the local authority's interest to reduce the time spent at a local plan inquiry as far as possible. Planning authorities are already required to reduce the volume of objections through negotiation and restating this requirement is unlikely to result in a significant time saving. The proposal to conduct local plan inquiries in a hearing format is to be encouraged, particularly if complex issues such as land supply have already been considered and determined through the strategic development plan process.

Western Isles Council: The simple answer to the first two questions is "yes". However, the document notes that the proposed new system of "local development plans" will be subject to the mandatory "public examination of objections". Following recent adoption of the Broadbay Local Plan, the Comhairle will not expect to bring any other local plans forward for adoption before moving to prepare a Western Isles wide local development plan. It is considered that there would be sense in following the suggested arrangement of a local mediation process prior to a "public examination of objections" and to use the 'hearing' forum wherever possible. In answer to the call for "other suggestions", it may be worth considering whether there would be a role, either in mediation, or even in a hearing or inquiry, for local environmental courts. These have been considered for dealing with planning

and other environmental matters that tend to have low priority in the local sheriff courts. Those appointed to preside in such courts could be trusted to deal with planning issues and this could take a burden off the Reporters, even if Reporters were still involved in some collaborative or overseeing capacity.

Other LA organisations

COSLA: Generally, there is support for the hearing format as a means of reducing the confrontational/adversarial element of inquiries. Concerns are expressed, reasonably, in COSLA's view, that the requirement on planning authorities concerning negotiation and mediation as described in the question, is suggested without clear proposals on how this should be managed and indeed, how this should be paid for! In addition, a valid point is made by East Renfrewshire Council concerning the need to look at such issues in conjunction with other proposals on the modernisation of development planning and the potential impact of widening the right of appeal must also be taken into account.

Public Bodies

Council on Tribunals, Scottish Committee: This Committee strongly supports any proposal to introduce negotiation and mediation but members suggest that this should be made a requirement rather than an expression of hope, so that all authorities work to the same rules and appellants thus receive the same opportunities irrespective of location.

Royal Fine Art Commission for Scotland: RFACFS considers that the measures suggested in the question should be pursued in order to reduce

the volume of objections. Planning authorities, however, already go to considerable lengths to minimise the number of objections to be considered at Inquiry and care must be exercised to ensure that further delays do not occur as a result of pursuing additional measures. Many authorities are already testing and employing innovative ways of consulting on development plans and the present consultation, together with work on pilot studies in the Highland and South Lanarkshire Councils, should generate ideas that can be adopted for use more widely.

Scottish Enterprise: It is important that as much effort as possible is made to reduce the volume of objections through negotiation and mediation before calling a local plan inquiry. The hearing format should only be considered for all local plan inquiries if it was considered to improve the efficiency of the process whilst also retaining the integrity.

Scottish Natural Heritage: The proposals as set out in paragraph 58 in relation to Local Plan PLIs appear reasonable and likely to achieve their objectives.

Scottish Environment Protection Agency: SEPA agrees that the process of development planning would be enhanced through greater use of negotiation or mediation following the deposit stage of Local Plans. It is our experience that many planning authorities do engage in this practice and, where this occurs, many objections can be resolved through very simple changes to the plan or through clarification about the way a policy or proposal will be implemented. As a statutory consultee involved in commenting on all Local Plans that come forward each year, SEPA would very much welcome any

direction to planning authorities to negotiate rather than leave the issue for decision by the Reporter. Inquiries are important for resolving conflict on key issues of principle, however many of the concerns we raise about Development Plans could and should be dealt with through simple negotiation. We would also agree with the second and third parts of this proposal -where hearings can be utilised they should.

The Development Industry

Bett Homes: As previously discussed above (Q19) hearings have a role to play but should not be instead of a local plan inquiry where evidence can be examined in detail.

Homes for Scotland: Subject to the qualifications given in respect of question 19, Homes for Scotland would support proposals which sought to use open and transparent processes to independently test emerging policy. [see general comment below.]

MacTaggart & Mickel Ltd: No -it was our understanding that it should already be good practice that negotiation and mediation between developer and local authority should take place in advance of inquiry. Our experience varies from local authority to local authority. Very often even where we try to engage with the local authority prior to inquiry to resolve, where possible, outstanding issues, they can be reluctant to meet. Last year, one local authority refused to discuss any of our numerous representations before the Local Plan Inquiry.

Stewart Milne Holdings: Efforts should be made to reduce objections before a Local Plan Inquiry; hearing

format is not appropriate; cross examination must be allowed.

Taylor Woodrow: As stated earlier, TW supports efforts to agree matters prior to the commencement of a LPI. With regard to suggestions of how this may be improved, efforts should be made in order to reach an agreed position on matters with the Council with all objectors. In recognising this opportunity, TW in conjunction with Homes for Scotland, advanced this approach at the recent Stirling Local Plan Inquiry. A consortium of objectors pulled together, via RPS Consultants and Shepherd & Wedderburn WS and agreed matters relevant to housing land supply, thereby narrowing the area of dispute. This not only saved time, but also permitted the Reporter to focus upon the salient matters. It is suggested that a formal procedure be introduced requiring the preparation of such joint statements prior to lodging of evidence.

Walker Group (Scotland) Ltd: Improved mediation on the part of the planning authority should be encouraged. We have experience of promoting single plots through the development plan process because it is the only place to examine the urban boundary. Development plan Inquiries should not be about single plots, however, the unwillingness of a planning authority to even consider compromising on the finalised version of the Local Plan will continue to result in Inquiries debating at length non-strategic issues. As noted above we have reservations about the robustness of the hearing process where development plans are concerned. As long as we have a development plan led system backed up by the primacy of the development plan contained within s.25, Local Plan

Inquiries will be put under the spotlight and their robustness thoroughly tested.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: We support the use of the hearings format, as a more "user-friendly", informal process. However, whilst we recognise the delay caused by numerous objections to the local plan, it is nonetheless often a controversial plan which raises concern among local people and businesses. The suggestion of encouraging planning authorities to discuss and negotiate with objectors may indeed result in some objections being withdrawn, but given the lead-in time to the local plan, local objection may already be firmly entrenched by the time formal objections are submitted. It would, perhaps, be more helpful to stress the need for better community (including the business community) involvement at the development stage.

Marks and Spencer plc: The first improvement would be beneficial. The second would also have benefits but only if it is recognised that complicated issues or those on which there is significant interest are likely to remain best dealt with via an inquiry format. In relation to the third improvement, our views are stated in answers to other questions.

Sainsbury's: Agree. There are far too few LPA's who try to meet Local Plan objections. They are the exception rather than the rule. There is huge potential to help resolve disputes at an early stage to clarify intentions. Can also save valuable time and money.

Scottish Coal Co Ltd: All suggestions agreed. Local Plan Inquiries are cumbersome, time consuming, boring and do not engage the stakeholders or the public. Must be sharpened up with a quick decision which will also encourage the participants to focus on real, key issues.

Scottish Council for Development and Industry: Yes, as per Question 19 the use of the hearing format to reduce objections via negotiation and mediation would be an acceptable approach. Full explanation of decisions contained within the development plan would also aid this process. Again though we would caution against a blanket use of the hearing format as issues of major policy may best be dealt with via an inquiry. It is worth at this point re-iterating SCDI's concerns about the level of resource devoted to planning within both local government and the Scottish Executive. Given that the level of objections to development plans may run into several hundreds there is clearly great pressure on planning authorities given limited staff resources. As SCDI stated recently in correspondence with the Communities Minister *"The function of planning and the planning system itself needs to have a greater political priority and the role it plays in facilitating the economic wellbeing of Scotland needs to be better understood. By dint of this it should have a greater resource to enable the system to attract a higher quality of staff and to be more transparent"*.

Scottish Landowners Federation: Inquiries can be shortened considerably by parties getting together in advance of an inquiry and agreeing or compromising on their objectives. However, there are limits to what can be achieved through negotiation and mediation; care would

need to be taken that pressure would not be being put upon parties reluctant to accept positions with which they fundamentally disagree when their cases have not been heard. That would in the medium to long term be counterproductive for all concerned. There is a place for Alternative Dispute Resolution and for informal hearings, but equally substantial disagreements need to be fully ventilated and formally arbitrated with a reasoned result which is made subject to judicial review. The fact that the full dress procedure may only be appropriate in comparatively few cases must not be allowed to obscure the need for it to be available.

Tesco: We agree that Authorities should be obligated to discuss and seek to resolve objections prior to the Local Plan Inquiry opening even if it only results in a better understanding of the differences between the two parties. At the Inquiry itself some issues can be dealt with by way of Hearing, for example, housing supply numbers but other issues probably need to be dealt more in a cross examination manner simply to extract the full information from all participants.

Professional organisations

Law Society of Scotland: The Sub-Committee agrees that there is scope to reduce the volume of objections through negotiation and mediation, but not as a norm. The Sub-Committee is very cautious about compulsory mediation in this area. The Sub-Committee urges the Government to support moves towards more regular local plan compilation, review and adoption.

RTPI: In the first place, we would agree that effective public participation in the development planning process should

involve earlier rather than later resolution of issues before they become entrenched matters for dispute. Once the formal stage of objection has been reached, however, we would fully support the introduction of mediation into local plan procedures. However, all of this requires a sea change of attitude by politicians at both central and local level towards the importance of development planning, the resources required for it and the management arrangements involved. We support the preference for a hearing format at local plan inquiries with the option for a hybrid approach where formal inquiry procedure would be more appropriate. In addition, clearer guidance should be issued with regard to written submissions to make it clear that these have equal status to any other means of giving evidence. This guidance should be cross referred to Article 6 of the European Convention of Human Rights with a clear indication of how the various procedures can ensure a "fair hearing" for any party.

Scottish Mediation Network: The Scottish Mediation Network (SMN) welcomes the proposed use of collaborative processes - negotiation and mediation - in the processed prior to the setting up of Local Plan Inquiry. Consensual dispute resolution, if practised rigorously, can address issues of delay, poor communication and perceived bias. The comments in this response focus only on Question 20 and paragraphs 56 to 59 of the Consultation Paper relating to mediation in the local plan inquiry process. Our aim is to assist with the productive revisal of proposals by highlighting areas and issues of practice which, if not addressed, may lead to implementation difficulties and less effective use of mediation

Specific Comment on the Draft for Consultation The SMN uses the following definition: "Mediation is a way of resolving disputes which helps the people involved to reach an agreement, with the assistance of an impartial mediator. The parties, and not the mediators, decide the terms of settlement. Mediation is a voluntary problem solving process which focuses on finding a solution that satisfies everyone for the future." The key elements of mediation are that it is: Independent, Impartial, Confidential and Non-judgemental. The SMN recommends that there be a distinction drawn between the helpful use of mediation skills and techniques - by planning professionals Inquiry officials and the use of a mediation process facilitated by an impartial outsider. The SMN recommends that the desire "to reduce the number of objections" be reframed as "building consensus about common issues addressed by the plan". The mediation process is most effective when parties participate voluntarily. SMN recommends that independent mediation is available to the parties at any stage throughout the whole process. The SMN is well placed to give independent advice about: Availability of mediators, Codes of conduct, Mediator and Service accreditation and Practice standards. The SMN has close links with Mediation UK which, among other things, provides and manages the Disability Conciliation Service throughout the UK. The SMN recommends that mediation services be encouraged to create and develop the credibility that comes with true independence. This includes high standards, excellent pre- and post-mediation services, a Code of Conduct and the availability of neutral venues for mediation sessions.

Mediator Excellence and Minimum Practice Standards: Quality of

mediation service providers and mediators is an important issue for the whole field of mediation, not only for the field of local planning. As mediation service providers are likely to develop into various areas of conflict, it would be helpful, and possibly unique, to develop a co-ordinated approach for Scotland. The Scottish Mediation Network has drafted and is presently consulting on a "Guidelines on the Practice of Mediation" outlining basic standards for mediators in all fields in Scotland. The SMN recommends that it collaborate with the Scottish Executive and other interested bodies in Scotland to map the key features of minimum practice standards across the UK and elsewhere, as part of a consensus building process for the whole of the emerging mediation profession in Scotland.

Consistency of Service Provision:

There has been discussion about developing a national body to oversee emerging fields of mediation and conciliation in order to ensure national minimum standards, best value and quality assurance. The SMN recommends that a collaborative initiative be encouraged among mediation service providers in Scotland to develop ways to address and ensure consistent high standards which would attract general approval from all those interested in effective approaches to mediation.

Scottish Planning Consultants

Forum: These are generally supportable as they contribute to achieving the four objectives relating to clarity, public involvement, time and speed. The only issue is one of emphasis on the right to an inquiry. The view is that an appellant should have the right to seek a formal inquiry if that is their preference (see above). The SPCF support proposals relating

to pre-inquiry negotiation, presumption toward hearings (with the right to an inquiry resting with the appellant) and other relevant improvements

Scottish Planning Law and Environmental Law Bar Group:

As we understand it, local authorities at present do negotiate with objectors to a local plan with a view to having their objections resolved. We agree that this practice ought to continue. We disagree that the hearing format ought to be the norm for all local plan inquiries. Parties to a local plan inquiry might have important interests at stake rendering particular land use allocations critical in view of the effect of s 25 of the 1997 Act. They should therefore be afforded a right to be heard and represented in the normal way in order that those interests may properly be considered and weighed against those of others. The principles underlying the "improvements in practice" contained in the consultation paper have been discussed above at the relevant paragraphs. In terms of improving the present system, the Group considers that there ought to be a change in the law which obliges local authorities to abide by the recommendations of the reporter in all but the most exceptional circumstances.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS:

It is a matter of regret that over the years, local plan inquiries have become more formal and much longer. Changes proposed in paragraph 58 have our approval and we agree with the proposal in the question. Although (again) there may be a resource question here, the performance of planning authorities might be

improved if they were more willing to take advice from external consultants. Although we do recognise competing interests (including among objectors) in our submission too many planning authorities are trapped into defending their plans at all costs. To some extent they are encouraged to do so by the style of some of the objections that are raised. All parties to the local plan process should be encouraged to recognise that mediation and negotiation have their parts to play.

Maclay Murray Spens: As previously indicated, we are certainly of the view that the development plan review process does not function as efficiently as it should. Many of the difficulties could be overcome if Local Planning Authorities were able/willing to apply more resources to the process. Reducing the volume of objections would clearly be desirable, although whether that will be achieved to any greater degree than occurs already by a process of mediation remains to be seen. The hearing format should not be imposed in every case. It will be appropriate in some but wholly inappropriate to others. Imposing the hearing system as a mandatory requirement would seriously damage the credibility of Local Plan inquiries as the means of testing the Planning Authorities' proposals and policies and in turn undermine confidence in the plan-led system.

Paul & Williamson: We support the proposal that Councils should try harder to mediate some of the objections to a Local Plan. We think a hearing provides a useful model for testing Local Plans. However, in view of the interest in the Local Plan and its importance for development control, confidence in the system will be crucial. Confidence will be eroded if the probing of evidence is not

sufficiently rigorous. The hearing format puts a heavy burden on the reporter and he/she will require adequate support so that they can manage the proceedings and adequately probe the evidence while a full account of the discussion is taken.

PPCA Ltd: No. Until Reporters' recommendations are binding, the local plan inquiry process remains deeply flawed in the context of s.25. There is no point in arguing that the inquiry or hearing process is to be transparent, etc., when the outcome is in the gift of the authority who sit as judge and jury. Until this matter is addressed, there will be deep suspicion of any changes which may be seen as denying objectors full rights to scrutinise the authority's plan and the reasoning behind it.

Robert Drysdale Planning Consultancy: As above -the right to cross-examine must be preserved.

Shepherd and Wedderburn: We consider that perhaps of even greater importance than the strategic development plans is the ability to fully test local plans. Our recent experience of undertaking numerous local plans is that very important decisions have often been taken involving council land during the formulation of the local plan process. We consider that it is absolutely fundamental that the way in which the local plan has been prepared and the assumptions are fully tested. Our experience suggests that the hearing system is not one which is likely to enable full and adequate testing of all the evidence. For example, we recently acted in the Shawfair local plan inquiry which related to the allocation of some 3,500 houses. Given the council's ownership within the southeast wedge, it was inevitable that it would have a

considerable financial interest. There were two alternatives put forward. We would suggest that the Inquiry in this respect gives confidence that the right planning decision had been reached for the right reasons. We consider that it is very important that parties are enabled to challenge fully the justification for local plan decisions as effectively, in many instances, there is only one opportunity. Similarly, we acted in relation to objectors to the local plan where the local planning authority had allocated a local park for a supermarket. Again, we consider that it is entirely appropriate for that matter to be fully and effectively tested in an inquiry context. In relation to many housing sites, landscape and technical transportation issues often form the basis of the allocation of land. These are topics, which in our view, on occasion may be more appropriately tested by an inquiry process. We believe that the fact that the plan making is subject to close scrutiny currently by a public inquiry encourages planning authorities to undertake appropriate research and analysis in the formulation of the local plan. In effect the fact that the proposals will be examined subsequently at a public inquiry ensure that an appropriate level of analysis is undertaken given the importance of decisions which are being reached. In the event that any lesser scrutiny were undertaken in respect of the local plan it is less likely that a planning authority would undertake the same level of justification. We consider that as a consequence there is considerable merit in retaining the right to fully test certain evidence at a public inquiry. We have previously highlighted the importance of developers being able to engage in the system. As previously highlighted, Scotland does not benefit from the full range of developers that other parts of the United Kingdom

have and it is very important that those who wish to invest in Scotland feel they have the opportunity to fully test local plan objections. The hearing format should not be universally adopted in the context of Local Plan Inquiries. We believe there must be an opportunity for strategic issues on e.g. housing land supply and green belt to be dealt with by way of an inquiry. Similarly there may be site specific issues which may be of importance and which would benefit from a full examination of evidence. Again we would submit that rather than having a single approach it is important to retain the ability for a Reporter to have the discretion to determine the appropriate procedure given the particular issues which are a difference between the parties.

Community Councils

Broughty Ferry Community Council: Yes.

West End Community Council (Edinburgh): Yes – no other suggestion.

Voluntary Organisations

Architectural Heritage Society of Scotland: Yes.

Ferryhill Heritage Society: Don't like the hearing format.

Friends of Glasgow West: As Local Plan inquiries have different obligations regarding the Reporter's arbitration, decision-making hearings may be an effective alternative.

Friends of Rural Kinross-shire: To some extent the 'Local Plan' is something of a misnomer in that it is concerned principally with land

allocation for specific purposes and the immediate impact of any development as well as the long term consequences for the community are not covered adequately. Firstly these are not matters that concern the developer as they have no commitment to the community as a whole and secondly the Public Authority's primary objective is to meet land allocation targets set by the Scottish Executive. It is not always the proposed developments that are the primary concern of the community but the longer term impact on the environment, amenities, services and quality of life for the existing populace as well as for the expanded community. Whilst we accept that Local Authorities prepare separate plans for other areas of activity such as transport, education and recreation it is becoming increasingly important that there is a more holistic approach to planning to ensure that amenities, and services are kept in step with housing, and commercial development. Present arrangements lead inevitably to public perception that Local Authority attention is focused primarily at meeting the aspirations of developers rather than serving the needs of the communities that they are there to serve. Furthermore all community groups are well aware that development is developer driven and that the effect of these developments on the community is of little concern. Unless this matter is addressed then paragraph 5 of the consultative document becomes meaningless. Question 17 suggests that the hearings process as an effective means of addressing matters in dispute. Whilst the proposals set out in paragraphs 45-47 have merit it has to be accepted that much ground could be covered less formally whilst a plan is in the early development stage. One of the main reasons that issues go to public inquiry

is that the consultation process is unsatisfactory and there is no established procedure for collective discussion between the various parties in the early stages and issues of concern to the community are not taken into account early enough nor are the real intentions of developers presented openly to the communities that will be affected. It is largely in the interests of the developer to go to public inquiry as they have the financial resources to engage the professional services of lawyers, engineers, surveyors etc whilst individual members of the community, nor collective groups can afford these resources. This immediately puts the public at a disadvantage as they are rarely acquainted with the procedures and often are not as articulate as the professionals. It is essential therefore that this present consultative process addresses this matter with a view to ensuring that there is, and is seen to be, a more level playing field. Whilst we endorse what is proposed in paragraph 58 of the consultation paper we consider that there also needs to be some practical guidance on the way that this is to be carried out. We believe that there are two ways to improve the situation as follows.

(i) Pre-Plan Development Consultation Village Design Statements were developed in England and Wales to provide a context for new development and are about how planning development should be carried out. so that it is in harmony with its setting and makes a positive contribution to the local environment. In 2001 the Association for the Protection of Rural Scotland led a pilot scheme in Tarland Aberdeenshire that was considered to be a much improved process for consultation and long term development. More recently Perth & Kinross Council proposed a scheme for Crook of Devon whereby the

community, landowners, local authority, developers and other interested parties were all involved in long term development. This was included in the Finalised Version of the Kinross Area Local Plan and we are currently awaiting the Reporter's views on this matter. Whatever the outcome it is our opinion that design and development statements arrived at by open discussion between all parties leading to say a ten year strategy for a specific local area could be of immense value. What we are suggesting is a step that comes after the approval of the Structure Plan and is a preliminary step to the drafting of a local plan. We also acknowledge that some form of Local Design Brief is not necessarily essential in all circumstances. An essential ingredient in this process must be an entirely non-adversarial approach but never the less a commitment to common agreement reached. It would enable many issues to be discussed and resolved so that a subsequent draft local plan would have an agreed and acceptable base and would certainly reduce the ground to be covered and time needed in any public inquiry -looking at it more optimistically it could in some cases avoid the need for one at all. We therefore recommend that the Scottish Executive should consult with the Association for the Protection of Rural Scotland, and other interested organisations, in formulating a procedure for Local Area Design Briefs that could be a basis for pre-plan development. We accept that there will remain some unresolved issues from this process but that is the right of individuals to dissent and present their case to a public inquiry. However we consider that this recommendation could make a major contribution to the objectives set out in paragraph 10 of the consultation paper and would reduce the time scale of pre-inquiry

stages as raised in question 7. With regard to paragraph 58 and in other parts of the paper there is repeated reference to 'objections' and this has a connotation of negativity and it obscures the fact that many points raised are, particularly in the early stages of planning, are valid observations and contributions. We recommend that in the first bullet point in paragraph 58 be amended; delete 'potential objectors' and insert 'interested parties'.

Friends of the Earth: It is important that people feel involved with the system. To try and negotiate away objections could be counter productive and give out a negative message to participants. However, effective and participatory mediation procedures do not necessarily leave communities feeling they must concede some matters in order for others to be considered, and may therefore be desirable. If people have taken the time to become involved then they should be given the courtesy of being involved in a meaningful way. We would have no objection to the hearing system being used.

Historic Environment Advisory Council for Scotland: Yes, definitely, in response to the first question; in response to the second best practice might be adopted by taking roadshows on draft local plans to the affected communities.

Planning Aid for Scotland: The use of the hearing format is supported. Most clients are objecting to a Development Plan and therefore urging Councils to reduce the number of objections through negotiations and mediation is supported. However, sometimes individuals and community groups supported the Council's original policy but disagree with the version

agreed between the Council and objector. The current process does not deal with this situation very well and there is little opportunity for the individual and/or community group to be involved or put their case. There therefore needs to be clear and transparent procedures, such that any agreements to negotiate any objections can be commented upon and scrutinised as part of the inquiry process.

Scottish Civic Trust: The Trust agrees with the premise that more should be done to negotiate and mediate objections to development plans as the first step. Although we have limited experience in this field, there is some evidence that early discussions can lead to amicable resolution. We have no strong views on the hearing v formal inquiry issue.

Individuals

Collins: Yes.

Connal: I agree the process would be improved by requiring authorities to reduce the volume of objections by a variety of means. I also agree that improvements which are to apply to the inquiry process generally should be applied to Local Plan Inquiries. However while planning law remains as it is, the increased prominence given to the local plan in subsequent appeal decision making inevitably means that many of the critical decisions on the future of areas are being taken not in the context of planning applications and appeals but in the context of Local Plan Inquiries. Accordingly I do not believe that the need for scrutiny of a substantial number of plans and the time and costs involved in this exercises is of itself a reason for not having a rigorous procedure. If that is what the procedure requires that is

what it requires. Indeed if there is greater emphasis on making plans more up to date there will be more plans (albeit probably a lot shorter) more often, so there will be a continuing need for scrutiny. I have some recent experience of unofficially advising a community group involved in a Local Plan and I have some sympathy with the need to make the system more user-friendly for community groups and individuals. I see force in the idea that the more flexible hearing procedure should generally be adopted except where there is need to depart from it and allow examination at some particular point. That is however subject to one very important caveat. Local Plan Inquiries and the role of local authorities at Local Plan Inquiries is one of the biggest sources of complaint which I hear from those involved in the planning system. It will remain problematic as long as the underlying issues of negativity on the part of planning officials, a tendency to defend every word to the death and other unattractive characteristics emerge. It will also continue to be problematic until the Executive formulates a method of dealing with the role of local authorities as land owners (or having other formal interests) in the context of local plans. Where the local authority has an interest in one site which is under consideration it remains difficult to convince even the most experienced of parties -never mind the cynical member of the public -that the process is fair. Accordingly somewhere in the process there has to be built in a rigorous scrutiny of the local authority proposal to which objection has been taken. It is not particularly critical how that is done. That could be adjusted to the particular case in point.

Hall: Yes, also excellent.

Roberts: Yes: But, (as mentioned in response to Q1 above), there is great concern by 'the planned', that a Reporter's Findings can be overturned by the LPA; -resulting in local people concluding that it is/was a waste of time getting involved in the planning process. I therefore welcome references in s 46 & 60, to the need to engage local people in such planning processes.

Smith (Robert): In my experience, it is normal practice for planning departments to attempt to reduce the volume of objections by negotiation etc so I cannot object to the suggestion. Once the reporter has reported to the local authority with his findings, much fury can be generated by the L.A. refusing to accept the Reporter's findings, and going back to the draft local plan.

Stark: Mediation is "A process in which a trained neutral person, a 'mediator', helps people in a dispute to communicate with one another, understand each other, and if possible, reach agreements that satisfy the participants' needs". (Source -The Maryland Alternative Dispute Resolution Commission). The essence of mediation is the strict neutrality of the specially trained mediator, who will try to tease out agreement without influencing it or offering advice on the issue or its resolution. Mediation offers a possible model for overcoming reluctance to negotiate the content of the plan. The parties to the mediation would themselves need to agree to the process, and must from the outset be willing to recognise the possibility of what may, for them, be a compromise solution. A certain degree of courage and maturity will be needed to embark on the process, but all will be worthwhile if it breaks an impasse. Suitable issues will probably be:

- .Relatively self-contained, either geographically or in their relationship with other issues;
- Characterised by shades of grey, and not black-and-white; and
- Of interest to easily identified groups or individuals.

Consensus building (a similar technique to mediation) might also be applied where a number of objectors have similar views, but have not yet managed to consolidate their view into a single presentation. The outcome of these discussions would be a statement agreed between the parties, which would be fed into the plan preparation process or the inquiry. Crucially, it would not inhibit the right of anyone to take part in the normal process. It would merely suggest how issues might be resolved, for the local authority's or the reporter's consideration. A planning authority must take full responsibility for the contents of its plan. Yet the success of the plan will depend largely on the degree of consensus which has been reached, as a policy with little backing has little chance of committed implementation. Consensus may be improved whenever the plan is modified in response to representations or objections, providing that they do not themselves become the subject of dispute. Reducing the number of objections is a laudable aim. But if that were all that mattered, it could be achieved very efficiently by preparing plan in secret! Better public involvement in plan preparation is likely to increase the number of disputes that will arise, so it's best to work towards consensus from the outset. A local authority can already achieve much in this regard -but there are occasions when the attitude of parties towards each other inhibits debate. Consensus building through a neutral facilitator has much potential in

such circumstances. Once the plan is on deposit and objections are received, mediation becomes viable, especially where a compromise might still be possible but negotiations have broken down. But it would be naive in the extreme to expect it to smooth away all opposition to a plan. There is a place for mediation in the pre-inquiry process. However, because it might increase some people's confidence in tackling the system, the number of objections may not reduce as is hoped. The real benefits should be felt in wider public acceptance of the plan and a consequent qualitative improvement in the application of its provisions.

Watt: Yes - Also, the Code of Practice for Local Plan Inquiries should include a clear statement that objectors to the local plan or plan alteration who are also developers (in most cases house builders) will not be allowed to present evidence that is in effect rehearsing or repeating a planning appeal case promoting the benefits of their individual site (and using an array of specialist witnesses on landscape analysis and design, drainage, education, ecology, transportation etc.). From my experience over recent years such objectors rarely accept Reporters' advice at pre-inquiry meetings that they should restrict themselves to general issues of housing land supply and effectiveness of sites. They are therefore abusing the local plan inquiry process to the detriment of all other parties, and adding considerably to the length and expense of the process with no benefit to the local community and the planning system. Strengthening the Code of Practice in this regard would allow such "evidence" to be curtailed at the very start if such objectors still attempted to take this approach.

Question 21 Should inquiries into planning appeals and called-in applications be dealt with separately from inquiries that are arranged to hear objections to local plans and from the public examination of objections to strategic and local development plans?

Local authorities

Aberdeen City Council: Yes. The remit of the reporter is different when determining an appeal as opposed to recommending in relation to local plan and it is not helpful to confuse the two.

Aberdeenshire Council: Yes. The purpose of a Local Plan Inquiry is to test conformity with the Approved Structure Plan while a Planning Appeal must cope with a wider set of considerations. The two elements should be kept separate.

Angus Council: Yes, but it will continue to be necessary to have appropriate regard to progress on plan preparation as a material consideration (as well as the provisions of the approved Development Plan) in dealing with planning appeals and called-in applications.

Argyll & Bute Council: The above appeals should be kept separate.

City of Edinburgh Council: CEC is concerned that the prevention of this linked approach could have an adverse impact on resourcing for the planning authority, in that it may lead to duplication in the preparation and presentation of evidence. It could also lead to inconsistent decision-making. It may also have an adverse effect on the desire for greater community involvement in the development plan process. The use of two reporters, one

dealing with the appeal, the other with the development plan, but listening to the same evidence, could be a suitable alternative.

Clackmannanshire Council:

Development plans: Yes. Conjoined appeals are particularly complex and make it more difficult for local residents and businesses to become involved in the process. Under normal circumstances, there should be separation of Local Plan PLIs and appeals against refusal of planning permission/called in applications.

Development control: No additional comments.

Dumfries & Galloway Council: Yes.

Dundee City Council: There is no doubt that the consideration of planning appeals alongside related objections to a local plan results in a complex overly detailed debate of issues which is detrimental to public involvement and unnecessarily time consuming in the Local Plan Inquiry process. The higher level issues of land use and policy require to be clarified at the Local Plan Public Inquiry in the first instance and any appeals or called in applications kept entirely separate and dealt with subsequently.

East Ayrshire Council: It is certainly considered that inquiries into planning appeals and call in applications, both of which deal with detailed development matters, should not be co-joined with inquiries or hearings into strategic development plans which are, by their very nature, strategically based at the broadest level. With regard to con-joined inquiries with local plan inquiries, the Council would agree with the views expressed in the consultation paper that con-joined inquiries can lead to substantially

longer and more complex inquiries, reduction in certainty of the process and confusion for participants in the process. It is also agreed that the level of information required to assess the two types of inquiry is considerably different. Consequently, the Council would strongly support any proposal to do away with co-joined inquiries at both the strategic and local plan levels.

East Dunbartonshire Council:

Whilst there are benefits of undertaking a single Inquiry into common issues which relate to a Development Plan Policy and an application on an effected site the tone of the two processes should in practice be different. If a more discursive and informal approach is to be taken to Local Plan Inquiries this might be considered less relevant to consideration of major development proposals which inevitably requires far more detailed preparation.

East Lothian Council: No. Planning Appeals should be conjoined with Local Plan Inquiries as many of the issues that are considered are similar and the Local Plan under consideration at Inquiry would be a material consideration to be taken into account in relation to such Appeals. In addition, the conjoining of Appeals enables Council staff resources to be used more effectively.

East Renfrewshire Council: Not necessarily, it may sometimes assist to have conjoined inquiries.

Falkirk Council: The suggestion is supported. Conjoined inquiries are inevitably more time consuming and result in longer delays particularly to Local Plan preparation. If conjoined inquiries were permitted it would increase the number of lengthy and complex inquiries and may be used to

undermine the development plan process. It is not considered that duplication of effort is a significant problem in practice because evidence is merely repeated. If the other suggestions in the consultations paper are adopted then much evidence can be taken as read. It is important however to make sure that decisions taken by two separate reporters are not contradictory.

Fife Council: There are mixed views on this issue but on balance it is felt that, although conjoined inquiries can confuse some participants, it does make sense to conjoin Development Plan inquiries and related appeals even if that involves additional administrative effort and, perhaps, separate Reporters to handle each type of inquiry. On the other hand separate PLIs would help focus on the merits of each case and at least appear to simplify the decision making process.

Glasgow City Council: The two should be kept separate with the outcome of the local plan inquiry helping to determine the outcome for the appeal/called in application. This would avoid the objector/appellant having 'two bites at the cherry'.

Highland Council: Undoubtedly this should be the case. It is quite unreasonable that a planning appeal into a site should be considered until the overall allocations in the Local Plan have been determined at the Public Local Inquiry. Conjoined Inquiries inevitably result in delay in receiving a Reporter's recommendation with respect to the Local Plan.

North Ayrshire Council: In theory, Inquiries into planning appeals and called in applications should be dealt with separately from Inquiries into Development Plans. However, the

overall effect of the proposals in the paper should be borne in mind. In particular, if parties are unable to secure a conjoined Inquiry, and are unable to sist a planning appeal until after determination of a Development Plan Inquiry, then they will have little option but to go to another Inquiry. This duplication could be a complete waste of time for everybody involved.

North Lanarkshire Council: It is considered they should be separate. To combine them leads to confusion and delay which prolongs uncertainty.

Perth and Kinross Council: Yes.

Renfrewshire Council: Yes as the arguments are not the same. Objections to local plans relate to issues of principle whilst the issues involved in a planning application relate to the detail of a particular proposal judged against the development plan.

South Ayrshire Council: It is considered that combined inquiries introduce an inappropriate level of detail into the development plan process (and potentially highlight a single issue rather than a broad range), extend the length of time taken to consider all issues of the called-in/appeal inquiry and local plan inquiry, and create additional pressure on the workload of planning authorities and the Reporters' Unit. Combined inquiries may also cause confusion for members of the public. Accordingly, the Council would most strongly support the view that inquiries into planning appeals and called-in applications be dealt with separately from development plan inquiries.

South Lanarkshire Council: Yes -it is easier if things are separate, if they are conjoined it inevitably leads to delays. The public need to understand

the difference between the types of inquiry and a full set of regulations that govern all aspects of inquiry should be made available to all interested parties at the beginning of the process.

West Dunbartonshire Council: Whilst the public might expect that the two matters could be combined, it is believed that they should remain separate. The two types of inquiry generally consider separate but linked issues. A reporter could reach different conclusions to the same objection. The Council is not obliged to accept the reporter's recommendations on the local plan inquiry but if a conjoined appeal is upheld, then planning permission will have been granted.

Western Isles Council: It has been suggested that an appeal against refusal of planning permission could be considered alongside related objections to a local plan. The Scottish Executive considers that it is best to keep the two separate from each other, as "experience shows that development plan inquiries that are expanded in this way have taken longer to process and become extremely complex. This has discouraged and inhibited public participation and reduced certainty". The position taken by the Scottish Executive seems to be justified on this point.

Other LA organisations

COSLA: Views both for and against this proposal are noted in the council responses viewed by COSLA. A key point of concern against the suggestion is the scarcity of resource to deal with a separate inquiry process. Coupled with that, is the potential for inconsistency of decision-making, leading, in all probability to further disengagement, rather than less, of community involvement.

Public Bodies

Royal Fine Art Commission for Scotland: RFACFS considers that appeals against the refusal of planning consent for a particular site should not be considered until Local Plan land use allocations have been considered through the Planning Inquiry process. The practice of conjoined Inquiries carries the potential for increased delay.

Scottish Enterprise: Inquiries into planning appeals and called-in applications are by their nature closely related to development plan inquiries. Separation should only occur where it improves the efficiency but retains the integrity of the process.

Scottish Natural Heritage: Yes, because Local Plan Inquiries conjoined with planning appeals are lengthy, complex and confusing. In addition, conjoined appeals raise a question regarding whether it is the plan that influences development or development that influences the plan. To clarify this issue, appeals into refused applications or deemed refusals should be conducted subsequent to Local Plan Inquiries or Examinations in Public rather than precede, or run in tandem with them. To emphasise the fact that the development plan has precedence, and to reduce pressure on planning authorities, Scottish Ministers and SEIRU, local planning authorities should be allowed to refuse to determine planning applications they identify as being prejudicial to the emerging development plan until after the relevant development plan or part of the development plan has been adopted. Clear guidance on such an action on the part of local planning

authorities would be required before such a proposal could be implemented.

Scottish Environment Protection Agency: We would support this proposal if there is evidence that this is making the inquiry process more complex and is inhibiting public engagement of the planning process.

The Development Industry

Bett Homes: This appears to be already taking place, as there seems to be a move away from conjoined appeals, although often the same strategic issues are debated each time.

Homes for Scotland: Homes for Scotland would not seek the imposition of rigid procedures and would support a flexible approach.

MacTaggart & Mickel Ltd: Although it is acknowledged that there may be some evidence to indicate that 'concurrent' inquiries do not save time/effort, our experience is different. Having been through an exhaustive Local Plan Inquiry where a residential development site was debated at length, it seems incredulous that within an 18 month period we are repeating the same arguments that we presented at a Local Plan Inquiry. We feel that this represents a waste of resources and is associated with a poorly directed system that fails to deliver social justice to all.

Stewart Milne Holdings: We understand that SEIRU have not been encouraging what was known as conjoined appeals anyway but concurrent appeals must be allowed particularly given the time it often takes to get to a Local Plan Inquiry.

Taylor Woodrow: TW has no direct experience of conjoined appeals. We therefore have no firm view on this matter.

Walker Group (Scotland) Ltd: We understand the desire to separate the two processes, however, as long as we have a development plan led system backed up by the primacy of the development plan in reaching decisions, the way in which the appeals and plan making are inextricably linked suggests that it is illogical to always deal with them separately. Recent experience of the relationship of appeals and development plan inquiries suggests that if you proceed ahead of the Local Plan then you run the risk of being dismissed as premature; if you proceed after the Local Plan Inquiry the application of s.25 will almost certainly result in a dismissed appeal. We can only conclude that the failure allow conjoined appeals has resulted in the loss of the right to appeal for the allocation of land for housing.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: In the interests of fairness, it would seem appropriate to deal with each case individually and therefore keep individual inquiries separate from examination of objections to local plans.

Marks and Spencer plc: No. The Executive maintains that development plan inquiries should not be linked to the consideration of the merits of planning appeals or called-in planning applications but a developer should not have to present his case twice nor face a refusal solely on prematurity grounds.

Sainsbury's: The primacy of the Development Plan makes it vitally important to ensure that the evidence of all parties is fully tested at both Local Plan Inquiries and Planning Application Inquiries. There should be no difference.

Scottish Coal Co Ltd: Keep separate. Merging will be confusing and will allow too many opportunities to create confusion to shroud the real issues at stake.

Scottish Council for Development and Industry: There is a potential benefit in an appeal being conjoined with a development plan inquiry where the timescales are suitable. However, this option should only be considered where it will not introduce significant delay into the system.

Scottish Landowners Federation: SLF supports the bullet points at paragraph 58.

Tesco: There is merit in considering a site-specific appeal alongside and during the course of a Local Plan Inquiry. In effect the evidence presented to support the Development Plan case would be comparable to that necessary to support a development proposal and it would seem futile to hold two separate Inquiries on the same matter.

Professional organisations

Law Society of Scotland: The Sub-Committee agrees that inquiries into planning appeals and called-in applications could be conjoined if there were good reasons for so doing, but not if that would be likely to result in inordinate delay. Multiple Reporters for such matters sitting on a conjoined inquiry should be expedient. Serious

consideration should be given to the most expedient mechanism for hearing objections to local plans and the public examination of objections to strategic and local development plans in the circumstances of each case.

RTPI: We support the principle for the sake of the clarity of the process and the streamlining of the development plan approval/adoption. The consequences for related planning appeals must be considered, however. Notwithstanding anticipated improvements in the timescale for the completion of reports on local plan inquiries, the proposal for six month expiry of a sisted appeal, where the outcome is dependent on a local plan subject to inquiry, will undoubtedly result in the expiry of the appeal prior to the result of the inquiry. It may be that the proposal for a six month limit to the sisting of an appeal may require to be adjusted in the case of appeals which are dependent on local plan inquiries.

Scottish Planning Consultants Forum: As the consultation paper indicates this tends to make inquiries more complex, less clear in process, discourage public involvement; increase costs and slow decision making. Conjoined inquiries do not deliver economies of scale. The SPCF supports the separation of inquiry types.

Scottish Planning Law and Environmental Law Bar Group: We agree that planning appeals and called in applications ought to be dealt with separately from local plan and strategic plan inquiries for the reasons stated.

Planning consultants, architects and lawyers

Archibald, Campbell & Harley WS: We agree that inquiries into development plans and development control decisions should be separate. To do otherwise raises procedural and legal complexities which should be avoided.

Maclay Murray Spens: In general terms, yes. There may however be particular circumstances where the hearing of the appeal in tandem with the strategic/local plan Inquiry may be appropriate and may assist public participation.

PPCA Ltd: No. Paragraph 60 contradicts the Code which paragraph 59 declares to be appropriate. Conjoining or concurrent running of appeals was and is the developer's only method of dealing with the unfair process whereby authorities can decide not to accept a Reporter's recommendations. The difficulty for appellants in separating the processes is that they are different processes and if the local authority chooses not to accept a recommendation on a particular site to which an appeal also relates, and the appeal is subsequently heard, it is then contrary to s.25. While the local plan Reporter's recommendations are material considerations, there is clearly disadvantage to the appellant in having the matters separated. It is suggested that the practice should be allowed until Reporter's recommendations are made binding. After that, there is no purpose in conjoining such inquiries.

Robert Drysdale Planning Consultancy: We are aware that the separation of application inquiries from local plan inquiries is now established practice. There are both benefits and disadvantages to the conjoining of application inquiries

with local plan inquiries. We have no particular preference either way.

Shepherd and Wedderburn: Our experience of local plans and, in particular, the Midlothian local plan, would suggest that no appeals should be determined as part of the local plan process. It is clear that the considerations applicable to local plan objections and appeals are different and, as a consequence, often evidence led in respect of the appeal is wholly irrelevant to the local plan reporters and some of the local plan evidence is wholly irrelevant to the appeal reporters. Against that background, we would suggest that planning appeals should not be conjoined in any manner whatsoever with local plan inquiries.

Community Councils

Broughty Ferry Community Council: Yes.

Craiglockhart Community Council: It would be better to separate appeals and called-in applications from local plan inquiries to avoid inconsistencies of approach which could create problems. This is an issue that deserves scrutiny in the light of other changes to local plans.

West End Community Council (Edinburgh): Yes.

Voluntary Organisations

Architectural Heritage Society of Scotland: Yes.

Ferryhill Heritage Society: Yes.

Friends of the Earth: It would seem to us that these are different in principle, and therefore should not necessarily have to follow the same

rules and procedures, especially as most communities or members of the public do not attend multiple inquiries. The procedures should be those which best facilitate participation in the specific circumstances.

Historic Environment Advisory Council for Scotland: Yes, although residual applications dependent upon the outcome of the inquiry should be dealt with without delay in the aftermath.

Saltire Society: It was agreed that linking plan-making with Development control could be impracticably complex and confusing.

Scottish Civic Trust: Whilst we appreciate the desire to simplify the process and avoid confusion and lack of clarity, there are times when a planning application carries with it very serious implications for a development plan that might be coming to a LPI. For example, an application for housing in a green belt could have very important repercussions for a green belt policy review in a development plan. Perhaps the use of the more informal hearing to consider the planning application is a mechanism for consideration, as opposed to a full hearing. If a full PLI was requested, then the two processes might be best decoupled.

Individuals

Connal: I agree entirely. My agreement is based on practical considerations, some of which are outlined in para 6. In addition there are good arguments that slightly different considerations apply to the two types of cases and it can be difficult to keep these separate. There are also significant legal arguments for separating the processes. The mental

gymnastics required of a Reporter called upon, on the one hand to decide (or to report to the Executive on) a proposal which is opposed tooth and nail by the planning authority (in the course of which the conduct of that planning authority will inevitably come under scrutiny) and at the same time to report to that self-same planning authority on objections to its Plan, are quite beyond what ought to be regarded as acceptable. It is not *prima facie* a fair procedure.

Hall: Yes.

Lindsay: Although conjoined inquiries can confuse some participants, it does make sense to conjoin Development Plan inquiries and related appeals even if that involves additional administrative effort and, perhaps, separate Reporters to handle each type of inquiry.

Roberts: Yes.

Smith (Robert): Yes.

Stark: Yes. Clarity of purpose is important, especially to lay participants in a local plan inquiry. However, it might be worth exploring the possibility that where an appeal is to follow a local plan inquiry, the same reporter might hear both and might allow some of the evidence led at the first inquiry to be taken into account at the second without the need for its repetition, provided that all parties to the second inquiry could be sufficiently safeguarded.

Watt: Yes.

Question 22 We would welcome views on other options not covered by this paper that could help to make public local inquiries less adversarial but allow them to remain just as robust as the means of taking decisions on major planning proposals.

Local authorities

Aberdeen City Council:

General: We generally support the aims of the paper and in this regard it is considered comprehensive in introducing some potentially useful and beneficial changes to current procedures.

Aberdeenshire Council:

1. General: For the most part for the determining of planning appeals, the planning inquiry system works well in that it is seen to be fair and transparent, the main criticism being the inherent delay. This consultation exercise has examined the problems in the system and will provide the basis for further modifications and improvements which will meet the Executive's aims of ensuring planning inquiries are inclusive yet delivering important decision[s] quickly and efficiently.

2. Role of reporter – local plan inquiries: However, there remains the opportunity to consider different styles of assessment of local plan objections by a reporter auditing the Council's reasoned justification in responding to objections, thereby focusing on the issue of conformity of a local plan to an approved structure plan or any replacement planning guidance.

3. Need for Reporters' Unit to become independent of Executive: Finally, to be seen to be independent of the Scottish Executive and of any other party, further consideration should be

given to the transfer of the Reporters Unit to become a branch of the Judiciary.

Argyll & Bute Council:

Adversarial nature of PLIs: It is difficult to suggest options for appeals to become "less adversarial" as they are investigating the merits of a case and cross-examination is a vital part of that process.

City of Edinburgh Council:

Enhanced use of information technology: CEC believes that there is wider opportunity in the use of electronic communication (see also Qu 7 above) to share information such as statements of case and background papers to assist understanding of the relevant planning issues. For example, each inquiry could have its own web page on the SEIRU's website, with precognitions, core documents and other information. Improved information and transparency can lead to greater understanding and less confrontation in the process.

Clackmannanshire Council:

Local Plan Inquiries: The planning authority should be required to demonstrate that all reasonable steps have been taken to reach a compromise with objectors prior to objections entering into the hearing or inquiry procedure.

Dumfries & Galloway Council:

1. Local Plan Inquiries: The local authority pays the Reporter expenses for Local Plan inquiries and would expect to have a more direct input in respect of the rules and guidance for their organisation than is with the case with other types of planning inquiry.

2. General: In general this local authority supports the Executive's wish to reduce the time and resources taken by Development Plan planning

inquiries. However, it must be recognised that this process is itself to some extent reduced by the also desirable objective of making inquiries more accessible, inclusive and transparent.

East Renfrewshire Council:

General: If we are to have a proper, plan-led planning system then the streamlining and modernisation of the process is essential: not just the PLI process but all the procedures associated with the preparation, approval and adoption of plans to bring them more in line with other public sector planning cycles. The challenge is to do this in a way that encourages public involvement and retains the rights of developers and applicants to have their role. It is essential, however, that the important decisions which face local planning authorities about the future development of their area are not unduly delayed by extensive, formal Public Inquiries, legal challenges and unnecessary legal and procedural delays.

Falkirk Council:

1. Enhanced use of information technology: It is considered that there is an opportunity to share information and to deposit documents electronically by for example having a web page for each inquiry.

2. Guidance on style and format of evidence and statements of case: It is also considered it would be beneficial for the Scottish Executive to issue guidance as to the style and format of evidence and statement of cases that it finds helpful and to identify practices which should be avoided.

Fife Council:

1. Decision letters: Decision letters following inquiries into planning appeals could helpfully include site

plans in addition to the written description of the site and its locational context. This would be more legible for most members of the public and interested parties than a long written description.

2. Clarification of issues and procedures at start of PLI: The PLI should always seek to clarify issues and procedures at the start. This could help avoid duplication, save time and avoid discussion of topics not of direct or fundamental importance. In addition this approach make it easier for third parties to participate and encourage them to do so.

Glasgow City Council: 1. Role of reporters: Reporters should be required to concentrate on the evidence presented by participants and their recommendations should be based on one or other of the participants viewpoints/proposals or a third way agreeable to both the Council and the appellants.

2. More consideration needs to be given to post-inquiry stage: The overall aims of, and proposals from, this review, which seek to reduce timescale and cost, while laudable, could be negated if further consideration is not given to the post-inquiry stage.

3. Challenges to local plans: The present system is unnecessarily time consuming and often open to abuse by objectors unhappy with the outcome of the process. Challenging the process by which a plan has been delivered should not be allowed to be used by objectors as a mechanism to continue their objections to the content of the plan. There is a need for clearer procedures on this matter and for some form of early arbitration to determine the validity or otherwise of a challenge.

4. Procedural changes should be simple to understand: Again, it is important that any changes to inquiry procedure are simple to understand and operate. It would be important to ensure that new procedures do not become onerous on the planning authority.

North Ayrshire Council:

1. Post-inquiry delays: A particular area of concern is the length of time which it takes for Scottish Ministers to determine applications after a Reporter's decision is made. Often (and in our experience usually) the time for the Scottish Ministers to reconsider the Reporter's decision is considerably longer than that taken by the Reporter to complete his decision. As few decisions of the Scottish Ministers vary dramatically from those of Reporters this is surprising. It is understood that there is a fairly complex procedure within the Executive's Planning Division for dissecting Reporter's decisions and preparing further reports to Ministers. It is recommended that this procedure is examined with a view to shortening timescales.

2. Third party rights of appeal: Secondly it is possible that the introduction of third party appeals will create new issues for the Inquiry process. These issues have not been expressly considered in the consultation paper. We feel that they should be.

3. Claims for costs in PLIs: Thirdly, the issue of costs has not been considered. In our experience, developers make a claim for costs at the end of almost every Inquiry. Often considerable Inquiry time is spent in trying to engineer a claim for costs and in evidence bearing on that claim. This can be a complete waste of Inquiry time, particularly where such claims

are rarely ever successful. Moreover the test for costs does not appear to be a level playing field. Much higher standards are expected from local authorities than from appellants, even if those appellants are professionally represented. The spectre of costs can also discourage involvement of members of the public in the Inquiry process. For all these reasons, the availability of costs must be further limited. It should also be made clear that waste of Inquiry time on costs claims which have little if any chance of success, may itself justify a claim for costs.

4. General: In conclusion, while we feel that the proposed reforms will probably produce time and cost savings, they will do little to increase public participation and have the potential to reduce the quality of decisions. If necessary, it would be better to supplement reporters' powers.

Perth and Kinross Council:
Decisions: No issue to raise on the particular matter of less adversarial but robust inquiries, but it is recommended that the reporters issue a "stamped set of plans" when sustaining appeals.

Shetland Islands Council:
Role of reporters: Reporters should play a much more pro-active role and be encouraged to ask probing questions of all parties to establish the salient facts. Reporters should lead the discussion/debate and their decision should be final.

South Ayrshire Council:
Enhanced use of hearings and inquisitorial role for reporters: There should be a fundamental change to the inquiry procedure. Inquiries should not be adversarial but should be in the nature of a hearing where parties state their case before a reporter or

reporters in more complex cases. Legal or procedural issues should be dealt with in advance by written submission.

South Lanarkshire Council:
General: There are a variety of ways inquiries could and should be improved -less legal involvement, better rules and regulations, Reporters who can keep on the subject and prevent legal reps from taking over the inquiry, adhering to timescales for depositing documents and clear outlines of cases, timescales and witness lists before the inquiry begins.

West Dunbartonshire Council:
Enhanced use of hearings and inquisitorial role for reporters: Greater use of hearings and greater inquisitorial powers for reporters seem to offer the best means of reducing the adversarial nature of public local inquiries. Finding a means to limit the extent to which one objector can cross-examine another to dismiss that site in favour of their own would also help to improve the efficiency of public local inquiries.

West Lothian Council:
1. Enforcement notice appeal PLIs: No specific consideration has been given to inquiries into appeals against enforcement notices. It is critical that attention be focused on the procedures and timescales for the determination of such appeals as in many cases it is suspected that the public inquiry procedure may be used as a delaying tactic to allow the operator of unauthorised development or use to continue that use until all procedures are exhausted. In many instances it is felt that hearings set on a shorter timetable may be of greater benefit to the community than public inquiries. West Lothian Council's experience is that the delays frustrations and an ongoing loss in the quality of life by

local residents is one of the major criticisms of the planning process.

2. General: It is agreed that there is certainly scope to make a number of modernising improvements to the procedure and practice of the public local inquiry process. West Lothian Council has and will continue to adopt a disciplined and constructive approach to inquiry procedures and is certainly prepared to renew its commitment so that the planning inquiry system continues to deliver in the interests of Scotland and all of its people.

Western Isles Council:

1. Difficulties of dealing with large projects: Our experience of the appeals and inquiries process has generally been favourable, with one notable and dominating exception: the inquiry into Redland's application for a coastal superquarry at Lingerbay. This experience, and the thought of potential inquiries into large renewable energy projects in the future, raise serious concerns over the ability of the present system to deal efficiently and effectively with very large projects. It is recognised that the Scottish Executive has already responded to the difficulties that surrounded having only one Reporter preside over the Lingerbay planning inquiry. Introduction of more than one Reporter to preside over big cases has already proved positive. The Lingerbay Minerals Review Inquiry in 2001 was presided over by two Reporters and was determined quickly.

2. Post-inquiry delays: However, even after the Reporter's recommendation is submitted to the Scottish Ministers in respect to big proposals, there may follow a considerable period of deliberation by Scottish Executive officials before the

Ministers issue a decision. In this regard the Scottish Executive says "Our objective is to ensure that recent improvements in case processing times by reporters are matched by the process of Ministerial consideration and decision". There is undoubtedly a case for a radical change in the process for very large cases to overcome the kind of unreasonable period of uncertainty, blight and distress that has been experienced at Lingerbay.

3. Role for Parliamentary Committee of Inquiry: A possible way to achieve this would be to bring such cases before a Parliamentary Committee of Inquiry. All parties could submit their cases in writing before such an Inquiry. Reporter(s) and such legal advisor(s) as deemed necessary could advise the Parliamentary Committee. Each party could be asked to attend the Inquiry to answer any questions that the Committee wished to ask. Scottish Executive officials could also be asked to attend to answer questions. As part of its deliberations the Committee would visit the site and hold a local session to ask questions of any locals who had made written representations but could not, reasonably, attend a Committee Inquiry in Edinburgh. This whole process could probably be concluded in an equivalent number of weeks as the months taken for the Lingerbay Inquiry. There should then also be a relatively short period for the Committee to digest its findings and reach a decision.

Public Bodies

Royal Fine Art Commission for Scotland: General Changes in the conduct of PLIs must be seen in the context of a move towards less formal appeals, which may reduce the number of cases subject to formal appeal

through the range of processes covered in the consultation paper.

Scottish Consumer Council:

1. Third Party Right of Appeal – Enhanced Neighbour Notification:

As previously mentioned the SCC takes a wide view of the "consumer" as relating to the planning service. We are therefore in favour of a statutory procedure which would allow third parties the right of appeal as we feel this would help create a more level playing field for all consumers. All persons affected by a planning decision should have the right to appeal against it. It is therefore vital that the extension of third party right of appeal is accompanied by the extension of neighbour notification. Without the provision of appropriate information regarding planning applications consumers will not be able to make informed decisions on how proposals may affect them. The Scottish Executive currently proposes to pass the responsibility of neighbour notification to local authorities. The SCC feels that this would be a timely opportunity to review how members of the public, beyond the immediate neighbours, can be notified of planning applications.

2. Adversarial Nature of PLIs: The SCC has concerns about the adversarial nature of PLIs, particularly in relation to the experiences of third parties, and feels that it is vital that planning inquiries are seen to be independent and impartial. There can be seen to exist an imbalance of experience between planning professionals and third parties. For a third party an inquiry may be a one-off experience, while for planning professionals it will be a regular aspect of their job. The lack of experience of third parties can serve to weaken their case. Third party groups may also be

intimidated by the adversarial nature of planning inquiries. They are often disadvantaged in terms of their lack of experience, and this is particularly detrimental where they are being cross-examined by developers' legal representatives. This raises issues of equality of arms under the European Charter for Human Rights, which states that:

*[Each party must be afforded a reasonable opportunity to present his case - including his evidence -under conditions that do not place him under a substantial disadvantage vis-a-vis his opponent.]*²

3. Mediation: The SCC suggests that greater use of mediation could play a potentially important role in reducing the number of planning cases reaching the inquiry stage. The SCC believes that mediation can offer consumers an accessible, affordable means of resolving their disputes in appropriate cases.³

Scottish Natural Heritage:

Enhance informality at PLIs by requiring parties to remain seated:

A simple way to slightly reduce the adversarial and intimidating nature of PLIs is for all parties to be seated while evidence is being given -by those giving evidence as well as those examining it or cross-examining it. The freedom of the questioner to stand up and move about establishes an inequality when the individual being questioned must remain seated. That inequality can be abused and become intimidating.

The Development Industry

Bett Homes:

Need for fair, accountable decision-making process: Bett homes would not resist the move away from adversarial inquiries, however we

would not wish this process to be any less rigorous / detailed, especially as the outcome of the process has significant impacts on the future land holdings and output of development companies. Removing opportunities to challenge evidence / test policies and decisions would lead in our view to a system that was unreasonable, unfair and with no transparency. This is surely the complete opposite to the current situation of a fair and accountable decision making process, which seeks to encourage investment in communities and stimulate investment. Some may argue this is already changing, with a general presumption against development instead of a presumption in favour of development.

Homes for Scotland:

1. Adversarial nature of PLIs: Homes for Scotland would not resist a presumption in favour of making Inquiries less adversarial. However there are circumstances when the matters before the Inquiry will have a major impact on investment decisions that require to be taken by commercial organisations and indeed there are circumstances where competing commercial interests have to be evaluated against strategic policy objectives. Under those circumstances it is believed that the Reporters can be positively assisted by the testing of evidence using an adversarial approach.

2. Need for fair, accountable decision-making process: An attempt to remove the opportunity to thoroughly test the refusal of planning permission or test the policies of Local Plans, could lay the entire process open to charges that it is unreasonable, unfair and lacking in transparency. The latter charge is often made against the development plan preparation process

and the Inquiry can be seen as the opportunity to redress a wrong. Ultimately what is important is the strength of the case each party present. Although cross-examination can be long winded and repetitive testing of the evidence is fundamental to the process.

Stewart Milne Holdings:

Speed up Local Plan making: The questions asked are only tinkering with the process and by and large ignore the critical issue of Local Plan Inquiries; we need Local Plans to get to Inquiry a lot quicker {within 2 years of work commencing on a Local Plan}; there should be no post-inquiry modifications with Local Plan moving straight to adoption once Council accepts Reporters' recommendation. We also need the Reporters Unit to make sufficient Reporters available to planning authorities for Local Plan Inquiries.

Taylor Woodrow:

1. Need for proactive advice on PLIs for communities and participants: It is considered that PLIs are perceived as more intimidating, than is actually the case. A great deal more work could be undertaken on advising communities and participants on the opportunities for comment and timescales, procedures, etc.

2. Need for early developer engagement with community: It is further considered, that members of the public who object to proposals, in order to substantiate their claims, should seek to resolve their objections with the appellant in the manner which is supported between the applicant and the local planning authority. The public perceive developers as unwilling to listen or engage with the community, this is certainly not the case in TW's case, where we are keen

to address local concerns prior to objections being made.

Walker Group (Scotland) Ltd:

Need for fair, accountable decision-making process: Any attempt to remove the opportunity to thoroughly test the refusal of planning permission or test the policies of a Local Plan, which is often prepared in a less than transparent manner, would not be fair. Ultimately what is important is the strength of the case each party presents. Although cross-examination can be long winded and repetitive testing of the evidence is fundamental to the Inquiry process.

Other Businesses/Business Groups

Federation of Small Businesses in Scotland: General: Our response to this consultation aims, to reflect the Federation's wish to streamline the planning process, by reducing the timescales and bureaucratic and financial burdens which can be associated with the process. In addition we support measures which improve the accessibility and clarity of the system.

Scottish Coal Co Ltd: Need for fair, decision-making process: We acknowledge the aim to make Public Inquiries less adversarial and for there to be more hearings in order to engage the public and to avoid intimidating them or dissuading them entirely from participation in the process. We would not disagree with this. However, as with many things, there needs to be a balance. Be they businesses or householders, all appellants should have the right for their appeal to be given careful consideration and for the issues raised to be properly discussed and analysed. Whilst supportive of

most of the proposed changes and the reasons for those changes, reduction in costs and time for Inquiries must not be made at the expense of the full and proper consideration of appeals.

Scottish Council for Development and Industry:

Provide additional reporter(s)/clerk for complex PLIs: Dependent on the complexity of the inquiry the use of a clerk or more than one reporter could assist with the speed of the inquiry. This could be from an administrative point of view or, where two reporters were used, one could deal with the major items of policy and the other with less contentious objections. Clearly this would have a resourcing implication and we would refer again to our comments on this under Question 20.

Scottish Landowners Federation:

Need for fair decision-making process: SLF agrees with the general thrust that public local enquiries should be made less adversarial, as long as they remain just as robust. By this SLF means that whatever is done, due process, impartial arbitration, transparency and overall fairness must take absolute precedence over every other consideration.

Tesco:

Role of the reporter: We believe Public Local Inquiries will always be adversarial and as one party seeks to challenge the view of another. The Reporter has a key role to play in making the whole situation seem less adversarial simply by being involved in the overall process conversing and liaising with non-professional third parties to assist them in their role. In particular, to give them a clear guide as to what form their evidence should take, when they are to appear and who should cross examine them. We have

not seen situations where third parties do not appear because they do not understand the situation nor do they feel pressured. The environment is such that even a more informal atmosphere were this achievable, would still intimidate any experienced third parties. The Reporter can play a key role in reducing these fears by explaining the process, the parties involved and the role of that third party.

Professional organisations

Law Society of Scotland:

1. Inquisitorial role for reporters:

The Sub-committee, is of the view that modification of the reporters roles would be required to make public local inquiries less adversarial. The reporter should become more pro-active in decision making. This has implications for resources and training but with adequate support it can be achieved.

2. Speed up local plan making: The Sub committee, on the basis of wider consultation, would support more regular local plan making by planning authorities.

Scottish Planning Consultants Forum:

1. Provision for amendment period for submitted precognitions:

A period should be introduced into the procedures that allow amendments to be made to submitted precognitions on matters of fact. This could be just before the precognition is presented. This would contribute to improved speed and clarity.

2. Reporters' decisions at local plan inquiries should be binding:

Reporter's decisions at local plan inquiries should be binding on local authorities. This will promote more confidence in the system, provide

certainty and reinforce the independence of the Reporters' Unit.

Scottish Planning Law and Environmental Law Bar Group:

1. Adversarial nature of PLIs: Our views relating to the use of the word "adversarial" as if it were a pejorative term are noted above. Certain other reforms in terms of the structure and practice of planning inquiries and representation at them have already been suggested.

2. Change role of statutory consultees: We would add that it would be desirable to change the role of statutory consultees such as SNH and HSE to avoid the appearance of bias which still exists at present even after the *Alconbury* decision.

3. Need for Reporters' Unit to become independent of Executive:

We also consider that the SEIRU be hived off and made completely independent rather than be part of the Executive in order to ensure the appearance of impartiality. As noted in an earlier answer, the State is in effect sitting in judgment of the planning process which it brought about. The arbiter of planning merits ought to have no ties with the Executive. Consideration might be given to introducing a separate and specialist Environmental Tribunal to consider planning appeals and called in applications.

Planning consultants, architects and lawyers

Maclay Murray Spens: General:

General we welcome the proposals set out in the Consultation Paper to make the Scottish planning system more accessible but we are of the view that some of the concerns raised (in relation to the present system) are misplaced

and attention instead should be focussed on the more pressing issues to which we have previously referred. Further, while we fully endorse the Scottish Executive objective of streamlining the administrative side of the inquiry process and encouraging greater public involvement we believe that it is imperative that a balanced consideration is given to public involvement and the need to encourage continued economic development.

PPCA Ltd: Adversarial nature of PLIs: There is a suggestion in this paper that the adversarial approach is somehow damaging, intimidating and results in more lengthy inquiries. However, the opposite is the case. Advocates, or solicitors acting as advocates, bring to the inquiry structure and clarity. Their training leads to the avoidance of unnecessary evidence. Many of the flaws in the inquiry process attributed to the adversarial approach are in fact flaws in the procedures or arise because of the conduct of the parties. The outcome of the East Renfrewshire Local Plan inquiry should serve to underline the injustice of the present system. Until that is clearly resolved, there should be no question of procedural changes which might further disadvantage objectors and appellants.

Robert Drysdale Planning Consultancy: Reconsider use of summary precognitions: As one who has appeared as a witness as well as an advocate at many planning inquiries, my greatest concern is the insistence that the witness should read from a summary precognition rather than a full precognition. The giving of evidence is a daunting and draining experience and all reasonable steps should be taken to assist the witness in presenting his or her case as effectively

as possible. The requirement to abbreviate a complex case into 2,000 words is an onerous one and, in my view, inhibits the proper presentation of the case. The requirement should be reviewed.

Shepherd and Wedderburn: Adversarial nature of PLIs: We would suggest that the best way of making public local inquiries more accessible is the manner in which the public are dealt with in the process. The key personnel in that particular matter are the individual reporter appointed to hear the inquiry and the support given in terms of guidance and possibly from the reporters' unit. Our experience is that where individuals and local groups participate in the inquiry they wish to ask searching questions of the witnesses who appear. They want answers to the questions which they pose. We would suggest that if the ability to test local plan proposals through cross-examination are lost, that will be something which individuals and communities will be unhappy with. They often wish to have the opportunity to test council witnesses on the topics that are most relevant to them. We would suggest that if there is a significant body of public objection on a topic and that a considerable number of individuals wish to appear at a local plan inquiry then the Reporter should retain a discretion to allow those people to question the council witnesses. We would suggest that the questioning of council decisions in the local plan making process is fundamental and the public should potentially have a right to properly question the basis on which the decisions have been reached. This further supports the view that a discretion should be retained to allow cross-examination.

Community Councils

Craiglockhart Community Council:

General: There is an obvious tension between the desire for public involvement and the need to remove some of the frustrations of the present system, including the production of documents which are not referred to by participants. Fairness and transparency are not easily achieved through speed and cost cutting. Every effort made to cross check any change for its effect on all those involved in the process is to be commended.

Voluntary Organisations

Architectural Heritage Society of Scotland: Need for new mechanisms to ensure public interest adequately represented:

If the new system is to be robust the underlying consideration informing any proposed changes must be the need to ensure adequate balance of representation of interests in the process. Local Authorities historically have a responsibility to protect the public good. In recent years we have seen an increasing abrogation of that responsibility in favour of the promotion of development interests - not least their own. This means that new procedures, mechanisms and resources need to be identified to enhance public and civic interests in the planning process as a whole. Such public involvement must be of the highest standard, by being relevant, focussed and informed. Too often today it is random, personalised and, because of limited resources, sometimes ill-informed. To achieve an appropriate standard the public interest must have resources that allow it to stand on a par with other interests. Clearly this is not the case at present. As any significant changes must support the inclusion of informed

public opinion, promoting public involvement with, and contribution to, the process of decision-making is essential. This requires positive consideration of the following overarching issues:

- support and promote proactively public involvement that is relevant, focussed and properly informed
- identify and support credible promoters of the public interest that can frame such interest with appropriate expertise and demonstrable financial independence, notably NGOs with established credentials such as ourselves, The Architectural Heritage Society of Scotland
- promote parity between objectors and applicants in all aspects of the planning system, including enhancing the capacity of prospective objectors through the promotion of resources
- establish equality on rights of appeal
- establish a right to call witnesses to ensure appropriate scrutiny of issues .

Clearly these issues encompass matters pertaining to the wider review of the planning system, but none-the-less they have a direct impact on the operations of the PLIs both as they exist today and as they might be modernised.

Ferryhill Heritage Society: General:

People must stand up and be counted. It is essential that the reporter and the legal profession are reminded that most ordinary objectors have no legal experience. Although I can appreciate the idea of a "hearing style" I have yet to be convinced that this would be satisfactory.

Friends of Glasgow West:

Third party right of appeal: We suggest that a complete update should include 3rd party right of appeal.

Friends of Rural Kinross-shire: We fully support the view expressed in the consultative paper that the public inquiry procedure must be robust but there are areas where the procedure could be modified with overall benefit, particularly to the community.

(a) Making Objections and Representations

Whilst there is need for uniformity and clarity, the procedures presently laid down are often difficult for individuals to follow. It must again be emphasised that many members of the public are not particularly articulate and find that the procedure set out in paragraph 11 of the current Code of Practice (September 1996) is difficult to follow and indeed intimidating in itself. Furthermore the form given in the Appendix only makes matters worse. This is the first stage in the process that inhibits some people from presenting a valid matter of concern. It is fortunate that some local authorities accept objections that do not strictly conform to this procedure. i.e. objections can be submitted in the form of a letter. Nevertheless it is essential to look at ways of simplifying the format as it stands at present. The weight accorded to comments by community groups and by individuals needs to be clarified. In the case of neighbours making a joint objection *it* would seem appropriate for this to be given more weight than one individual. If not this must be clearly indicated in the procedure. We understand, maybe incorrectly, that where objections are made by official bodies (such as Community Councils) or organised groups (such as FORK) these are treated as single objections. However these should be considered as

representative of a wider body of community opinion and that should be indicated clearly in the procedure. Clearly the rules should be explicit on this matter.

(b) Documentation

We consider it important that steps are taken to simplify the form of documentation used. The community at large do not understand the thinking behind the many formats used and referred to. 'Productions', 'Core Documents', 'Pre-cognitions', 'Statement of Evidence', 'Statement of Response' etc only serve to cause confusion and are intimidating in themselves. The purpose and value of all of these is not set out in the current procedure and certainly not generally understood and there is a very strong case for rationalising. We suggest that this could be greatly simplified with three documents a 'Statement of Objection', 'Evidence in Support of Objection' and a 'Statement of Response to Objection. - these would be clear and more self explanatory.

(c) Written Submissions Written submissions are often used by individuals to avoid appearing at the inquiry. Although written submissions are given full consideration by the reporter there needs to be a more positive indication given, to those who present objections and comments in this way, that they are not thrust into the background amid the clamour and debate on those matters that are brought to the inquiry for discussion. We believe that it is important to raise the profile of written submissions to give assurance to those who feel unable to attend and present their case to a public inquiry. We recommend that a review be undertaken to simplify inquiry documentation so as to encourage a more positive approach from the community. The Scottish Executive should then seek public comments on these revisions prior to

them being adopted in a modernised procedure.

Third party right of appeal: In the introduction to the consultation paper, paragraph 1, mention is made of the possible introduction to the planning system of a right of third party appeal. Although it does not constitute part of the present consultation process we wish to record our full endorsement of this matter. It is our view that conditions and guidelines must be set regarding, timescales and number of appeals. The introduction of the right of appeal for third parties can only be seen as an important step in correcting an anomaly in the planning system and present a more even playing field

Friends of the Earth: General: We have no other specific proposals to make at this time although we should like to endorse the aspirations for the inquiry system as set out in para 63 of the consultation document. If this consultation process results in a less intimidatory, less formal, as robust, more transparent, more accessible and a more inclusive inquiry system then the consultation will have achieved what it set out to do.

Historic Environment Advisory Council for Scotland: Changes in the conduct of public local inquiries must be seen in the context of a move towards less formal appeals within the legislation controlling the historic environment, which may reduce the number of cases subject to formal appeal through the range of processes covered in the consultation paper.

Planning Aid for Scotland: See suggestions in the general comments section.

Individuals

Connal: General: In taking an overview, however, bear in mind that it is rarely in the interests of the private sector to cause undue difficulty or delay because at the end of the day they are paying for the very expensive team who are involved in the process! Bear in mind also that the general approach of parties bringing out their own cases under the control of an independent party is essentially the process to be found in a very wide variety of decision-making processes, whether these are Courts, specialist tribunals or whatever. The combined experience of all of these systems cannot be entirely wrong!

Cramond: 1. Adversarial nature of PLIs: It would help make inquiries less adversarial if the word 'witness' were dropped. Planning inquiries are about the possible future, not the factual past. No one has seen, heard, or 'witnessed' anything. Equally the word '-evidence' should not be used. Just about the only factual 'evidence' at a planning inquiry is a description of the site and a statement of what is proposed to be done on it. Virtually everything else that is said at a planning inquiry is simply argument about what might or might not happen as a result of approval of the application. It is forecasting, estimating, speculating, contending and disputing. It is about claims and arguments of what might or might not happen in the future: it is not - 'evidence' about what has actually happened in the past. Very little of this argument can properly be regarded as factual.

2. Keeping local plans up-to-date: While not strictly relevant to a consultation on procedures, I wish to suggest that one of the objectives -the

desirability of avoiding inquiries wherever possible -could be achieved if planning authorities kept their plans up to date and made them as clear and easily understood as possible. This would give both developers and possible objectors better guidance and would reduce the number of inquiries and abortive applications by making clear the likelihood of the rejection of particular kinds of application for particular sites and the reasoning behind the plan and the zoning it contains. Given the availability of powerful computer software it should be much easier than formerly to keep plans updated, provided there is adequate survey data and analysis.

3. Third party right of appeal: The introduction to the consultation paper indicates that there is to be a separate consultation about the right of third party appeal. In my day in planning the view was taken that if every objector had a statutory right to appeal against the grant of planning permission, the development would be unable to proceed until that appeal had been determined. Since objectors would have nothing to lose by appealing, a sizeable proportion of development proposals would be delayed. Moreover objections by individuals or tiny minorities, possibly based on selfish or frivolous grounds, could delay the provision of facilities favoured by the elected local authority as being in the overall public benefit. In short one "nimby" could damage -at least by delay - the legitimate interests and needs of the public as a whole. Whatever the view now taken, I should simply make the point that I fully accept that many of those seeking a right of third party appeal are neither selfish nor frivolous, and I suspect many of them are motivated by a genuine belief that individual objectors and small organisations are

disadvantaged by the present system of planning inquiries because they cannot afford to employ professional consultants. I believe however that if the suggestions made above – for full and timely submission of written argument and a greater role for Reporters in directing discussion, concentrating on what is important and relevant, and ensuring that points made by individuals who are not professionally represented are fully examined and clarified – the feeling of disadvantage would be reduced, objectors would feel that the playing field was more level and accordingly the pressure of demand for third party appeals would be less strong.

Smith (Robert): Professionalism of reporters: I have generally been impressed by the standard of Reporters. There are exceptions, of course, such as at Lingerbay where the Reporter seemed to require a great length of time to come to a decision.

Stark:
Adversarial approach and mediation: Adversarial techniques are characterised by avoiding disclosure of potentially damaging information (which the opposition tries hard to winkle out), and by a general unwillingness to negotiate. An unfortunate consequence can be collateral damage to subsequent good relations between parties. In contrast, mediation encourages negotiation and the safe disclosure of information -one of the principal reasons for the confidentiality of mediation sessions, and why a mediator cannot contribute directly to an inquiry.

Watt:
Reporters' decisions at local plan inquiries should be binding: No other suggestions on the main thrust of reducing the adversarial approach in

public local inquiries. However, in relation to the post inquiry process in Local Plan adoption, I have always found it most anomalous that the Reporter's conclusions and recommendations can be ignored by the planning authority. Local objectors' confidence in the system is undermined and scepticism and disenchantment compounded when this is explained to them. There seems no good reason why the report on a local plan inquiry should not be binding on the authority in the same way as decisions on planning appeals are. I appreciate that this issue may not be directly relevant to this consultation, but it should be considered within the overall Review of Strategic Planning and perhaps it has been.

Additional matters raised by respondents to the consultation

Local authorities

Argyll & Bute Council:

1. General Whilst there is a number of potential ways to speed up the process, the process is relatively robust at present and to dilute it on the basis of "speed" rather than "quality" could undermine the credibility of the process. Notwithstanding this no process or procedure is perfect and it is worthwhile to examine options for improvement.

2. Post-inquiry delays: One of the key areas in terms of speed that is missing from the paper is the question of issuing a decision after the case has been heard. As Planning Authorities are urged to make decisions within two months, there may be a case for reporters to issue a decision within a certain time period after the closing of a PLI, particularly where this relates to a Planning Application. The appeals procedure can take too long and the issue of the decisions letter can be

delayed whilst in the hands of the Scottish Executive or Reporter.

North Lanarkshire Council:

The decision: The following comments relate to the written decision following a public inquiry, hearing or written submissions. At present the decision is issued in letter form. It would be more helpful to the planning authority and appellants if the decision was issued as a "notice", similar to that used by local authorities for planning application decisions. Similarly, this should be accompanied by a set of stamped approved plans and sent to both the planning authority and the appellant. Plans can often be altered and amended and it is important to have a definitive set to which the decision relates.

The Development Industry

Homes for Scotland: 1. PLI system must engender confidence: The public inquiry process should be designed to engender confidence in the planning system as a basis for guiding investment decisions. As such the process must be fair and transparent and seen to be independent. The private sector expects the planning system, within the context of economic, social and environmental considerations, to guide and stimulate investment for the future economic well being of Scotland. There is beginning to emerge an impression that planning authorities seek to control and regulate development rather than seeking to stimulate and target investment. The private sector looks to the inquiry system to drive out decisions that are rigorous, transparent and determined by an independent assessment of the cases presented. A public inquiry system that engenders a view that its primary objective is to defend planning authority policy

positions will weaken public confidence. Whatever changes are driven into the system, they must reinforce a sense of independence and rigor on the part of the Reporter.

2. Need for new PLI Code of Practice: In respect of Local Plan Inquiries and in the context of the Scottish Executive's desire to make Reporter's recommendations binding it would seem appropriate to review and update the Code of Practice for Local Plan Inquiries particularly with a view to ensure that decisions are evidence based.

Other Businesses/Business Groups

Scottish Landowners Federation: Professionalism of reporters: SLF would in conclusion like to commend the professionalism of the Reporters who hear planning appeals.

Politicians & public

Lindsay:

The decision: Decision letters following inquiries into planning appeals could helpfully include site plans in addition to the written description of the site and its locational context. This would be more legible for most members of the public and interested parties than a long written description.