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04 April, 2017

Dear Sir / Madam,

**Places, people and planning: A consultation on the future of the Scottish planning system<sup>1</sup>**

Thank you for the opportunity to comment on these proposals for the future of the Scottish planning system. This response is submitted on behalf of the Chartered Institute for Archaeologists (CifA), a professional body representing archaeologists working across the UK and overseas, and the Federation of Archaeological Managers and Employers (FAME) the trade association for commercial archaeological organisations. Details of these bodies are provided in a separate appendix.

**Places, people and planning: the future of the Scottish planning system**

**General**

CifA and FAME welcome Scottish Government's desire to put people at the heart of planning and for planning to *'be central to the delivery of great places'*.

However, the four key areas of change identified on page 3 of the consultation document and elaborated thereafter do not provide a sufficiently even-handed focus for revitalising Scotland's planning system.

In particular, the third proposed key area of change, *'Building more homes and delivering infrastructure'* provides a dominant theme and an unbalanced approach to the achievement of sustainable development. Indeed, consideration of sustainable development, the touchstone for a modern planning system receptive to wider needs of the people it serves, is sadly lacking throughout the consultation document. Of

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<sup>1</sup> <http://www.gov.scot/Resource/0051/00512753.pdf>

course, meeting housing and other needs is important, but this has to be balanced against environmental protection (including the historic environment with which we are primarily concerned) and other factors. The environmental aspect of sustainable development receives little or no attention in the proposals.

*'Stronger leadership and smarter resourcing'* (the fourth proposed key area of change) is an objective that we endorse and there is much in this section of the consultation paper that we support. However, in practice implementing these changes can be more problematic if we lose sight of sustainability. Facilitating more development, more quickly and at less cost provides real threats for the environment (including the historic environment). Although reducing unnecessary bureaucracy is to be encouraged, local planning authorities (and the archaeology and historic environment services which advise them) must be given adequate time and resources to ensure that sustainable development is delivered as promptly as possible.

### Specific Questions

**A: Do you agree that our proposed package of reforms will improve development planning?  
Please explain your answer.**

(i) On balance, yes. In particular, we are pleased to see an endorsement of the plan-led system.

(ii) However, care needs to be taken to ensure that

- *'decisions on the future of a place, including where development should happen [are ultimately] made locally and local people should be involved'*. The National Planning Framework (NPF) and Scottish Planning Policy (SPP) have important roles to play but should not overshadow local development plans
- decisions in relation to development planning are made in the light of adequate information on the impact of proposals and policies upon the historic environment. There is a tension between making sure that the *'evidence base for local development plans is more streamlined and effective'* (paragraph 1.37) and ensuring that *'allocation of a site in a development plan gives more certainty that development will happen'* (paragraph 139). This tension would be most acute if any form of permission were to be automatically accorded to allocated sites (as discussed in paragraphs 1.42 to 1.43 of the consultation document) and we strongly support Scottish Government's reservations in this regard and its decision not to pursue such proposals (see further under question 6).

**1. Do you agree that local development plans should be required to take account of community planning?**

1.1 Yes, provided that any such requirement reflects the fact that community planning is not synonymous with land use planning. The need for community planners to have access to planning and related expertise (including archaeological and other historic environment expertise) would be increased by such a requirement.

1.2 Subject to the above, a more coordinated approach to development planning which seeks to engage with communities at an early stage in the planning and development cycle is only to be encouraged and provides scope for wider consideration of the historic environment early in the process. Such consideration should embrace not only the consideration of the harmful impact of development upon historic assets but also the value of the historic environment in positively shaping places and promoting regeneration.

**2. Do you agree that strategic development plans should be replaced by improved regional partnership working?**

2.1 Only if mechanisms can be introduced which facilitate and ensure effective partnership working and take sufficient account at an appropriate level of the need to manage and protect the historic environment.

**3. Should the National Planning Framework (NPF), Scottish Planning Policy (SPP) or both be given more weight in decision making?**

3.1 We would support giving statutory weight to Scottish Planning Policy (SPP) alongside the National Planning Framework (NPF) (with consequent parliamentary scrutiny), but would not support making them part of the statutory development plan. Development plans should reflect local circumstances and we are pleased to note the recognition in paragraph 1.27 that *'Local development plans could still include policies where they are required to identify departures from the Scottish Planning Policy (SPP) that are justified on the basis of distinctive local circumstances'*.

**3(a) Do you agree with our proposals to update the way in which the National Planning Framework (NPF) is prepared?**

3.2 Yes, provided that the *'provision for interim updates to be made where necessary'* is sufficiently flexible to allow any necessary revisions in the course of the extended review cycle.

#### **4. Do you agree with our proposals to simplify the preparation of development plans?**

4.1 No. In addition to the proposals in paragraph 1.29 there are proposals in paragraph 1.44 which relate to the preparation of development plans. A number of these proposals (such as setting out minimum levels of information needed to support allocations and submitting and appraising information on sites before allocation) are sensible at face value and could be helpful in ensuring that appropriate archaeological information is provided and considered before sites are allocated. However, references to a '*more streamlined*' evidence base at paragraph 1.37 and to a '*broader zoned approach*' at paragraph 1.44 suggest that less information might be required than is currently the case, with potentially serious implications for the historic environment. Even where the consultation document recognises that further information may be required (in the second bullet point of paragraph 1.44), it is economic and market appraisal information which is highlighted. Environmental information is never mentioned.

4.2 Moreover, the resource implications of front-loading the system acknowledged in the second bullet point of paragraph 1.44 raise significant issues for local authorities (including archaeological and historic environment services) which do not have the resources to undertake work hitherto carried out on behalf of developers upon an application for permission. The consultation envisages site proposers submitting information in relation to specific sites, but how would this work, for instance, with a broader, zoned approach?

#### **4(a) Should the plan review cycle be lengthened to 10 years?**

4.3 Yes, provided there are mechanisms to ensure sufficient flexibility.

#### **4(b) Should there be scope to review the plan between review cycles?**

4.4 Yes.

#### **4(c) Should we remove supplementary guidance?**

4.5 No. Supplementary guidance provides a useful means to address specific matters, including those relating to the historic environment.

#### **5. Do you agree that local development plan examinations should be retained?**

5.1 Yes.

**5(a) Should an early gatecheck be added to the process?**

5.2 Yes. This should provide further focus to the process.

**5(b) Who should be involved?**

5.3 We would be concerned to see that significant issues relating to the historic environment were addressed at this stage by those with archaeological or related expertise.

**5(c) What matters should the gatecheck look at?**

5.4 We are particularly concerned to see the gatecheck assess whether appropriate environmental assessment (including an assessment of implications for the historic environment) has been carried out.

**5(d) What matters should the final examination look at?**

5.5 We are particularly concerned to see that the impacts of policies and proposals in the development plan upon the historic environment and specific historic assets are adequately assessed insofar as this has not already been dealt with at an earlier stage. What is adequate will depend upon the status of any allocation. If, for instance, permission in principle were to be conferred on allocated sites, more detailed assessment would be required before allocation (see below).

**5(e) Could professional mediation support the process of allocating land?**

5.6 Yes, provided there is a sufficiently rigorous appraisal of the implications of allocation for historic assets.

**6. Do you agree that an allocated site in a local development plan should not be afforded planning permission in principle?**

6.1 Yes.

6.2 We strongly support Scottish Government's stance in this regard. Although archaeological issues may be flagged in the development plan process, sites are routinely allocated in development plans in Scotland in the absence of all necessary archaeological assessment and evaluation which would be required on the submission of an application for permission to develop that site (see paragraph 20 of PAN 2/2011: *Planning and Archaeology*).

6.3 Affording planning permission in principle to allocated sites would either require significantly more archaeological work to be done by site proposers prior to allocation or prevent sites from being allocated in the plan. Either way, this would run contrary to Scottish Government's desire to simplify and add greater certainty to the development plan process.

**7. Do you agree that plans could be strengthened by the following measures:**

**7(a) Setting out the information required to accompany proposed allocations**

7.1 Yes, provided that the information required was sufficient adequately to assess the impact of development upon historic assets (see paragraphs 4.1 and 6.2 above).

**7(b) Requiring information on the feasibility of the site to be provided**

7.2 Yes, but this has to be accompanied by a wide range of other information (including information relating to the historic environment).

**7(c) Increasing requirements for consultation for applications relating to non-allocated sites**

7.3 Yes, but this question assumes that appropriate information has already been provided for allocated sites.

**7(d) Working with the key agencies so that where they agree to a site being included in the plan, they do not object to the principle of an application**

7.4 Yes, but preventing such agencies from objecting subsequently is another matter. An award of costs may be a more appropriate sanction to prevent unreasonable conduct on the part of key agencies.

**8. Do you agree that stronger delivery programmes could be used to drive delivery of development?**

8.1 Yes.

**B: Do you agree that our proposed package of reforms will increase community involvement in planning?**

**Please explain your answer.**

(i) Yes, but that involvement needs to be supported and guided to provide a clear understanding of the community's involvement in the planning process. Greater engagement of local communities with their own historic environment is particularly welcomed.

**9. Should communities be given an opportunity to prepare their own local place plans?**

9.1 Yes, provided that

- those plans are in general conformity with local and national policies
- there are appropriate mechanisms to ensure that the impact of policies and proposals in local place plans upon the historic environment are adequately addressed
- communities are given access to appropriate planning and related expertise (including expertise in relation to archaeology and the historic environment generally) to assist in the preparation of such plans
- communities receive other support training and guidance (as suggested in paragraph 2.16)

**9(a) Should these plans inform, or be informed by, the development requirements specified in the statutory development plan?**

9.2 The work carried out in the preparation of local place plans may help to inform the development requirements specified in the statutory development plan, but local place plans must ultimately be in conformity with local development plans.

**9(b) Does Figure 1 cover all of the relevant considerations?**

9.3 See paragraph 9.1 above.

**10. Should local authorities be given a new duty to consult community councils on preparing the statutory development plan?**

10.1 Yes.

**10(a) Should local authorities be required to involve communities in the preparation of the Development Plan Scheme?**

10.2 Yes.

**11. How can we ensure more people are involved?**

**11(a) Should planning authorities be required to use methods to support children and young people in planning?**

11.1 No comment.

**12. Should requirements for pre-application consultation with communities be enhanced?**

Please explain your answer(s).

**12(a) What would be the most effective means of improving this part of the process?**

**12(b) Are there procedural aspects relating to pre-application consultation (PAC) that should be clarified?**

**12(c) Are the circumstances in which PAC is required still appropriate?**

**12(d) Should the period from the serving of the Proposal of Application Notice for PAC to the submission of the application have a maximum time-limit?**

12.1 No comment, save that any revision of pre-application consultation procedures should ensure that appropriate consideration is given to the impact of development upon the historic environment in this process.

**13. Do you agree that the provision for a second planning application to be made at no cost following a refusal should be removed?**

13.1 No comment, save that the removal of this provision might in practice create a disincentive to the negotiation of a scheme which overcomes all legitimate planning objections.

**14. Should enforcement powers be strengthened by increasing penalties for non-compliance with enforcement action?**

14.1 Yes. Effective enforcement is crucial not only to public confidence, but also to the efficient operation of the planning system. Increased penalties would provide a deterrent for those who flout or wilfully disregard planning requirements.

**15. Should current appeal and review arrangements be revised:**

**15(a) for more decisions to be made by local review bodies?**

15.1 Yes.



**15(b) to introduce fees for appeals and reviews?**

15.2 Yes.

**15(c) for training of elected members involved in a planning committee or local review body to be mandatory?**

15.3 Yes. This should include training in relation to archaeology and the historic environment.

**15(d) Do you agree that Ministers, rather than reporters, should make decisions more often?**

15.4 No comment.

**16. What changes to the planning system are required to reflect the particular challenges and opportunities of island communities?**

16.1 No comment.

**C: Will these proposals help to deliver more homes and the infrastructure we need? Please explain your answer.**

(i) Possibly, but that is not necessarily the issue. The question should be whether these proposals will help to deliver more homes and infrastructure sustainably and the answer to that question, in some respects, is 'no' as indicated below.

(ii) We welcome the recognition that *'many factors are currently limiting the number of homes being built across Scotland'* and care needs to be taken not to dismantle a planning system that has generally worked well in response to a complex series of issues, many of which are beyond the remit of land use planning.

**17. Do you agree with the proposed improvements to defining how much housing land should be allocated in the development plan?**

17.1 No comment, save that

- care has to be taken to ensure that the level of allocation reflects need and not aspiration
- over-allocation can be just as harmful as under-allocation since, in practice, it often leads to the allocation of land which is more sensitive environmentally

and which can in many cases be developed in preference to other, less sensitive, allocated land.

**18. Should there be a requirement to provide evidence on the viability of major housing developments as part of information required to validate a planning application?**

18.1 We would not object to this, but it should not overshadow the need for other information (including information in relation to the historic environment) to support an application. Indeed, archaeological desk-based assessment and field evaluation in accordance with paragraph 20 of PAN 2/2011 can raise issues which affect the viability of a project.

**19. Do you agree that planning can help to diversify the ways we deliver homes?  
19(a) What practical tools can be used to achieve this?**

19.1 No comment, save that Scottish Government should resist the temptation to relax planning regulation in an attempt to diversify delivery. The need for a planning application is key to the protection of archaeological interests since it enables appropriate archaeological desk-based assessment and field evaluation to be required prior to the granting of permission (ensuring that only sustainable development is permitted) and allows appropriate conditions to be imposed on sustainable development to avoid, mitigate or offset harm to historic assets.

19.1 Consequently, dispensing with the *'need for self-builders to go through the formal planning process'* in initiatives such as the self-build project in Maryhill, Glasgow (highlighted on page 32 of the consultation document) causes ClfA and FAME some concern.

**20. What are your views on greater use of zoning to support housing delivery?**

20.1 ClfA and FAME have very significant concerns about the greater use of zoning to support housing delivery, given the desired short-circuiting of the planning application process and the implications for already hard-pressed local authorities and their archaeology and historic environment services. It is not clear how appropriate archaeological assessment and evaluation could be secured in respect of all potential sites in such zones and by whom it would be carried out. Without substantial additional resources it is unreasonable and unrealistic to expect local authorities to undertake or commission such work.

20.2 In the absence of appropriate safeguards this is likely to lead to the loss or damage of nationally-important historic assets. Although in many other cases development on a specific site might be acceptable in principle in archaeological terms, without the ability to impose conditions or obligations tailored for that site, significant harm to historic assets and their significance is likely to ensue. The difficulties are compounded when dealing with buried remains where the nature and extent of the archaeological interest is at the outset often unknown.

20.3 We are also concerned about the proposed removal of the blanket restriction for SPZs in conservation areas and its effect on the historic environment and has not seen evidence to allay such fears.

**20(a) How can the procedures for Simplified Planning Zones be improved to allow for their wider use in Scotland?**

20.4 There would need to be a much greater front-loading of the system than currently is the case, but (at least in relation to archaeology) it is difficult to see how this would be achieved in practice.

**20(b) What needs to be done to help resource them?**

20.5 If increased use of zoning is practical in archaeological terms (which we doubt), then local authority archaeological and historic environment services would need very substantial increased resources properly to fulfil its crucial role in development planning and management.

**21. Do you agree that rather than introducing a new infrastructure agency, improved national co-ordination of development and infrastructure delivery in the shorter term would be more effective?**

21.1 No comment.

**22. Would the proposed arrangements for regional partnership working support better infrastructure planning and delivery?**

**22(a) What actions or duties at this scale would help?**

22.1 No comment.

**23. Should the ability to modify or discharge Section 75 planning obligations (Section 75A) be restricted?**

23.1 Yes, provided that some flexibility is retained to modify obligations where strictly necessary.

**24. Do you agree that future legislation should include new powers for an infrastructure levy?**

24.1 No comment.

**25. Do you agree that Section 3F of the Town and Country Planning (Scotland) Act 1997, as introduced by Section 72 of the Climate Change (Scotland) Act 2009, should be removed?**

25.1 No comment.

**D: Do you agree the measures set out here will improve the way that the planning service is resourced?**

**Please explain your answer.**

(i) Yes, provided that there is a continuing will and support from Scottish Government to facilitate high quality, sustainable development rather than simply increased levels of development.

(ii) ClfA and FAME applaud the Scottish Government's timely recognition of *'the valuable role that planning plays in ensuring that the public good is considered in decisions about the future of our places'* (paragraph 4.3) and that *'The planning service must have the resources it needs to deliver the world-class service our communities deserve and our economy needs'* (paragraph 4.10).

(iii) Furthermore, we welcome the emphasis on skills and training (including the need for specialist skills) in paragraph 4.7.

(iv) However, proposals such as that to extend the use of permitted development rights under the banner of *'efficient decision making'* raise doubts as to whether *'smarter resourcing'* in reality means reduced expert oversight through continuing deregulation, which is likely to have a harmful impact upon the historic environment.

**26. What measures can we take to improve leadership of the Scottish planning profession?**

26.1 Scottish Government can provide a lead and a strong message about the value of planning *'as a visionary profession that creates great places for people.'* Similarly, Government needs to continue to stress the importance of the historic environment in place-making, regeneration and well-being.

**27. What are the priorities for developing skills in the planning profession?**

27.1 There should be an emphasis on developing a broader range of skills including archaeological skills and those related to the wider historic environment. ClfA echoes the sentiments in paragraph 4.9 of the consultation document and should be added to the list of professional bodies involved in *'collaborative approaches to improving places and delivering development'*.

**28. Are there ways in which we can support stronger multidisciplinary working between built environment professions?**

28.1 Yes, through collaborative projects with the Built Environment Forum Scotland (BEFS) and its constituent members including ClfA.

**29. How can we better support planning authorities to improve their performance as well as the performance of others involved in the process?**

29.1 In the case of archaeology, through increased funding and support for local government archaeology and historic environment services and a better understanding of the challenges which they face.

29.2 A significant step towards achieving this goal would be achieved by enacting a duty for local authorities to have or have access to an up-to-date Historic Environment Record (HER) maintained and supported by expert staff. (See, for example, sections 35 to 37 of the Historic Environment (Wales) Act 2016 which imposes such a duty on Welsh Ministers).

**30. Do you agree that we should focus more on monitoring outcomes from planning (e.g. how places have changed)?**

30.1 Yes

**30(a) Do you have any ideas on how this could be achieved?**

30.2 With regard to the historic environment, this would require the continuing engagement of local authority archaeology and historic environment services throughout the planning cycle.

**31. Do you have any comments on our early proposals for restructuring of planning fees?**

31.1 As a general principle, increasing planning fees more closely to align the cost to applicants with the service provided is supported. This should include archaeological and historic environment services which should benefit in part from some of the increased revenue.

**32. What types of development would be suitable for extended permitted development rights?**

32.1 With regard to the historic environment, it is not the type of development (however laudable) that is important, but the potential for harm to the historic environment which arises where development is permitted without the need for an application for permission (for the reasons outlined in paragraph 19.1 above and elsewhere in this response).

32.2 We continue to have grave concerns about the continuing extension of permitted development rights without any or any adequate consideration of the safeguarding of historic assets. In addition to development involving ground disturbance (with obvious implications for buried archaeological remains), there is also potential for harm to the historic environment from other permitted development (for instance, in relation to character and setting), both individually and cumulatively.

**33. What targeted improvements should be made to further simplify and clarify development management procedures?**

33.1 As outlined above, ClfA and FAME are concerned that simplification and clarification are not simply viewed as a means to deregulate, thereby lessening protection for the historic environment through the planning system. This concern is particularly significant, given the fact that the vast majority of the historic environment (over 90%) is undesignated and, for the most part, receives its only protection through consideration in the planning system.

**33(a) Should we make provisions on the duration of planning permission in principle more flexible by introducing powers to amend the duration after permission has been granted? How can existing provisions be simplified?**

33.2 No comment.

**33(b) Currently developers can apply for a new planning permission with different conditions to those attached to an existing permission for the same development. Can these procedures be improved?**

33.3 Conditions provide a key mechanism for securing public benefit in relation to the historic environment and safeguarding historic assets and their significance. Any changes in this regard should not in any way undermine, but should reinforce, the efficacy of such conditions.

**33(c) What changes, if any, would you like to see to arrangements for public consultation of applications for approvals of detail required by a condition on a planning permission in principle?**

33.4 No comment.

**33(d) Do you have any views on the requirements for pre-determination hearings and determination of applications by full council?**

33.5 No comment, save that, however applications are dealt with, they should ultimately be determined with the benefit of appropriate expert advice from local authority archaeological and historic environment services in relation to archaeological or other historic environment issues.

**34. What scope is there for digitally enabling the transformation of the planning service around the user need?**

34.1 There is great scope for using three-dimensional visualisations and other digital technology to engage communities in the management and protection of the historic environment through the planning system.

**35. Do you think any of the proposals set out in this consultation will have an impact, positive or negative, on equalities as set out above? If so, what impact do you think that will be?**

35.1 No comment.

**36. What implications (including potential costs) will there be for business and public sector delivery organisations from these proposals?**

36.1 The costs of front-loading the system would be significant if proposals such as those relating to the greater use of zoning and allocations are pursued.

**37. Do you think any of these proposals will have an impact, positive or negative, on children's rights? If so, what impact do you think that will be?**

37.1 No comment.

**38. Do you have any early views on whether these proposals will generate significant environmental effects? Please explain your answer.**

38.1 Yes. A number of the proposals are likely to cause significant harm to the historic environment as outlined above.

We would be happy further to discuss the issues raised in this consultation insofar as they affect the historic environment. In the meantime, if there is anything further that we can do to assist please do not hesitate to contact us.

Yours faithfully,

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Chief Executive, ClfA

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## APPENDIX

### The Chartered Institute for Archaeologists

The Chartered Institute for Archaeologists (CIfA) is the leading professional body representing archaeologists working in the UK and overseas. CIfA promotes high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provides a self-regulatory quality assurance framework for the sector and those it serves.

CIfA has over 3,200 members and around 80 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

This response was drafted with the aid of CIfA's Scottish Group which has over 250 members practising in the public, private and voluntary sector in Scotland. Furthermore, CIfA is a member of the Built Environment Forum Scotland (BEFS), a network organisation that brings together non-governmental organisations and professional bodies that work with Scotland's built environment, and endorses its response to this consultation.

### Federation of Archaeological Managers and Employers (FAME)

FAME is the trade association for archaeological employers and managers. FAME represents one in three archaeological practitioners, employing the majority of archaeologists across the UK. Its membership includes over 50 archaeological practices, from small consultancies to all the largest contractors, from commercial companies, universities and local authorities across England, Scotland and Wales. In addition to representing its members' interests in matters of policy, its aims are to foster an understanding of archaeology across the construction and development sector and promote best professional practice, training and development, and a safe and healthy work environment.