



**Friends of  
the Earth  
Scotland**

# **Scotland's Planning System**

## **A Community Guide**

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**When was the first time you came into contact with the planning system? It may have been when you heard about a new house, factory or other development in your local area that would affect you.**

**Since then you may have found that the planning system is large and potentially difficult to understand. This guide is designed to help you use and influence the planning system from a community point of view. What issues you get involved in are up to you; maybe you care about transport, housing, industry or something else that affects your life. This guide will help you know where you can be involved in influencing development and how best do that in your local area.**

# 1. Introducing the Planning System

## 1.1 What is the planning system?

The planning system controls the way in which Scotland's land is used. It does this through laws and legislation that require all (or at least most) new developments to get permission from the local council's planning authority before they are built.

### ...And where did it come from?

The first planning legislation in the UK was the Housing and Town Planning Etc. Act of 1909. Similar legislation was already operating in Germany and Scandinavian countries and the Netherlands passed similar Acts at about the same time. The aim was to improve the living and housing conditions in the growing urban areas. However, the 1909 Act was overtaken by World War 1. There was some planning in Scotland in the 1920s and 1930s, though it was mainly confined to the layout of new suburbs, and there were enormous problems about the scale of compensation that had to be paid to landowners whose development rights were restricted by refusal of planning permissions.

The passing of the 1947 Town and Country Planning Act was a landmark. It became operational in 1948. It made planning mandatory, and overcame the problems of compensation so that an effective system for the control of development could operate. It forms the basis for the system that still exists today.

### Why do we need a planning system?

The free for all development occurring on the outskirts of towns and cities created the need for a planning system. Currie in Edinburgh is an example of a linear or ribbon settlement built along an existing road. There was no planning system that required developers to build new roads so houses were built along existing thoroughways.

The planning system took away the right to develop on your own land.

### How does planning work today?

The planning system (as the name suggests!) requires the Scottish Government and all Scotland's Local Authorities to plan developments for the coming decade or so.

The keystone of the planning system is the statutory (legal) requirement to obtain planning permission for the development or other use of land. It provides a means for planning authorities to control unsuitable development, either by refusing permission, or by granting permission for appropriate development, usually subject to conditions. In general, the legislation allows the council to say yes to developments that fit the plan and no to developments that don't.

In this way development is said to be 'plan-led'.

The main pieces of legislation that create the planning system today are called the *Town and Country Planning (Scotland) Act 1997* and the *Planning etc. (Scotland) Act 2006*.

## What is Development?

Planning is about controlling the location, appearance and environmental impact of 'development'. But what is development in this sense?

There are many dictionary definitions - they all relate to growth, expansion or refining. For the purposes of the planning system development is defined as, 'building, engineering or other operations that take place in, on, over or under the land, or any material change of use of any building or other land.'

This means development could be anything from constructing a landfill site, to building a factory, housing development, superstore or adding an extension to an existing house. It may mean changing the use of a building from a house to a block of flats or a house to shop. Even digging a trench could be considered as the start of development.

The Planning Act 2006 extends the definition of development to include fish farms. Agriculture and forestry is not considered development. This meant the controversial GM crop trials in Scotland did not require planning permission.

Note: Some small low-impact developments are classed as 'permitted development'. These developments do not require planning permission to be built.

## How will the new Planning Act 2006 affect me?

In December 2006 a new planning Bill was given royal assent (became law). The secondary legislation and guidance still has to be prepared and agreed and the consultation process for this can be found in the timetable for implementation available online at: [www.scotland.gov.uk/Topics/Planning/Modernising](http://www.scotland.gov.uk/Topics/Planning/Modernising)

The legislation it has been stated many times by ministers and planning officials at the Government now provides for a more inclusive planning system and a more efficient planning system. There is talk of a new culture change happening in planning.

This new legislation updates the Town and Country Planning (Scotland) Act 1997 and other primary legislation. However the new Planning etc (Scotland) Act 2006 has not come into force straight away. Some of the policies may not come into force for another 2-3 years whilst the secondary legislation that is required is drawn up and published.

### Primary and Secondary Legislation

Primary legislation is the law drawn up by the government and is usually described as an Act. The secondary legislation is drawn up by an authority given power to do so by the government. It assists the implementation of the acts by providing more details and guidance. For example Section 75 of the Planning etc Scotland Act provides for Good Neighbour Agreements while the secondary legislation describes in detail how they will work.

## **Key Features: Planning etc. (Scotland) Act 2006**

The key features of the new Bill as stated by the government are outlined below:

- it will introduce a hierarchy into the planning system, where planning applications will be dealt with differently, depending on whether they are developments of national, major, local or minor significance;
- it will ensure that the next National Planning Framework will deliver developments of national importance;
- it introduces new measures for the quick and reliable processing of major developments;
- decision making and appeals will be devolved to a local level in certain cases;
- the Bill will introduce a statutory duty for development plans to be updated every five years (Ed: some plans are decades old!);
- it introduces a range of measures to promote opportunities for communities to participate in development planning and on individual planning applications, and to ensure that their views are taken into account;
- it sets out new measures to ensure that planning authorities can deal more effectively with breaches of planning control (enforcement).

### **Friends of the Earth Scotland's planning expert analysis**

This is a fair summary of the Act in theory. As much of the implementation and secondary legislation is still to follow we do not know yet if the Act will achieve these statements. The Planning Act does not radically alter the system. The key changes are the introduction of the National Planning Framework, a bit more consultation and emphasis on the development plans.

What the Act does is make it easier for large developments like a new Fourth Bridge or an Edinburgh Airport expansion to gain planning permission. It also gives more weight to the development plans by requiring them to be kept up to date.

The agenda behind the Act was to make local authority planning departments more efficient by making their policies more uniform across Scotland and creating more powerful legislation to enforce national policies. A bigger stick to beat local authorities! For example the Government can now write a development plan for a local authority if it does not produce an acceptable version.

### **Further Reading**

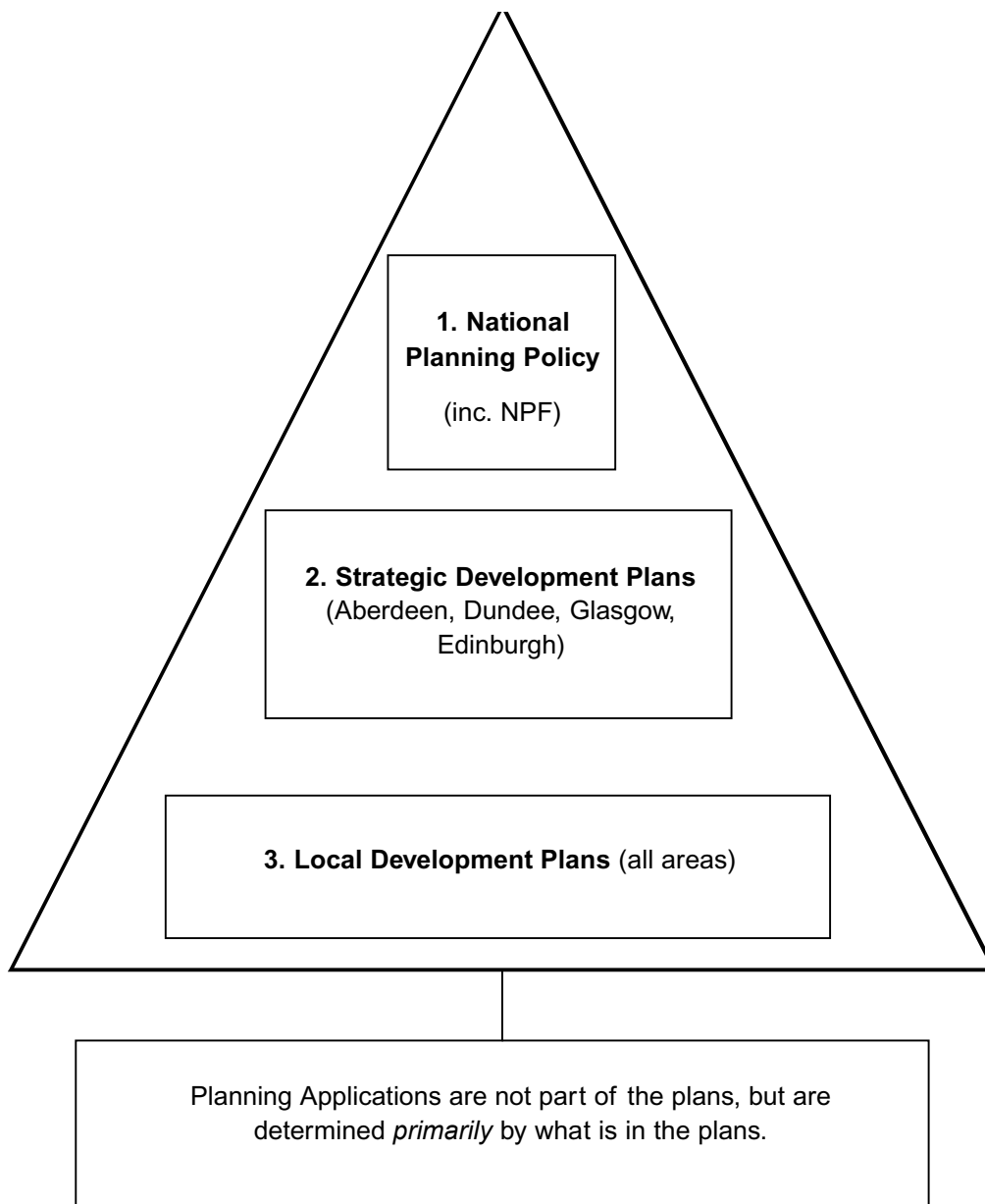
For the text of the new Planning Act 2006 and a brief guide see:  
[www.scotland.gov.uk/Topics/Planning/PolicyLegislation/Legislation](http://www.scotland.gov.uk/Topics/Planning/PolicyLegislation/Legislation)

## 2. Influence the Plans

How do you influence the plans for your local area? This section will give you an overview of what the Planning System looks like and tell you when and where you can make changes.

- **Part 2.1 - A hierarchy of plans:** Here we will look briefly at the different levels of plans in Scotland.
- **Part 2.2 - The system in more detail:** Here we will look in more detail at each level and explore how they affect you.
- **Part 2.3 - Community engagement:** How you can be involved and influence the plans.

### 2.1 A Hierarchy of Plans





## 1. National Planning Policy

These documents include National Planning Policy Guidelines (NPPG), Scottish Planning Policy Guidelines (SPPG) and the National Planning Framework (NPF).

**Developed by:** Scottish Government.

**Approved by:** Scottish Ministers.



## 2. Structure Plans

### ...soon to be Strategic Development Plans

There are currently 17 Structure Plans covering the whole of Scotland(1). These plans set out the Council's general plans for how they will use their land over the following 10-15 years.

Under the new Planning Act, Structure Plans will disappear and Strategic Development Plans centred on Scotland's four major cities will take their place. SDPs will mark out areas for protection, development and regeneration as well as stating key local authority policies on things like transport, environment, communities and housing.

**Developed by:** Groups of local authorities.

**Approved by:** Scottish Ministers.



## 3. Local Plans

### ...soon to be Local Development Plans

Local plans are produced by local authorities and cover the whole of Scotland. They lay down where certain types of development are likely (and unlikely) to be given planning permission.

Under the new Planning Act, Local Plans will be replaced by Local Development Plans. These new plans will have more weight in planning decisions because the plans will be up to date.

**Developed by:** Local Councils.

**Approved by:** Local council.

## Planning Applications

Most new developments need planning consent from the local Council before they can be built. Companies or developers submit planning applications detailing their development plans to the local planning authority for approval.

The new Planning Act will introduce a 'Hierarchy for Planning'. In this hierarchy, the decision processes for small development applications will be different to the decision processes for larger development applications. This hierarchy is summarised below.

**Developed by:** Individual companies/developers/public bodies (e.g. local authorities or Scottish Water)

**Approved by:** Planning officials, Council planning committee, Reporters Inquiry Unit (now DPEA), or Scottish Ministers.



## 2.2 The System in More Detail

### 2.2.1 National Planning Policy

Two key concerns of the Scottish Government are to achieve consistency in decisions and conformity with national policy. They also must comply European law and certain European Directives.

#### Scottish Planning Policy

The Scottish Government produces national policies called Scottish Planning Policies (SPP). There were formally called National Planning Policy Guidelines (NPPG). NPPG's are now being phased out.

Planning officials in Local Authorities must take account of relevant SPPs when preparing a plan or considering a planning application. For example SPP 11 on Open Space and Physical Activity requires local authorities to “take a strategic approach to the provision of sports facilities and to include playing fields within relevant plans and strategies”. Therefore a local plan that does not have a policy that adequately covers this would not be open to challenge at Inquiry.

#### Circulars

Circulars inform a local authority of changes to secondary legislation. Circulars are mainly technical but can be important, e.g. if another law impacts changes and affects the way planning policy should be carried out. For example wildlife protection laws and EIA's (see section 6).

#### Planning Advice Notes (PANs)

The Scottish Government also produces Planning Advice Notes (PANs), which give best practice (as the Government sees it) on how best to deal with matters such as local planning, involving community councils in planning, and controlling the environmental effects of surface mineral workings.

This advice is not statutory, which means Local Authorities do not have to follow it by law but they can be a material consideration (see below).

#### Further Reading

All current SPPs, NPPGs, circulars and PANs can be found at: [www.scotland.gov.uk/Topics/Built-Environment/planning/publications](http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications)

SPP1 has further information on the objectives of the planning system as seen by the Government.



### Campaign Success!

Recently Friends of the Earth Scotland (FoES) raised an objection during West Dumbartonshire's Local plan consultation because they had not included a policy on micro-renewables as required by SPP6: Renewable Energy. It's now there!

FoES campaigns to create national policy that is strong on environmental issues. The public and FoES activists have an important role to play in spotting when local authorities do not implement a national policy like SPP6.

## 2.2.2 National Planning Framework

*“The National Planning Framework is to set out in broad terms how the Scottish Ministers consider that the development and use of land could and should occur”.* SPICe briefing 2006

The National Planning Framework (NPF) is an important national policy document. Since the new Act it is now a legal requirement for Local Authorities to implement relevant parts of the NPF when producing Development Plans.

### Role of the NPF

The role of the NPF is “to guide the spatial development of Scotland to 2025”. This means it sets out the general location of major development and the transport connections between those locations. It is not intended to be a prescriptive blueprint, but will be a key material consideration in framing planning policy and making decisions on planning applications and appeals. It will be taken into account by the Government and its agencies (such as the Scottish Environment Protection Agency or Scottish Natural Heritage) in policy and spending decisions.

### Content of the NPF

As a country-wide strategy document, the NPF identifies specific developments only when developments are considered to be of national importance. It also includes a description of Scotland, the key issues and drivers of change and it sets out a vision for Scotland.

### Why is the NPF important?

The national planning framework process is the most important part of the planning process because it identifies where national developments involving transport, energy and waste will be and where in general they will be situated. It is an exceedingly important document because it includes types of national developments such as large transport projects like airports, railway lines, major waste incinerators. Developments identified in the NPF will still be subject to local enquiries but objectors will not be able to challenge the NEED for them. Once identified in the NPF it seems likely that the principle of development is no longer open to question at planning application or enquiry stage. This however has not been tested.

Before the new Act FoES went to the Public Local Inquiry concerning the construction of the M74 extension through the poorest parts of Glasgow and questioned the need for the new road. Under the new Act it seems likely we will not be able to do this for national developments like a new the Second Fourth Road bridge or an airport expansion.

### Further Reading

The NPF document contains much description. The section with the least waffle is the Annex where the National Developments are identified. You can view the National Planning Framework online at:

[www.scotland.gov.uk/Topics/Planning/national-planning](http://www.scotland.gov.uk/Topics/Planning/national-planning)

## 2.2.3 Structure Plans

### ...soon to be Strategic Development Plans

Strategic Development Plans will replace Structure Plans under the new Planning Act.

### Out with the old...

Under the Town and Country Planning Act 1997 Local Authorities were required to produce Structure Plans and were encouraged to update them every five years. The old Structure Plans covered the whole of Scotland and outlined the Local Authorities outlining their approach to various issues in their area, including Housing, Employment, Environment and Transportation. When Regional Councils were removed in 1996 this created a problem with who should be creating the Structure Plans.

### ...In with the new

The new Strategic Development Plans only cover Scotland's four major city areas (Glasgow, Edinburgh, Aberdeen and Dundee). Groups of nearby local authorities, known as the Strategic Development Planning Authority (SDPA), produce Strategic Plans and are required to update them every 5 years and plan roughly 15 years ahead. For example, Angus, Dundee City, Fife and Perth & Kinross councils jointly produce the Strategic Plan for Dundee.

The idea is to cover the city areas and their hinterlands under direct influence from the city. This is in general, anywhere where city-centre workers might be commuting through.

### What's in a Strategic Development Plan?

A strategic plan sets out policies and plans for the 'big-picture' developments, like large housing developments, supermarkets and landfills. The strategic plans do not address exactly where these developments will be situated. You might know for example that your area will get 3000 houses and roads to service them but you wouldn't know where. For developments this size however, you can often guess where the location will be!

### Why is the Strategic Development Plan important?

Proposals made in this document filter down to the local plan level and affect decisions made on individual applications. There is a presumption in favour of development that is in accordance with the adopted Strategic Plan. In some cases development is planned far in advance so it is a useful strategy to keep an eye on what is proposed in the long term. If you are concerned ask the local authority about how a proposal or policy will address the area's problems.

Housing developers work really hard at the Strategic Plan stage to ensure they have land available to build on.

## 2.2.4 Local Plans

### ...soon to be Local Development Plans

Local Development Plans will replace Local Plans under the new Planning Act.

#### Out with the old...

The Town and Country Planning Act 1997 required all local authorities to produce Local Plans with detailed policies and land identified for housing, industry, conservation and so on for their whole area.

#### ...In with the new

Under the new Planning Act, Local Development Plans must be produced and revised by local authorities every five years. The Local Plans identify site specific developments or land-use and should follow Strategic Development Plan.

#### Why is the Local Development Plan important?

The local development plan guides the recommendations made by the planning officers and decisions made by councillors regarding whether or not applications should be accepted or refused. Technically if a planning application does not contradict any of the local plan policies then it cannot be refused.

*“Each planning application must be considered on its individual merits, although the planning authority must make a decision taking account firstly of the provisions of the relevant development plan and then other material considerations. The planning authority will also consider valid representations made by the public and by consultees.”*

([www.ukplanning.com](http://www.ukplanning.com))

## 2.3 How You Can Be Involved and Influence the Plans

### Community Engagement

In early 2007 a new planning advice note, PAN 81 on community engagement was published. The PAN gives advice on how to engage communities in the planning system. Planning authorities are required to produce a participation statement setting out how they will involve communities in development planning. The language of the new Planning legislation in Scotland and the subsequent PAN on community engagement talks about bringing about a culture change in the planning system. The aim is to increase public participation in the system by enabling people to become involved at an earlier stage. Many people do not get involved in planning issues until a development is actually going to affect them, for instance when someone decides to build a house at the end of someone's garden or a new development is planned on some green space that local people value. The aim of the new system is to encourage people to get involved at the formulation of planning policy stage, helping to shape their local and structure plans.

Look up the new PAN 81 on

[www.scotland.gov.uk/Topics/Built-Environment/planning/publications](http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications)



#### Talking Point

Do you think planning advice notes such as this will help to bring about a culture change within the planning system? How do you think improved community engagement in planning fits in with the other objective of the new planning legislation which is to speed up planning decisions?

## **Opportunities to influence the NPF and development plans**

*“Influencing the Government’s National Planning Framework and your local authority’s development planning just got critical.”*

The new planning system has been described as ‘front-loaded’. This means there is now more emphasis on engaging communities and the public as early as possible. The idea is to allow for a less adversarial planning system where groups are working together to reach agreement by consensus instead of the current situation where developers or the council propose a development and local people must oppose it if they do not agree.

For this front-loaded system to work requires meaningful participation where the views expressed by the community are incorporated fairly into the process of development. It requires communities to understand the how the NPF and development plans are produced and to be actively involved in influencing them early on. ‘Early on’ means before a planning application is submitted and before the immediate threat of a development in the local area.

Under the new system, the capacity for communities to oppose large developments at the planning application stage has been reduced in a sense because of the greater emphasis on the development plans being up to date and providing a stronger framework for the decisions. It is important therefore that you get involved in community consultation processes in the development planning stages. Influencing what’s built, what’s developed and what’s preserved in your local area must now be done earlier.

In section 3 we will describe how you can influence individual planning applications and how the procedures and timings for this process has changed.

## **Where you can influence the planning process**

The Planning Act 2006 brings in new requirements for planning authorities and developers to consult the public. By understanding how the NPF and development plans are produced you can identify where your input will most effectively influence what gets built in Scotland and your local area.

### **The National Planning Framework Process**

The National Planning Framework (NPF) must be reviewed every five years. The ways in which you can input and influence the NPF is detailed in a Participation Statement produced by the Scottish Government.

Identify where you can input into the process on the NPF website:  
[www.scotland.gov.uk/Topics/Planning/national-planning](http://www.scotland.gov.uk/Topics/Planning/national-planning)

## At the Development Plan Stage

NB: 'Development plans' here refers to both Strategic Development Plans and Local Development Plans.

Development plans must be reviewed every 5 years. This means that plans will be more regularly updated, than they were under the 1997 Act. The new development plans will not be completely renewed every 5 years, the focus will be on the changes made since the last plan.

The methods and details of how your local authority will publicise the development plan process and consult on the proposals will be detailed in a Participation Statement. The first of these statements should be published by local authorities in Easter 2009 and must be reviewed every year.

### Main Issues Report

The Main Issues Report is a public consultation document setting out what the local authority thinks the key planning issues are. The Main Issues Report is a chance for you to comment on and influence the focus of the development plans (e.g. declining or increasing population size might be a key issue or ensuring that there are policies to promote sustainable transport systems). This is a very important stage of the consultation for local authorities and for you. The council should be getting "extensive involvement of local people" at this stage (PAN 81 p17).

### Proposed Development Plan

The local authority then produces a proposed development plan after analysis of the comments received. This proposed plan will be made open to public consultation for a minimum of 6 weeks during which comments can be made in the form of representations with material considerations (see Section 3).

After the period of representation closes the local authority may modify the plan. If these modifications are significant then the modified plan will enter another period of consultation.

The proposed plan will then pass to Scottish Ministers for approval, amendment or rejection.

If representations made during the proposed development plan consultation are not taken account of in the development plans, (ie objections are still outstanding), Scottish Ministers must appoint someone (presumably a Reporter) to examine the plan and check the local authority followed its participation statement. What constitutes 'taken account of' remains ambiguous.

## Further Information

There is more important information about public consultation, your opportunities and what to look out for in Planning Advice Note 81: Community Engagement.

[www.scotland.gov.uk/Topics/Built-Environment/planning/publications](http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications)

## Some useful planning terms

- *Planning Proposal*: a planning proposal is a developer's description and plans for their development that are put forward before an application is made.
- *Planning Application*: a planning application is the document containing the details and plans for a development. This document is available to view at council offices.
- *Planning Permission*: formal approval sought from a council, often granted with conditions, allowing a proposed development to proceed. Permission may be sought in principle through outline planning applications, or be sought in detail through full planning applications.
- *Planning Committee*: elected councillors take decisions on planning applications. The full council rarely takes the decision but delegates it to a planning committee on which some councillors sit.
- *Planning officer*: a person employed by the local authority to work in the planning department.
- *Determination*: the process by which a local planning authority reaches a decision on a planning application.
- *Neighbour notice*: a letter to residents next to or within 20m of a proposed development boundary. This letter is sent once the local authority receives a planning application and contains the deadline for formal objections.
- *Call-in*: Scottish Ministers can "call in" certain planning applications so that they determine the application instead of the local planning authority.
- *Delegated Powers*: a power conferred to planning officers by locally elected councillors so that the officers may take decisions on an application.



## 3. Influence an Application

You will now be familiar (or maybe totally confused!) with why we have a planning system, what constitutes development in the planning system and the role of the development plan. Let us now look at development management - this is the new name for development control. Development management concerns the management and assessment of planning applications.

### 3.1 Planning Applications

Once it has been ascertained that planning permission is required for a particular development, the developer will apply to the local authority for planning permission. This is the time when most people first come into contact with the planning system, when they are forced to respond to an unwanted development. This section will look at the application and objection part of the planning process.

#### The planning hierarchy

A hierarchy is a system of ranking and organising things. The new Planning Act has created a hierarchy of development. This hierarchy organises planning applications into four types:

- 1. National Developments:** developments that affect the whole of Scotland or at least a major section of the country. These developments are identified in the National Planning Framework. Examples may include large water treatment plants, large waste facilities, trunk roads and transport schemes.
- 2. Major Developments:** large-scale developments that are not of national importance. Examples include shopping centres, business parks, recycling facilities and large-scale housing schemes. The proposed definitions of major developments are in The Town and County Planning (Hierarchy of Developments) (Scotland) Regulations 2007 under consultation until 21 March 2008.
- 3. Local Developments:** medium-scale developments that require planning permission but which are not considered to be national or major developments. For example smaller housing schemes, commercial developments and some householder developments.
- 4. Minor Developments:** small developments considered to have little impact on their surroundings. Minor developments do not require planning permission. Examples are likely to include small extensions, new access roads, satellite dishes and solar panels.

#### Why a hierarchy?

Previously all applications went through the same basic process regardless of their size and complexity. This new hierarchy has been designed to make the planning system more efficient by, for example, allowing smaller applications to be delegated to planning officials as opposed to the elected planning committee. The hierarchy has come under criticism for taking away the public's rights to oppose a large national development at the development plan and application stages.

## 3.2 Different ways to influence what happens

### 1. Making representations

Once a planning application is made you have a legal right to object to (or support) any application for planning permission with a representation. This is an important way of stopping harmful development and probably the easiest in terms of the amount of time you will have to spend on it. However it is a very reactive process (meaning you have to respond quickly to applications coming in). The drawback is it doesn't give you much scope to influence things as much of what can be influenced has already been set out in different policies and in the development plans.

(NB the new legislation has helped in terms of increasing the amount of time you have to respond to an application from 14 days to 21).

### 2. Getting involved in consultations

#### Development plan consultations

You can on the other hand get involved much earlier in the process by getting involved in consultation processes on a development plan. The advantages of getting involved at this stage is that if you do manage to influence a local plan policy then effectively you will influence more planning applications. You will also have more time for considering what you want to say, because local plan consultations are held over a longer time period. However you will probably have to have more staying power as it can take months possibly years for the whole development plan preparation to take place.

Making your views heard at this stage allows you to suggest an alternative development or alternative land-use. It is important at this stage to 'know what you want, as well as what you don't.'

#### Planning policy and legislation consultations

New planning policy and legislation is always being prepared and updated. Understanding the proposed legislation can be complex but if there is a particular issue that affects you, for example housing or landfills, commenting at this stage could be very powerful. It is unlikely however that the primary legislation will change in the next few years as the new planning Act is so recent and had cross party support when it was passed. Unfortunately the political opportunity for campaigning for Third Party Right of Appeal has passed and it is unlikely that there will be another for a while, but it is always worth keeping up a dialogue with your MSP about issues such as this.

### FoES Campaign: Micro-renewables for new developments

Friends of the Earth Scotland has successfully lobbied for a national planning policy on micro-renewables. FoES and many of our members sent in written responses to the Scottish Government's consultation on SPP6 (Scottish Planning Policy on renewable energy) to ensure that the policy was a strong one. The result is that things like solar panels and biomass boilers should now be included in new housing and office developments (above a certain size) across Scotland, as a way of reducing climate change emissions from those developments.

## Consultations and Written Representations: What's the difference?

Consultation is used to describe quite a few different things in the planning system. The main distinction is between informal consultations and a formal written objection. We believe both types of consultation are useful. It is important however to understand the difference.

During less formal consultation you can express your feelings about a development. Informal consultations could involve discussions with planners or views aired during a community consultation event. This type of consultation process encourages a long term dialogue and is important in building relationships and understanding as well as 'getting your voice heard'.

Formal written objections are referred to in this document as 'representations' and can only be made during certain times in the application process. When you use material considerations as arguments there is a statutory requirement for your views to be taken account of in the decision process. Once you submit a valid written representation you are 'in the system' and will be informed of decisions and can be involved with hearings and inquiries.

### 3.3 Pre-application Consultations

For large developments, developers are encouraged to start the process of negotiation with the public before they submit the application for planning permission. This will take place in the form of a statutory pre-application consultation with local communities for all national and major developments and developments listed in Schedule 1 of the proposed Development Management Procedure Regulations (e.g. development on greenbelt or housing greater than 5 units where not in the plan).

In pre-application consultation developers are required to:

- consult the community council
- publish a notice in a local paper advertising the proposed development and public meeting
- convene at least one public meeting

The local Authority can require developers to go further. The Scottish Government will produce guidance to Local Authorities on what kinds of consultation they should require from developers above the minimum stated here.

Developers must submit a pre-application report to the local authority along with the planning application. This must include a report of the representations made and how (if at all) the proposal has been altered as a result.

## 3.4 Representations

### Writing a Representation

When presenting arguments to a planning authority you must put them in writing (keeping a copy for your own reference) preferably typed. Emails count as writing. Before objecting you should find out as much as you can about the proposed development.

You will have a set amount of time in which to submit formal comments to the Director of Planning. This will normally be 21 days and should be advertised in a local paper and any neighbour notices.

You should also write to the Planning Committee and to your Councillor to obtain their support for your objection. Councils must make a decision within a set timeframe depending on where in the hierarchy the development sits (during this period of course, objections and lobbying can continue).

#### Sample letter to the Planning Department

[Your Address]

[Date]

[Name and address of council]

[Reference number of planning application]

Dear [Director of Planning],

Application for Energy from Waste (Incinerator)  
plant at Greenfield, Anytown, Scotland

I wish to object to the above proposal on the following grounds.

1. The land is not identified as land for waste disposal facilities in the current Structure Plan
2. The development will degrade the local park amenity
3. The development will lead to increased traffic in the area creating safety and noise issues.
4. Waste will be transported to this development from a wide geographical area. This is inconsistent with the Proximity Principle.

I should be grateful if you would acknowledge this letter and take all my points into consideration before making any decision.

Yours faithfully,

[You]

Beware, some controversial applications are made just before the Christmas holiday period, or at other difficult times. However, it is possible to ask for more time for representations to be made. As well as writing to the council Director of Planning, a 'shocked, we need more time' article in the local paper works well. However it is much more effective to develop good relations with planning officers and councillors so using the media may count against you in the long term.

If you know of other people who oppose a development, work with them to write to the local authority. Be sure to all write individual letters (petitions and pro forma letters can be treated as one representation by local authorities).

If you agree with a development or feel that the council have made a good decision let them know. This places you in stronger position if you do later oppose a development. You are more likely to develop good relations with planning officials if you are not viewed as "anti development" or "NIMBY".

Support your objection with as much sound evidence about the environmental effects of the proposal as you can gather, rather than just expressing 'opinions', however valid they may be. It is important that you concentrate on planning matters. Arguments that must be taken account of by planning officers are called 'material considerations' and are detailed in the next section.

## 3.5 Material considerations

Those factors that have to be taken into account by planning authorities when making decisions are called 'material considerations', and are extremely useful for objectors and proponents of planning applications. We have detailed the most important 'material considerations' here to give you some ideas. Essentially these are other factors outwith the 'development plan' such as:

government policy and guidance, for example Scottish Planning Policy (SPP) and Planning Advice Notes (PANs).

- views of statutory consultees
- public representations
- planning history of the site
- availability of infrastructure, roads, sewer capacity etc
- impact on the surrounding area
- impact on the natural and built environment
- conditions attached to satisfy needs of the development plan

Representations must not be emotive as objections of this nature receive no consideration whatsoever. Arguments that a development will result in property or land losing value are normally viewed as insufficient grounds for objection. Similarly, objecting on grounds of loss of view is not a valid planning consideration. However, Councillors will be swayed by an angry community on many other grounds.

For example, the basis of your objection may be that:

- the proposal runs contrary to the Local or Structure Plan – quote the council's own commitments back to them.
- the impact on homes and other buildings in your local area (e.g.. Will it ruin the visual appearance of the general area? Will the development be noisy or cause unpleasant smells? Will it affect the access of nearby houses to daylight and privacy?)
- the impact on traffic (e.g. Will the development increase traffic levels or create problems with road safety or parking? How will it affect pedestrians and cyclists?)
- the impact on local infrastructure (e.g. Can local infrastructure cope with the development? Will sewerage facilities, roads, schools, shops etc be adequate if the development goes ahead?).

## 3.5 What happens to your representation

In general, planning officials assess the application against the development plans and national guidelines, along with representation and objections from consultees and the public. Planning officials will then make a recommendation to the Planning Committee, which makes the decision as to whether to grant or refuse planning permission.

This procedure is different for smaller local developments. Under the Planning Act 2006, applications for these developments can be determined by planning officials. This is to lessen the load on the Councillors who sit on the Planning Committee.



### Talking Point

What do you think is the implication of transferring the determination of local applications to officers?

### Statutory Consultees

Along with views from the public, planning officials and the planning committee must consider views from other organisations called statutory consultees. Statutory consultee views are sought because they have specific expertise in a certain area.

Some examples of Statutory consultees are

- Scottish Natural Heritage
- Scottish Environment Protection Agency
- Local Authority Transportation Department
- Local Community Council

This is not an exhaustive list and will vary from time to time depending on site conditions and locality. For instance on some occasions Historic Scotland may be consulted if there is any indication that there may be areas of historic interest, scheduled or unscheduled on or near the site which may be affected by the development.

Statutory consultees reply directly to the Planning Department of the Local Authority. This is the same procedure that the public follow although with a different timescale attached.

Points made by consultees are then considered by the planning team and finally the Director of Planning is in a position to write a report containing a recommendation to be placed on the Agenda of the Planning Committee.

## Your right to object to development

Anyone has the right in principle to make an objection or a representation on a planning application although to have any effect they must be framed in terms relevant to Planning Law or to policy contained within the Local Authority Plans.

If the Local Authority refuses planning consent the developer has the right to appeal this decision. If the Local Authority grants planning consent the public have no right of appeal. This seemingly unfair imbalance arose through the historic right to develop your land. In 1947 the Town and Country Planning Act effectively removed this right to develop replacing it with the right to appeal a refusal of planning permission.

During the creation and consultation of the Planning Etc. Act 2006 Friends of the Earth Scotland and many other organisations campaigned for Third Party Right of Appeal (TPRA). TPRA would provide the public with the same rights as the developer. Unfortunately TPRA has not been included in the Planning Act 2006.

Appeals against the refusal of planning permission are covered in Section 4.

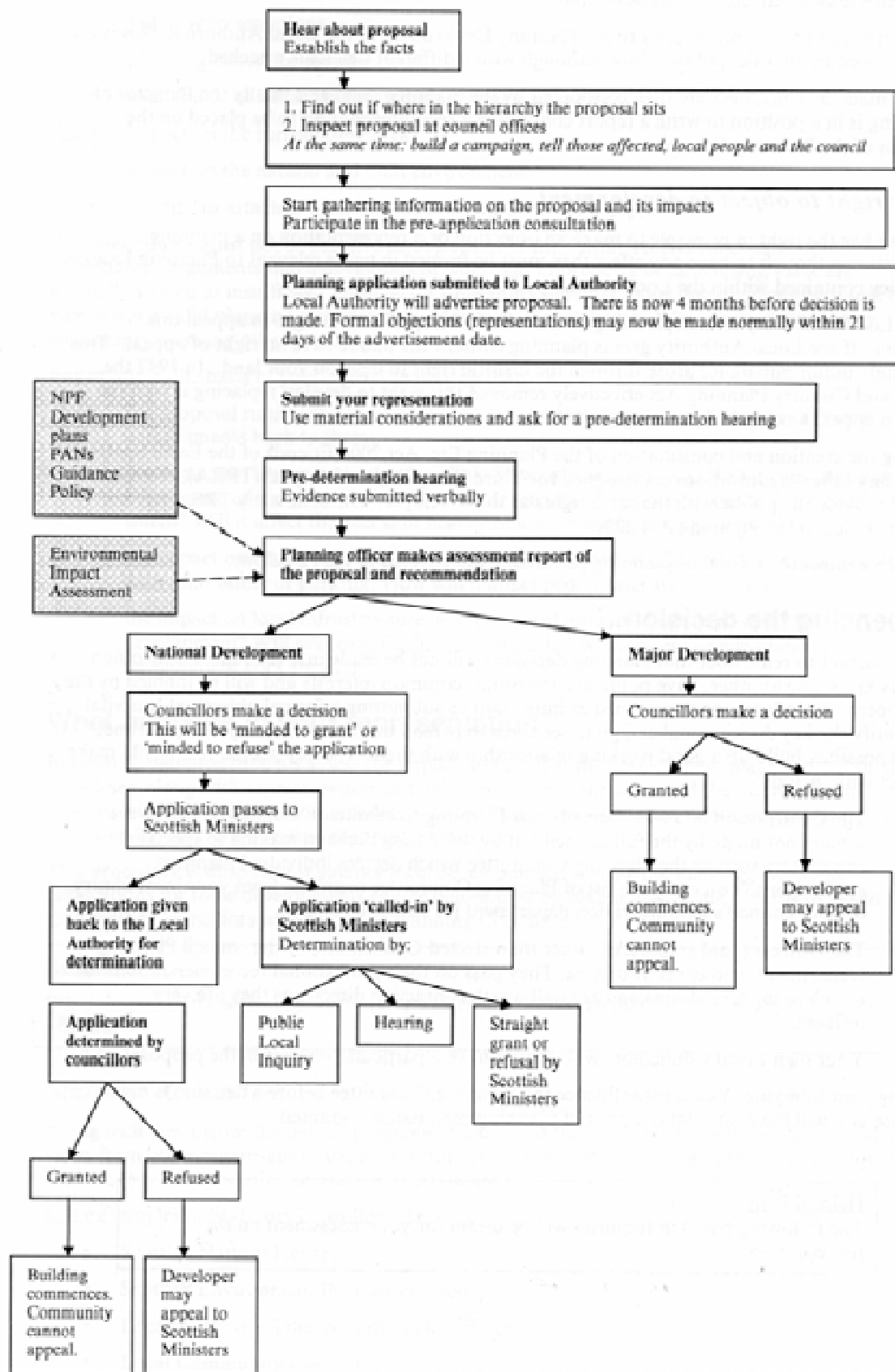
## 3.6 Influencing the decision

It's important to remember that planning decisions will not be made in a vacuum. The decision makers know one another, have political friendships, common interests and will be lobbied by the developers – so influencing them is just as important as submitting a formal objection! It is vital to identify the key decision makers, go to see them in person to let them know your views and, where possible, build up a good working relationship with them. The key people you would make contact with include:

- The Chairperson and Members of your Planning Committees. Council decisions are usually not made by the full council but by delegating decision making to specialist committees such as the Planning Committee which decides individual planning applications. You can get a list of Planning Committee members from your local library or your council's administration department [or their website].
- The Officers (paid employees rather than elected Councillors) of the council Planning Department who cover your area. They pass on their professional recommendations to the Planning Committee and are well worth contacting directly as they are very influential.
- Your own Local Councillors who should have a particular interest in the proposal.

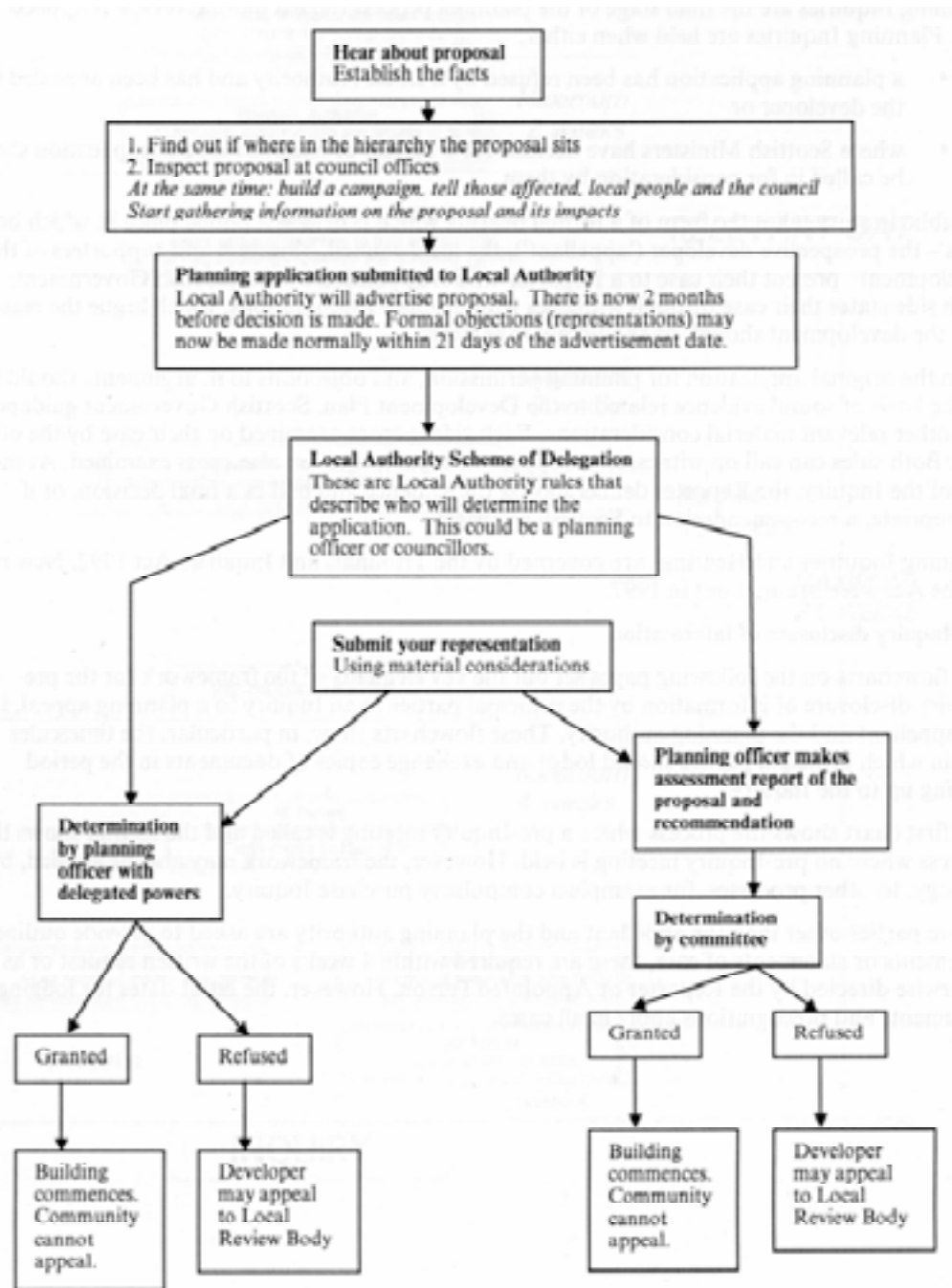
Timing your lobbying: You must influence the Planning Committee before a decision is made because you will have no right of appeal if planning permission is granted.

### 3.6 The Application Process: National and Major Developments





### 3.7 The Application Process: Local Developments





## 4. Planning Inquiries

**Planning Inquiries are the final stage of the planning process (unless judicial review is applied for). If you are involved in an inquiry or are considering getting involved this section will be useful to you.**

### 4.1 What is a Planning Inquiry?

Planning Inquiries are held when either:

- a planning application has been refused by a Local Authority and has been appealed by the developer or
- where Scottish Ministers have decided for a variety of reasons that the application should be called in for consideration by them.

A Public Inquiry takes the form of a formal hearing which is held in a public place in which both sides – the prospective developer ('appellant'), the local council, objectors and supporters of the development– present their case to a Reporter who is appointed by the Scottish Government. Each side states their case through witnesses who produce Precognitions, which argue the reasons why the development should, or should not take place.

As in the original application for planning permission, and objections to it, arguments should be on the basis of sound evidence related to the Development Plan, Scottish Government guidance and other relevant material considerations. Each side is cross-examined on their case by the other side. Both sides can call on witnesses to support their case, who are also cross examined. At the end of the Inquiry, the Reporter deliberates on the evidence and makes a final decision, or if appropriate, a recommendation to Scottish ministers.

Planning Inquiries and Hearings are governed by the Tribunals and Inquiries Act 1992. New rules on the Act were brought out in 1997.

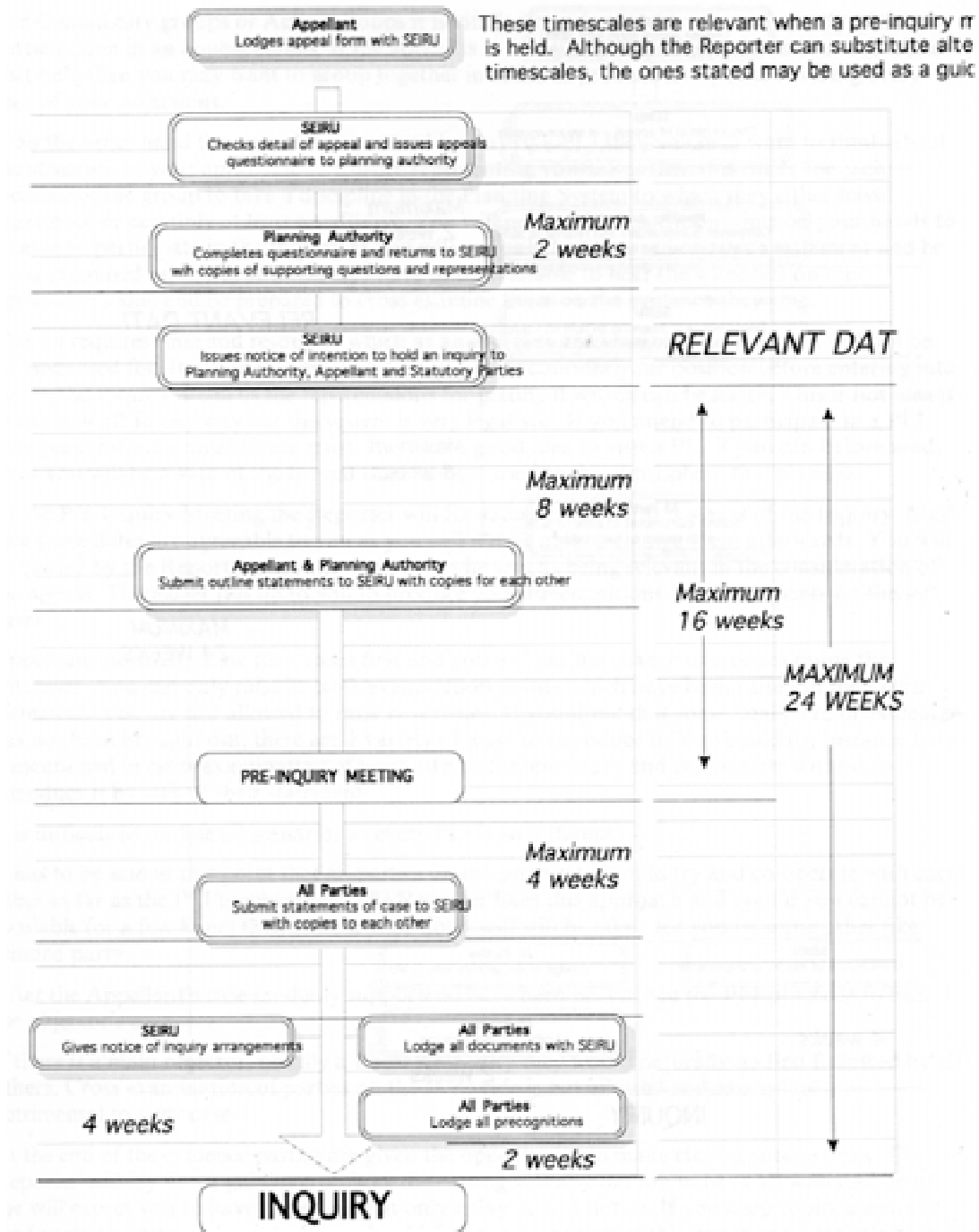
#### **Pre-Inquiry disclosure of information**

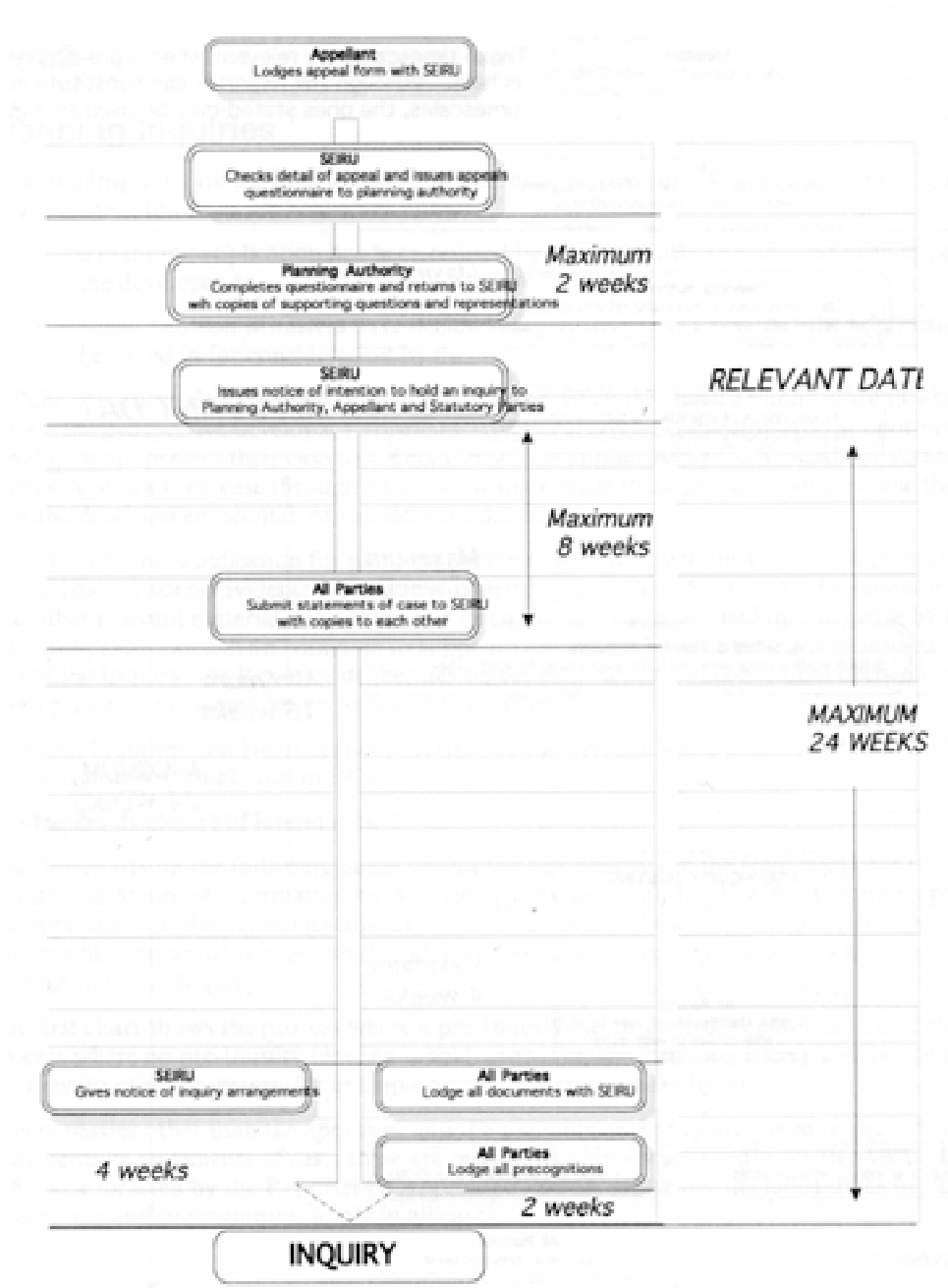
The flowcharts on the following pages set out the key elements of the framework for the pre-Inquiry disclosure of information by the principal parties to an Inquiry to a planning appeal, i.e. the appellant and the planning authority. These flowcharts show, in particular, the timescales within which principal parties should lodge and exchange copies of documents in the period leading up to the Inquiry.

The first chart shows the process where a pre-Inquiry meeting is called and the second shows the process where no pre-Inquiry meeting is held. However, the framework may also be applied, by analogy, to other processes, for example a compulsory purchase Inquiry.

Where parties other than the appellant and the planning authority are asked to provide outline statements or statements of case, these are required within 4 weeks of the written request or as otherwise directed by the Reporter or Appointed Person. However, the latest dates for lodging documents and precognitions apply in all cases.

## 4.2 Planning Inquiry Timetables





## 4.2 Public Inquiries: The community view

The new rules concerning Public Local Inquiries (PLI) brought out in 1997 outline the procedure to be undertaken by all the various parties. Parties are expected to adhere to the timescales laid down and to assist the Reporter in assuring that the case is clearly focussed on the issue thereby eliminating repetitious and irrelevant evidence. Figure 5.1 gives flowcharts which detail the timescales involved in arranging an Inquiry.

For Community groups or Action groups it is vitally important to be aware of exactly what participation in an appeal entails. If the appeal is to be by way of written submissions and a site visit only then you may want to group together in order to produce a response covering every area of your objections.

If on the other hand the appeal is to proceed by way of a PLI then you may want to think about the structure of your approach. If you are representing yourselves then it is easier for each member of the group to take a discipline in the Planning System to which they either have experience or certainly at least an affinity. You will need to have sufficient time on your hands to be able to participate in the Inquiry as you will not only have to read out your statement and be cross examined on it, but you will also have to be available to hear the witnesses on the opposition's side and be prepared to cross examine them on the evidence they give.

This all requires time and resources which as an ordinary member of the public you will not be recompensed for. It is vitally important that you fully consider your position before entering into the Public Inquiry arena as the repercussions for getting it wrong can be harsh. This is not meant to put you off in any way but the system is very legalistic. If you intend to participate in a PLI then preparation is an absolute must. It is also a good idea to visit a PLI if you can beforehand, so as you will be aware of the format used and get used to the atmosphere that prevails.

At the Pre-Inquiry Meeting the Reporter will fix dates for the various stages of the Inquiry. Make sure these dates are agreeable to you as you will not be able to change them afterwards. You will be guided by the Reporter as to the main issues he sees as being relevant in the consideration of the appeal. Thereafter it is up to you to produce your Precognitions and Documents on the set dates.

Appellants normally state their cases first and you will get the chance to cross examine the witnesses. You can only raise in cross examination points which have been raised in their own statement. You are not allowed to raise new issues. If you think that some vital piece of evidence has not been brought out, there are a variety of ways to introduce it. You could for instance have it mentioned in cross examination of your own document or try and get another witness to introduce it by way of their statement.

It is difficult to outline all scenarios as every PLI is so different.

It has to be said at this point that all parties on the same side should try and co-operate with each other as far as the PLI is concerned. The Reporter likes this approach and even if you cannot be available for a few hours then at least your notes will still be taken for you by some other like minded party.

If there is a main objector, usually a Local Authority they would naturally go first followed by all others. Cross examination of parties on the same side is not allowed and can in fact be detrimental to your case.

At the end of the evidence parties are given the opportunity to make closing submissions. The Reporter will lay down guidance on how the closing submissions are to be dealt with and he or she will expect you to have these ready at only a day or so's notice. If you keep copious notes of the Inquiry as it goes along then you should find the formation of this document relatively easy. It is not supposed to be a lengthy document but should briefly summarise the main points of the case as it has emerged from evidence, cross examination and re-examination.

Site visits are also likely to be undertaken at the end of a PLI although you can be assured that the Reporter will have made visits him or herself once, if not twice before commencement of the Inquiry.

After closing submissions, you then wait on the outcome from the Scottish Government. Generally the Reporter is allowed three days writing up time for every day of the Inquiry but that is almost always flexible.

You can make enquiries regarding progress to the Reporter's Assistant (never the Reporter directly) at [DPEA@scotland.gsi.gov.uk](mailto:DPEA@scotland.gsi.gov.uk).

A Scotland Office publication called Circular 17/1998 Tribunals and Inquiries Act 1992 is available which sets out in detail all you need to know regarding Public Local Inquiries.

## 4.3 Planning Inquiries: The Reporter's view

A Planning Inquiry is therefore conducted by a Reporter, appointed by the Scottish Government but independent of it. Reporters form the Scottish Government Inquiry Reporters' Unit now called the Directorate of Planning and Environmental Appeals. Read the article below 'Planning appeals and the role of the Scottish Government Reporters' Unit' by Jim McCulloch, the Chief Reporter of DPEA.

Please Note: *The following article was given as a talk to Friends of the Earth Scotland, by Jim McCulloch, the Chief Reporter of DEPA and reproduced with his permission. The opinions contained within it are his own and do not represent the views of the DPEA or the Scottish Government.*

### “ Planning appeals and the role of the Scottish Government Inquiry Reporters Unit ”

#### What we do and how we do it

The Franks Committee set the principles back in 1958: the appeal process must be open, fair and impartial.

Against that the purpose of the planning system is to guide change through an efficient and effective process that respects the rights of the individual while acting in the interests of the wider community.

Most of our work involves planning appeals.

Most planning appeals are dealt with by an exchange of written submissions followed by a site inspection.

In most appeals Ministers delegate the decision to the Reporter, so he or she then writes a reasoned decision letter. There were 1000 such cases in 2006/2007.

A very small proportion of written submissions appeals are recalled for decision by the Scottish Ministers so that they take the decision instead of the reporter.

There are statutory procedure rules for written submissions cases and also a code of good practice. These set critical deadlines for each of the 4 stages of the process.

The planning authority and the appellant currently have the legal right to request that an appeal be determined by means of a public local Inquiry (PLI) or hearing. Again, there are statutory procedure rules for public inquiries and also a code of good practice. The Scottish Ministers have the right to call-in a planning application from a planning authority so that Ministers decide the outcome. A PLI is generally always held in these cases.

The Scottish Ministers require each party to an Inquiry to disclose their case in advance in a structured and consistent way. The Rules set onerous time-limited requirements for pre-Inquiry exchanges with which everyone must comply.



We held 63 PLIs in 2006/2007, preparations were made for a further 41, but these were withdrawn.

We also hold hearings, 58 in the last year (2006/2007). These are not PLIs and are governed by a non-statutory code of conduct. In this process all of the parties exchange written submissions and the reporter convenes a structured discussion to resolve the issues that he considers to be outstanding. A hearing cannot become a PLI on the day because none of the statutory requirements for a PLI would have been met. Hearings are a very effective means of quickly resolving a planning dispute and an under-used resource in Scotland.

We hold Development Plan Inquiries on behalf of planning authorities where a reporter is appointed to consider the objections to a local plan and to recommend a preferred course of action to the council. There were 9 in the last year, although planning authorities had indicated that many more would be ready for inquiry, but this proved to be unduly optimistic. Local Plan Inquiries now comprise the longest running of all of the Inquiry cases in any year. In the last year 6 out of 9 local plan inquiries lasted more than 10 weeks. In contrast it is now rare for a planning appeal Inquiry to last longer than 4 weeks.

We also deal with objections lodged against Compulsory Purchase and other Orders, including road schemes and a variety of appeals under the Environmental Protection Act. These may have no relationship to land use planning whatsoever.

Broadly speaking between 38 and 40% of all appeals are successful. The lower rate applies to cases dealt with by written submission and the higher rate to PLIs, which suggests that parties opt for a PLI when they consider that the issues are finely balanced.

Ministers set performance targets for speed of processing, but there are no quotas for appeals to be won or lost. No influence is brought to bear on an individual reporter, apart from through the arguments that the parties to the appeal have made to him or her.

Appeal decisions must be:

- consistent with the written submissions or the evidence led at the Inquiry
- clear and unambiguous; and
- fully justified by reasoning in the decision letter or the report to the Scottish Ministers

A reporter's decision is final and cannot be altered once made other than by an Order of the Court of Session.

## **Staffing of DPEA**

The Unit has just short of 60 staff. Slightly fewer than half are the administrators who run the office, make the arrangements for planning appeals to be determined, talk to the public and to agents and issue the decisions.

There are around 36 reporters, 16 are full-time salaried civil servants, the balance are part-time consultants used as needed to deal with the full range of casework. Most reporters are planners, some are also architects. We have 2 who are lawyers; there is a surveyor and also a civil engineer.

I am the Head of Profession for the reporters; I run the Unit and am answerable to Ministers for performance and the budget. I'm also a member of the Development Department Management Board, which oversees all of the activities of the Department.

## **e-planning**

Our website;

[www.scotland.gov.uk/Topics/Planning/Appeals](http://www.scotland.gov.uk/Topics/Planning/Appeals)

comprises simple explanatory text with drill down links to take users to all of the hard information: the Acts; Rules; Circulars; NPPGs and SPPs; and PANS.

We are working towards receiving appeals electronically.

We have launched an enhancement of the website to allow searches of all current delegated appeals and to view decision letters on line and without charge.

## **Third parties and individuals: What do reporters want?**

No matter who is giving evidence we want clarity; certainty; consistency and brevity.

In common with planning authorities and the Scottish Ministers a reporter is required by Section 25 of the Act to make the determination of a planning appeal, or a called-in application, in accordance with the provisions of the development plan, unless material considerations indicate otherwise.

The practical effect is to give all developments that are consistent with the development plan a head start; this is referred to as the 'plan led system'. It is not universally popular.

Material considerations are the balancing factors that can add further weight to the development plan or justify an exception to its provisions. In effect these define the limits of public intervention in planning:

Material considerations are not defined in the Act.

Broadly these are any consideration that relates to the use and development of land.

So, material considerations should serve or relate to a planning purpose.

The consideration must be material, or relevant, to the development in question.

The weight to be attached to the consideration is for the decision-taker to determine and show the reasons.

Material considerations cover (but not exclusively): residential amenity; compatibility with other uses; private interests and public interests; other environmental controls; economic and financial considerations; community benefit; and social factors.

Local anxiety is not a material consideration unless it is substantiated by evidence of a relevant planning issue; neither are moral issues.

### **Hints and tips for effective participation.**

Everything that follows is central to what we want, and from all participants!

### **Preparation**

It doesn't matter whether you are preparing for an Inquiry, a hearing or for a written submissions case, the essentials are the same. A good approach is to structure your material in the way set out in the House of Lords judgement in the case *City of Edinburgh Council v SOSS* 1998 SLT 120 (in both NPPG 1 or SPP 1 - paragraph 47) so that you address the planning merits of the proposal in the way that section 25 of the Act requires.

This is what the person taking the decision will have to do, it makes sense for you to provide your views in the same format:

- identify provisions of the development plan that are relevant to the decision
- interpret them carefully, looking at the aims and objectives of the plan as well as the detailed wording of the policies
- consider whether or not the proposal accords with the development plan
- identify and consider relevant material considerations, both for and against the proposal
- assess whether these considerations warrant a departure from the development plan

Don't miss the trick by leaving the decision-maker to make what he or she can from a jumble of random thoughts and relevant and irrelevant material.

## The good precognition or written submission

The good precognition or written submission:

- ✓ is clear, precise and brief, if for a PLI there must be a summary when the main evidence runs to more than 2,000 words
- ✓ says only what is needed to state and justify either a professional opinion or a point of view
- ✓ avoids waffle and padding
- ✓ leaves the opinion of others for them to state unless it is made clear from the outset that you are putting forward views on behalf of a group
- ✓ eliminates irrelevant, non-essential detail or repetition
- ✓ focuses on the critical issues within the context of the determination that the Scottish Ministers or reporter can make
- ✓ is accurate on the basics: dimensions, points of the compass, your arithmetic and the arithmetic of others and detail: particularly the way that you represent the position of other witnesses for the other side
- ✓ avoids simple errors and thus rich pickings for the other side.

## The good Inquiry witness

The good Inquiry witness:

- ✓ gives their own opinion and never the evidence that someone else has suggested unless they are prepared to adopt it as their own
- ✓ ensures by early preparation and careful consideration that their material is robust, coherent, consistent and, above all, realistic
- ✓ ensures that the summary is exactly that, some say something different.
- ✓ does not lodge 'helpful' annexes, these have to be disclosed as Inquiry documents 4 weeks before the start
- ✓ has considered, and understands, why the other side argue that the development would not cause the harm that you fear
- ✓ applies Scottish policy - English Circulars and PPGs don't contain Scottish policy unless explicitly stated: their only relevance may be in setting standards of good practice
- ✓ has additional copies of the summary and the full precognition for members of the public
- ✓ doesn't turn up on the first day with an armful of adjustments, explanations and new documents: beware the power to order an adjournment + expenses
- ✓ does not try, without good reason, to expand the summary/read in evidence by backtracking to the full precognition
- ✓ is careful about introducing new matters on the hoof - is the new issue so important that it must be taken into account, or are you just sweeping up loose ends?

Don't give evidence at the site inspection that follows the Inquiry, but table a list with closing submissions, founded in the issues that you have raised, of the features that you want the reporter to inspect

Remember that the purpose of the Inquiry is to consider issues fairly, thoroughly and consistently and without unnecessary formality but it is an important legal process where relative informality must not be misunderstood - so you don't discuss the case with others whilst your evidence, or cross-examination, is on-going.

### **Things that go wrong**

- ✗ Confusing a draft development plan with the current development plan.
- ✗ Confusing one policy with another.
- ✗ Preparing ineffectively and missing out the reality check.
- ✗ Failing to consider the balance of material considerations both for and against the development.
- ✗ Confusing the terms of the development that is before the Scottish Ministers for decision.
- ✗ Failing to take account of national policies.
- ✗ Assuming, without checking, that the other side have got it right.
- ✗ Leaving errors, missing documents, procedural defects to be corrected at the Inquiry; sort them out before.
- ✗ Missing the deadlines set by the Codes of Practice, the Inquiries Procedure Rules, or the Regulations.

### **Surviving cross-examination**

- Some of the best cross-examiners are third parties; some of the worst are Inquiry professionals.
- The purpose of cross-examination is to test evidence, for better or worse it is still a fundamental part of the Inquiry system.
- Remember that the cross-examiner rarely asks a question without having a good idea of the answer.
- No matter who is asking, expect questions that are robust, but fair and possibly persistent, so you must be able to defend, justify and explain the statements that you have made.
- Be realistic and consistent with adjectives in written material and use exactly the same expressions in answers.
- Your objective is to show that your judgement is sound and balanced, so you have to be able to demonstrate authority for it, and have considered the material considerations that go the other way.
- Don't let yourself be bounced, keep your temper (cool, calm, confident).
- Within reasonable limits, take your time.

- Say what you mean and mean what you say.
- Keep answers short and don't be evasive.
- Watch your body language.
- If you don't know the answer, say so, and why.
- Don't answer for others; you put them in a difficult position.
- Don't die in a ditch, the wise concede the point if there is no way out and live to fight another day.
- Remember that the reporter is interested only in the arguments about the planning merits and not the histrionics and emotions.

J. M. McCulloch

Chief reporter, DPEA

Some of the information in McCulloch's article will reinforce what you have covered before. Most of it will be essential if you are participating in a Planning Inquiry.

For more up to date information on public inquiries read:  
[www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals](http://www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals)

# 5. Strategic Environmental Assessments and Environmental Impact Assessments

Environmental assessment of large developments is required by European legislation. This area of the planning system is introduced in this section and sources of further reading referenced. You will find this useful if you are planning to comment or make a representation on on of these assessments.

## 5.1 Strategic Environmental Assessments

A Strategic Environmental Assessments (SEA) is 'an environmental assessment of certain plans and programmes, including those in the field of planning and land use' ([planningportal.gov.uk](http://planningportal.gov.uk)).

In other words an SEA is a formal environmental assessment of certain policies that are likely to have a significant effect on the environment. SEA's are not carried out on specific developments but on Government and council policies. Consultation is a required part of the SEA process.

### Further Information

- Scottish Government SEA website:  
[www.scotland.gov.uk/Topics/Environment/14587](http://www.scotland.gov.uk/Topics/Environment/14587)
- For guidance on evaluating the quality of an SEA process see Thervel, R. (2004), Strategic Environmental Assessment in Action. London: Earthscan Publications Ltd. FoES has not had a chance to reviewed this publication.

## 5.2 Environmental Impact Assessments

Environmental Impact Assessment (EIA) describes the process of assessing the environmental effects of a development. Very large developments like power stations, incinerators and large road schemes and many other larger developments like golf courses, waste-water treatments and quarries are required to conduct an EIA when proposing a new development. Developers must then submit to the local authority a written report called an Environmental Statement along with their planning applications.

Local community action relating to EIA's usually comes in two forms:

- EIA's are expensive and a developer may well attempt to argue that the proposed development does not require an EIA. Local knowledge and research can show that an EIA would be necessary under the regulations.
- The developer carries out the research and reporting of EIA's and this has raised questions as to the level of impartiality in their content. There is a role here for community assessment for quality of the EIA.

## Further Information on EIAs

### EIA's explained

Friends of the Earth (England, Wales & Northern Ireland) have produced a campaigner's guide to EIA's. The regulations for Scotland are almost identical. Read 'Scottish Environment Protection Agency' where this document says 'Environment Agency':

[http://community.foe.co.uk/campaigns/rights/resource\\_pack](http://community.foe.co.uk/campaigns/rights/resource_pack)

The Campaign to Protect Rural England also has a community guide to EIA's:

[www.cpre.org.uk/library/results/environmental-assessment](http://www.cpre.org.uk/library/results/environmental-assessment)

### Assessing the Quality of an EIA

Planning Advice Note 58 – Environmental Impact Assessment has a checklist of quality indicators for Environmental Statements. See paragraph 80 and 81.

The following book is a detailed guide to Good Practice for an EIA. Although FoES has not had a chance to reviewed it:

Department of the Environment (1994), Good Practice on the Evaluation of Environmental Information for Planning Projects- Research Report, London, HMSO. ISBN 0-11-752990-7

Institute of Environmental Management and Assessment has Review Criteria for the accreditation of members. This document contains assessment criteria for a really good EIA as viewed by the professional body:

<http://www.iema.net/download/membership/corporate/Review%20Criteria.pdf>

### The Regulations

Scottish Planning Series Planning Circular 8-2007: The Environmental Impact Assessment (Scotland) Regulations 1999

European Directive (85/33/EEC as amended by 97/11/EC)



## 6. Top Tips for influencing the planning system

Read Friends of the Earth Scotland's top tips from three experienced campaigners.

- ✓ Keep it simple
- ✓ Know whom you have to influence! In larger and controversial developments the planning officers make an analysis and recommendation but it's the councillors on the planning committee who make the decision.
- ✓ You must persuade councillors on their grounds. If the councillor's not interested in the environment, use other arguments like transport.
- ✓ National policy is really important as a material argument and one that is underused.
- ✓ MPs/MSPs are a publicity weapon but may not have direct decision-making power especially in smaller developments.
- ✓ Don't worry about 'brown envelopes'. There's never been a proved corruption case in Scotland, many campaigns become fixated on this aspect when they could be influencing the decision makers.

### Stuart Hay's top tips

Stuart Hay is Head of Projects and Campaigns at Friends of the Earth Scotland. He's an experienced campaigner and a planning professional by training.

### Stuart McKenna's top tips

Stuart campaigned against a landfill without planning consent in his village of on the outskirts of Edinburgh. With the compensation money won the community are considering building an anaerobic digester as an alternative to landfill.

- ✓ Become part of your community council or form a sub-committee of the community council. Community councils are statutory consultees so in this way you become part of the planning system.
- ✓ You must have professional advice
- ✓ But don't relinquish control of your fight to the solicitors. Ask them, "I'm law, how do we get from here to here" so that you remain in charge of the campaign.
- ✓ Refuse to go away. When times are tough and you are feeling disheartened find something that keeps you going. For me it was getting angry at the way we were being treated.
- ✓ You must have champions like MSPs, councillors or local celebrities. Actively seek them out.
- ✓ Publicity is important, get to know your local paper and feed them stories about your campaign.

## Diana's top tips

Diana Cairns is a Portobello resident and a core member of the successful Portobello Campaign Against the Superstore.

- ✓ Be well organised.
- ✓ Do your homework on whatever it is you are fighting for or against; rehearse your arguments.
- ✓ If you are objecting to a planning application don't just send one letter per household; every person in the house should object as it's a numbers game to a certain extent.
- ✓ Encourage people to write their own letters as councils set more store by these than standard letters.
- ✓ Try to appeal to a broad spectrum of supporters. Don't assume that certain groups won't be interested in your campaign.
- ✓ Inform supporters regularly through as many channels as possible, for example email, newsletters, leaflets in shops, libraries, pubs, etc or delivered through doors, press releases, websites, public meetings, demonstrations.
- ✓ Organise a wide programme of enjoyable fundraising activities. Use events to help keep the campaign momentum by getting people together, especially during fallow periods.
- ✓ Use planning arguments (if you are fighting a planning issue) and don't just rely on emotion.
- ✓ If you have to fight a public inquiry try to employ your own experts independently of the local authority
- ✓ Be more determined than your opponents. The difference is that you care whilst they may not.
- ✓ Be persistent: don't give up even when things become difficult.

## The Freedom of Information Act

Friends of the Earth Scotland were at the forefront of campaigning for the Freedom of Information (Scotland) Act 2002. This is a law that gives you the right to access information held by many Scottish public bodies, including the local authority.

The following is from the Freedom of Information (Fol) website – [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

*“Anyone - from anywhere in the world - has a right to see any kind of recorded information from a Scottish public authority, however old the information is. You do not have to say why you want the information or what you want it for and the authority is obliged to respond to all information requests they receive within 20 working days of receipt.”*

This doesn't mean you can see everything. Some information may be refused if it is commercially valuable or if it would cost more than £600 for the public body to obtain but under the Freedom of Information Act there is a vast array of information available.

Top tips on making a Freedom of Information request

- ✓ Before you make a request check that you can't find the information another way. Under the Fol laws local authorities and other public bodies publish lots of information online and in hard copy.
- ✓ You can always phone up the local authority and ask if the information is published and where.
- ✓ Big Fol requests are a burden on cash-strapped planning departments and making lots of request could damage your relationship with the planning officers. But don't be put off making a request if you genuinely can't obtain the information elsewhere!
- ✓ To make an information request regarding planning write to the planning department of your local authority detailing what information it is you would like to see.
- ✓ Be as exact as possible to ensure you receive what information you are looking for.

Top tips if you are unhappy with the response

- ✓ If you are unhappy with the result of your Fol request you can ask the authority to review its decision. Maybe the information has been refused, there has been no reply after 20 days or you have been charged an unreasonable fee.
- ✓ Ask for a review by email or letter giving your name, address, details of the original request and the reasons why you want a review. You should ask for a review within 40 working days of your request or last letter from the authority and you can expect a reply within 20 days.
- ✓ The authority will send you reasons for refusing you information or charging you. If you are still unhappy after a review you can make an appeal to the Scottish Information Commissioner.

## **Further information**

Download 'Your Right to Know' an excellent booklet with advice on how to make a information request and what to expect from public bodies.

Scottish Information Commission - [www.itspublicknowledge.info](http://www.itspublicknowledge.info)