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## **REPORT**

**To: Special Infrastructure Committee**

**17 March 2006**

**From: Head of Planning  
Infrastructure Services Department**

### **Planning etc. (Scotland) Bill**

#### **1. Introduction**

**1.1** Attached to this report is an appendix that sets out the Council's provisional response to the Planning etc. (Scotland) Bill. The Communities Committee is presently taking evidence on the Bill. I wrote to the Clerk to the Committee on 6 March 2006, the last day on which representations were to be accepted, setting out the Council's provisional views. I left the way open for amendments to the letter and for further representations in connection with the impact of the Bill's provisions on the Zetland County Council Act 1974.

#### **2. Links to Council Priorities**

**2.1** Members will be aware that the planning system has many facets and touches in one way or another on most aspects of life in Shetland. A satisfactory planning system will help us achieve our four main priorities, namely:

- Sustainable development
- Benefiting people and communities
- Looking after where we live
- Celebrating Shetland's cultural identity

#### **3. The Scottish Executive's Proposals**

**3.1** The proposals are outlined by the Executive as follows:

*"The primary objective of the Bill is to modernise the planning system to make it more efficient and give local people better opportunities to influence the decisions that affect them. It will do this in four distinct ways. First, it will make the planning system fit for purpose by introducing a clearer sense of priority and allowing different types of application to be addressed in different ways. This will make the planning system better able to facilitate delivery of the sustainable growth that Scotland needs. Secondly, it will ensure that the planning system is more efficient by establishing new*

*requirements for the production of development plans that are at the heart of an efficient system that provides certainty for users, and are kept up-to-date. Thirdly, it will be an inclusive system where local people can be more involved in the decisions that affect them and their communities. Fourthly, it seeks to ensure that those making policy will promote development in the most sustainable locations.”*

**4. Draft Council Response**

- 4.1** A draft letter setting out the provisional Council response to the Planning Bill forms Appendix 1.

**5. The Need for Change in Local Practice and Procedures**

- 5.1** There is no doubt that the Planning Bill’s proposals, if implemented, would necessitate substantial changes in the way the Council manages the planning system. The classification of developments into four categories (national, major, local and minor) and the associated introduction of mandatory delegation arrangements and Hearing procedures is one of the more significant examples. These matters are the subject of a separate report.
- 5.2** The Bill introduces the need for planning permission for fish farm developments out to 12 nautical miles. This potentially has implications for the ZCC Act, and the matter has already been raised at the Communities Committee in its hearing of evidence. The subject will require a separate response, raising, as it does, issues which are not just related to planning.

**6. Financial Implications**

- 6.1** This report has no direct financial implications. It is likely that the proposals in the Planning Bill will have financial implications.

**7. Policy and Delegated Authority**

- 7.1** There is no existing policy covering the proposed response and a decision accordingly rests with the Council. Should Members wish to make substantial amendments to the draft response to the Planning Bill, it may be appropriate to delegate the framing of the final response to the Executive Director, Infrastructure Services or his nominee in consultation with the Convener, Chair of Infrastructure Committee, Chair of Planning Sub Committee and Planning Spokesperson.

**8. Conclusions**

- 8.1** The Scottish Executive has introduced to the Scottish Parliament a Planning Bill that contains far-reaching proposals for modernising the present town and country planning system. A draft response is appended to this report.
- 8.2** Even without the prospect of change arising from the proposals in the Bill, there are compelling reasons to review the present arrangements for local Hearings in Shetland. A report recommending changes to the present

arrangements in relation to the Planning Sub Committee is presented at this meeting.

**9. Recommendation**

**9.1** I recommend that the Council:

- a) Endorses, with any amendments felt necessary, the response appended to this report, which was submitted in draft form to the Scottish Parliament on 6 March 2006
- b) Agrees to delegate further work required to elaborate and present the Council's views on the Bill to the Executive Director, Infrastructure Services or his nominee in consultation with the Convener, the Chairs of the Infrastructure Committee and Planning Sub Committee, the Chair of the Marine Development Sub-Committee and the Planning Spokesperson.

Report Number: PL-09-06-d1

## **Provisional Letter to the Communities Committee, Scottish Parliament**

Mr Steve Farrell  
Clerk to the Communities Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Dear Mr Farrell

### **The Planning, etc (Scotland) Bill**

This letter sets out comments from Shetland Islands Council on the proposals contained in *the Planning etc Scotland Bill*. The comments in their present form have been prepared by Council officers and have not yet been endorsed by Councillors. I shall confirm the Council's views, with any amendments to the comments made in this letter, on or after 17 March 2006. The Council reserves the right to add to, or modify, the views expressed in this letter.

In general, the Council welcomes the intention behind the review of the planning system and agrees that we need a system that is fit for purpose, efficient, inclusive and a secure foundation for sustainable development. We believe that the proposals contained within the Bill will move the system firmly in those directions. We also recognise that the details of many of these proposals will be subject to secondary regulation or order prior to implementation.

### **New Act**

The Scottish Executive has proclaimed the Planning Bill as a fresh start for planning that which will reinvigorate the regime so as to deliver a cultural shift in the planning system. If we are to succeed in these laudable aims, then there should be a standalone new Act (rather than one that amends previous Acts) to herald the new dawn. Merely to amend the 1997 Act, as presently proposed, will rightly be seen as tinkering with the existing planning framework and will mean that time will be devoted to interpretation that would be better devoted to implementation.

*Q1 Has consideration been given to a new, comprehensive Act?*

### **National Planning Framework**

We recognise the reality that decisions on nationally significant projects such as motorway extensions, superquarries and the like are typically made by the Scottish Ministers following a public inquiry. In practical terms the proposed new arrangements will largely reflect that reality in those instances where the proposal is not cleared back to the Planning Authority for decision. The fact that a project is nationally significant does not, however, mean that the rights and opinions of local communities can be set aside. This would be directly contrary to the Executive's wish for wider inclusion expressed elsewhere. There is scope

for substantial improvement in the way we as a society take these major decisions. There is a need to establish ground rules for the consideration of national projects, so that the deliberations of Ministers and Parliament can be properly informed and it can be demonstrated that local concerns have been listened to. Issues that arise in this connection include resources of time and expertise available to local communities and the role of local stakeholders in developing parameters for a project and monitoring its subsequent operation.

## **Part 2 - Development Plans –**

Planning authorities will have to exercise their development plan function with the objective of contributing to sustainable development. Whilst this is welcomed, the Council looks forward to further guidance on how the competing elements of economic, social and environmental interests can be addressed.

There appears to be a shift towards the more prescriptive sort of development plan common in many other countries and away from the more flexible approach that has distinguished the British system. Whilst we understand the need for certainty, and are very well aware of the difficulty in reconciling it with flexibility, some regard needs to be had to the realities of the development process. The Council also wonders whether the approach being taken by the Scottish Executive in drafting the Bill is consistent with that in the rest of the UK and whether consistency of that kind is seen as having merit. The Council's main concern, however, is that, in remote rural areas especially, a development plan must be able to cope with opportunities as they arise.

For example, small-scale industrial or commercial developments may come forward on the basis of a particular entrepreneur's enthusiasm; such developments can produce very welcome employment gains. Whilst we shall, of course, continue to allocate land for industrial or commercial development, it is important to allow a degree of flexibility in order to accommodate such windfall proposals. Finally, it is not easy for even the most up-to-date development plan to anticipate technological and funding change, and it is entirely possible that, within a five-year plan period, the conditions for investment in (say) some form of energy development might change significantly. On a related point, we would incidentally observe that there would be merit in bringing developments that are subject to Electricity Act procedures within the same body of legislation as other developments and we think the Draft Bill should address that anomaly.

The development of a national planning framework where the emphasis is on the city within the region may result in peripheral areas, like Shetland, being disadvantaged. We rely on cities (Aberdeen, Edinburgh, Glasgow or Inverness) as transport interchanges, freight hubs, service and supply centres. Consequently, we would welcome the opportunity to be involved in those aspects of planning for these areas relevant to us, as their future development will affect ours.

The emphasis on the primacy of the plan and the engagement of the community in plan formulation are welcomed.

## **Part 3 Development Management**

It is noted that planning permission will be required for fish farming development up to 12 nautical miles. The Council is concerned that, in the drafting of the Bill, no account appears to have been taken of the impact of the Bill on provisions contained within the Zetland

County Council Act that empower this Council to regulate these and other developments. This is a matter that will need to be the subject of further discussion between the Council and the Executive before consideration of the Bill is concluded. However, we would make some brief observations at this point.

It is apparent that planning permission will be required only for fish farming, in other words for just one form of development. There will be no planning control over anything else, for example offshore renewable energy developments. Planning permission may be refused for a fish farm on the grounds of unacceptable visual impact, but wind turbines will not be assessed under the planning regime. This is clearly inconsistent. It is also not possible to deduce from the Bill the arrangements that will apply in relation to the planning status of existing fish farming developments (i.e. whether they will be granted planning permission by virtue of being extant at commencement, or some other, date; whether their planning status will require to be clarified by a certain date; and whether any such consents will be time limited or permanent).

*Q Have the implications of creating a planning regime restricted to only one development type been assessed?*

*Q How can we have a development plan that only covers very limited types of offshore development?*

*Q What consideration has been given to establishing a planning status for existing fish farming developments?*

### **Notification of start/completion of development**

We seek further clarification on the impacts of this proposal. At present, the enforcement regime is largely reactive. The implication of this amendment is that the enforcement regime will be proactive. We may need to check planning applications for suspensive conditions, or be required to ensure compliance with all conditions when the development is notified as completed. Whilst we acknowledge that there will need to be further legislation, we are concerned that pre- and post- development notification may also impose, or lead to a gradual introduction of, a new duty of care for the Council. Whilst we have no problems with the new proposals, such a shift in operational practices will require significant new resources.

*Q Does the Executive believe the provision will create a new duty of care, with the associated resource implications?*

### **Other Provisions**

We would also like to welcome the proposals for standard application forms; the provisions to allow the variation of planning permission; and enabling a notice to be served requiring a planning application to be submitted in cases where development is unauthorised. This will remove the opportunity to get planning permission via an appeal against an enforcement notice.

### **Neighbour Notification**

We welcome in principle the transfer of neighbour notification to local planning authorities. We also agree that it is appropriate to levy an increased fee on planning applications to cover planning authorities' costs. Whilst neighbour notification will undoubtedly involve

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some additional work, our officers presently spend significant amounts of time trying to explain the existing procedures and resolving the complicated issues that can arise where neighbour notification has not been properly carried out. (As an example of how difficult some cases can be, we were censured by the Ombudsman in 1998 for failure to identify incorrect neighbour notification).

We also believe that the system needs overhauling and that it may be appropriate to introduce different types of notification for different scales or types of development. A notification process applicable to a major city centre development may not be appropriate for a minor development in an isolated rural location. In Shetland, the local weekly paper is widely read and is therefore an excellent communication tool; the weekly list is read out on the local radio station. We believe that a prominent site notice and a newspaper advert would be sufficient for most applications in the Shetland context. It should be noted that many isolated, but significant, developments may not require any neighbour notification at all at the moment. Options should be available to suit a range of circumstances, rather than trying to identify one process that fits all scenarios.

*Q Do the revisions allow for local discretion on methods of neighbour notification?*

We note that pre-application consultation will be mandatory for certain classes of development under Section 10. This is welcomed in principle, as many developers treat planning as an afterthought, with the resulting delays often being wrongly attributed to planning departments.

We think further thought needs to be given to the proposal that planning departments may be required to give a commitment to the timescale and outcome of the planning process on behalf of the planning authority. One difficulty with this is that the consideration of planning applications involves consultations, negotiations and decisions by elected members, the outcome of which the planning department cannot guarantee. We appreciate that a more up-to-date development plan, pre-consultations by developers and other measures should help to create greater certainty, but the expectation that this provision will create among developers may prove hard to fulfil. Another problem is that precise allocation of sites for different types of development is difficult or impossible to achieve in rural areas and particularly, we would argue, crofting areas. In our rural areas, we seek to allow maximum flexibility. In practical terms, it is difficult to reconcile that approach with offering the degree of assurance that developers may seek through this provision, at least in the Shetland context.

*Q Will the secondary legislation allow rural authorities to maintain a flexible regime?*

## **Record of Decisions**

We welcome the proposal that planning authorities provide a full record of the relevant factors considered in determining each application and reasons given to the applicant. This is a further step towards a more open and accountable regime.

## **Pre-determination hearings**

We welcome this proposal, which will regulate a process that is already in operation in many authorities. It will make the planning system more obviously compliant with the

European Convention on Human Rights. It should be noted that there will be resource implications for all participants in the process.

### **Scheme of delegation**

We note that this section will, through regulation or order, create a decision making process by officers that will include an appeal to members and that, for certain types of applications, there will be no right of appeal to Scottish Ministers other than in a failure to determine. We understand that these measures are intended to allow rapid determination for more applications, though the details remain to be specified

We also note that there is no proposal for a Third Party Right of Appeal. Shetland Islands Council has taken a more relaxed view of third party appeal provisions than many other contributors to the debate on this topic. This is because we have more than thirty years' experience of operating the relevant provisions under the Zetland County Council Act. We recognise that there is resistance to a comprehensive right of third party appeal and we understand the reasons for that resistance. However, we think there is one combination of circumstances in which a third party right of appeal would be helpful. We suggest that, if a wide right of third party appeal cannot be contemplated, such a right should be available to those who have registered objections to, or observations on, a planning application when a Local Planning Authority has made a decision that is both contrary to the development plan AND contrary to the Planning Officer's advice.

We think that this would provide a safeguard for communities. We believe that, if the other measures proposed in the Bill achieve their purpose, resort to such an appeal should be very rare. Furthermore, to restrict legitimate objectors' rights in such clear cut cases to either legal challenge (at one extreme) or writing to their local newspaper (at the other) is simply not credible, whether in terms of town and country planning or accountable local government in general.

### **Planning Obligations and Good Neighbour Agreements**

We are unclear how Good Neighbour Agreements will operate in conjunction with planning conditions and planning obligations.

*Q Can the Executive provide further details on the relationship between planning conditions, obligations and Good Neighbour Agreements?*

### **Enforcement**

We believe that enforcement is undervalued and the regime is not achieving what it could. It is often the only contact some members of the public have with planning and, it is unfortunate if it does not create a positive impression of an efficient regime, responsive to public demands. The provisions of the Bill do not promote either effectiveness or inclusion, nor do they provide the radical overhaul of the system that is required. Whilst we welcome the proposed Charter, we are concerned that it will serve only to conceal the lack of real reform on the enforcement front. Planning authorities may be reluctant to employ the new temporary stop notice provision in cases where its use is justified because of the risk of an award of compensation.



*Q Whilst we have no objections to the new provision to allow the Scottish Ministers or one of their reporters to correct mistakes in their decision letters, we ask why this sensible approach is not extended to planning authorities?*

### **Explanatory Notes – Financial Memorandum**

In many ways, the Notes and Memorandum which accompany the Bill make the most interesting reading: by identifying the financial implications of the Bill, it highlights the changes in the day-to-day operation of the planning process. For example, it is indicated that there will be a 20% drop in application numbers from amendments to permitted development. However, it must be noted that whilst householder development represents approximately 50% of all applications as a national average, in Shetland householder development represents only 36% of applications. Therefore any reduction in numbers will not have the beneficial impact on resources that, it is suggested, will be enjoyed in other authorities.

With regard to costs, it is openly admitted by the Executive that there is a significant degree of uncertainty in the Ove Arup report, with a variance of up to 20%. There is a reliance on increased fees, and those fees being ring fenced to planning, but the proposals also aim to reduce the number of applications. We note the Scottish Executive's research conclusion that an increase in fees of 34% is appropriate.

The figures seem to indicate a demand for up to 100 planning professionals. We agree that the new Bill will add to existing workloads. We welcome the resources to be made available for training, but we consider that more effort is needed to attract an adequate supply of high-calibre entrants into the planning profession. This needs a concerted approach to the development and expansion of planning education

### **Conclusion**

In principle, we welcome the proposals. However, we wish to make further representations on the extension of the planning regime over aquaculture development and the provisions that will need to be incorporated into the Bill or introduced in secondary legislation to reconcile it with the provisions of the Zetland County Council Act.

We hope that you will find these comments useful and constructive. Should you wish to discuss or clarify any point, please do not hesitate to get in touch with me.

Yours sincerely

Head of Planning





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**REPORT**

**To: Special Infrastructure Committee**

**17 March 2006**

**From: Head of Planning**  
**Infrastructure Services Department**

**TAKING PLANNING DECISIONS: PROPOSALS FOR CHANGE**

**1 Introduction**

- 1.1 Members will recall that, at the Council meeting on 14 September, I presented a report, the immediate purpose of which was to approve a response to the proposals contained in the Scottish Executive's White Paper entitled *Modernising the Planning System*. However, I also drew attention to new procedures for making planning decisions set out in the White Paper, and I suggested that there were compelling reasons for re-examining the way in which we take planning decisions in this authority. It is clear from the Planning etc. (Scotland) Bill, published at the end of 2005 and now before the Scottish Parliament, that the Government intends to follow through the White Paper proposals. This report explains the background and proposes new arrangements.

**2 Links to Council Priorities**

- 2.1 Members will be aware that the planning system has many facets and touches in one way or another on most aspects of life in Shetland. A satisfactory planning system will help us achieve our four main priorities, namely:

- Sustainable development
- Benefiting people and communities
- Looking after where we live
- Celebrating Shetland's cultural identity

It is important that the decision-making which lies at the heart of the system is well-informed, fair and transparent.

**3 Background**

3.1 It is relevant at the outset to quote one of the paragraphs from the White Paper, which draws attention to:

*'the central role of planning in the delivery of a sustainable pattern of economic growth, supported by essential new homes, infrastructure and community facilities, whilst protecting our most important natural assets. [The White Paper] also responds to the need for improved opportunities for meaningful public involvement in the planning system, and for that involvement to occur at the right point in the system to be able to influence outcomes.'*

3.2 Given the proposals in clause 16 of the Bill, which involve (among other changes) a statutory system of delegation to Planning Officers and new arrangements for local Hearings, our procedures for determining planning applications will almost certainly need to change, probably within the next eighteen months or so. However, the need to review them also stems from our present circumstances. In the first place, there are certainly questions to be addressed locally about the ways in which we can ensure that those who should be involved are brought into the process in the right way and at the right time. Secondly, there are issues connected with the Council's role in major developments. There are also, I believe, matters that would benefit from clarification in terms of the way in which we as a Council handle departures from policy. This report analyses the issues involved and sets out some possible ways forward.

## **4 The Issues**

4.1 My first concern is that our procedures for handling departures from the development plan, including the three-stage process possibly culminating in a Hearing, need amending. It may be helpful to set out the steps involved, at present, in dealing with a departure from the Development Plan:

- we identify and advertise the proposal as a potential departure from policy. The departure from policy involved in the proposal may be immediately obvious (for example, a house proposed to be sited in a Local Protection Area) or it may only become apparent some weeks later as the result of analysis by the other Services or external agencies whom we consult. Typically, issues to do with (for example) road safety, drainage, settlement pattern or agricultural land quality may take longer to pin down and there may therefore be some delay in identifying the proposal as a departure from the development plan and advertising it as such;
- in our report to the Sub-Committee, we explain the reasons why we judge that the proposal is a departure. Generally speaking, our recommendation is likely to be refusal, but there are also times when we consider that a departure is justified, in which case we recommend approval. It is conceivable, though very

unlikely, that we might recommend refusal of a proposal that complied with policy, presumably because some aspect had arisen or been drawn to the Council's attention through objections, for example, that the policies concerned had not foreseen;

- If the Sub-Committee wishes to recommend a departure from policy, it refers this to the next Council meeting;
- the Council is then invited either to allow or reject the potential departure from policy; if the proposal is rejected, that is the end of the matter, barring an appeal to the Scottish Ministers;
- If the Council is of the view that there could be allowed a departure from policy, they endorse the Sub-Committee's recommendation, which leaves the way open for a Hearing to be held by the Planning Sub-Committee. The applicant and objectors are invited to present their cases. In this circumstance, the Sub-Committee has delegated powers to determine the application, even though a departure from policy is involved. If a departure is approved, clear reasons must be recorded. If there is no Hearing, the Sub-Committee's earlier recommendation on the application is at this last stage deemed to be final.

4.2 This system, which dates from 1997, was an attempt to reconcile the Council's administrative regulations with the government advice relevant to these matters, which is contained in Planning Advice Note 41. The procedure was the focus of considerable attention, last year, in relation to the development at Hillside, Gulberwick. However, there have been other Hearings recently and they are not an especially rare occurrence. I consider the present system to be cumbersome. Apart from that, input from applicants and objectors occurs only at the very end of the process, which among other things means that some information which might be useful to Members may become available only at the last stage of the process. Although my staff have explained the system repeatedly in reports, meetings and correspondence, it is clear that it is confusing for applicants, objectors and indeed Members. The position is exacerbated by the occurrence of Planning Sub-Committee meetings on a six-weekly cycle, which is another of my concerns; the time taken to reach a decision under these arrangements can stretch to many months. This is frustrating and unsettling for all concerned.

4.3 I have a second concern about Hearings. The purpose of the Hearing is finally to decide whether or not it is appropriate to depart from policy in the light of the representations made at the Hearing by applicants and objectors. Any hearing of this nature, which is charged with the function of taking a final decision on matters that are the subject of an adversarial process, should, to provide the best chance of an objective hearing to all participants, not be simply comprised of the same

members who were involved at earlier stages. If the decision is made by the same Members, the process is susceptible to challenge, particularly if parties allege that the minds of the Members taking part had been made up at an earlier stage and before the final sitting, which under the present arrangement is the first opportunity participants have had to address Members directly.

- 4.4 I have alluded to the lengthy periods of time that elapse between meetings of the Planning Sub-Committee under the Council's present meeting arrangements. I think we need to address this. We are meant to determine planning applications within a two-month period. The vast majority of decisions are made under delegated authority; given adequate staff resources we would expect to be able to make them within a reasonable timescale. However, for those applications that have to go to the Sub-Committee, it is obvious that we have little hope of meeting the target. Delays affect everyone involved in the process and we need to find ways of minimising them. Our recent performance shows a continuing decline and whilst this is in part attributable to the level of staffing resources (a matter on which I have submitted a report to the Chief Executive) it certainly does not help that meetings are so far apart.
- 4.5 My final concern is about the Council's role as partner or co-promoter of major developments. The largest current proposal involves the development of a very large wind farm in Shetland's north-east mainland. The Council will not make the final decision on that development, because it will be submitted to the Scottish Executive under Section 36 of the Electricity Act 1989. However, the Council, as Planning Authority for Shetland, will be consulted by the Scottish Executive on the submitted proposals and will be involved in coordinating local consultation and discussion, in the course of which it should offer objective comment on the proposals and on any concerns raised in public representations. On the other hand, the Council is involved in a joint venture to promote the scheme and is owner of some of the land involved. There are conflicts between all three of these roles, and the Council needs to take all reasonable steps to minimise them. This requirement applies at both Member and Officer level, and in relation to Planning staff means that they must not become involved in providing detailed advice in the course of the development of the proposal, in a quasi-consultant role, if they are otherwise to be involved in giving advice to the Council.
- 4.6 I consider that action to address these difficulties is unavoidable and is needed now. The issue of conflict of interest identified in the preceding paragraph is arguably the most pressing, but in relation to the wider issues I have no wish to see applicants, objectors, communities, Members or my staff struggle with a system for departures that is simply not fit for purpose and which, however well-intentioned, has the capacity to create substantial unnecessary confusion and delay. I can see no alternative to the creation of a smaller Planning Sub-Committee, probably meeting more frequently.

This would produce a system of decision-making that was demonstrably fair, transparent and significantly quicker. It would also allow us to resolve the difficulties entailed by Members' wish to become involved in promoting particular projects.

- 4.7 As I indicated in my earlier report on this subject, there may be potential conflicts of interest arising from Members' role in the Shetland Charitable Trust. Active support for a particular proposal expressed by a Councillor Trustee in that forum may be regarded as incompatible with the particular Member's participation in decisions at the Planning Sub-Committee or indeed at a subsequent Council meeting dealing with a planning decision; in other words, a Member who has expressed support for a proposal in the course of a discussion at the Charitable Trust might be judged to have fettered his or her discretion with regard to the making of a decision at the Planning Sub-Committee. An individual Member who sits on the Planning Sub-Committee is, for Code of Conduct purposes, a member of the Planning Authority at all times, including when he or she is sitting on the Charitable Trust. The detailed consideration of mechanisms to address this will require further deliberation by both Trustees and Members, but I believe it is a significant issue.

## 5 Proposals

- 5.1 I believe that the issues that need to be resolved, and the potential solutions to them, are as follows:

I believe we need to:

*i. Create a committee structure that:*

- 1. Provides the basis for a fair Hearing where one is required*
- 2. Enables the Council and individual Members to separate the role of Planning Authority from the role of developer*
- 3. Makes it much easier for Members to separate the roles of advocate and decision-maker as required by the Code of Conduct*

The essential requirement here is that the initial decision on all planning applications should be taken by a smaller Planning Sub-Committee, but one that has delegated powers to take all decisions other than those involving a policy departure. This would have two consequences. Firstly, it might allow recommendations to depart from policy to be reviewed by Members of the Council who had not been involved in the initial consideration. Secondly, it would enable a greater number of Members who wished to promote particular applications and who are not Members of the Sub-Committee to act openly as an advocate. They would be able to address the Sub-Committee

in the same way as an applicant or an objector. They would be required to leave the Chamber and take no part in voting when the Council was making any necessary final decision on an application. This would not only resolve the difficulty faced by Members wishing to support or oppose an application by a private individual; it would also allow those Members who wish to engage with a particular Council proposal (most obviously the windfarm) to do so on an entirely transparent basis. My initial view is that a Sub-Committee of no more than nine Members, with a quorum of five, would be appropriate. Assuming that the proposal in the Planning Bill for delegation of some decisions to Officers is enacted, and subject to what may be laid down in related regulations, this Sub-Committee could probably also act as the Appeal Committee for cases where an applicant wishes to appeal against an Officer's refusal of permission or the conditions on a permission.

*ii. Establish a simpler, quicker system for dealing with departures from the Development Plan*

I propose that, where objections have been made to a planning application – whether or not the proposals are regarded as a departure from policy – the objectors and the applicant should be invited to present their cases at the meeting of the Planning Sub-Committee at which the application is first considered. Should the Planning Sub-Committee take a decision that is in accordance with policy, it would be final. Should the Sub-Committee wish to recommend a departure from policy, that recommendation would be considered by the Council at the next available meeting; the Council would determine the application and either grant permission as a departure or reject the Sub-Committee's recommendation.

*iii. Hold meetings of the Planning Sub-Committee on a shorter cycle in order to deal more quickly with applications*

A gap of six weeks between meetings (on occasion, seven or eight weeks) makes it even more difficult to meet the statutory target of two months for making planning decisions. Given that only a small proportion of applications comes before the Sub-Committee, it probably doesn't have a huge effect on our measured performance, but (much more importantly) it assuredly does have an effect on applicants and objectors, prolonging their uncertainty and holding up development. I believe that we should arrange meetings of the new, smaller Sub-Committee on a three-weekly basis.



- iv. Seek means to resolve any conflict of roles that may arise from Members' involvement in both the Charitable Trust and the Planning Authority*

It is not easy to see how expressions of support for a project made in the course of Charitable Trust deliberations could be regarded as doing other than fettering the discretion of Members involved in such deliberations if they are subsequently faced with a decision at the Planning Sub-Committee. Means of resolving this will need to be examined.

- 5.2 These proposals are presented in outline at this stage. If Members are minded to pursue them, they will need to be worked up in detail. Assuming agreement is reached, the various written procedures associated with these matters will then need to be revised.

## **6 Financial Implications**

- 6.1 This report has no direct financial implications. However, it is known that the proposals in the Bill will result in significant additional costs, some proportion of which will be incurred in Shetland. We have been involved in some discussions with the Scottish Executive about the resource implications and we expect that there will be further talks.

## **7 Policy and Delegated Authority**

- 7.1 There is no existing policy covering these suggested amendments to Council procedures and a decision to proceed with them will need to be ratified by the Council.

## **8 Conclusions**

- 8.1 There are compelling reasons to revise the procedures applying to the taking of planning decisions. Arrangements need to be put in place to deal with the conflicts of interest that the Council faces in its various roles and to assist Members in meeting the requirements of the Code of Conduct. There is also a need to adapt the decision-making process to ensure that the procedures for dealing with departures from policy are clearer and more straightforward than at present.
- 8.2 This report proposes solutions to these difficulties.

## **9 Recommendation**

- 9.1 I recommend that Members adopt in principle the proposals set out in paragraph 5.1 of this report and instruct me, in consultation with the Head of Legal and Administrative Services, to bring forward for ratification revised versions of the various written procedures needed to give effect to the changes.

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