



SCOTTISH EXECUTIVE  
Development Department

PLANNING

# **Rights of Appeal in Planning**

*Analysis of Consultation  
Responses*

December 2004



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**RIGHTS OF APPEAL IN PLANNING**

**ANALYSIS OF CONSULTATION RESPONSES**

**A**

**Report**

**by**

**Craigforth**

**November 2004**

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## **EXECUTIVE SUMMARY**

### **Background**

The *Rights of Appeal in Planning* consultation paper was published by the Scottish Executive on 1 April 2004. It explored the issues around the introduction of what is commonly known as a 'third party right of appeal' (TPRA) and invited responses to 16 specific questions. Over 2500 copies of the consultation paper and 650 e-mail alerts were issued to a wide range of organisations and individuals representing a wide cross section of interests. It was also published on the internet.

A total of 1620 responses to the consultation were received, 75% of which came from individuals. The majority of these responses (over 4 in 5) were linked to 2 campaigns promoted by Scottish Environment LINK (the **everyone** campaign) and by Friends of the Earth Scotland. 25% of responses came from organisations, some of whom allied themselves to responses from national bodies representing their interests. 31 of Scotland's 34 planning and national park authorities responded.

The closing date for responses to the consultation was 30 July 2004. However responses received up until 25 October 2004 were analysed and inform this overview of consultation responses. Responses have also been summarised in a detailed digest. An extract from this will be made available on the Scottish Executive's planning web site covering those responses where the respondent has agreed to make their views public.

For the purposes of analysis responses were categorised into 8 groups representing different interests or characteristics. These groups were:

- Individuals
- Environment/heritage groups
- Community Councils
- Political representatives or parties
- National/regional agencies and interest groups
- Planning and related professionals
- Planning authorities
- Business/developers.

The number of questions answered by respondents varied considerably by group. For example individuals answered an average of only 2 questions while planning authorities answered an average of 15.

### **Arguments for and against TPRA (Q1)**

It was agreed by the majority of respondents to this question that the arguments set out in the consultation paper accurately reflected both the case for and the case against the introduction of TPRA, although some questioned the emphasis or basis of points made depending on their own viewpoint.

Some felt that there could have been more context given including more information on current plans to modernise the planning system and the potential that proposed reforms might have on altering the arguments both for and against TPRA. It was thought that the paper would have benefited from more hard evidence of the impact that TPRA has had in countries where it already exists as well as more information on the likely impact in this country.

### **What supporters of TPRA are seeking (Q2)**

The majority of those making specific comment agreed that the explanation of what supporters of TPRA were seeking was explained well in the consultation paper.

Some supporters did not agree with the suggestion that the case for TPRA was simply about the principle of having the same appeal rights as applicants but about wider concerns regarding public confidence in the system, including transparency and accountability in planning decision making. They also resented the implication that their primary interest was in seeking to prevent development by overturning decisions that they did not approve of, arguing that it was the quality and impact of development they sought to influence, rather than its prevention.

Business/developers and the majority of those planning authorities who commented did not accept that this was the case. They suggest that the majority of potential third party appellants will be those driven by self-interest who seek to curtail development near their own properties based on arguments that do not necessarily constitute 'substantive planning grounds'.

### **Extent of Support for TPRA in principle (Q6)**

Almost all respondents expressed a view as to whether they supported or opposed the introduction of TPRA in principle. Almost 9 in every 10 respondents (86%) expressed their support while over 1 in 10 (13%) did not. Statistically the overall high level of support is largely a result of the large number of individuals responding to the consultation (including through campaigns) in support of TPRA.

However views were highly polarised by group. As well as most individuals, the majority of environment/heritage groups, Community Councils and those political representatives and parties who took part support the introduction of TPRA. On the other hand the majority of business/ developers, planning authorities, planning and related professionals and national/ regional agencies and interest groups oppose its introduction.

*Individuals* express their support largely in terms of equality, fairness, natural justice and human rights on the basis that applicants have the right to appeal and others do not. The support of *environment/heritage groups* is couched in similar terms but with more emphasis on the pursuit of environmental justice, sustainable development and social inclusion.

*Community Councils* feel that their current role as statutory consultees and the efforts they make to comment on planning applications are undervalued and not given sufficient recognition by planning authorities. Some are interested in the concept of a 'community right of appeal' which would be available to them or other local community organisations who could act in the wider community interest. Those *political representatives and parties* who responded came from a similar perspective as individuals and environment/heritage groups.

Among *environment/heritage groups* and *Community Councils* the primary interest is to influence development that is of a 'developer' rather than 'householder' scale and those that have wider community impact and attract a body of objection.

*Business/developers* are 'implacably opposed' to the introduction of TPRA because the current planning system is already 'slow and unresponsive' and that its introduction would bring more bureaucracy and delay, threaten investment and local and national economic growth. They want to see any efforts to increase third party involvement focused on the preparation of development plans and pre-application stages of developments. They fear that TPRA, if introduced, will be 'hijacked' by professional objectors, NIMBYs, those with agendas and competitive business interests.

Most *planning authorities* do not see TPRA as being in the wider public interest and see it as a threat to the Executive's aims to speed up and streamline the planning process. There are considerable concerns about the resource implications of such a radical change which they think will change the whole 'ethos' of the planning system in a negative way. A minority of authorities support the very limited introduction of TPRA in some particular circumstances.

The majority of *planning and related professionals* including the Royal Town Planning Institute are opposed to TPRA in principle. They also want to see efforts to improve third party involvement focused on the development plan and pre-application stages of development and are concerned about TPRA undermining the primacy of the development plan. The significant minority who support TPRA do so for similar reasons as other groups.

The majority of *national/regional agencies and interest groups* also oppose TPRA, although a minority are in support. Views tend to split along interest grounds. For example economic and employment organisations are opposed, while some voluntary sector organisations are in support. Housing interest groups are concerned about the potential for TRPA to impact negatively on social housing developments including those for disadvantaged groups.

### **The potential restriction of TPRA to 4 categories of development identified in the *Partnership Agreement* (Q3)**

The majority of respondents would support the application of TPRA being restricted to the 4 *Partnership Agreement* categories of where the local authority has an interest, where the application is contrary to the local plan, when planning officers have recommended rejection and where an Environmental Impact Assessment (EIA) is required. This level of support is influenced by the **everyone** campaign that urged support for this.

However if TPRA was to be introduced, the majority of planning authorities would only support it in the case where there is 'significant departure from the development plan' and the majority of business/developers would not support its introduction in any of the categories. The categories of where planning officers have recommended rejection and where an EIA is required were the most controversial as proposed categories where TPRA could apply.

Moreover the primary interest among supporters is for TPRA to apply to decisions on 'developer scale' rather than 'householder scale' applications, irrespective of their technical planning status.

#### **Types of Decision where TPRA should apply (Q4)**

There was general agreement that if TPRA was introduced it should apply to the categories suggested in the consultation paper. Some did not agree with the proposed exclusions relating to enforcement, applications under the Electricity Act and control of advertisements and others thought that it should apply to approvals only (i.e. not refusals).

#### **Which third parties should be able to appeal (Q5)**

It was the commonly held view that the exercising of any TPRA should be awarded to objectors to the original planning application and that this should be paramount. Some wanted this widened to include those making any representations or comments to the original application.

#### **How planning authorities and the Scottish Executive are placed to manage any increase in workload (Q7)**

The majority of those responding specifically to this point felt that neither planning authorities nor the Executive were well placed in terms of resources to cope with any resultant increase in workload. Existing resources were already considered inadequate to run the current system. A shortage of planners and a lack of professional education and training opportunities in Scotland would be additional complicating factors which would make adapting to the introduction of TPRA difficult.

#### **Implications for the attractiveness of planning as a career (Q8)**

Views were split as to whether TPRA would increase or diminish the attractiveness of planning as a career although most planning authorities and planning/related professionals view it as a negative prospect. It is likely to mean a further increased focus on development control and detailed processes, which are less popular than development and strategic planning.

Supporters of TPRA think the profession will benefit from being part of a fairer system that has more public respect and will require different skills including how to best engage with communities.

#### **The application of fees (Q9)**

Most of those who commented support the introduction of a fee to make a third party appeal and this is considered important to deter 'frivolous and vexatious' appeals clogging up the system. Fees should be set at a modest level, although views on the appropriate level vary from £25 to £500. There are some concerns that if a nominal fee is set that collection becomes largely a further administrative burden on the system rather than a source of funding.

The minority who passed comment on whether an applicant should be charged a fee to lodge an appeal thought that this should not be the case.

**The role of Ministers and the Scottish Executive Inquiry Reporters Unit (SEIRU) (Q10)**

There is majority support for a continued role for Ministers in deciding certain planning applications of national and strategic importance and some view this a critical part of the democratic process. However it is widely recognised that there needs to be greater clarity and consistency as to when Ministers have a locus to become involved and the need for published guidelines/criteria is suggested.

Environment/heritage groups tend to disagree and want to see all appeals being decided by an arms-length or wholly independent SEIRU to ensure that decisions become non political.

**Whether mandatory hearings would increase public confidence (Q11)**

Most planning authorities agreed that the wider use of hearings might increase public confidence with particular support coming from those authorities already operating a voluntary hearings system. There was no interest in hearings becoming mandatory although many agreed that there was a need for more national consistency and the publication of guidance would be welcomed. The wider use of hearings was preferable to the introduction of TPRA but may be difficult to resource.

Environment/heritage groups and individuals did not generally favour their increased use as they did not give sufficient opportunity for third parties views to be taken on board and did not prevent an applicant choosing to go to appeal. Hearings were considered to be no substitute for TPRA.

**The extension of notification to Ministers (Q12)**

Among those who commented, the majority thought that the extension of Ministerial notification/call-in powers to include all development plan departures would not serve to address public concerns about decision making by planning authorities. It is questioned whether such an approach is justifiable or indeed practical as the majority of cases will be of a minor nature, of no legitimate Ministerial interest, and will only contribute to additional costs and delays in the system.

However across most groups there is some acceptance that there may be a case for clearer definitions and more consistent application of the 'significant departure' rule and when notification should apply. Again the case for published guidelines/criteria is made, as well as a case for closer monitoring in this area.

**Screening and screening criteria (Q13)**

There is widely based support for the need for a screening process to accompany any introduction of TPRA. It is expected that criteria would be applied to both the nature of appeal and type of appellant to ensure compliance with whatever system it is agreed will operate. The main purpose of screening is viewed as ensuring that 'vexatious or frivolous' appeals are eliminated and not allowed to clog up the system.

While many agreed that the screening criteria suggested in the consultation paper were appropriate e.g. the 4 *Partnership Agreement* categories, there are quite wide concerns that such an approach may be too complicated. There are perceived benefits in any screening system being simple, involving a minimum level of interpretation and subjectivity.

Among supporters of TPRA the primary interest is for TPRA to apply to larger scale applications with wider community impact, especially those that are controversial and attract a body of objection and that this should be recognised in the design of any screening system.

#### **Withdrawal of appeal rights (Q14)**

Business/developers are totally opposed to the withdrawal of applicant appeal rights in any circumstance. Some planning authorities suggest withdrawal of these rights might be appropriate where a decision is in accordance with an up-to-date local plan and where there are repeat applications/appeals for essentially similar developments on the same site. Environment/heritage groups suggest withdrawal in environmentally sensitive or protected areas.

If TPRA was to be introduced there is little enthusiasm for any withdrawal of appeal rights in the case of third parties, except for cases of national security and public safety and, with considerably less enthusiasm, developments of national or strategic economic importance.

#### **Views on the 4 Models featured in the consultation paper (Q15a)**

Of the Models presented in the consultation paper support is strongest for Model 1 (based on a new third party appeals system) and Model 2 (based on the continued modernisation of the existing planning system without TPRA) – the former by supporters of TPRA, the latter by opponents.

#### **Alternatives (Q15b)**

When asked to identify alternative changes that could bring about a fair and effective planning system many respondents suggested quite modest measures, some of which are already being addressed by current modernisation proposals, some which are not.

The Royal Town Planning Institute suggests that there may be scope for the introduction of a limited Public Right of Notification procedure which would essentially be an extension of the existing Ministerial notification/call-in system in limited circumstances. Community Councils suggest a special Community Right of Appeal.

#### **Conclusions**

Notwithstanding the majority support for the introduction of TPRA, the views of key stakeholder groups are highly polarised and split between those who are strongly in favour and those who are strongly opposed, with little common ground.

Among some opponents of TPRA, and in particular planning authorities, there is a degree of acceptance that the increased use of hearings and Ministerial notification and call-in procedures may have a part to play in increasing public confidence in the planning system. The case for published criteria, guidance and more consistency governing the circumstances in which they should be used would be welcomed by some and would be preferable to the introduction of TPRA.



## INTRODUCTION

### Background

1. The Scottish Executive published its consultation paper *Rights of Appeal in Planning* on 1 April 2004. This honoured a commitment in the White Paper *Your Place, Your Plan* published in March 2003 which considered issues around how to enhance public involvement in the planning system. The commitment to consult also featured in *A Partnership for Scotland: Partnership Agreement* published in May 2003.

2. The consultation paper explored the issues around the possible introduction of what is commonly known as a 'third party right of appeal' (TPRA). It discussed views previously expressed in support of, and against, TPRA, in what circumstances appeals could potentially be permitted, how an appeals system might work in practice as well as considering resource and other implications. The paper invited responses to 16 specific questions.

3. A draft Regulatory Impact Assessment (RIA) was published alongside the consultation paper. The RIA looked at potential costs and benefits, in financial terms, of the introduction of TPRA.

4. The consultation paper was issued to a wide range of organisations representing a cross section of business, professional, community, environmental, political and statutory interests as well as to all Community Councils, planning authorities and local enterprise companies (LECs). It was also issued to a large number of individuals on request including those who had expressed a prior interest to the Executive. The consultation paper was also made available on the planning page of the Executive's web site and responses were also invited through this route. In total around 2500 copies of the consultation paper were issued as well as an e-mail alert to 650 people on the Executive's planning e-mail alert list.

5. Consultation responses were invited by Friday 30 July 2004, but many responses (25% of the total) continued to be received well after this date. This was partly due to the consultation period taking place over the summer months when some organisations were not meeting regularly (e.g. local authorities, Community Councils etc) and were unable to respond within the timeframe. Many individual responses were also received after the cut off date. All responses received up until 25 October 2004 have been included in this analysis.

6. This report provides a summary overview of the main findings of the consultation responses. All responses have been summarised in a detailed digest that accompanies this report. Not all entries of the digest will, however, be publicly available because some respondents have not given consent to the publication of their response or have requested confidentiality.

**Responses received**

7. A total of 1620 responses were received to the consultation. This is the largest response to a planning consultation undertaken by the Executive to date.

8. The size of response is partly related to the level of interest and strength of feeling in relation to TPRA among respondents. Almost 2 in 3 (65%) of all responses originated from 2 main campaigns and took the form of standard text (through postcard, e mail or letter). The standard core text of each campaign is reproduced in Annex 1 of this report.

9. The ‘**everyone**’ campaign, co-ordinated by Scottish Environment LINK, brings together the members of a broad spectrum of Scottish environment groups and focuses on the activities of a combined membership of around 500,000 Scots on issues of common interest.<sup>1</sup> The campaign encouraged people to respond through its website either by letter or e-mail as well as issuing printed postcard responses to which names and addresses could be added in support and returned to the Executive. A total of 999 such campaign responses were received – 62% of all responses to the consultation.

10. Friends of the Earth Scotland promoted its own campaign while also supporting the ‘**everyone**’ campaign. Through its own campaign people were encouraged to make their views known through the website by e-mail or letter. A total of 57 responses can be linked specifically to this campaign - 4% of all responses received.

11. In the case of both sets of campaign responses, only those that were substantially made up of the standard core text were counted as campaign responses. Where the text was amended or significantly added to, these were counted as non-campaign responses.

12. A small number of other responses using standard text were also received. These responses were forwarded to the Executive through an individual’s relevant MP or MSP and have been counted as non-campaign responses.

13. Some respondents with a particular focus of interest allied themselves to, and/or expressed explicit support for, the responses of national agencies representing their interests, whether they were formally members of such organisations or not. Such responses referred to in this way included those of CBI Scotland (business), Homes for Scotland (house builders), Scottish Environment LINK (environment/heritage groups) and the Scottish Association of Community Councils (Community Councils). While some standard core text was recognisable in such responses, suggesting an element of campaign, they were substantially added to by respondents. As in the case of individuals where this occurred, these have been counted as non-campaign responses.

14. To assist the analysis of responses, respondents were classified into 8 distinct groups defined by either their type or focus of interest. The group classification used is set out and explained in Table 1 below.

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<sup>1</sup> **Everyone** campaign website

**Table 1: Classification of Respondents by Group**

<b>Group</b>	<b>Description</b>
Individuals	Individuals (not organisations) but excluding those known to fall into any of the other categories
Environment and heritage groups	All national and local non-statutory interest groups whose main focus is campaigning for the conservation and protection of the natural or built environment
Community Councils	Community Councils only – i.e. excluding other community representative groups
Political representatives and parties	Political parties, MPs, MSPs and councillors
National/regional agencies and interest groups	Those agencies with a specialist statutory, national or regional interest excluding non-statutory environment/heritage organisations
Planning and related professionals	Those professionally qualified in planning or related disciplines, planning and related consultancies and planning and related academics
Planning authorities	Responses from local authorities, joint Structure Plan Committees, National Parks and COSLA
Business/developers	All those with business, development or commercial interest including academic establishments responding from a development perspective

15. It should be noted that the majority of responses from ‘individuals’ came from an environment/conservation perspective. Many of the non-campaign responses from individuals were from people who had recent (largely negative) experience of planning applications or planning decisions of which they disagreed.

16. A small number of respondents classified as ‘individuals’, largely opponents of TPRA, may have been ‘planning and related professionals’ although there was a lack of explicit evidence to suggest that this was the case (e.g. qualifications or statement of experience).

17. A few identical or similar responses were submitted more than once on behalf of different groups/individuals e.g. a response prepared for a community council by an individual but also submitted separately as an individual response, a response prepared for one environment/heritage group but also submitted by another etc. In such cases the responses were counted the relevant number of times and in each relevant category.

18. A total of 4 responses were submitted with no identification of who the respondent was. These have been treated as anonymous although they are most likely to be ‘individuals’ and are included as such in the analysis of responses that follows.

19. The total number of responses received by classification group is shown in Table 2 below and the split between campaign and non-campaign responses by group is shown in Table 3 that follows.

**Table 2: Responses by Group**

Group	Total	
	No.	%
Individuals*	1216	75%
Environment and heritage groups	66	4%
Community Councils	109	7%
Political representatives and parties	14	1%
National/regional agencies and interest groups	28	2%
Planning and related professionals	34	2%
Planning authorities	33	2%
Business/developers	120	7%
ALL	1620	100%

\* Includes 4 anonymous

**Table 3: Campaign and Non Campaign Responses by Group**

Group	Non Campaign		Campaign	
	No.	%	No.	%
Individuals*	175	31%	1041	99%
Environment and heritage groups	57	10%	9	1%
Community Councils	105	19%	4	0%
Political representatives and parties	13	2%	1	0%
National/regional agencies and interest groups	28	5%	0	0%
Planning and related professionals	33	6%	1	0%
Planning authorities	33	6%	0	0%
Business/developers	120	21%	0	0%
ALL	564	100%	1056	100%

\* includes 4 anonymous

20. Key points to note on the profile of respondents and type of responses received are as follows:

- Individuals were by far the largest group accounting for 3 in 4 (75%) of all respondents
- 99% of campaign responses came from individuals
- Individuals were also the largest group in non-campaign responses but accounted for less than 1 in 3 of such responses (31%)
- Business/developers and Community Councils were the next largest groups each accounting for around 7% of all responses and around 20% of non-campaign responses

- Environment and heritage groups accounted for 4% of all responses and 10% of non-campaign responses – similar in number to planning authorities and national/regional agencies and interest groups combined.

21. Although it has not been possible to calculate response rates for specific groups it should be noted that 31 of Scotland's 34 planning and national park authorities responded to the consultation as well as 109 of Scotland's estimated 1200 Community Councils.

### Responses to questions

22. The 16 main questions forming the focus of the consultation are set out in full in Annex 2 of this report. One question (Q15) was split into 3 parts meaning that potentially respondents could answer up to 18 individual questions.

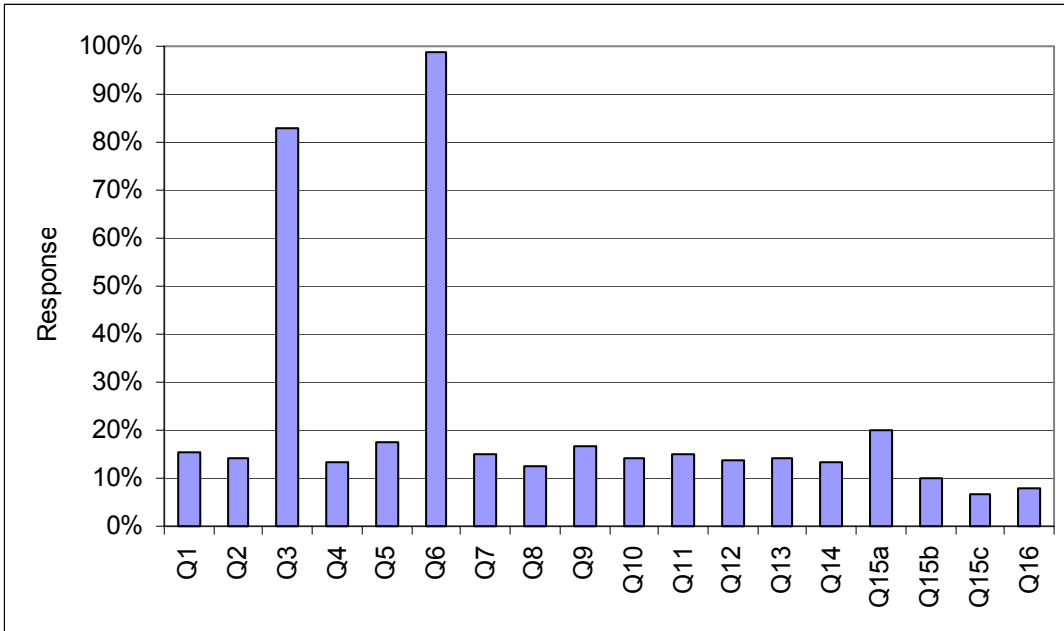
23. It should be noted that a substantial number of respondents did not structure their responses in line with the questions. In these unstructured cases, responses were analysed and attributed to the most relevant question where this was feasible. Even where responses were structured by question, respondents did not always answer the question directly (e.g. yes/no/don't know) – again in such cases responses were interpreted by way of implication where this was possible.

24. The level of overall response to each question varied considerably and this is illustrated in Figure 1 below. Key points to note are:

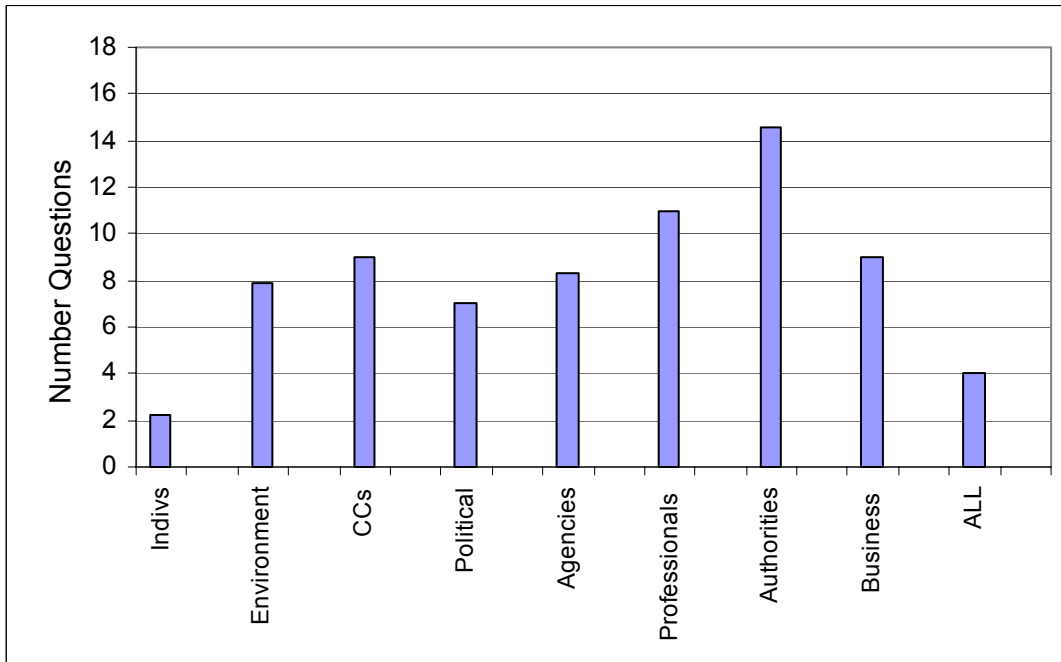
- Almost all respondents (97% of the total) answered Q6 which asked about support for the principle of TPRA
- Over 4 in 5 respondents (83%) answered Q3 which asked whether TPRA should apply to 4 specific circumstances identified by the *Partnership Agreement*
- 1 in 5 respondents (20%) answered Q15a which asked about 4 potential models of how best to improve public involvement in the planning system - 2 based around some form of TPRA, 2 that were not
- Most other questions were answered by between 1 in 6 and 1 in 8 of all respondents, falling to 1 in 10 for the last few questions.

25. This profile of overall responses to specific questions is heavily influenced by the volume of campaign responses from individuals. The campaigns focused on Q3, Q6 and to a lesser extent Q15a.

**Figure 1: Overall Response by Question**



**Figure 2: Average Number of Questions Answered by Group**



26. The level and pattern of responses to individual questions also varied markedly between groups; this is illustrated in Figure 2 above. Key points to note are:

- Planning authorities answered the widest range of questions – an average of 15 questions answered
- Individuals answered the least number of questions - an average of 2 – the profile again reflecting the content of the main campaigns
- Other groups answered an average of 8-10 questions, with the exception of political representatives who answered an average of just over 6.

### **General comments made by respondents**

27. Prior to answering specific questions many respondents made some general comments. The most common themes were:

- Support or otherwise for TPRA and reasons (analysed under Q6)
- The specific role of the respondents and the interests they represent
- The planning experience of the respondent or their perceptions of the current planning system e.g. 'slow and unresponsive' (developers), 'stacked in favour of developers' (Community Councils) etc
- Reference to alliance with or membership of other respondent organisations and their responses (as discussed earlier in para. 13 above).

28. Furthermore many respondents made specific reference to welcoming the consultation (mostly those in support of TPRA) although a few made reference to 'unfortunate' summer media reports alleging that the Executive may have already decided its position on TPRA.

### **The remainder of this report**

29. The rest of this report examines the responses to each of the individual questions in turn. In doing so, the order has been slightly amended from that of the consultation paper. For ease of understanding it is useful to look at support for the principle of TPRA (Q6) at an earlier stage than featured in the paper i.e. before examining responses to more specific questions addressing how TPRA might work in practice, and questions aimed at establishing views on other possible measures for improving public involvement and confidence in the planning system.

30. In considering the following analysis and commentary it should be borne in mind that respondents were more likely to make comment where they disagreed with what was being said, rather than where they were in support.

## RESPONSES TO SPECIFIC QUESTIONS IN THE CONSULTATION

### Arguments for and against TPRA (Q1)

31. The consultation paper set out the most common arguments previously made to the Executive for and against TPRA. Respondents were asked to consider whether these accurately reflected the arguments or whether other arguments could be made.

32. While only 1 in 6 respondents (16%) replied to this question, the vast majority who responded felt that the arguments had been laid out clearly and accurately (4 in 5 respondents), although business/developers were more likely to disagree than other groups.

33. The majority of those who commented took issue, from their particular viewpoint, with the specific arguments made, or the emphasis given, rather than necessarily disagreeing that these represented the views of supporters and opponents of TPRA. Comments made under this question in most instances did not differ significantly from those made by supporters and opponents of TPRA in principle (Q6) which are addressed later in this report.

34. Among those who had general criticisms to make, the main focus was the lack of sufficient context given, in particular:

- Current plans to modernise the planning system and the potential of these reforms to alter the arguments for and, in particular, against TPRA
- This omission gave the impression that a fragmented approach to the review of the planning system was being taken especially given other recent consultations e.g. *Making Development Plans Deliver*
- The consultation paper would have benefited from more hard evidence both from other countries where TPRA exists and on the (true) impact that it has had, as well as more information on the likely impact in this country.

35. In terms of the arguments set out in support of TPRA, the following were the most common additional arguments made, amongst the minority who commented:

- It would discourage 'departures' from development plans and provide an additional impetus to keep plans up to date
- The interpretation of development plans, policies and planning guidance by planning authorities are often too subjective or wrongly applied
- Planning authorities and developers can manipulate the system for their own ends (e.g. important decisions taken prior to a local plan inquiry, 'twin tracking' of applications by developers etc)
- Planning decisions are often taken on party-political grounds and behind closed doors (e.g. by political ruling group) and not necessarily by those elected to represent particular communities affected by proposals – in such cases elected planning authorities do not necessarily have the best interest of communities at heart

- Following the lodging of an application and the initial opportunity to comment, significant changes are often subsequently made as a result of negotiation without any further communication or opportunity to comment prior to approval
- Developers are driven by profit and do not represent wider community interests
- Any additional costs and delays associated with the introduction of TPRA are justifiable given the long term impact of developments on communities, heritage and the environment
- It would act as a last check and final opportunity to challenge/ scrutinise developments of poor quality
- It would give a 'voice' to disadvantaged communities
- There is insufficient recognition of the *Partnership Agreement's* commitments to sustainability and community participation (and an over emphasis on its commitment to speeding up planning decisions in the presentation of the case against).

36. Additional arguments made against TPRA included the following:

- Many of the supporting arguments are more a reflection of the need for change in the current planning system rather than justifying the need to introduce TPRA – there are many other measures that can be taken to address such concerns
- There is a lack of evidence that such a radical change to the planning system is required
- TPRA would change the very ethos of the planning system to be one that is anti-development - it would become adversarial, litigious and less disposed to either engagement or compromise
- TPRA will encourage NIMBYism, would be 'hijacked' by professional objectors, campaigners with 'a particular axe to grind', those with a personal rather than community interest and commercial competitors
- It would lead to increased centralisation of planning decision making – this runs contrary to other Executive aims e.g. the promotion of local empowerment and accountability
- It would act as a disincentive to planning authorities to constructively deal with applications likely to be the subject of TPRA, when the decision is likely to be ultimately taken out of their hands (by Ministers or Reporters)
- Supporters of TPRA and objectors to applications do not represent wider community interests

- Applicant right of appeal was introduced (in the 1947 Planning Act) to compensate for a loss of development rights among land/property owners – third parties have never had a right over other people’s land/properties and therefore an appeal right is not justified
- Consumers (e.g. house purchasers) will ultimately pay for any extra costs associated with the introduction of TPRA and make developer contributions through Section 75 and affordable housing agreements less likely
- TPRA will be the ‘death’ of certain ‘bad neighbour’ industries such as waste management, mineral quarrying and renewable energy (wind farms) in which investment and development is essential
- There is no recognition of the extent of the risks and costs that business and developers already undertake in developing proposals (without considering any added costs associated with TPRA).

**What supporters of TPRA are seeking (Q2)**

37. The consultation paper also set out the Executive’s understanding of what supporters were looking for by way of TPRA. This revolved around 3 broad reasons – the principle (equal rights with applicants), concern about aspects of the planning system and a desire to overturn decisions. Respondents were invited to comment on the accuracy of the case as set out.

38. While only 1 in 7 respondents (14%) responded to this question, again the vast majority (9 in 10) agreed that indeed the case had been set out accurately.

39. Some respondents – in particular individuals, Community Councils and environment/heritage groups – resented the suggestion that support for TPRA was simply about the ‘principle’ of third parties having equal rights with applicants in terms of appeal rights. Wider concerns most commonly mentioned included:

- The (lack of) quality, transparency and accountability in planning decision making
- Lack of confidence in the current planning system
- The right of communities to take control /ownership of their own communities and of those ‘who have to live with development’ to modify it
- Safeguarding the environment for future generations.

40. Regarding other aspects of the planning system, some of the proposed modernisation proposals are not universally viewed as positive. The commitment to ‘speed up’ the planning process is of some concern, for example to Community Councils who view this as less opportunity to make their views known (e.g. due to meeting cycles) and a perception that controversial applications have a tendency to appear at holiday times.

41. For some respondents, TPRA is viewed specifically as a means to ensuring that communities are listened to by both developers and planning authorities and their views given serious consideration.

42. There is some scepticism that speeding up decision making and the move to 'shorter and more focused development plans' will necessarily promote greater understanding or meaningful public involvement.

43. The most controversial aspect of this section of the consultation paper was the suggestion that supporters of TPRA were primarily interested in 'overturning' planning decisions. This led to very polarised views being expressed as to whether this was the case.

44. Community Councils, environment/heritage groups and individuals resented the implication of this suggestion. Those who responded from these groups pointed out that it was not about overturning decisions, but more about influencing development and achieving modifications to it in order to make it more acceptable and of higher quality.

45. However this was not a view shared by either business/developers or indeed those planning authorities who made specific comment. The alternative view is that, from experience, most potential appellants under TPRA are likely to be those seeking to curtail or prevent development near their own properties and a desire to overturn decisions because they are unhappy with these decisions. This is perceived to be driven by self-interest largely concerned with negative impact on property values and loss of personal amenity (e.g. views) – i.e. not substantive planning grounds.

46. Planning authorities also highlight that such actions by current objectors (potential appellants) usually pay scant regard for the wider (silent) community interest (e.g. a new retail park development being objected to largely on the grounds of impact on neighbours and the immediate community). In this regard reference was made to the lack of evidence of current levels of user satisfaction with planning services and understanding of the critical factors that influence satisfaction levels.

47. Planning authorities also have concerns regarding the potentially 'risk free' nature of TPRA for prospective appellants. This it is argued seems contrary to the responsibilities expected of others in the planning process (applicant, authority, statutory consultees etc). They also express concern regarding the 'democratic consequence of TPRA' highlighting that there is already considerable local political concern that in the existing appeals system planning decisions are largely made by unelected and unaccountable Reporters who often have 'little grasp of the local context'.

#### **Extent of support for TPRA in principle (Q6)**

48. Consultees were invited to comment on whether they supported TPRA 'in principle'. The response to this question was by far the highest achieved in the consultation with almost all respondents (97% of the total) indicating whether they were in support of TPRA or not, although in some cases this required some degree of interpretation (by implication), where the question was not answered directly (YES/NO). The overall profile of responses by group and campaign/non campaign responses are provided in the set of tables below.

**Table 4: Support for TPRA by Group (All Respondents)**

Group	YES		NO	
	No.	%	No.	%
Individuals	1205	99%	9	1%
Environment and heritage groups	62	94%	2	3%
Community Councils	82	75%	13	12%
Political representatives and parties	10	71%	1	7%
National/regional agencies and interest groups	9	32%	17	61%
Planning and related professionals	13	38%	19	56%
Planning authorities	7	21%	26	79%
Business/developers	1	1%	118	98%
ALL	1389	86%	205	13%
ALL (excluding individuals)	184	46%	196	49%

Note – Figures in the above table do not sum to 100% - the remaining responses are unclear/don't knows and no replies

**Table 5: Support for TPRA by Group (Non Campaign Respondents Only)**

Group	YES		NO	
	No.	%	No.	%
Individuals	164	94%	9	5%
Environment and heritage groups	53	93%	2	4%
Community Councils	78	74%	13	12%
Political representatives and parties	10	71%	1	7%
National/regional agencies and interest groups	9	32%	17	61%
Planning and related professionals	12	36%	19	58%
Planning authorities	7	21%	26	79%
Business/developers	1	1%	118	98%
ALL	333	59%	205	36%

Note – Figures in the above table do not sum to 100% - the remaining responses are unclear/don't knows and no replies

49. Almost 9 in every 10 respondents (86% of the total) expressed support for TPRA in principle; just over 1 in 10 (13%) did not. Statistically, the overall high level of support is largely a result of the large number of individuals responding to the consultation (including through campaigns) in support of TPRA.

50. If only responses from organisations, professional and political representatives are considered (i.e. individuals are excluded), the balance of opinion swings against TPRA, although only just – 49% against, 46% for and 5% who were unclear or did not answer the question.

51. If campaign responses are excluded, but non campaign individuals included, the balance swings again, to be in support of TPRA – 59% for and 36% against.

52. Irrespective of the overall numbers for and against, the most striking characteristic of the responses is the extreme polarisation of views by group. Over 99% of individuals and 94% of environment/heritage groups recorded support for TPRA; 98% of business/developers and 79% of planning authorities recorded their opposition to TPRA. The overall profile of those in support and those who are not is summarised below by group.

SUPPORTS TPRA: individuals, environment and heritage groups, Community Councils, political representatives and parties

OPPOSES TPRA: business/developers, planning authorities, planning and related professionals and national/regional agencies and interest groups.

*Individuals*

53. The 'individuals' view, including that of the majority responding through campaigns, is one of almost unequivocal support for TPRA (99% of respondents recording support). Only 1% stated they were against the introduction of TPRA and it is likely, based on the content of these responses, that the majority of these were actually planning or related professionals who did not identify themselves as such.

54. Support is largely articulated in terms of equality, fairness, natural justice and human rights. This is on the basis that applicants (developers) have the right to appeal and others (individuals, communities) do not.

55. As noted earlier many individual respondents have had relatively recent experience of being involved in proposals of which they disapproved, including as neighbours, objectors, as participants in appeals or inquiries etc. Such experiences almost exclusively involved the following types of development:

- 'Developer scale' housing developments
- Development in conservation areas or listed buildings
- Development on city open spaces e.g. allotments, bowling greens etc
- Large scale retail development e.g. supermarket
- Quarrying/open cast mining
- Waste disposal/management and landfill sites
- Wind farms
- Telecommunications masts.

56. Based on this experience there is a degree of frustration, dissatisfaction and mistrust of planning decision making processes. This includes concerns regarding the quality of planning officer reporting, discussions held and recording of decisions made.

57. Through support of TPRA there is a desire to prevent development of poor quality and that which will have adverse environmental impact including control of 'bad neighbour' type developments. While a small number of individual responses suggest an over-riding concern about development that has an adverse impact on them personally, the vast majority expressing support for TPRA appeared to be far more concerned with the wider impact on communities and in the long term (e.g. inheritance by future generations).

58. In the case of 'bad', 'inappropriate', 'misguided' or 'poor quality' decisions (approvals) being made, there is perceived to be effectively no recourse currently available. TPRA is required as a 'check' in such cases. Current provisions allowing for challenge through the Ombudsman or Court of Session are perceived to be too narrowly defined and 'not practical' for ordinary members of the public to pursue, not least for reasons of cost, time and lack of skills.

59. They want to see TPRA as an integral part of proposals for modernising the planning system and not as a 'bolt on'. While plans to improve public input to development planning and other modernisation measures are generally welcomed, these are not considered adequate alternatives.

60. In short, while a minority of individual respondents may find the removal of an applicant's appeal rights acceptable as an alternative (e.g. to avoid the likely resource requirements of TPRA), for the majority the introduction of TPRA is by far the preferred (if not the only acceptable) option.

61. Given the environmental and conservation origins of the campaign responses and focus of many of the non-campaign responses, it is difficult to say whether such views represent those of the general public more widely in the absence of evidence of broader public opinion on the subject.

#### *Environment and heritage groups*

62. The support for TPRA is just as strong among environment and heritage groups with 61 of 66 respondents (92%) falling into this group specifically recording their in principle support.

63. The articulation of support is couched in terms similar to individuals (equality, justice etc) but with more emphasis specifically on environmental justice, sustainable development and social inclusion. There is a strong interest in the ability of TPRA to potentially act as a checking 'quality control' mechanism for developments as well as acting as an impetus to keep development plans up to date and for more pre-application discussions to take place.

64. Many groups believe that the introduction of TPRA will act as a catalyst in improving the quality of planning applications, decisions and developments and ultimately lead to a more efficient and effective planning system. They do not necessarily agree that TPRA will lead to a big increase in the likely number of appeals (except perhaps in the short term as the system beds down). However if there is a significant increase required in resources to service TPRA, this is largely a price worth paying in terms of longer term environmental considerations and the lasting impact of poor quality development on communities.

65. It is also believed that TPRA has the potential to promote wider citizen ownership of the individual's own community and environment. Not surprisingly among some groups there is a specific focus of interest on the potential for TPRA to apply in areas where the conservation of the built or natural environment is seen to be paramount e.g. listed buildings, conservation areas, green belt, SSSIs, Natura 2000 sites etc.

66. Outside of such protected areas, the primary view of environment and heritage groups is that TPRA should apply in the case of 'big' developments that have wider community impact and that may attract a large number of objections. Such groups do not necessarily have any interest in TPRA applying for example in the case of 'householder scale' applications and in this respect mirror the views of some Community Councils whose views are next addressed.

#### *Community Councils*

67. 82 of 109 Community Councils who responded to the consultation (75%) voiced their support for TPRA in principle; 13 (12%) did not and specifically stated they were not in support. The remainder were unclear or did not address the question.

68. As statutory consultees, many of the Community Councils who responded clearly have had considerable experience of the workings of the planning system. Indeed the majority view in support of TPRA appears to be, at least in part, born out of frustration as a result of this experience. Community Councils feel that:

- Their efforts to make comments on applications go unrewarded
- If comments are made, they are given no acknowledgement or feedback (they are not directly discussed or addressed by officers)
- Their comments are not given due regard or taken into account
- They are given no feedback of the outcome of the application.

69. Furthermore those that have experience of attending planning committee meetings or planning hearings/panels, even where they are allowed to address such meetings, are frustrated by what they term their 'tokenistic' nature. This is partly fuelled by the perception that there is an increasing tendency for planning decisions to be effectively taken prior to such meetings (i.e. by the ruling political group). There is a good degree of suspicion of such 'political' decision making and a strong view that such decisions are often too much in favour of developers and that elected members can too easily be 'taken in' by arguments such as the prospects for job creation which often do not materialise to the extent first stated.

70. Their frustration is also fuelled by a lack of resources, in particular to service their statutory consultee role, and there is a sense of blame attached to the Executive in this regard. Partly as a result of such resource limitations, both financial and personnel, Community Councils are quite realistic as to whether they could resource the introduction of TPRA without a substantial boost in financial support, training resources and increased access to professional advice and support (e.g. improved access to, and provision of, Planning Aid services). Having said that, they do not see this as a reason not to support TPRA.

71. In common with many environment/heritage groups there is a strong focus of interest in the potential use of TPRA in the case of developments that have a wider community impact and that attract substantial community objection. They too are not so interested in the application of TPRA in relation to householder scale type applications, for example.

72. In particular there is strong support and interest in the concept of a 'community right of appeal' in such cases whereby an individual or group of individuals' case would be taken up by the Community Council who would present it on their behalf. Where no Community Council exists they suggest that this role could be undertaken by another type of community organisation.

73. Around 1 in 8 Community Councils who responded explicitly stated that they were against the introduction of TPRA. This was largely for reasons that were similar to those cited by business/developers – that the planning system is already 'slow and complicated enough', would adversely affect an individual's right to develop their own property and would lead to a system whereby developments that are in the wider public interest could be held up by self interest, business competitors and 'unrepresentative groups'.

#### *Political representatives and parties*

74. The small number of responses received from political parties and political representatives were mostly in favour of TPRA (10 of 14) and came from a similar perspective as responses from individuals and environment/heritage groups. The main reasons given for support included equality and fairness, the current system being too pro-developer and concerns regarding human rights.

#### *Business/Developers*

75. The views of business and developers is at the other end of the spectrum from individuals and environment/heritage groups. There is 'implacable opposition' to TPRA - the term used in the responses of both CBI Scotland and Homes for Scotland and made reference to by many respondents in this group. 118 of 120 respondents (98%) recorded their opposition.

76. The arguments made against TPRA are largely those set out in the consultation document, namely that the current system is slow, unresponsive and its introduction would add another layer of bureaucracy and only lead to further delay. It is also argued that there is already sufficient opportunity for public involvement in the planning system and that any efforts to increase this should focus on the development plan stage and more emphasis should be given to ensuring such plans are kept up to date.

77. Central to their argument is that TPRA will threaten the achievement of the *Partnership Agreement's* commitment to 'speeding up' the planning decision making process as well as the Executive's own objectives, not least its 'number one' priority of sustainable national economic growth but also its targets and strategies in areas such as renewable energy, waste management and the improvement of public services and infrastructure. The threat of Scotland becoming 'competitively disadvantaged' particularly in relation to England, where it has been decided not to proceed with TPRA, is also a main focus of concern.

78. Although critical of the current system, there is strong support for both current modernisation proposals as well as the role of both local councillors and Ministers in planning decision making. Indeed the potential for TPRA to undermine local democracy and political accountability is a major tenet of their case for opposition.

79. As noted earlier, business and developers consider that the potential costs and risks associated with the introduction of TPRA have been severely underestimated in the consultation paper. They also feel that there is insufficient emphasis on the costs and risks already taken on by developers when developing major development proposals. If the Executive was to seriously consider the introduction of even a very limited TPRA, there would likely be calls that prior to any implementation the impact on costs, risks and delays for developers would need to be assessed.

80. As noted earlier there are particular concerns that TPRA will effectively stymie any 'bad neighbour' developments e.g. wind farms, landfill sites, quarries etc

81. There is little confidence that either planning authorities or the Executive could cope with the introduction of TPRA even with a modest increase in resources.

82. Furthermore it is anticipated that TPRA will be hijacked by professional objectors, NIMBYs, those with 'agendas' (including moral and political) and business competitors. In this regard it should be noted that the business and developers view of experience of TPRA from the Republic of Ireland is markedly different from other groups in support of TPRA e.g. environment/heritage groups. They report that third party appeal rights have been abused and used as a negotiating/bargaining tool and dominated by competitive business interests which has led to bribery and corruption in some instances e.g. pay offs by developers to objectors.

83. Finally this group have no confidence that TPRA will appease objectors or prospective appellants. While recognising that there can be genuine cases of community concern in some instances, they strongly believe that the principal motivation of the vast majority is self interest and that their dissatisfaction with planning decisions stems from experience of these decisions going against them. As a result, the introduction of TPRA will not address their concerns and indeed may only unrealistically raise public expectations and ultimately only serve to further undermine public confidence in the planning system - the exact opposite of what is intended.

#### *Planning Authorities*

84. 26 of the 33 respondents in the planning authorities group (which includes COSLA) who responded to the consultation also expressed their opposition to TPRA in principle.

85. Of the 7 who registered support (6 local authorities and one National Park authority) most could only support TPRA if it was introduced in very limited circumstances – more limited than the 4 categories of the *Partnership Agreement* featured in the consultation addressed later below. In voicing support there is a clear expectation that sufficient additional resources will be made available to service any limited introduction.

86. The majority of planning authorities do not see TPRA as being in the wider public interest and see it as a major threat to the Executive's aims of 'speeding up' planning decisions and 'streamlining' the planning process. It is also viewed as a threat to sustaining progress made in recent years by authorities in improving aspects of their planning performance.

87. There are considerable concerns about how a system offering TPRA could possibly be resourced and about the impact that its introduction would have on the whole 'ethos' of the planning system (e.g. a change from being pro-development to anti-development, from being facilitative to confrontational, from being proactive to reactive etc).

88. It is considered very likely that TPRA will undermine 'the primacy of the development plan' and current proposals to modernise development planning and achieve constructive public involvement in planning. It is also not clear what incentive there would be for a planning authority to allocate resources to deal with or progress significant and controversial applications as these are almost certain to attract third party appeals with the final decision being taken out of that authority's control.

89. TPRA is also viewed as being a threat to, and likely to delay, vital public and private sector investment that will bring beneficial impacts to the wider (majority and silent) community. As in the case of business/developers there are worries that any right of third party appeal will be open to abuse and if any such system was introduced there would need to be safeguards to protect planning authorities from any potential litigation from applicants in cases where third party appeals are received following approval by the authority.

90. The introduction of TPRA will further undermine local democracy and accountability, leading to more and more significant planning decisions being taken out of a planning authority's hands and being made by Reporters who are unelected and unaccountable. This is unacceptable to local authorities, and a possible reason why even the minority expressing some support for TPRA, do so in such limited circumstances.

91. The majority feel that this is the wrong time to contemplate such a radical change to the planning system and that current modernisation proposals should be given time to take effect and prove themselves before any such action is considered. It is also believed that measures to increase public involvement in the planning system should be focused on the early stages of the development process and not the final stages as in the case of TPRA .

#### *Planning and related professionals*

92. There is a split in the views of this group – while over half of those responding (19 of 33) oppose the introduction of TPRA, a substantial minority (13 of 33) are in support.

93. Among some planners and planning solicitors, the whole principle of third party appeal rights is challenged on the basis of the historical development of applicant rights of appeal – i.e. absolute development rights being removed from property/land owners by the 1947 Planning Act and the fact that appeal rights were introduced as a form of compensation for such a loss of rights. There is no similar reasoning as to why third parties should have similar rights.

94. As in the case of planning authorities and business/developers there is strong support for any measures to improve public/third party involvement in planning to be focused on the early (pre-application) stages of the development planning process and concerns about undermining the role and status of the development plan. It is also believed that the introduction of TPRA will detract attention from the need for more effective planning at a strategic level which is regarded as much more of a priority.

95. While the local democratic process is viewed as critical for making planning decisions there is recognition that both councillors and the public do not 'understand planning' partly because it is already 'so complicated' and that TPRA will add to such complexity and delay decision making timescales further.

96. Opponents feel that the case for TPRA cannot be justified at this time ('a luxury that cannot be afforded') in terms of resources, timescales, wider public interest and other more important priorities. Although it is recognised that the existing system needs to be improved to address third party concerns in relation to transparency, quality of decision making, development plan currency, fairness and clarity, there is little belief that TPRA will deliver on this.

97. The Royal Town Planning Institute (RTPI), the professional body for planners does not support the introduction of TPRA but suggest an alternative in the shape of a new Public Right of Notification. This is discussed more fully under 'alternative packages' towards the end of this report.

98. Supporters of TPRA among planning and related professionals as in the case of groups where the majority are in support, most commonly think that its introduction will bring fairness and equity, an improvement of public confidence in the system and provide an ultimate check on poor quality decision making.

*National/regional agencies and interest groups*

99. There is also a split in views among this group partly due to its highly diverse nature. This group includes statutory bodies e.g. Scottish Natural Heritage and SEPA, strategic authorities e.g. coal, rail etc, housing, consumer and voluntary sector interest groups, Scottish and local enterprise companies, regional economic forums, trade unions and legal bodies.

100. The majority of such groups (17 of 28) oppose TPRA in principle; a minority (9 of 28) are in support of it. Views tend to be split along interest grounds – for example those agencies operating in the fields of employment, industry, transport and health are universally opposed to TPRA.

101. Opponents include Scottish Enterprise and its LEC network who have major concerns regarding the performance of the existing planning system and its 'detrimental impact on the economy'. Concerns regarding the introduction of TPRA are focused on the potential for further delays in handling planning applications and the negative impact this will have on business growth.

102. Scottish Natural Heritage (SNH) whose main concern is the care of the natural environment is not in support of TPRA – in contrast to the views of non statutory environment groups who were almost unanimously in support. SNH's preference is for resources to be focused on the continued modernisation of the development plan system and an increase in the use of existing notification procedures to deal with development plan departures.

103. The Scottish Environment Protection Agency (SEPA) supports a very limited TPRA where development has major environmental impact but only where it has not already been subject to scrutiny through the development plan process.

104. While housing interest groups are split in their views, they are very concerned that TPRA will be used to prevent social housing developments including those for disadvantaged needs groups e.g. homeless people, disabled people etc. They consider that this could threaten the achievement of other policy priorities and targets of the Executive e.g. in relation to homelessness, domestic abuse, community regeneration and social inclusion.

**The potential restriction of TPRA to 4 categories of planning decisions identified in the *Partnership Agreement* (Q3)**

105. The *Partnership Agreement* gave a commitment to consult on 4 specific types of planning decisions where TPRA might potentially apply. These include cases (approvals) where:

- the local authority has an interest
- where the application is contrary to the local plan
- when planning officers have recommended rejection
- where an Environmental Impact Assessment (EIA) is required.

Respondents were asked to indicate whether TPRA should be limited to these categories.

106. The positioning of this question in the consultation document caused some difficulty, in particular the fact that it came before respondents were asked to express their overall view as to whether they supported or opposed TPRA in principle (Q6). Despite a proviso that any response to Q3 would not prejudice any overall view expressed in Q6, some respondents refused to answer, or found it difficult to answer. This was particularly the case for those supporters who felt TPRA should potentially apply to all types of planning decision as well as for those opponents who strongly felt that TPRA should not apply in any circumstance. For example in the business/developers group over half of the respondents did not answer this question, often because of their stance of 'implacable opposition'.

107. On a technical note, a few respondents commented on the wording of 2 of the categories under consideration. It was suggested that the second category should read 'where contrary to the development plan' so that cases contrary to the structure plan as well as the local plan are included. This is suggested in recognition that either the structure or local plan may be the more valid or current at any particular time, in any particular case. It was also suggested that the third category should read 'where the planning decision runs contrary to officers recommendation' rather than limiting it to only where officers have recommended rejection. This would imply that refusals, as well as approvals, falling into this category would also be eligible for TPRA, although this was not necessarily supported by respondents views on Q4 (to which decisions should TPRA apply).

108. This question attracted the highest response after Q6 (support for TPRA in principle) and was answered directly or indirectly by over 4 in every 5 respondents (83% of the total ).

109. As noted earlier, this question was 1 of 2 that featured in the **everyone** campaign where respondents were invited to offer their support for the application of TPRA to be limited to all 4 categories (the appropriate text is replicated in Annex 1). This campaign accounted for 76% of all responses to this question.

110. The profile of overall results of support or opposition for each category by group is illustrated in Table 5 below. Bearing in mind that respondents were asked for their views without prejudice to their overall position of support or opposition to TPRA, the key points are:

- Over 9 in 10 respondents would support the introduction of TPRA in all 4 categories – support is dominated by individuals, environment/heritage groups, Community Councils and political representatives/groups
- If TPRA was introduced, the majority of national/regional agencies and interest groups can see its relevance in all 4 categories, although support is least in the case of where an EIA is required
- A clear majority of all business/developers would oppose the introduction of TPRA in any of the 4 categories
- The majority of planning authorities would be opposed to TPRA in 3 of 4 categories; the only category where there may be support would be in the case of where decisions are contrary to the local (development) plan; support tended to be conditional on this only applying in certain conditions which are discussed further below.
- Planning and related professionals are split in their views with no overall majority in support of any of the 4 categories – again the least relevant case is perceived to be cases where an EIA is required.

**Table 5: Support for TPRA in 4 Partnership Categories (without prejudice)**

Group	Where local authority has an interest	Where departure from local plan	Where officer has recommended rejection	Where EIA required
Individuals	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Environment/heritage groups	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Community Councils	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
Political reps/parties	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
National/regional agencies/groups	YES	YES	YES	YES
Planning/related professionals	NO	?	?	NO
Planning authorities	NO	<b>YES</b>	<b>NO</b>	<b>NO</b>
Business/developers	<b>NO</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>
<b>ALL</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>
<b>ALL (exc individuals)</b>	YES	<b>YES</b>	YES	YES

Note – bold indicates 2 in 3 or more respondents in support or opposed; non bold indicates over half but less than 2 in 3 respondents in support or opposed ; ? indicates where no overall majority

111. Both supporters and opponents made a range of comments on why TPRA should apply or not apply in these 4 categories. Generally speaking supporters restated many of the reasons given in the consultation document while opponents tended to be a bit more expansive in additional comments made. Taking each case in turn the following comments were the most commonly made.

*Cases where the local authority has an interest*

112. Current procedures require notification to Ministers where there is a land or financial interest on the part of the local authority and where the application does not accord with an approved or adopted plan or where there has been a substantial body of objections.

113. Supporters of TPRA stressed the need for probity and transparency in such cases because of the potential conflict of interest involved. While opponents understood such concerns, they questioned why existing notification and call-in procedures were not considered to be adequate in offering sufficient safeguards and whether there was any evidence to suggest otherwise. Some respondents, including some authorities themselves, imply that such procedures may not be being applied consistently or widely enough and that there may be a need for more guidance on use and/or stricter application. Among opponents the tightening up of such procedures is far preferable to the introduction of TPRA in such circumstances.

114. The remainder of comments focused on the difficulties associated with defining where the local authority has an 'interest' and whether such interest is direct or indirect, financial or policy etc. There was some concern expressed by supporters of TPRA about the increasing scope of local authority interest and in an increasing number of applications and the fact that the nature of such interest is not always apparent or straightforward to identify.

115. While supporters of TPRA generally want to see a wider definition used, opponents lean towards the current definition being more clearly and strictly defined to focus on for example only 'significant' departures from the development plan and where there is evidence that decisions have not been made on 'robust planning evidence'.

116. The following types of applicant or applications were cited from both sides as being contentious in terms of defining what constitutes a local authority interest:

- companies, trusts and other organisations including public private partnerships (PPPs) in which the Council has a current, recent or future financial interest
- organisations who are financially supported/sponsored by the local authority
- 'affordable' and in particular 'social' housing developments including those for vulnerable and disadvantaged groups.

117. While (TPRA) supporters would want such cases included, opponents would not. Local authorities and some national/regional agencies have particular concerns regarding the likely impact of any change to current procedures on delaying or threatening investment in major infrastructure and public sector projects that are in the wider community interest.

*Cases which are contrary to the local (development) plan*

118. As noted earlier, respondents have suggested that it would be more appropriate that this category applies to both structure plans and local plans which together constitute the development plan. Current procedures require notification to Ministers where an application constitutes a 'significant departure' from a structure plan or a local plan approved by Ministers. As most local plans do not involve Ministers in the approval process, notification in practice tends to focus on instances involving departure from the structure plan (only).

119. The origins of support for TPRA to apply in such cases seems borne out of frustration with the content of local plans (their lack of precision, their basis in policy and criteria rather than being site specific etc) and their lack of currency. The consultation document itself highlights that 70% were adopted more than 5 years ago and many respondents suggested that timescales and requirements to keep plans up to date should be mandatory. There is also significant frustration and concern about the lack of clarity surrounding key definitions used in the planning process – namely what constitutes being 'contrary', a 'departure', a 'significant' departure and a 'material' consideration. The inadequate recording/public availability of the reasons behind planning decisions which are often based on such concepts (but do not explain them) are viewed as contributing to the lack of clarity.

120. While many opponents again point to the adequacy and effectiveness of existing notification and call-in procedures in handling such cases, even the majority of planning authorities, suggest that if TPRA is introduced, this is probably one of the most relevant categories where it could apply. Support is largely restricted to instances where a decision constitutes a significant departure from the development plan and where the development plan is considerably out of date or has lost its 'relevance'.

121. Having said that, most opponents of TPRA including most planning authorities have a clear preference for focusing on strengthening the current development plan system in terms of public involvement, making plans more relevant and keeping plans up to date. Some also feel that existing notification and call-in procedures could be strengthened and more consistently applied and enforced.

*Cases where planning officers have recommended rejection*

122. This category applies to where planning officers have recommended rejection of an application but the planning authority (elected members) decide to approve it nonetheless. It is suggested by some respondents that this category should be extended to include where a decision is taken against officers recommendations whether involving approval or refusal.

123. Supporters of TPRA are almost unanimous in it applying in such instances arguing that there is a need to ensure that there has not been undue political influence or pressure brought to bear on the decision taken.

124. Opponents on the other hand argue that it is a democratic right of elected members not to accept officers recommendations and that essentially that is why they are elected - to make such decisions. Any move to introduce TPRA in such cases is essentially anti-democratic. It is argued that it is quite legitimate for councillors to weigh up considerations differently. Planning authorities and at least half of planning professionals argue that many planning decisions are a matter of interpretation and judgement (i.e. taken on balance rather than on black and white considerations).

125. It is also argued that such decisions are transparent and clearly recorded as being against officers recommendation, although others argue that the reasons for such decisions are inadequately recorded.

*Cases where an Environmental Impact Assessment (EIA) is required*

126. This is probably the most controversial of the 4 *Partnership Agreement* categories under consideration. Supporters of TPRA are almost unanimous in their support for it applying in such cases, while the majority of planning authorities, planning and related professionals and business/developers do not agree.

127. Supporters argue that an EIA is an indicator of proposals that are 'big' in scale, likely to have a major impact on communities, are likely to be controversial and environmentally sensitive. It is argued that TPRA should apply in all Schedule 1, if not all Schedule 2, cases as defined by existing regulations which stipulate when an EIA is required and when not.

128. To some extent there is evidence to suggest that this argument is in part related to the overall lack of public confidence in the planning system. There is a perception that EIA studies are not to be trusted. They are commissioned by applicants/developers, are highly technical in nature and content, poorly understood and rarely, if ever, come out in opposition of a development. It is questioned by environment/heritage groups and Community Councils whether EIAs can ever be independent in such circumstances and there are serious questions as to whether planning officers and authorities really have the skills to critically assess these.

129. On the other hand opponents see little logic in applications that involve EIAs being a category where TPRA should automatically apply. It is argued that such cases are already open to additional scrutiny because of the EIA requirement and the fact that such applications are often subject to Ministerial notification and potential call-in procedures. It is questioned whether such applications are necessarily an appropriate indicator of controversial proposals or those that are of wider public interest. Some respondents do not see them as having any different status to those that require a Retail Impact Assessment or Transport Impact Assessment, for example.

130. If TPRA was to apply to this category the following additional concerns were highlighted:

- That developers would seek to ensure that their developments would fall below the threshold limits of where an EIA is required
- If so, concerns over the cumulative impact of below threshold developments
- That all 'bad neighbour' developments or industries would be subject to TPRA, effectively removing them from local planning decision making, and any such development stymied, seriously threatening the future of industries such as quarrying, mining, renewable energy, waste management etc.

**To which types of decision should TPRA apply (Q4)**

131. This question proved quite complex for respondents to handle and only around 1 in 8 (13%) made any comment, with far fewer specifically referring to the types of decisions set out in the consultation paper. The complexity for respondents arose from how different types of decision were presented for potential inclusion or not.

132. Planning authorities, planning/related professionals were the most likely to respond overall. Business/developers repeated their stance of 'implacable opposition' with the majority of respondents in this group suggesting that TPRA should not apply in any type of planning decisions.

133. The consultation paper listed a number of types of decision, assuming that the *Partnership Agreement* categories of the previous question would apply, where TPRA could come into effect. Irrespective of their position on the overall principle of TPRA, the majority responding agreed that TPRA should potentially apply in the following cases:

- Approvals – both in 'outline' and in 'full'
- Refusals, non determinations and conditions applied
- Periodic reviews of mineral permissions
- Prior approval of development under the General Permitted Development Order (GPDO).

134. However a significant minority of planning authorities and planning/related professionals suggested that TPRA should apply to approvals only and not to refusals, non determinations or consent conditions. There was also less enthusiasm for periodic reviews of mineral permissions and prior approvals under the GPDO to be subject to TPRA.

135. The consultation paper also suggested that certain types of decision should not fall within the scope of TPRA if it was introduced. This included cases of enforcement, deemed permissions under the Electricity Act 1989 and the control of advertisements. Among those specifically responding to these categories:

- 1 in 3 Community Councils and 1 in 3 environment/heritage groups did not agree that enforcement cases should be excluded
- 1 in 3 environment/heritage groups did not agree that deemed permissions under the Electricity Act should be excluded
- A small number of planning authorities opposed to TPRA did not see the reasoning for excluding any of these categories if it was introduced.

136. Some respondents highlighted that if applications under the Electricity Act became exempt from TPRA, there would be the potential for inconsistency in the handling of renewable energy (wind farm/turbine) proposals depending on their scale (i.e. larger developments under the Electricity Act not being subject to TPRA, smaller developments under the Planning Acts being subject to TPRA). Such concerns were not limited to supporters of TPRA but also included some opponents.

137. The focus in this question on types of decision where TPRA might apply resulted in a number of respondents, especially among individuals and Community Councils, raising the issue of cases where the details of applications change following initial submission and consultation e.g. through negotiation between the applicant and the planning authority. Since such changes tend not to be advertised or communicated, many supporters feel that TPRA should also apply in such instances.

**Which third parties should be able to appeal (Q5)**

138. This question was answered by around 1 in 6 respondents (17% of the total). Planning authorities, planning /related professionals and Community Councils were more likely to respond than other groups.

139. The consultation paper identified 5 different types of third party who might potentially be eligible to exercise a right of appeal, if it was agreed that TPRA should be introduced. These groups were:

- All members of the general public (i.e. anyone)
- Persons with an interest in the land (property/land owners, neighbours)
- Objectors to the original planning application
- Representatives (Community Councils, other community/resident groups, environment/heritage groups)
- Other interested parties (business interests, statutory consultees, national/local interest groups, councillors, LECs and trade unions).

140. The table below highlights the type of third party most often mentioned by respondents in each group and overall.

**Table 6: Which Third Parties by Group**

Group	Most Commonly Mentioned		
	1st	2nd	3rd
Individuals	Objectors	Community Councils	Respondents/commentors
Environment/heritage groups	Objectors	Respondents/commentors	Those with property rights
Community Councils	Objectors	Community Councils	Those with property rights
Political reps/parties	Objectors	Community Councils	-
National/regional agencies/groups	Objectors	-	-
Planning/related professionals	Objectors	Those with property rights	-
Planning authorities	Objectors	Respondents/commentors	Statutory Consultees
Business/developers	No one	Objectors	-
ALL	Objectors	Community Councils	Respondents/commentors

141. Objectors are, by far, the type of third party most commonly mentioned when considering who should be able to exercise TPRA if such a mechanism is to be introduced. They were mentioned by 2 in 3 of all respondents to this question. It was the most common answer given by each group, with the exception of business/developers who again repeated their stance that TPRA should not be granted to anyone. Some planning authorities were more measured and suggested that to object should not in itself be sufficient and that any objection would need to be 'on substantive planning grounds'.

142. Some respondents widened the category of objectors to include those who made 'representations', 'commented' or 'responded' to the original application although few suggested how these might be identified/defined. Among those who did make comment it was expected that 'something would need to be in writing'.

143. Community Councils were the next most commonly mentioned type of third party – by over 1 in 3 respondents to the question. Strongest support came from Community Councils themselves, individuals and political representatives/parties. There was some minority support for TPRA to be made available to the general public, those with property rights including neighbours and statutory consultees (other than Community Councils) but these were specifically mentioned by less than 1 in 10 respondents to the question.

144. Generally speaking the paramount criterion was seen to be the need to be an objector to the original application rather than giving such groups an automatic right to appeal.

145. There was little support for TPRA to be made specifically available to those with business interests, national and local interest groups, councillors, LECs or trade unions.

146. It was widely recognised by those with wider experience of the planning system that there would need to be some measures put in place to ensure that the category of those able to exercise TPRA was limited in some way. Among these there was a lack of enthusiasm for such a right to be available to any member of the public.

147. Notwithstanding the origins of planning and the historical right of an individual's right to develop their own property or land, many respondents felt that those with such interests had other means available by which to prevent development e.g. by virtue of ownership and choosing not to sell.

148. Concerns were expressed regarding the concept of 'representatives' or 'representative groups' being eligible and how these might be defined, both by supporters and opponents of TPRA. While Community Councils supported the involvement of other representative local community groups in situations where no Community Council existed, there was concern over other groups getting involved that were secular in their focus of interest and not locally representative or accountable. Reference was made to those with wider 'agendas' and those with 'particular political interests'.

149. This was an issue of particular concern to business/developers who foresee a system under TPRA that could become potentially hijacked by a variety of common but minority interests. They question whether these interests can be truly considered representative of the wider majority community interest which is largely silent. They largely argue that the involvement of 'representatives' is already sufficiently addressed through local democracy and the election of the local planning authority.

150. The difficulty of managing and identifying what constitutes a 'legitimate' interest is well recognised by many Community Councils in regard to the possible introduction of TPRA. Some suggest that this could be managed by the introduction of a 'special right of community appeal' which would rest with a Community Council (or other local group) whereby they would 'take on' the case on behalf of a number of their constituents (including neighbours) who would be encouraged to act collectively.

151. While support is undoubtedly widest for TPRA to be available to objectors to the original planning application above anyone else, there are widespread concerns among opponents that this will potentially lead to a flurry of 'speculative' or 'spurious' objections, including those based on 'campaigns', that would have little substance and that would 'paralyse the system'. Hence the reason why many planning authorities insist that any such objections would need to be on valid planning grounds.

**How would planning authorities and the Scottish Executive be placed to manage any resultant increase in workload as a result of the introduction of TPRA (Q7)**

152. Just over 1 in 7 respondents (15% of the total) answered this question; planning authorities, planning/related professionals and business/developers were more likely to respond than other groups.

153. A clear majority of those expressing a view consider that neither planning authorities or the Executive (SEIRU) are well placed to respond to such a radical change to the planning system. It is considered that the current system 'could not cope', not least because it is already 'struggling to perform' and is already overstretched and under resourced.

154. Without exception, planning authorities feel that the introduction of TPRA would require a significant increase in financial and human resources for them and for the SEIRU. They highlight that the number of planning applications has increased significantly since the mid 1990s and that this, along with improvements in performance, have been absorbed without any increase in the number of planners. There has also been an increase in the number of Executive led initiatives requiring planning involvement. If significant additional resources were not made available, planning performance in other areas, notably determining planning applications and development plan production and implementation, would suffer. It is not accepted that there is any real potential to redistribute staffing resources within planning to service TPRA, given current levels of resourcing.

155. Business/developers highlight that most authorities are still failing to meet the Executive's own performance targets and that the timescales associated with handling of 'commercial scale' applications in particular are unacceptable and a major threat to local and national economic growth. It is not only authorities that are considered under resourced but also statutory consultees where the introduction of TPRA would also have a major impact.

156. Furthermore there is little confidence among these groups that even if there was a commitment to significantly increase resources to accommodate TPRA that this could be achieved in practice in the short to medium term. The following complicating factors were identified:

- An already significant shortage of planners with many authorities experiencing recruitment difficulties
- A lack of sufficient professional planning education and training opportunities in Scotland
- The potential drain of local authority planners to the private sector and the SEIRU due to the new opportunities for appeal work that the introduction of TPRA would bring.

157. Many Community Councils, individuals and environment/heritage groups also consider that, based on their experience, the introduction of TPRA could not be accommodated within the existing level of resources available to planning authorities or statutory consultees – many perceive these resources to be already inadequate and to have suffered from ‘under resourcing for years’.

158. However resource considerations are not viewed as a satisfactory ‘excuse’ or reason for not proceeding with TPRA among these groups. This is typically expressed in the following terms - ‘fairness is more important than resources’, ‘TPRA is an improvement in democracy worth funding’, ‘any price is worth paying given the long lasting effects of development’ and that ‘the Executive will need to provide the framework and resources to make it happen or it won’t work’

159. Some respondents within these groups on the other hand feel that the potential level of additional resources likely to be required (and the additional number of appeals that will result) is being exaggerated by opponents of TPRA. They argue that the cumulative impact of current modernisation plans combined with the introduction of TPRA (on a limited and screened basis) will require applicants to consult more with communities through pre-application discussions resulting in better quality planning applications that are less likely to attract opposition and therefore fewer appeals. However even some from this viewpoint agree that there are likely to be resource impacts in the short term while TPRA ‘beds down’ and it is suggested that these could be managed by ‘staged implementation’.

160. A small number of respondents made specific reference to the ‘substantial planning delivery grant’ and ‘increase in Planning Aid resources’ announced in England to support the ongoing modernisation of the planning system. There is an expectation that similar additional funding will be found in Scotland to support current modernisation proposals and it is suggested that its use should be extended to help support any introduction of TPRA.

### **Implications for the attractiveness of planning as a career (Q8)**

161. The consultation paper invited respondents to comment on whether they thought that a significant increase in the appeal caseload would have any implications for the attractiveness of planning as a career. As noted above, the premise of the question (that there would be such an increase) was challenged by some respondents (supporters of TPRA) while many did not feel that they were in a position to pass comment..

162. This question was specifically addressed by only around 1 in 8 respondents (13% of the total), although fewer than this expressed a clear view. Although planning authorities and planning/related professionals were more likely to respond than other groups, over 1 in 3 of business/developers, environment/heritage groups and Community Councils also responded. The overall profile of responses is shown in the table below.

**Table 7: Impact on Planning as a Career**

<b>Response</b>	<b>Number of respondents</b>	<b>%</b>
Yes – positive	51	32%
No – not significant	43	27%
Yes – negative	65	41%

163. 3 in 4 respondents felt that an increased appeals workload would have an impact on the attractiveness of planning as a career, while 1 in 4 thought there would be no or little impact. Although numbers of respondents within each group were quite modest, the following points are worthy of note:

- Business/developers, planning authorities and planning/related professionals think that there will be an impact and that this is likely to be negative in nature
- Community Councils, environment/heritage groups and individuals are more split in their views as to whether the impact will be significant or not, but the majority think there will be an impact and that this likely to be largely positive.

164. Among those who feel that there will be a negative impact, the majority argue that an increased focus on appeals in itself brings negativity – that the planning system will become more regulatory and bureaucratic as well as adversarial in nature. Some feel that this will add to current poor staff morale and bring additional stress for local authority planners.

165. From within the profession (authorities and professionals) there is a perception that planning is already a career in which there is falling interest largely as a result of an ‘increasingly narrow focus on development control activities’ and ‘managing detailed processes’. In short, it is not the kind of work that makes graduates want to become planners – they want to work in ‘forward planning, policy development, plan implementation and positive development control’ rather than ‘fighting rearguard actions’.

166. The implications of this for current modernisation proposals and for planning in the long term are also of some concern and it is questioned whether such a shift in work emphasis will attract ‘the more creative and visionary staff the profession needs to set and drive the agenda for change in the planning system’. This is regarded as not only an issue for planning authorities but also for the SEIRU.

167. It is suggested that the introduction of TPRA, on anything but an extremely limited basis, will lead to the growth of a 'lucrative appeals industry' which is likely to lead to the drain of the most experienced planners from local authorities to private consultants and indeed the SEIRU, where increased resources will be required. Given existing staffing and recruitment difficulties this would only serve to 'make matters worse' without there being a ready pool of planners to take their place. Some respondents from the legal profession also recognise the potential for increased work deriving from appeals, although this is not welcomed by all of those who have an interest in planning law.

168. On the other hand, these are far from the views generally expressed by supporters of TPRA. While some recognise that there are current resourcing difficulties within planning authorities, they consider that it will have a largely positive impact. It is argued that directly or indirectly the work of planners will involve greater community involvement, lead to more transparent decision making and ultimately better quality decisions and development. This 'fairer' planning system will be more valued by the public. This is anticipated to be a profession that graduates are more, rather than less, likely to be drawn to, one that requires a broader range of skills and experience and one that will be regarded in higher esteem.

169. Others take the pragmatic view that 'all jobs change' and why should planning be any different or that this is not a relevant matter in the consideration of whether to introduce TPRA or not.

170. Finally among both supporters and opponents, there are some respondents who take the view that any impact on planning as a profession is dependent on:

- The extent and nature of TPRA if it is introduced
- The level of (additional) resources that are made available to support its introduction
- The extent to which there are negative impacts on other aspects of the planning service as a result.

171. If there is a need for more planners as a result, and there are resources to employ them, it is expected that at least in the short to medium term salaries will have to increase to attract more into local authority planning, given current staff shortages and the limited graduate pool.

**The application of fees in cases of objection and appeal (Q9)**

172. Respondents were invited to comment on whether a fee should be payable to object to a planning application or to lodge an appeal against a planning decision and what an appropriate fee level would be in such cases.

173. This was quite a complex (multi faceted) question and one which caused some confusion for respondents. In the consultation paper the question was raised in the context of a potential model setting out how TPRA could work (Model 1). Because of this the majority of respondents assumed that the reference to appeals meant third party appeals (only), rather than referring to both applicant and third party appeals, which was the intention.

174. Around 1 in 6 respondents (16%) commented, although not all addressed each part of the question.

175. There was little support among any group for the principle of a fee being payable in the case of lodging an objection to an application. Well over 4 in 5 (84%) responding to this aspect of the question felt that no fee should be payable.

176. It is not possible to draw any conclusions on the views as to whether fees should apply in the case of applicant appeals. Among the few planning authorities and planning /related professionals who specifically commented there was no majority view. Some thought that applicants should pay a fee on the same basis (level) as any proposed for third parties and others felt that they should not pay anything given that they have already paid an application fee.

177. In relation to the case of third party appeals, a substantial majority – 2 in 3 of all respondents (66% of the total) – thought that a fee should apply. This was the view of a clear majority in each group. While Community Councils were the least likely to agree (44% disagreeing) this was associated in part with the particular difficulties envisaged by Community Councils in being able to pay for their involvement in such appeals. This is due to their limited financial resources and the rules governing the use of any financial assistance (grant funding) they receive from their respective local authority.

178. The widespread support for fees in the case of TPRA is driven by a strong desire to deter what respondents refer to as ‘vexatious and frivolous’ appeals and to ensure that any new appeals system does not become clogged up with these.

179. It is widely recognised that there needs to be a balance struck in any fee or fee scale proposals, to deter such appeals by ‘time wasters’ but at the same time not to discourage genuine appellants of modest means pursuing a case. Many respondents expressed this in terms of a ‘modest fee’ being appropriate.

180. This is not quite the view of all business/developers with many in this group envisaging a more substantial fee, arguing that third parties should pay ‘at least the same’ as an applicant pays to lodge an application in the first place.

181. There is a minority view that there should be no fees payable by third parties wanting to appeal on the basis that any fee would be unfair and exclusive in impact, as well as inhibiting participation in the planning process. Some make a case for non profit, voluntary and community organisations to be exempt from any fee introduced on the basis that they would be ‘acting in the public interest’.

182. As to what constitutes a ‘modest fee’ there are quite varying perceptions. Community Councils, environment/heritage groups and individuals would consider a fee in the range of £25-100 as acceptable, whereas the majority of planning authorities think somewhere in the range of £100-500 would be more appropriate. However some authorities and agencies recognise that charges at such levels will not be sufficient to cover the real costs associated with handling a third party appeal. They question whether ‘nominal’ fees are worth collecting (“why bother?”) suggesting that such fee collection would become ‘yet another administrative burden on the process’.

183. Business/developers argue that any additional costs incurred by them in contesting third party appeals should be able to be recovered e.g. where an appeal is proven to be 'vexatious' and/or where it is unsuccessful and suggest that this be done through the awarding of costs against the appellant. Planning authorities also voice some concern about the potential for litigation by applicants in situations where they initially grant approval only for the decision to be overturned as a result of a successful third party appeal. This issue would need to be specifically addressed in the design of TPRA.

184. A small minority of respondents felt that a deposit and/or fines system may be effective in deterring wasteful appeals, although such views were not strongly held.

### **The role of Ministers and the SEIRU (Q10)**

185. The consultation paper asked the question whether Ministers should retain their role in particular planning appeals or whether the SEIRU should decide all appeals. Around 1 in 7 (14%) of all respondents passed comment on this particular question. While planning authorities and planning/related professionals were more likely to respond, these responses were outnumbered by business/developers and Community Councils, with half of all respondents in each of these 2 groups expressing a view.

186. A clear majority of those responding (2 in every 3) feel that the Ministers should retain a role in deciding certain planning applications. Levels of support are strongest among planning authorities, national agencies/interest groups and business/developers (almost 9 in 10 agreeing), although a majority of individuals and Community Councils responding to the question also agree.

187. Many merely commented that Ministers should 'retain their current role', or that 'the status quo should remain'. Others stress that they have a legitimate role in deciding applications that are of 'national importance' or 'strategic significance' and that such decisions should rightly lie with 'our political masters' as a critical part of the democratic process – 'major investment decisions often call for political decisions to be made in the public interest'. Any move to increase the role of the SEIRU and the power of Reporters is regarded as undermining democratic accountability.

188. However even among supporters of a continued role for Ministers there are some concerns over the lack of clarity and justification surrounding which decisions they choose to intervene in and why (as opposed to those where the ultimate decision is left to the SEIRU). The need for published criteria/guidelines on where Ministerial intervention can apply is suggested.

189. The majority of environment/heritage groups and a substantial minority of Community Councils and individuals oppose a continued decision making role for Ministers and want to see an 'arms length' or wholly independent SEIRU decide all appeals. It is argued that only the SEIRU can act impartially and make 'purely evidence-based decisions' rather than the nature of decisions being vulnerable to 'political whim'. It is also thought to be critically important that decisions are made by an independent body in cases where there is a conflict of interest including where Ministers may be both the promoter of development and the decision maker. The example of developments involving the extension to the national motorway network is given as an example.

190. Planning/related professionals are completely split on this issue. While some argue that the Ministers have a valid role to play and that their current role should be maintained at least in matters of national importance, others argue that planning decisions should be taken on planning grounds by ‘an independent body free of political bias’.

191. Irrespective of their particular stance on this issue, a small number of respondents stated that any introduction of TPRA does not justify any change to the role of Ministers and question whether there should be any connection between the two.

**Whether mandatory hearings would increase public confidence (Q11)**

192. This question considered whether the introduction of mandatory hearings in ‘defined circumstances’ would increase public confidence in the decisions made by planning authorities. Some respondents answered the question in more general terms – i.e. whether they thought mandatory hearings were a good idea, rather than specifically addressing whether they would be likely to lead to an increase in public confidence. Others commented on the potential increase in the voluntary use of hearings but made it clear that they would not want these to be mandatory, and this was particularly the case among planning authorities.

193. Just over 1 in 7 respondents (15%) answered this question. There was no clear majority view with respondents being almost equally split between those who felt mandatory hearings would make a difference (47%) and those who thought they would not (45%). There were some important variations in the views expressed by different groups.

**Table 8: Would Mandatory Hearings Improve Public Confidence?**

<b>Response</b>	<b>Number of respondents</b>	<b>%</b>
Yes	116	47%
No	109	45%
Unclear/Don't Know	19	8%

194. The strongest support for the increased use of hearings to improve public confidence was among planning authorities and agencies with over 2 in 3 supporting such a move. This was viewed as a much more acceptable solution than the introduction of TPRA. Much of this support came from those authorities who were already operating a planning hearings or planning panels system, and although the majority did not want these to become mandatory, there was widespread support for a national Code of Guidance or Best Practice Guide to ensure some national consistency in when they were used and how they were conducted. How hearings are conducted and managed are considered critical issues to be addressed by other groups in such guidance.

195. The prospect of mandatory hearings was not particularly welcomed by some authorities and there were concerns expressed as to how such a system could possibly be resourced, not only financially but also in practical terms. Many hearings are held in the evening and usually involve elected members. This, combined with moves to more streamlined and corporate (cabinet) type committee decision making structures which meet less frequently, had authorities asking whether the demand for mandatory hearings could ever be serviced.

196. Considering in what 'defined circumstances' hearings might be appropriate, the most commonly mentioned circumstances were 'significant departures' from the development plan, where there was a 'substantial body of objection' and where applications were 'large scale and contentious'. However there was little support for their wider application among planning authorities or agencies.

197. The majority of Community Councils also supported their increased use (56%) although a substantial minority did not (42%). Again there was support for these to be restricted to 'larger proposals of community interest' although many of those who had experience of them felt that they 'did not work' or were 'not of great benefit'. Mandatory hearings were not seen as an alternative to TPRA.

198. Environment/heritage groups and individuals were far from convinced of their benefits and were stronger in their view that they were 'no substitute for the independent scrutiny of applications that would follow from the introduction of TPRA'. Reference was made to the very limited opportunity that third parties have to present their case in current hearing systems already operated by some authorities. They are not acceptable because they still allow the applicant a right to appeal if the outcome is not in their favour.

199. While those in the business/developers group are more split in their views, those that are against their introduction appear to have more experience of them. Current hearings systems are dismissed by some as often being 'theatrical and tokenistic nonsense' and that ultimately they will not work because feelings run high and in many cases objectors' views are not taken on board resulting in a frustrating experience for all. Those in this group who support their wider use again see them as relevant only in major applications of 'local and national concern'. Strong support is articulated for early third party involvement in the policy formulation and development preparation stage rather than at hearings.

200. There are a number of common themes that run through views on hearings, irrespective of the group to which respondents belong. These include:

- concerns about the resource implications of making hearings mandatory
- the view that they should not apply to all (smaller) applications that attract objections
- that the resource implications of running them would be considerable and could not be met
- that they would add not only costs but delays to the existing system.

201. Among those who would not favour the increased use of hearings, across different groups, there are real concerns as to whether public hearings in any shape or form would really lead to an increase in public confidence. It is argued that the increased use of public hearings would only raise expectations that objectors would not only have their say, but be heard and their objections accepted, leading to having a real bearing on the outcome and decisions amended accordingly. Experience suggests that except in a minority of cases this would not happen and decisions would not be overturned and that this would merely lead to frustration, an increased feeling of marginalisation and ultimately a further decrease in public confidence.

**The extension of notification to Ministers in the case of all departures from the development plan (Q12)**

202. Respondents were invited to comment on whether the extension of existing Ministerial notification procedures to include all cases where there is a departure from the development plan would sufficiently address concerns about planning authorities making decisions that are contrary to them.

203. Again around 1 in 7 respondents (14%) commented specifically and again planning authorities and planning/related professionals were more likely to reply. However around half of all Community Councils and business/developers also expressed a view.

204. The overall response to this question is set out in the table below with just over half of all respondents (53%) feeling that such an extension would not address such concerns but with a substantial minority (42%) thinking the opposite.

**Table 9: Would Notifying Ministers of All Departures Address Concerns?**

<b>Response</b>	<b>Number of respondents</b>	<b>%</b>
Yes	93	41%
No	121	53%
Unclear/Don't Know	13	6%

205. The majority of business/developers, environment/heritage groups, individuals, agencies and planning authorities do not think an extension of existing procedures would address public concerns. However the reasons for not supporting such a suggestion vary significantly by group.

206. Many business/developers argue that the current system is adequate and works well and that any extension to include all departures would be resource intensive, contribute to further delay and introduce an 'additional layer of bureaucracy' in the planning decision making process. It is questioned whether there can be any justification for Ministers to get involved in anything other than cases of national or strategic interest and that the majority of departures would be likely to be 'insignificant' or 'trivial' cases. However any extension in procedures is viewed as 'preferable to TPRA'.

207. This view is largely shared by the majority of planning authorities who are also concerned about the potential impact on recent improvements in planning performance and the Executive's aim to further speed up the process.

208. Environment/heritage groups on the other hand argue that existing procedures and the call-in system 'lack transparency', do not afford a role for third parties and do not adequately address the range of concerns that exist regarding local authority decision making. Any extension is therefore 'no substitute for TPRA' and indeed they highlight that if TPRA was introduced there would be little requirement for a role for Ministers in planning decisions, except possibly in exceptional cases.

209. Some of these views are shared by individuals but they also have concerns regarding the potential cost, time and workload implications and the risk of 'swamping the system' that may arise from any extension.

210. While the majority of Community Councils support an extension and feel that this could alleviate some public concerns, others are concerned about the likely implications for resources and the risk of increased delays in decision making. Among supporters of an increased role for Ministers in development plan departures, it is not envisaged that this would be extended to apply in all cases but would focus on those larger scale applications with wider community impact and those that attract a large number of objections.

211. Yet across all groups there is some interest in tightening up the definition and application of the 'significant departure' rule in relation to Ministerial notification/call-in. It is not clear whether this interest extends to potentially widening its application to local plans that are approved by local authorities (as opposed to by Ministers) as few respondents addressed this directly. Yet, with the exception of planning authorities themselves, this is often implied.

212. The lack of strict application of existing procedures causes some frustration especially the fact that deciding when these circumstances apply rests with the planning authority itself. Some argue that this is inappropriate and suggest this is a role that should be taken on by the SEIRU to ensure such decisions are taken from a more independent viewpoint, acting as a 'statutory consultee' in such instances. The case is again made for published criteria/guidelines to be available addressing where Ministerial intervention should apply as well as the case for more monitoring of this area.

**Appropriateness of a screening process and relevant screening criteria (Q13)**

213. The consultation paper asked for views on whether it would be appropriate to introduce a screening process for planning appeals and if so, what relevant screening criteria might be. Among respondents there was some confusion as to whether this question was referring to all potential planning appeals (by applicants and third parties) or only those appeals made by third parties. The question was raised in the context of a specific proposed model (Model 4) that is based on a new appeals system for both. Notwithstanding this, many respondents answered it in relation to third party appeals (only).

214. Around 1 in 7 respondents (14%) answered the question with a clear majority (73%) in favour of a screening process. The overall profile of responses is given in the table below.

**Table 10: Would Screening Process be Appropriate for Appeals?**

<b>Response</b>	<b>Number of respondents</b>	<b>%</b>
Yes	168	73%
No	56	24%
Unclear/Don't Know	6	3%

215. The few respondents who commented specifically on whether a screening system should be introduced in the case of applicant appeals did not support such a move, although a few business/developers thought that it might be acceptable to consider this in cases where appeals are based solely on grounds of non-determination.

216. There is widely based support for there to be a screening process in the case of third party appeals, although a small minority argue that the planning system is complicated enough without another 'hurdle' being introduced. (Some business/developers stated that they did not support the introduction of any screening process, but that this was simply because they were opposed to the very principle of TPRA.)

217. Support for screening is largely expressed in terms of the need to screen both appeal and appellant to ensure that they meet the relevant criteria that will apply to TPRA, whatever is decided upon, and to ensure that any such system is not abused. It is regarded as imperative that 'vexatious or frivolous appeals' are 'weeded out' by screening and that this should include for example those that are not on 'legitimate', 'substantive' or 'material' planning grounds.

218. It is also considered important to filter out appeals that are made by commercial competitors 'where business advantage is sought' although clearly there are likely to be difficulties in identifying these with no particular suggestions made as to how this might be achieved. Similar comments are made in relation to 'habitual objectors'. Some Community Councils suggest that their involvement (or that of other community groups) in the screening process might assist in the identification of 'legitimate' interests using their local knowledge.

219. In the desire to eliminate appeals that are considered to be wasteful, there is an implicit desire among many respondents to ensure that any resources introduced to support the introduction of TPRA are appropriately allocated.

220. In the 2 potential models involving TPRA set out in the consultation paper (Models 1 and 4) both suggest that the initial screening criteria could be along the lines of the 4 categories set out in the *Partnership Agreement* and which featured in Q3 of the consultation - where the local authority has an interest, an application is contrary to the local plan, when planning officers have recommended rejection and where an Environmental Impact Assessment (EIA) is required. Other potential screening criteria suggested include where an authority has not reached a decision but has all the information it requires to do so (implying a 'deemed refusal'), where the reasons for a decision are not supported by recorded evidence contained in the authority's decision notice and report, and where there may have been a flaw in due process (e.g. carrying out the required consultation or notification).

221. Many supporters of TPRA, and Community Councils in particular, agree with the suggestion that these are relevant screening criteria that could be used, at least in the case of third party appeals. However some respondents, including a number of business/developers, planning authorities and individuals ask if a single stage or 2 stage process involving such categories is not too overly complex and too 'technical' in nature to be easily understood by lay people.

222. There are quite wide concerns that any screening process introduced is above all transparent and defensible. Many think that in order to achieve this, any criteria applied requires to be 'clear' and 'simple' in order to be strictly applied. It is argued that there needs to be a minimum level of interpretation and subjectivity involved, not least to avoid the danger of there ultimately being demands for appeals against screening decisions.

223. When articulating which decisions or types of development should pass such a screening process and allowed to be subject of TPRA, there is little reference to the ‘technical’ planning categories aforementioned which are not necessarily well understood. Moreover the primary interest in where TPRA should apply is expressed in the following terms:

- ‘Controversial’ developments
- ‘Significant’ developments
- Where applications attract a ‘significant number of objections’
- The ‘extent of (opposed) community support’
- ‘Strategic’ significance.

224. In light of the above it is generally anticipated that ‘householder scale’ applications would not be considered appropriate to be included, unless possibly that they were high profile with wider community impact, for example in the case of conservation areas and listed buildings.

225. Lastly questions are asked as to who would operate such a screening process – there are calls among the most informed that this should be seen to be independent and that this should rest with the SEIRU, a planning appeals or planning Ombudsman or an independent panel, perhaps made up of planning professionals, community representatives and the planning authority. There are some concerns that a screening process should rest with Ministers or the Executive’s planning division given the potential conflict of interest in relation to their locus in determining which applications are subject to call-in and in making decisions on the same.

**Circumstances in which the right to appeal may be withdrawn (Q14)**

226. This question again caused some confusion for respondents. While it was raised in the context of Model 4 which relates to both applicant and third party appeals, the majority responded in a way that referred to the latter (only).

227. Only around 1 in 8 respondents (13%) addressed the question specifically, with planning authorities and planning /related professionals most likely to respond, although half of all business/developers and Community Councils also passed comment.

228. Around 3 in 5 who responded felt that there should be no circumstances where the right of appeal should be withdrawn. The overall profile of responses is shown in the table below.

**Table 11: Should Right of Appeal be Withdrawn in Certain Circumstances?**

<b>Response</b>	<b>Number of respondents</b>	<b>%</b>
Yes	83	38%
No	125	57%
Unclear/Don’t Know	11	5%

229. Among the minority who responded specifically to the potential withdrawal of an applicant's right of appeal some planning authorities felt that this should be withdrawn where a decision is in accordance with an up to date local plan that has been subject to recent public scrutiny and where there are repeat applications/appeals along similar lines to those that have been subject to recent refusal. Some environment groups favoured withdrawal of appeal rights in environmentally sensitive or protected areas while the majority of business/developers who commented were totally opposed to any withdrawal of applicant appeal rights 'in any circumstance'.

230. Among supporters of TPRA, there is little enthusiasm for the withdrawal of appeal rights in relation to third parties, except for developments associated with national security, public safety and, with considerably less enthusiasm, developments of national or strategic economic importance. Specific mention was made of 'flood defences' by a few individuals as being an appropriate category where there should be no third party appeal rights. Any exceptions are generally viewed as being complicated and potentially open to manipulation.

231. Those agencies with a specific interest in housing or homelessness are again concerned about the vulnerable position of social housing developments if TPRA was to come into being and feel that such developments need to be protected by some means. A few respondents also referred to public infrastructure projects in the same way.

#### **Views on the 4 indicative models set out in the consultation paper (Q15a)**

232. The consultation paper set out 4 indicative models, each based on a different package of changes designed to improve the current planning system. Respondents were invited to give their views on each of the models presented, again without prejudice to their overall view on whether they supported TPRA or not. Although not directly asked, in passing comment, the majority who responded indicated which of the models was their preference.

233. This question attracted the third highest response in the consultation with 1 in 5 (20%) of all respondents commenting. As noted earlier answering this question featured in the Friends of the Earth Scotland Campaign (57 responses in total) which encouraged support for Model 1 and was partly responsible for this slightly higher response rate compared to other questions.

234. The 4 indicative models featured in the consultation paper can be summarised as follows:

##### *Model 1*

A new third party right of appeal which would apply in the 4 categories identified in the *Partnership Agreement* - discussed earlier and featured in Q3 of the consultation

##### *Model 2*

Continuation of the ongoing programme of modernisation of the planning system without introducing a third party right of appeal

*Model 3*

Introduction of a statutory requirement on planning authorities to hold public hearings in defined circumstances combined with an extension of existing Ministerial notification and call-in procedures to include all development plan departures – no introduction of a new appeals system

*Model 4*

A new appeals system which would apply to both applicants and third parties based on a 2 stage screening process combined with a series of related changes to planning procedures including removing the right to an inquiry into local plan objections, revoking existing Ministerial notification procedures and extending the scope of permitted development (i.e. development that does not require a planning application).

235. There was some evidence to suggest that not all respondents who read this section of the consultation document fully understood the difference between Models 1 and 4.

236. The overall degree of support for each of the models and how support varies by group is illustrated in the table below. This is followed by a table that shows the preferred model or models of each group.

**Table 12: Support for Indicative Models (without prejudice)**

<b>Group</b>	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>	<b>Model 4</b>
Individuals	<b>YES</b>	<b>NO</b>	<b>NO</b>	<b>YES</b>
Environment/heritage groups	<b>YES</b>	<b>NO</b>	<b>NO</b>	<b>YES</b>
Community Councils	<b>YES</b>	<b>NO</b>	<b>NO</b>	<b>YES</b>
Political reps/parties	YES	<b>NO</b>	<b>NO</b>	NO
National/regional agencies/groups	<b>NO</b>	<b>YES</b>	NO	<b>NO</b>
Planning/related professionals	<b>NO</b>	YES	<b>NO</b>	<b>NO</b>
Planning authorities	<b>NO</b>	<b>YES</b>	YES	<b>NO</b>
Business/developers	<b>NO</b>	<b>YES</b>	<b>NO</b>	<b>NO</b>
ALL	YES	YES	<b>NO</b>	NO
ALL (exc individuals)	NO	YES	<b>NO</b>	NO

Note – bold indicates 2 in 3 or more respondents in support or opposed; non bold indicates over half but less than 2 in 3 respondents in support or opposed

**Table 13: Preferred Indicative Model (without prejudice)**

<b>Group</b>	<b>Preference</b>	<b>% Support</b>
Individuals	MODEL 1	92%
Environment/heritage groups	MODEL 1/ 4	93%
Community Councils	MODEL 1/ 4	82%
Political reps/parties	MODEL 1	67%
National/regional agencies/groups	MODEL 2	67%
Planning/related professionals	MODEL 2	58%
Planning authorities	MODEL 2	74%
Business/developers	MODEL 2	88%

237. Overall, support is strongest for Models 1 and 2 although the pattern of support is highly polarised by group. Key points to note about the views of each group are as follows:

*Individuals*

There is very strong support for Models 1 and 4 with a very clear preference for Model 1; comments made suggest that Models 2 and 3 are ‘wholly unacceptable’ and are ‘not an alternative to TPRA’

*Environment/heritage groups*

There is very strong support for Models 1 and 4 with no overriding preference; some in this group suggested either one model or the other or indeed a mix of elements from both; comments made suggest that Models 2 and 3 are ‘wholly unacceptable’ and are ‘not an alternative to TPRA’

*Community Councils*

There is strong support for Models 1 and 4 with no overriding preference; some in this group suggested either one model or the other or indeed a mix of elements from both; comments made suggest that Models 2 and 3 are ‘wholly unacceptable’ and are ‘not an alternative to TPRA’; concerns were expressed over how they would manage to resource the introduction of Models 1, 3 or 4

*Political representatives/parties*

There is strong support and preference for Model 1

*National/regional agencies and interest groups*

There is strong support and preference for Model 2 with some minority support for one or both elements of Model 3

*Planning/related professionals*

There is majority support and preference for Model 2 with some minority interest in elements of Model 4

*Planning Authorities*

There is very strong support and preference for Model 2 although there remain some concerns about how modernisation plans are going to be resourced; there is some minority interest in the increased voluntary use of hearings per Model 3, and both this and an extension of call-in powers (also Model 3) would be preferable to the introduction of TPRA

*Business/developers*

There is very strong support for Model 2; Models 1, 3 and 4 are considered 'completely unacceptable'

238. The majority of specific comments made by individual respondents in support or otherwise of each of these models largely reflect those already covered in response to earlier questions in the consultation paper. For example business/developers are concerned about the risks, delays and negative impact on the economy in relation to Models 1, 3 and 4 while planning authorities are concerned about the resource implications, impact on service and on the nature of planning of Models 1 and 4 in particular. Environment/heritage groups, Community Councils and individuals see Models 1 or 4 offering an opportunity to create a more balanced and fair system that will provide opportunity for more public involvement, ownership and influence while encouraging developers to consult more and produce higher quality proposals and developments.

239. Model 4 suggested 3 other possible changes to the planning system that might be appropriate if a new appeals system for both applicants and third parties were to be introduced; these were not addressed elsewhere in the consultation paper and therefore this was the only opportunity for respondents to pass comment on them. The 3 proposed changes were:

- the removal of the right to an inquiry into local plan objections
- the revoking of Ministerial notification procedures
- the extension of the definition of 'permitted development' – to be determined locally.

240. It is impossible to tell whether those that indicated support for Model 4 by implication supported such changes. Few respondents, whether supporters or opponents of the model, commented specifically on them.

241. Among those who did comment there was little support for the removal of the right to a local plan inquiry and indeed some suspicion of the suggestion in light of the anticipated key role of the development plan in a future modernised system.

242. There was some acceptance that the same level of Ministerial notification would not be required under a system where third parties had a right to appeal but concern nonetheless that such procedures should continue to apply in cases that would not come within the scope of TPRA, depending on the criteria ultimately agreed. There was support in ensuring that duplication was avoided rather than removing the procedures altogether.

243. There was a split in support for the extension of the definition of 'permitted development' under this model. Some respondents, including some planning authorities, could see some potential for this, irrespective of them supporting this specific model or not. However there was little enthusiasm for such a change to be left to local discretion - instead the need for national consistency was emphasised. It was recognised that any changes would require full consultation separate from any consideration of TPRA.

244. Among planning authorities there was no acceptance that any such extension of permitted development, if agreed, would free up adequate, or indeed appropriate, staffing resources to dedicate to a new system of TPRA. It is not felt that this would produce 'the right quality of skills and experience to handle complex appeals'.

#### **Alternative package of changes suggested (Q15b)**

245. As well as inviting comment on the 4 models set out, respondents were invited to suggest any alternative package of changes that they felt could ensure that the planning system is both fair and effective. 1 in 10 respondents (10%) made suggestions. In the majority of cases the alternative measures suggested were combinations of those identified in this and other consultation papers e.g. *Making Development Plans Deliver*.

246. The most commonly mentioned suggestions include those listed below with some respondents suggesting combinations of these.

- Keep development plans up to date and consider making timescales mandatory
- Continue with current modernisation plans and focus any increase in third party involvement in the preparation of development plans and the pre-application stage
- Make development plans and planning forums/panels/hearings more local
- Remove the right of appeal for applicants either totally or at least where a refusal is consistent with a recently approved development plan
- Introduce shorter time limits for allowing applicant appeals
- Make the twin or multiple tracking of planning applications by applicants illegal
- Prohibit repeat applications and appeals (where they are substantially the same) within fixed time periods
- Make Reporter decisions binding on planning authorities

- Ensure that there is more publicly available explanation and recording of why planning decisions are made from planning authorities, whether approvals or refusals; this should include publication of evidence from both supporters and objectors and a formal response to objections
- Extend the use of planning hearings/panels by planning authorities
- Increased use of IT and internet
- Better advertising of applications
- Stronger enforcement, policing and action in relation to both consent conditions and developer agreements
- Wider remit for the Public Services Ombudsman in planning matters or the establishment of a Planning Ombudsman – alternatively extend circumstances where judicial review of planning decisions allowed (i.e. from due process to include planning considerations)
- The extension of legal aid to cover planning matters
- Improved guidance and consistency in relation to the use of S75 (planning gain) agreements
- Increased use of negotiation and mediation techniques in resolving planning conflict.

247. A number of other more alternative proposals were identified by a small number of respondents. Each of these featured in more than one response but in some cases were clearly related to each other e.g. based on the same core response or the same response submitted on behalf of a number of respondents. These proposals included the following.

*Public Right of Notification Procedure*

248. The Royal Town Planning Institute (RTPI) along with a few other respondents (based on the same core response) suggest that as an alternative to the introduction of TPRA, a new 'Public Right of Notification Procedure' could be introduced in defined circumstances.

249. This is essentially based on an extension of existing Ministerial notification and call-in procedures. It is proposed that 'relevant applications' would be those where an approval of an application will constitute a significant departure from the development plan or where there is a local authority interest involved. The 'relevant (third) parties' who could exercise the right of notification need to be defined but could include objectors, neighbours, Community Councils etc as under consideration in relation to TPRA. The relevant party would have the right to have the application referred to Ministers for independent review. It would then be for Ministers (SEIRU) to decide whether to call-in the application for determination after a public inquiry or to let the decision stand. No legal planning permission is granted to applicants until the case is considered.

250. This model is based on tight turnaround times including relevant parties having 7 days from notification to decide whether to call for an independent review or not and the SEIRU having 28 days to decide whether to call-in an application or not.

#### *Community Right of Appeal*

251. As noted earlier in the report there is a strong interest among some Community Councils and some environment/heritage groups in the concept of a (Special) Community Right of Appeal. It is argued that communities are not third parties in the case of larger scale applications but second parties, as they have to live with the results of any such development. Indeed it is suggested that one of the options that should have been considered in the consultation paper should have been communities having a right to appeal but applicants not.

252. Suggestions vary but the introduction of such a right does not necessarily preclude an individual's right to appeal as a third party, but the focus of interest clearly lies in 'developer scale' rather than 'householder scale' applications, although the latter may be appropriate where involving listed buildings, conservation areas, green belt etc.

253. The Community Council or other community organisation would have the right to appeal on behalf of its community or on behalf of an individual or group of individuals within its area. This could be supported by a right for Community Councils to receive copies of all applications in its area, a right to be heard at planning committee meetings and indeed even a right to vote at such meetings. It is recognised that this would require additional resources and training for Community Councils and the further development of Planning Aid services in Scotland.

#### *National Appeals Unit/Tribunals*

A few respondents suggest that a new national appeals unit is established that is totally independent from the Executive and where relevant third party appeals would be determined by an Appeals Tribunal whose membership would include planning professionals and lay people among others.

#### **Impact of the 4 models or any other suggested package of change on the resources and objectives of you or your organisation (Q15c)**

254. Less than 1 in 10 respondents (7%) commented specifically on this question and the substance of comments were very much along the lines of responses to the specific models (Q15a) and to the overall position taken in relation to TPRA (Q6).

255. Builders/developers stress that the introduction of Models 1, 3 and 4 would be highly damaging to their business and to future national economic growth. There is a concern that a growth of an 'appeals industry' will lead to substantial additional development costs that will be passed to the consumer and create greater uncertainty in investment planning and decision making. Consumers will also 'miss out' in terms of new products and services, for example in the telecommunications industry through inadequate or delayed infrastructure. It is argued that the likely cost and delay implications are severely underestimated in the consultation paper and the accompanying RIA.

256. Community Council views are mixed. Some refer to the already increasing demands placed on them since they were made statutory consultees while others do not particularly see the implementation of any of the models as having much impact on them especially where they do not envisage themselves being involved in many appeals. The majority however see Models 1, 3 or 4 having a significant impact and there are serious concerns regarding the impact on their resources (human and financial) as well as on the need for more skills, training and access to professional advice and support. How they will pay for any fees associated with making a third party appeal is considered a key issue that needs to be addressed.

257. Environment/heritage groups see any impact on them of a model based on TPRA (Models 1 and 4) as being largely positive. The planning system will be fairer and they will be able to have more influence and control over development that they see as damaging to the built and natural environment. This will ultimately lead to better quality proposals and development. There are concerns about the resource and cost implications for them as voluntary organisations and in this respect it is seen as important that any fees are not prohibitive and that any award of costs against appellants should be avoided.

258. Any impact on individuals is articulated in terms of increased empowerment and improved confidence in the planning system. Any comments made assume that TPRA will apply (Model 1 or 4).

259. Planning/related professionals see the impact largely in resource terms and 'more work for planning consultants' and irrespective of the models pursued that the resourcing of local authority planning needs to be adequately addressed.

260. Statutory consultees within the national/regional agencies and interest group, have significant concerns about servicing Models 1, 3 or 4, although the majority made no specific comment.

261. Planning authorities also see the main impact on them in terms of resources, although there are also concerns regarding the impact on local democracy and the achievement of policy and development objectives. While all models are seen as having significant resource implications ('we don't have enough resources to service the existing appeals system') Models 2 and 3 are seen as the least resource intensive especially if the increased use of hearings is limited to 'strictly defined circumstances'. Models 1 and 4 would 'place an unreasonable burden on development control services' as well as have a detrimental impact on other aspects of planning performance.

#### **Other additional comments (Q16)**

262. Finally respondents were asked for any other additional comments they wanted to make on matters not addressed in the consultation paper. Less than 1 in 10 respondents (8%) made any specific comment. The content of the majority of responses under this question has already been discussed in this report or in the consultation paper itself.

263. A small number of Community Councils and environment/heritage groups highlighted that there was no specific mention of proposals for increased education and training provision to assist communities and voluntary sector organisations to engage with a changing planning system (under current modernisation proposals), any introduction of TPRA and promoting greater understanding of roles and responsibilities. It is suggested that resources need to be set aside and plans drawn up as to how to make most effective use of these.

264. Planning authorities took the opportunity to highlight that they should have a right to seek a review of a Reporter's decision on an appeal, other than on legal grounds, where they consider an error has been made. They also warn that any introduction of TPRA will require considerable work in revising 'procedural aspects of application processing'.

### **Regulatory Impact Assessment (RIA)**

265. While some respondents made passing reference to the content of the RIA when responding to particular consultation questions, none made any detailed comment on its content. Respondents from different groups took issue with the way that cost and resource impacts and risks had been assessed and presented in the RIA. Business/developers typically thought that the implications were grossly underestimated and in particular in relation to the impact on 'bad neighbour' developments and industries. Community Councils and environment/heritage groups on the other hand typically felt that the cost and resource impacts had been overestimated and were 'unnecessarily pessimistic'.

## CONCLUSIONS

266. There is widely based agreement among respondents that there are issues around the current level of public confidence in the planning system, although some feel the level of dissatisfaction may be exaggerated by 'activists'. The need for action to improve confidence is recognised by both supporters and opponents of TPRA although there is little common ground as to how best to address this.

267. The majority of the 1620 who took part in the consultation are in support of the introduction of TPRA with over 4 in 5 respondents (86%) in favour. Strong support comes from individuals, environment/heritage groups, Community Councils and the small number of political representatives/parties who responded and many view TPRA as the only acceptable solution. Individuals accounted for over 4 in 5 (86%) of those who support the introduction of TPRA.

268. Around 1 in 8 respondents (13%) oppose the introduction of TPRA. This includes almost all business/developers, most planning authorities and the majority of planning/related professionals and national/regional agencies and interest groups who responded. Those in the business/developers group are 'implacably opposed' to the introduction of TPRA. 30 of Scotland's 32 local authorities responded to the consultation, with 26 opposing TPRA in principle and 6 in support, although in limited circumstances.

269. Supporters argue that TPRA is required to address the inherent lack of equality and fairness in the planning system because applicants have the right to appeal and third parties do not. Its introduction is also regarded as critical to achieve environmental justice and to ensure the safeguarding of the built and natural environment for future generations.

270. There is evidence that support for TPRA is in part born out of frustration with aspects of the existing planning system and indeed many supporters view it as a potential means to address specific failings. The potential of TPRA to be used as leverage to ensure that development plans are kept up to date, that developers enter into pre-application discussions with communities and that the role and views of Community Council views are 'taken seriously' by planning authorities are common themes in the responses of supporters of TPRA. Through such leverage it is anticipated that ultimately better quality applications and developments will result and therefore in the long term there are likely to be less appeals rather than more.

271. Opponents argue that the introduction of TPRA will be another burden on an already slow and unresponsive system that does not meet its own performance targets. Business/developers see it bringing additional risks and delays, threatening investment and national economic growth. Planning authorities and statutory agencies also have concerns about the potentially negative impact on investment in public infrastructure and major public/private partnership projects including regeneration initiatives, as well as major concerns about how TPRA could be resourced.

272. Those opposed to TPRA do not regard it as an appropriate response to address current public concerns and see it not only as a threat to local democracy but also not in the (silent) wider public interest. Indeed they anticipate that if TPRA is to be introduced its use will be dominated by those acting out of a narrow self interest or those with specific 'agendas' who will have raised expectations of their views influencing the outcome of appeals decisions. If the majority of appeals continue to be granted in favour of applicants, which it is suggested seems likely, they think this will only lead to frustration and further undermining of public confidence – the opposite of what is intended.

273. Supporters want to see TPRA as an integral part of the current ongoing reform of the existing planning system, not something to be considered separately. Opponents feel that it is inappropriate to consider the introduction of TPRA into a system that is already under resourced and currently going through a process of change and that efforts to improve third party involvement in planning decisions should focus on the development plan formulation and development pre-application stages. Current planned improvements to the system should be given the opportunity to 'bed down' and prove themselves before considering the introduction of such a radical change to the planning system.

274. If TPRA was to be introduced the majority of respondents would support its application to be restricted to the 4 *Partnership Agreement* categories of where the local authority has an interest, where the application is contrary to the local plan, when planning officers have recommended rejection and where an Environmental Impact Assessment (EIA) is required. However the majority of planning authorities would only support its introduction in the case where there is 'significant departure from the development plan' and the majority of business/developers would not support its introduction in any of the categories. The categories of 'where planning officers have recommended rejection' and 'where an EIA is required' were the most controversial as proposed categories where TPRA could apply. Moreover the primary interest among supporters is for TPRA to apply to decisions on 'developer scale' rather than 'householder scale' applications, irrespective of their technical planning status.

275. Of the Models presented in the consultation paper support is strongest for Model 1 (based on a new third party appeals system) and Model 2 (based on the continued modernisation of the existing planning system) – the former by supporters of TPRA, the latter by opponents.

276. When asked to identify alternative changes that could bring about a fair and effective planning system many respondents suggested quite modest measures some of which are already being addressed by current modernisation proposals, some which are not.

277. Among some opponents of TPRA, and in particular planning authorities, there is a degree of acceptance that the increased use of hearings and Ministerial notification and call-in procedures may have a part to play in increasing public confidence in the planning system. The case for published criteria, guidance and more consistency governing the circumstances in which they should be used would be welcomed by some and would be preferable to the introduction of TPRA.

278. To conclude, notwithstanding the majority support for the introduction of TPRA, the views of key stakeholder groups are highly polarised and split between those who are strongly in favour and those who are strongly opposed with little common ground.

## Annex 1: Standard Text of Campaign Responses

### everyone campaign

I want equality in the planning process.

Please accept my response to the Consultation on Rights of Appeal in Planning. I would like to register my support for introducing a Third Party Right of Appeal (answer to Question 6).

In answer to Question 3, I believe that the right of appeal should be limited to the following cases:

- where the local authority has an interest
- where application is contrary to the development plan
- which go against the planning officers recommendation
- where an Environmental Impact Assessment is needed.

Please acknowledge my response.

### Friends of the Earth Scotland campaign

While I am not able to respond in detail to all the questions in the consultation, I am writing to express my broad support for the introduction of a third party right of appeal (Q6) in line with Model 1 in the consultation document (Q15).

## Annex 2: Consultation Questions

Q1 Paragraphs 3.3.1 to 3.4.9 have identified arguments made to us previously both for and against a third party right of appeal. Do you think they accurately reflect the arguments? Are there other arguments not covered here which you wish to raise?

Q2 Do paragraphs 3.5 to 3.14 accurately reflect what supporters of a third party right of appeal are seeking in a new appeal process?

Q3 If the right of appeal were to be extended to third parties, do you think it should be restricted to all or some of the four categories identified in the *Partnership Agreement*? Please give reasons to support your views. *Your response to this question will not prejudice any view you express on the principle of widening the right of appeal.*

Q4 Which planning decisions do you think should be capable of appeal to the Scottish Ministers?

Q5 If the right of appeal were to be extended, which third parties should be able to appeal and in what circumstances? Please give reasons for your answer and also, where relevant, explain why you think any of the third parties identified above should not qualify for a right to appeal. *Your response to this question will not prejudice any view you express on the principle of widening the right of appeal.*

Q6 Do you support, in principle, the introduction of a wider right of appeal in the planning system? Please give reasons to support your views.

Q7 How do you feel the planning service at both planning authorities and the Scottish Executive would be placed to manage the likely increase in workload?

Q8 Do you think there would be any implications for the attractiveness of planning as a career if there were to be a significant increase in the appeal caseload? Please give reasons for your answer.

Q9 Should a fee be payable to object to a planning application and/or to lodge an appeal against a planning decision? If so, what do you think would be an appropriate level of fee?

Q10 Should the Scottish Ministers retain their role in deciding particular planning appeals, or should SEIRU decide all appeals?

Q11 Would the introduction of mandatory public hearings in defined circumstances increase public confidence in planning authorities' decisions?

Q12 Would extending the circumstances in which the Scottish Ministers are notified, to include all development plan departures, sufficiently address concerns about decisions being made by planning authorities against the terms of development plans?

Q13 Would it be appropriate to introduce a screening process for planning appeals? Please let us have your comments on relevant screening criteria.

Q14 Are there circumstances in which any right to appeal against planning decisions should be withdrawn? Please give details.

Q15 (a) Please give us your views on each of the models outlined in section six.

(b) Can you think of any alternative package of changes to the planning system to ensure a system which is both fair and effective.

(c) How would each of these models (and any other package you suggest) impact on the resources and objectives of you or your organisation?

Q16 Please let us have any additional comments you wish to make, if any, on relevant matters not addressed in this paper.

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