

SCOTTISH PROPERTY FEDERATION POSITION STATEMENT PLANNING (SCOTLAND) BILL STAGE 3 BRIEFING PAPER

Introduction

1. The Scottish Property Federation (SPF) is the voice for the property industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers.

Key Issue

2. **Our members have very strong concerns that the amendments passed at Stage 2 would impose several new unfunded additional burdens on the development sector, local authorities and the Scottish Government. The revisions to the Bill mean that it is unlikely that the spirit and intentions of the Bill – ‘to streamline the planning process’ - will be met. There also appears to be some duplication and conflicting duties and priorities. Therefore, as it stands, the Bill as amended at Stage 2 would make the planning system unworkable.**
3. **The revised Financial Memorandum, which sets out the costs of the Bill as it stood after Stage 2 shows that the costs to planning authorities, over 10 years, could range from almost £19 million to over £74 million. The costs to the development industry could also increase by anything between £45 million and £400 million, which could rise to in excess of £1.2 billion over the same period due to the impact of the potential infrastructure levy.**
4. **Speaking at the SPF annual conference in Edinburgh on 6 March, our Chairman called upon all political parties to work with industry to fix the Bill to avoid the disaster of an unworkable Planning Bill becoming Scottish law. We are pleased that this message has been heard within Parliament and note that a number of proposed Stage 3 amendments seek to address many of our concerns. However, there are several recent amendments that risk derailing the Bill.**

Detailed Concerns

5. The SPF’s key concerns on the detailed aspects of the Bill at the end of Stage 2 and proposed amendments in the lead up to Stage 3 are as follows:
 - **Part 1 Sections 1 to 9 - Development Planning *Annex A***
 - **Part 2 Sections 10 to 11– Simplified Development Zones/Masterplan Consent Areas *Annex B***
 - **Part 3 Sections 12 to 20 - Development Management *Annex C***
 - **Part 4 Sections 21 to 26 - Performance of the Planning Service *Annex D***
 - **Part 5 Sections 27 to 30 – Infrastructure Levy *Annex E***
 - **Third Party or ‘Equal’ Right of Appeal *Annex F***

General Overview

6. The Bill is a key opportunity to unlock development and deliver the much-needed infrastructure for our growing population and business needs. If we are to drive local economic growth, jobs and investment we must have strong public leadership and an efficient, aspirational and delivery-focused planning service. The planning system therefore should deliver the framework for investment by the private sector, the public sector and joint ventures.
7. We agree it is important that community views are incorporated into plan-making at the earliest stage and that community engagement is undertaken effectively at the up-front stage of a development proposal and, therefore, welcome the introduction of Local Place Plans.
8. It is important that we achieve greater alignment of public budgets and infrastructure co-ordination as well as developer contributions where appropriate. This part of the independent planning review of 2016 has not really been taken forward in these proposals.

Key Statistics

9. The main issue facing the commercial real estate sector in recent years is a lack of availability of finance, particularly for development purposes. A recent report by the Fraser of Allander Institute for the SPF drew on public statistics to note that whereas in 2009 some 7.1mn square feet of commercial development was produced, by 2017 this had fallen to just 1.6mn square feet – a drop in development production of 77% over eight years.
10. The real estate sector is a key catalyst for jobs, investment and creating places for people to live, work and enjoy. The Fraser of Allander Institute Report found the industry contributed £4.8bn a year to the Scottish economy and sustained some 92,000 jobs either directly or indirectly.
11. Commercial development is a key driver of economic growth. For every 100 FTE employees working in commercial construction activities a further 85 are supported elsewhere in the Scottish economy; and for every £100mn demand for commercial property output there is an estimated £73mn across the economy. If the construction sector can turn around its economic output this could have a positive impact on the Scottish economy.
12. Commercial construction activity is, of course, only part of the development sector. The wider sector includes housing development and colleagues at Homes for Scotland have produced research, which identifies that a return to pre-recession levels of output (25,000 homes per year) over the course of this Scottish Parliament, would contribute an additional £1.9bn for the economy and 38,400 jobs.
13. The SPF would be pleased to discuss our views and comments at your convenience.

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SCOTTISH PROPERTY FEDERATION BRIEFING ON THE PLANNING (SCOTLAND) BILL AS AMMENDED AT STAGE 2

PART 1 - DEVELOPMENT PLANNING

Part A1 and 1ZA

- The amendments passed at Stage 2 provided conflicting purposes for planning. Defining a purpose of planning will always encounter a difficulty of being either too narrow in scope or too wide. If the purpose is defined too narrowly this may lead to legal challenges, and if it is defined too widely then the intention of providing a definition may be meaningless. Our members are of the view that the definition of the purpose of planning is not required and is better left to policy, which will inevitably change over time to reflect the various economic and social drivers. Defining planning in terms of the 'best long-term public interest' immediately starts a debate as to what is in the best long-term public interest. **That is why we do not support section A1 of the Bill. By way of addressing these concerns our members suggest that if a definition of the purpose of planning is to be enacted it should reflect section A2 but without 3ZA4.**
- **Our members note that amendments 113 and 114 attempt to define public interest, but we have concerns about the practicalities of applying these more prescriptive definitions.**

Section 1

- We welcome the Stage 2 amendments to the Bill, to make information on housing needs and education constraints and capacity as key matters to be taken into account in any review of the National Planning Framework.
- The SPF agrees with the requirement for the promotion of national planning policy in the context of the NPF. We are concerned that many Stage 3 amendments seek to apply policies that are already required under other regulations and policies. This duplication complicates the planning system and for this reason **we do not agree with proposed amendments 186 to 190.**
- There should be a statutory requirement to examine housing needs. This could be done via the Strategic Housing Investment Plan and should be reviewed biennially.
- Our members support the introduction of national targets for housing although no detail is proposed as to how these targets are to be allocated at regional and local level, which are clearly of significant importance in terms of delivering more housing **across all tenures**. While the detailed provisions relating to older and disabled people are laudable and should be included in the Bill, further detailed provisions relating to all tenures are also needed. **Our members support amendments 19, 22 and 173.**

- Interactions between the NPF, SDPs (if retained), LDPs and Local Place Plans are unclear. There should be a clear hierarchy lead by the NPF, all plans should be consistent with each other, and this should be properly reflected in the Bill. Section 8(3) of the Bill states that in the event of any incompatibility between a provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail. Members welcome the requirement for Planning Authorities to collaborate to support the NPF where Infrastructure requirements cover more than one Authority. **Amendments 99 and 119 go some way to addressing the hierarchy issue, by giving powers to the DPEA at the examination stage to request that the relevant planning authority updates its LDP, and therefore the SPF supports these proposals.**
- Our members consider the increase from 90 to 120 days for Parliamentary consultation on the NPF is somewhat excessive.
- Our members' views on Strategic Development Plans has been to agree with the independent planning panel that they should be abolished and re-purposed towards improving infrastructure co-ordination and delivery on a regional basis, across planning authority areas. This requirement becomes stronger with the lack of any co-ordinating infrastructure agency as had also been proposed by the independent panel. By seeking to encourage, and if necessary, enforce regional infrastructure co-operation the amendment also seeks to draw in the relevant key Agencies (Scottish Water, Transport Scotland) to this process. In addition, our members feel that since the requirement to prepare SDPs is repealed, it is vital that strategic housing needs feature in the NPF along with related education capacity on a region wide basis.

Section 2

- Scotland is small enough in population to allow regional planning to be addressed in the NPF e.g. housing targets, key strategic infrastructure and importantly location of employment. We do, however, recognise the need for Regional Council groups to co-operate in order to contribute to an improved regional dimension to the NPF. Indeed, we believe it is imperative that we have Regional Infrastructure Plans, which would be an alternative role for SDPs. Please see concerns raised in relation to LDPs which also apply to this section of the Bill.
- **Our members therefore support amendments 55, 56 and 106 to 111, which remove the requirement for SDPs and amendment 54, which adds a requirement for the preparation of regional spatial strategies.**

Section 3

- Our members welcome the inclusion of young people in all aspects of the planning system and fully support the provision.
- An amendment of concern is the restriction of Scottish Ministers' intervention powers in Local Development Plans. This was brought forward to address the Committee's concerns about the 'centralisation' aspects of the Bill but risks further inconsistency between authorities and non-adherence to Scottish Planning Policy.
- Our members do not agree with many of the amendments to this section, for example the use of brownfield land being put into legislation. It is the SPF's view that guidance should suffice and would be strengthened by an amendment to ensure decisions are in accordance by planning guidance issued by Scottish Ministers. These concerns also relate to the process for SDPs above if they are not to be repealed.
- **Our members support amendments 57 to 99**, which removes most of the additional and unnecessary burdens added at Stage 2 for Local Development Plans. **We do not support amendment 191 to 195** because we believe these issues are addressed more appropriately elsewhere. We welcome the incorporation of Scottish Planning Policy into the National Planning Framework, which strengthens its status as part of the development plan. **Our members also welcome amendment 119** to address insufficient land allocated for housing in an LDP.

Section 4

- We agree with the provision in the Bill for the repeal of Section 22 of the Town and Country Planning (Scotland) Act 1997. As some local authorities have used supplementary guidance to such an extent that it makes the overall development plan unduly complicated and unwieldy. Our members also have concerns about the lack of scrutiny of supplementary guidance, which is not subject to any form of examination. Due to the incorporation of national planning policy into the development plan this should enable LDPs and SDPs to cross refer to these national policies rather than repeat them at length.

Section 9

- Our members welcome the introduction of Local Place Plans and are of the view that there must be adequate resourcing for this provision in the Bill. We welcome the Stage 2 amendments which seek to embed the LPP within the development plan process. However, there also needs to be a mechanism to deconflict LPPs where different community bodies propose LPPs that overlap or conflict.
- **In relation to amendments 195 to 196, we do not believe primary legislation is required to review the effectiveness of LPPs.** This could be done via a Ministerial commitment to make such a review.

Section 14D

- Our members are concerned at the prohibition of development on greenbelt land. The SPF's view is that this is unnecessary as the primacy of 'brownfield land' is already in planning policy, which is strengthened by linking Scottish Planning Policy and the National Planning Framework. The prohibition of greenbelt land is too restrictive and does not take account of future environmental changes. **Our members therefore welcome amendment 130**, which removes the primacy of brownfield sites.

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PART 2 – SIMPLIFIED PLANNING ZONES/MASTERPLAN CONSENT AREAS

Section 10

- We believe Masterplan Consent Areas (MCAs) have potential to support the alignment of development processes and increase delivery of both housing and commercial developments. We therefore welcome the amendments to encourage local authorities to consider whether a scheme would be appropriate in their district. MCAs could be particularly useful for large and complex mixed-use development sites that are established sometimes over decades. Over a timescale of this order, there could be many requirements for changes in technical standards or indeed of markets and so long as the principle of development is established and approved by the relevant authority then an MCA can help to de-risk a complicated development process. Such major investments will require positive support from local authorities and potentially Scottish Ministers for NPF related proposals.
- Our members are of the view that the new MCA mechanism will be a useful tool in enabling more development. Landowners, developers and communities can engage early in the planning process around an inclusive vision for an area, speeding up economic activity and the regeneration of areas and helping to accelerate and diversify commercial and housing markets. But this needs to be alongside work on infrastructure delivery to ensure that this does not then delay the MCA based development.
- The SPF is aware that frustrations are raised by community bodies or those representing community bodies from time to time. The potential award of wider permitted development rights and MCAs, when there is clear community support, would encourage developers to implement robust and meaningful community engagement measures.
- Our members have expressed strong concerns about the introduction of the provision for land value capture (LVC) by compulsory purchase of land. They are concerned about the premature introduction of LVC in the Bill when the Scottish Land Commission is still in the process of investigating LVC on behalf of the Scottish Government. There is a risk of creating confusion and undermining or duplicating the planning system. **We also do not agree with amendments 212 and 215.**
- A fundamental point and key concern of our members is the potential loss in the uplift in value that might accrue under these arrangements. Local authorities would have a right to forcibly acquire land, knowing that the value will increase, but will not have any legal duty to pay proper recompense for its consented value. This would present local authorities with a conflict of interest by being in a position of being able to acquire unallocated land, without starting a planning process or confirming the public led interest, then granting planning permission and deriving the benefit of the increased value. The current arrangements relating to the payment

of compensation for compulsory acquired land entitle the owner to receive compensation based on the open market value.

- Our members are also concerned that the identification of an MCA, where LVC is proposed, will act as a significant disincentive to the landowners concerned who will be unwilling to make their land available. Conversely, local authorities may be encouraged to promote MCAs in the knowledge that they will be acquiring land at less than market value.
- Our members also have expressed concern about the removal of the power for Ministers to propose an MCA scheme. They therefore **welcome amendments 125 and 126.**
- Existing planning legislation already allows a form of LVC in as much as developers receiving valuable planning permissions must make contributions in money or in kind to offset the reasonable infrastructure impacts of their developments. There are currently two examples of mechanisms, which extract 'community benefit' from development: Planning Obligations, through S75 of the Town and Country Planning (Scotland) Act 1997; and the potential infrastructure levy as set out in the Bill.
- S75 agreements are tied to the land and should capture part of the uplift in land values from planning and development activity. These, by result, can be in kind or contribution form. This is particularly true in respect of residential developments as the S75 contributions made continue to increase in volume and to cover an ever-wider range of provisions. It is also important to acknowledge the public good inherent in development itself. It is clearly in the public interest to meet need and demand for houses in particular. **Our members therefore welcome amendment 112,** which removes the provision for land value capture by compulsory purchase of land.

Section 11 A

- The SPF does not support the proposed provision for local authorities to designate culturally significant zones (CSZ) and are of the view that this is sufficient to rely on strong policy protection which is currently contained within the Chief Planner's letter. There is uncertainty as to the extent and composition of a CSZ, which could be land or buildings used permanently or temporarily. The 100-metre protection zone around CSZs could potentially undermine important town centre or other urban regeneration developments in circumstances where the presence of a CSZ should be a factor, but not the deciding factor, as to whether a development can proceed. **Our members therefore welcome amendment 127** and the removal of culturally significant zones.

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PART 3 - DEVELOPMENT MANAGEMENT

Section 11B

- This amendment seeks to state statutorily that the ‘use of a dwelling house for the purpose of providing short-term holiday lets involves a material change in the use of the building’. The difficulty is that it does not define what a short-term holiday let is, which needs to be defined in primary legislation. In Greater London the Deregulation Act 2015 seeks to control short-term lets by restricting them to no more than 90 days in any one year. Our members support further regulation in this area, although this issue may be tackled from a housing legislation perspective such as HMO or some other form of licensing regime. We recognise the potential scale of the issue, with over 9000 short-term lets available in Edinburgh alone. We are concerned that the proposed amendments are uncosted and pre-emptive, as Scottish Ministers are currently consulting on this issue. **Our members therefore do not support amendments 1, 2 and 157 to 159. But we do agree that further regulation is necessary within housing regulation.**

Section 14 A

- Our members have expressed concern at the increase in time for declining to determine an application has been increased from 2 years to 5 years and suggest that 3 years would be a more reasonable timeframe.

After Section 16 B

- **Our members strongly disagree and cannot support amendments 160 and 161. This is discussed in Annex F of this paper.**

Section 16 D

- Our members are firmly of the view that the provision for the introduction of a meaning of material consideration is unworkable and is not required and therefore **welcome amendment 139.**

Section 17

- The Bill seeks to clarify the duration of planning permission to allow greater certainty for applicants, communities and the planning authority. The Bill does this via amendment of the existing provisions under s58/59 of the Town and Country Planning Act (Scotland) 1997. As the default periods for planning permission or Planning Permission in Principle (PPiP) will now be 3 and 5 years respectively. However, the Bill specifies that a Planning Authority should set a duration of planning permission as a condition, and that if it fails to do so when granting either

planning permission or PPIp, then it is assumed to have set a condition with the default durations specified above. The key change introduced by the Bill is that the legislation appears to suggest the duration of planning permission can be set from the outset and may be shorter than the 3- or 5-years default. Our members do not support the ability to reduce the duration of planning permissions to less than 3 years and can see no circumstance where this would be appropriate.

- The reintroduction of time limited conditions will enable existing planning permissions to be varied under s42 by seeking an extension of those conditions because the use of time-limited conditions was abolished under the 2006 Act and this process was removed. Returning to the pre-2006 Act position offers greater certainty and transparency to all parties.

Section 18

- The effect of this section is to remove the oversight of Scottish Ministers in confirming a completion notice in circumstances where no objection has been made. The service of a completion notice is of such draconian effect that our members consider that the will of Scottish Ministers should be retained.

Section 19 and 20

- Our members support the proposed flexibility to enable a s75 agreement to either be varied through a voluntary agreement, or to be subject to a formal application for modification or discharge, which could lead to some cost and efficiency savings. Further flexibility in terms of granting applications under s75A or appeal under s75B where the modification can be adapted to fit the circumstances is to be welcomed. In noting the proposal to decouple the requirements of a s75 planning obligation to both restrict or regulate the use of land and require payment, we have some concerns that planning obligations may be used solely for requiring payment, without the necessary link to the development proposed. **We welcome the clarity provided in amendment 145 as to when an agreement takes effect.**
- Our members note the disparity in s75 fees payable to local authorities, which can vary from £500 to £20,000+ across the country. Our members would welcome some standardisation of the level of these fees to a reasonable level.

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PART 4 – OTHER MATTERS

Section 21

- SPF members have previously indicated a willingness to pay a higher planning fee for a tangible improvement in performance by planning authorities, and we were disappointed to see the removal of performance provisions at Stage 2. It is important that Scotland continues to remain competitive, and any increase in fees paid by the private sector needs to result directly in an injection of additional resources for planning services, delivering stronger leadership that supports appropriate development and encourages new investment in our built environment. Unfortunately, we have yet to see full commitment by planning authorities to tie fees to better outcomes in the way that's needed. The move to full cost recovery by local authorities should not be done at the expense of an efficient and effective planning system.
- Our members are concerned about the possible removal of the free second application submission in cases of minor points of refusal. They are firmly of the view that there should be a fair and proportionate approach in this instance. For example, applicants are unlikely to resubmit an application at a cost of circa £120,000 to deal with the minor changes proposed by elected members to an original application, which has been approved by officers. The Bill allows planning authorities to charge for anything they do relating to the planning function under the affirmative procedure (s252 of the Town and Country Planning (Scotland) Act 1997). The planning authorities can decide to waive their fee and the regulations can set out when and when not to charge. We note that the regulations will identify what could be classed as minor amendments that should not attract a charge.

Section 24

- Our members did not support the removal of this section at Stage 2, which included vital training requirements for council members charged with taking often complex planning decisions. This was a key recommendation of the independent review on the grounds of efficiency, accountability and transparency and is an essential component of a modern planning system. Some important topics for training could include development planning, development management and development finance. Training of elected members should be mandatory, monitored and enforced. **Our members therefore support amendment 162** which introduces the power to impose training requirements.
- Our members would like to see a greater understanding by the public sector of the upfront costs the private sector already pays towards delivering the planning service and the risks involved. If

we are to drive local economic growth, jobs and investment we must have strong public leadership and an efficient, aspirational and delivery-focused planning service.

Section 25

- As stated above, training of elected members is important, therefore, our members do not support the removal of this section, which provides a reserved power on Scottish Ministers to transfer its functions in exceptional circumstances. Our members support the power to transfer functions where there are insufficient trained persons or poorly performing authorities. They are also concerned about the removal of the performance reporting requirements placed on local authorities. This would appear to take away the accountability of local authorities and is linked to our membership's previous indication that they are willing to pay a higher planning fee for a tangible improvement in performance by planning authorities. **Our members therefore support amendments 164 and 167.**

Section 26

- Our members strongly disagree with the removal of this section at Stage 2, which seeks to establish national performance monitoring for all local authorities. We do not consider this to be burdensome on local authorities who currently adhere to a non-statutory performance framework. It is highly beneficial that this is formalised and given statutory force in the interests of efficiency and effectiveness. **Our members therefore strongly support:**
 - **amendment 163, which provides for an annual report by planning authorities on performance;**
 - **amendment 166, which provides for an assessment of planning authorities performance and directions to planning authorities;**
 - **167, which provides for national performance monitoring and national planning improvement co-ordinator; and**
 - **170 which makes provision for Ministerial guidance on the role of an authority's chief planning officer.**

Annex E

SCOTTISH PROPERTY FEDERATION BRIEFING ON THE PLANNING (SCOTLAND) BILL AS AMMENDED AT STAGE 2

PART 5 – INFRASTRUCTURE LEVY

Sections 27 to 30 and Schedule 1

- Our members have strong reservations over the proposals to proceed with the introduction of a new infrastructure levy in the absence of clear measures for the introduction of a viable charging mechanism. It is impossible at this stage without that information to give a true reflection of the cost to the Scottish Administration, local authorities and other bodies, individuals and businesses. The revised Financial Memorandum, which sets out the costs of the Bill as it stands after Stage 2 estimates potential costs to developers could be in the region of £750 million, over 10 years.
- It is the view of our members that the costs and complexities of setting up an infrastructure levy may have been significantly underestimated. Clarity around who is going to fund the setting up and administration of the levy is required, and whether this funding will be recovered from infrastructure levy income. There is a risk that the cost of administering the scheme will erode the ability of the scheme to pay for infrastructure.
- Our members are concerned that the potential for ‘double charging’ through the infrastructure levy and s75 agreements. Whilst this would not appear to be the intention of the Bill it is important that a statutory protection is included to prevent this from happening. **Our members therefore strongly support amendment 172 and 218**, which provides for the infrastructure levy to specify that payments in respect of a planning obligation under S75 for a particular development cannot be required where payment is already due in respect of that development in terms of the infrastructure levy, and allows for relief in these circumstances.
- Certainty is required on the face of the Bill as to when the levy is payable. In England and Wales, the trigger point is the commencement of the development. Under the S75 arrangements financial contributions are almost invariably backdated and paid in instalments reflecting the need for a developer’s return to generate finance to make those payments. Our members would wish a provision on the face of the Bill to reflect these matters.
- The SPF cannot give support to a planning system whereby sheriff officers/bailiffs are in the position of seizing the property of applicants for non-payment of a levy, which may have been disproportionately imposed on the development itself in the first instance. This is likely to deter much needed investment and put Scotland at a competitive disadvantage. **Our members therefore welcome and support amendment 150.**
- The LG&C Committee shared our concerns about the lack of information on the nature of the levy and the timescale for consultation and implementation. Nonetheless, amendments were agreed to ensure no aggregation/redistribution by Ministers and the insertion of a sunset clause for implementing the power. However, our members are of the view that a 10-year period is

too long, and that 5-year period is more appropriate in the circumstances. **We welcome amendment 149** to reduce the period but remain of the view that a 5-year period is more appropriate.

- We share reservations expressed in the Stage 1 Report on the levy. Developer contributions are an issue of concern and particularly with lengthy delays on agreeing the legalities of s75 planning obligations and other agreements or contributions. This is not to argue that development operates in a vacuum and has no wider impacts on infrastructure or communities, but we are also very aware of the experience of the Community Infrastructure Levy in England, where developers have reported a lack of transparency in the use of levies and duplication of taxation. We are also adamantly opposed to proposals for enforcement action where levies are in dispute – this is simply a recipe for leverage and misunderstanding in our view and a notion that takes no account of the multiple complexities of a development project.
- The scale of infrastructure costs is in many cases beyond the capacity of developers, particularly with more constrained access to development finance. The Local Government and Communities Committee itself has noted that a levy is likely to achieve only a fraction of estimated infrastructure costs. It should also be borne in mind that levies and contributions will be assessed as part of the development’s overall viability and will be factored into new development prices and values.
- More broadly, we have supported calls by the Independent Review Panel for a form of infrastructure agency to co-ordinate and deliver key infrastructure that will enable development to come forward. The Scottish Futures Trust, with its blend of private and public-sector know-how may be in a strong position to support this initiative. The lack of a national infrastructure co-ordination agency is a real missed opportunity, especially given experience of some members, for example in schools funding. This causes unnecessary and long-term delays to projects that would bring major economic benefit to Scotland as a whole.
- Our members are of the view that a National Infrastructure Agency is important to ensure that there is an accountable fair and transparent structure in place for the full co-ordination of diverse funding sources. This would cover funding across key agencies, utility providers, local authorities as well as other public bodies and arrangements for the funding where appropriate between public and private sectors.
- The proposals outlined in the Scottish Government research document are likely to create considerable costs to the public sector, as publicly owned land is rationalised, and local authorities will have a further negative impact as proposals indicate that they will be responsible for the administration of the scheme. The proposed ‘land tax’ would result in a reduction in land values as the cost would fall back to the landowner.
- Creation of a ‘land tax’ in a general form could, however, create the risk of a reduction in overall land values, with the potential to reinforce market failure around housing. A sufficient number of landowners, in both the private and public sectors, must be incentivised to supply their land into the development system and could be less willing to sell if the new legislation creates undue obstacles and costs for doing so.

- While the Financial Memorandum states that the introduction of the scheme would be cost neutral, there is a considerable risk that the scheme will not deliver the intended additional capital for investing in the critical infrastructure required.
- Our members have concerns about the provisions set out in Clause 9 of Schedule 1, which could have unintended consequences. The majority of land transactions, whether options or conditional contracts, are concluded on a 'subject to planning' basis. The option/contract will therefore only determine, and the development proceed, on the granting of planning permission. If planning permission were to be withheld until an infrastructure levy is paid, this could hamper the exercise of most land contracts and prevent development from proceeding, even if there were no other obstacles to development. **We therefore support amendment 150.**
- The SPF supports development growth in all geographic parts and business sectors of Scotland and will look to the emerging Scottish National Investment Bank for innovative ways of encouraging development. This requires a fair infrastructure charging mechanism and strong linkage to existing or emerging public-sector funds.

SCOTTISH PROPERTY FEDERATION BRIEFING ON THE PLANNING (SCOTLAND) BILL AS AMMENDED AT STAGE 2

Third Party Right of Appeal or 'Equal' Right of Appeal

- Our members are firmly of the view that Third party right of appeal (TPRA) or 'equal' right of appeal does not fit and should not be included as part of the reform package contained in the Bill. As this would lead to lengthy delays in decision making and would lead to all significant planning decisions being taken, not at local level, but by Scottish Ministers or a reporter on their behalf.
- Our members are keen to move away from adversarial planning disputes and consider that the strengthening of the Local Development Plan and the introduction of Local Place Plans will assist communities in ensuring that their points of view are properly considered at an early stage. Our members believe that these measures will greatly assist in improving public trust in the planning system and in particular what gets built and where.
- **We support amendment 146**, which introduces a new provision for the promotion and use of mediation. However, the process would need to be clearly defined via the guidance with adequate controls particularly in relation to timing. It would need to be clear that people who have made representations should only have one opportunity to enter into mediation to avoid unacceptable delays. For example, it should not be possible to enter into mediation at the local development plan and again at application stage, unless there is a demonstrable deviation from the plan. It should also not be possible to enter into mediation on a specific project on the grounds of environmental impact and then undergo the process to examine the impact on infrastructure, schools etc.
- Proper consultation with all stakeholders including young people, which our members vigorously support, should ensure that Local Development Plans and Local Place Plans allocate sufficient and suitable land for new development. It is worth noting that planning decisions must be taken in line with the development plan, unless material considerations indicate otherwise. This underpins the importance of the need for early and sustained engagement by communities, which we support.
- If TPRA or 'equal' right of appeal were to be considered there are difficulties in identifying who those third parties should be and how representative they are. Amendments have been proposed seeking to allow a TPRA where a development is considered contrary or significantly contrary to a development plan. This would provide unacceptable uncertainty as to whether a proposal is contrary or significantly contrary to a development plan and is likely to be subjective.
- Introducing TPRA or 'equal' right of appeal would also place Scotland at a significant disadvantage for inward investment. There could also be a serious impact on the delivery of new housing, infrastructure and the risk of placing Scotland in a disadvantageous position compared to other parts of the UK when it comes to the location of development capital.

- Our members are firmly of the view that widening the appeals process to third parties will not improve planning efficiencies or make the planning process more equitable. There is little doubt that the introduction of TPRA or 'equal' right of appeal would introduce new and substantial delays into the planning system and place further strain on local authority resources. Proponents of TPRA often cite the arrangements that exist in Ireland, but it must be considered that the Irish planning system operates not through a democratically elected planning committee but through a planning board against whose decisions TPRA exists.
- **Our members cannot, therefore, support amendment 160, 161, 204 or 205.**