

Consultation Response

Investing in Planning:
a consultation on
resourcing Scotland's
planning system

May 2024

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31 May 2024



Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Planning Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation: *Investing in Planning: a consultation on resourcing Scotland's planning system* (the "**Consultation**").¹ It has the following comments to put forward for consideration.

Consultation Questions

Working smarter

Question 1. Which assessments might benefit most from improved proportionality?

We have no specific comments to make.

Question 2. To what extent do you agree that processing agreements are an effective tool for creating certainty in planning decision making timescales? Please explain your view.

Partially agree

In general, we consider that these are helpful project management tools for both planning authorities and applicants. Members note that their experiences of using processing agreements can be mixed, although highlight that they can be a useful way for applicants of engaging in early dialogue with the planning authority, and setting realistic timescales for applications to progress within.

As a recurring comment, some of the challenges in this area relate to the deliverability of the agreed timescales within processing agreements; rather than the use of processing agreements in and of themselves. We refer to our comments regarding resourcing elsewhere in the response in this context.

We also refer to our comments on processing agreements in our previous work on planning obligations, discussed at question 5.

¹ [Investing in Planning: a consultation on resourcing Scotland's planning system](#)



Questions 3-4

We have no specific comments to make.

Question 5. What additional actions can we take to improve certainty in the planning process?

We note the discussion regarding the creation of a template Section 75 Agreement Template (paragraph 44, Figure 1). We refer to our previous work in this area, when we undertook a public consultation and related work on the subject of planning obligations in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997.

The purpose of the consultation was to identify an evidence base to support good practice in relation to planning obligations. Based on the evidence received from the consultation and discussion events, we published two papers: (1) [Planning obligations report September 2020](#) (the **Report**); and (2) [Planning obligations summary document September 2020](#).

These papers set out our proposals, based on the evidence gathered through the 31 consultation responses we received and at subsequent discussion events. Our findings and proposals were reported to Scottish Government.

The Report notes in relation to model agreements and house styles:

“Model agreements and in-house styles

- Planning authorities should be encouraged to consult upon and publish a model planning obligation, recognising the need for this to be reviewed regularly and updated as appropriate. It is important that the need for flexibility of the model is recognised as bespoke arrangements may apply, while having regard to the model and reflecting the desired objective of efficiency. The model should be easily accessible on the planning authority’s website. An explanatory note to accompany the model agreement may be needed.
- A Scotland-wide model planning obligation would be difficult to achieve at present due to varying practice and the specificity required in obligations in order to accommodate the circumstances of particular cases. However, it is suggested that standard clauses be developed on a range of matters (such as excluding liability for former owners, ultimate owners and statutory undertakers and registration of planning obligations), the use of which would be optional, but encouraged. Such standard clauses could be incorporated as an Appendix to the replacement Planning Obligations Circular. We would be willing to assist in the preparation of standard clauses.”

We note the current practice in this area, with some standardisation across each planning authority. Members observe that delays in finalising such agreements often do not concern amendments to the boilerplate clauses; instead relating to aspects specific to the development, e.g. phasing and triggers for payment, and

points relating to permitted transactions prior to registration. A template agreement would be limited in the extent to which it could cover off these transactional aspects. Further, we note that the operational clauses will be informed by the Local Development Plan, meaning that they will be specific to the relevant development.

In relation to templates used by each local authority, there would be merit in there being a local agents forum to consult and notify if changes to each precedent document are proposed.

More generally, we note that attention is often paid to section 75 Agreements and the potential issues in this context. We highlight that there are a number of other elements of the process which can significantly impact relevant timescales. For example, a driver of delays can often relate to the discharge of planning conditions. There would be merit in further consideration about how this process can be improved.

Question 6. Do you have further ideas on opportunities for streamlining, alignment or standardisation?

We have no further comments to make.

Question 7. Are there any skills actions which you think should be prioritised?

We note the ongoing legislative and policy developments in relation to biodiversity matters, including the publication of the Scottish Government's *Draft Planning Guidance: Biodiversity* in November 2023, and NatureScot's ongoing work to develop a biodiversity metric. For these proposals to be implemented effectively, there will need to be suitable capacity and availability for professionals skilled in these areas, such as biodiversity consultants and landscape architects.

Question 8. Are there any skills actions not identified which you think would make a significant impact?

We refer to our comments above at question 7.

Question 9. Do you think that the concept of a 'planning hub', modelled on the Building Standards Hub would support authorities and deliver improvement in the system? Please explain your view.

Partially agree

We note the discussion of a "Planning Hub" at pages 19-22 of the Consultation. We generally welcome attempts for greater consistency across different planning authorities, and consider that there could be many benefits to such an approach.

We note the reference to the Building Standards Hub objective to "Increase consistency in the delivery of the verification service across all local authorities" and consider there would be merit in something of a similar vein in the planning context.



We also note that there can be variety between the content uploaded to the various planning portals, meaning that some contain more information than others. Consistency would be welcomed in this area too.

We consider further benefits of a Planning Hub could be to pool resources for specialist functions, such as undertaking retail impact assessments. Similarly, a Planning Hub could also be of assistance by providing assistance to a Local Authority if, for example, it had issues due to temporary staffing pressures caused by illness or recruitment issues.

Questions 10-12

We have no specific comments to make.

Planning fees

Question 13. Do you agree that planning fees should increase annually in line with inflation? Please explain your view.

No view

We note the discussion on the proposed annual inflation increase for planning fees. We do not seek to comment on merit of these policy proposals. We would make the following observations in this context, regarding related practical points.

It is important that the planning system is appropriately resourced. If there is an increase in fees in the model proposed, consideration should be given as to how to ensure that this approach will *directly* benefit how the planning system functions. We echo this sentiment in relation to the proposals for discretionary charges. For example, consideration could be given to whether such fees could be ringfenced for use within the planning system.

We note the proposals relating to fees for planning appeals (pages 29-33). We similarly do not wish to comment on the policy basis of these proposals. We note the following wider considerations in this context, and consider that these proposals raise nuanced questions that require exploration in detail. Consideration should be given to whether this model would impact the attractiveness of carrying out business and development in Scotland. Changes to this model may also require consideration of impacts on the operation of expenses in the planning context, for example should this lead to a process more akin to litigation.

Further, we stress the need to ensure that any changes to the fee model do not present a barrier to effective access to justice for those using the planning system.

Questions 14-21

We refer to our comments above at question 13.



Resourcing other parts of the system

Questions 22-37

We have no specific comments to make.

Cumulative impact

Question 38. Which proposal would you most like to see implemented? Please explain the reason for your answer.

We have no specific comments to make.

Question 39. Do you have other comments on the cumulative impact of the proposals?

As noted above, we draw attention to the potential cumulative impact of these, and related, proposals – and highlight the importance of there being appropriate resourcing, capacity, and forward planning to avoid implementation issues. We also note potential impacts on investment and business planning depending on the interaction and roll-out of the proposals, and thought should be given to this in the context of divergencies from the approach taken elsewhere in the United Kingdom.

Question 40. Do you have other ideas to help resource the planning system? Please set out how you think the proposal could be resourced.

We have no specific comments to make.

Impact assessments

Question 41. Please provide any information on the potential impacts of our proposals to assist with preparation of the following impact assessments:

- Business and Regulatory Impact Assessment
- Equality Impact Assessment
- Islands Communities Impact Assessment
- Children's Rights and Wellbeing Impact Assessment
- Fairer Scotland Duty
- Strategic Environmental Assessment

We have no specific comments to make.



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