

**SCOTTISH GOVERNMENT CONSULTATION ON REVIEWING AND EXTENDING
PERMITTED DEVELOPMENT RIGHTS (PDR) IN SCOTLAND – PHASE 1**

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to appraise the Planning, Protective Services and Licencing Committee of the content and potential implications of Scottish Government proposals to review and extend Permitted Development Rights (PDR) as set out in their Phase 1 consultation paper published 1st October 2020 (Appendix A), and its accompanying Strategic Environmental Assessment (Appendix C).
- 1.2 It is recommended that the Council respond to the Consultation as per the detailed response to each of the 73 consultation questions which are set out in detail within Appendix B attached to this report.
- 1.3 The proposals are in the main acceptable, or acceptable subject to additional mitigation measures that the consultation seeks to identify. However, significant concern is raised by officers in respect of proposals which seek to introduce new permitted development rights that would remove the conversion of agricultural buildings to alternative uses (including residential and 'flexible' commercial use) from the requirement for planning permission. It is recommended that the Council strongly object to those particular elements of the proposals.
- 1.4 The deadline for responding to the consultation is 12th November 2020; the Scottish Government have not agreed to provide an extension that would allow the response to be agreed by the PPSL committee in advance. Therefore, a response approved by DMT was submitted in advance of the deadline with commentary advising that this response is a draft response and may be subject to a further submission of amendment following consideration by the PPSL committee on 18th November 2020.

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2.0 INTRODUCTION

- 2.1 As part of their overhaul of the Scottish Planning System, the Scottish Government previously consulted in November 2019 on a proposals to implement a programme to review and extend Permitted Development Rights (PDR). The consultation primarily sought to prioritise a thematic review of PDR to inform the phased implementation of this work.
- 2.2 The consultation issued on 1st October 2020 relates to Phase 1 of the PDR review programme and sets out proposed PDR changes for four distinct types of development:
- i) Digital Telecommunications Infrastructure
 - ii) Agricultural Developments
 - iii) Peatland Restoration
 - iv) Active Travel

The consultation opened on 1st October 2020 and closes on 12th November 2020. It is understood that the Scottish Government are keen to progress and implement these proposals during the current Parliamentary term (i.e. before May 2021). The consultation paper is attached in full for reference as Appendix A. The proposed response to the 73 questions in the consultation are set out separately as Appendix B for ease of reference. The consultation is accompanied by a Strategic Environmental Assessment which is referred to in Q.71 only, this is attached as Appendix C.

- 2.3 The timing of the consultation period however precludes the ability to fully engage with elected Members on this matter through discussion at PPSL committee in advance of the deadline. Officers have requested an extension to the consultation deadline; however this has not been forthcoming and the response submitted for 12th November has been accompanied by a caveat advising the Scottish Government that the Council reserves the right to augment any comments submitted by the deadline with any views endorsed by PPSL committee at their November meeting. The consultation has also been flagged up with the Chair of the PPSL Committee with the suggestion that details of the consultation be circulated to elected members for information along with advice that they may wish to respond as an individual if they have strong views on any of the proposals. Preparation of the draft response has included consultation with Roads and

Infrastructure Services, Development Policy, and Regulatory Services, in addition to discussion at the Departmental Management Team on 26th October 2020,

3.0 RECOMMENDATIONS

- 3.1 Recommend that PPSL endorse the submitted response to the Consultation as per the detailed response to each of the 73 consultation questions contained within Appendix B attached to this report.
- 3.2 It is noted that if PPSL committed determine to amend the content of the submitted response then a mechanism is available for submission of updated commentary however the Scottish Government have advised that the content of any 'late' submissions might not be reflected in the published report.

4.0 DETAIL

- 4.1 The Scottish Government's stated objectives for the consultation are "to boost the Scottish Economy and help meet climate change ambitions. They are intended to support the expansion and improvement in Digital Communication, allow residents to erect storage for bikes and other active travel equipment in front gardens, restore Scotland's vital peatlands and allow for increased agricultural development and diversification, as well as the delivery of new homes (including affordable properties) in rural areas."
- 4.2 The Scottish Government's rationale for intervention in this instance is that "removing the requirement for some developments to submit an application for planning permission means that development can be progressed more swiftly, taking advantage of improvements to technology or react to situations". "Extending PDR or introducing new PDR is also intended to support Scotland's ongoing recovery from the COVID Pandemic".
- 4.3 The Scottish Government's proposals set out in the consultation are extensive but may reasonably be summarised as:

Part 4: Digital Telecommunications Infrastructure:

- Increases to existing PDR limits for digital infrastructure (e.g. new masts, extensions to existing masts, antenna and kit on buildings, equipment cabinets on the ground and underground equipment);
- Extension of PD rights into sensitive areas (but subject to lower size/height limits); and
- To ensure that PDR is compliant with Article 57 of the EU Directive in relation to Small Aerial Wireless Access Points (SAWAP).

Part 5: Agricultural Developments:

- Approximately double the size of new agricultural buildings (from 465sqm to 1000sqm) that may be erected under PDR (subject to prior approval) and double of the size of extensions to existing agricultural buildings that may be carried out without prior approval;

- Introduce a new PDR for the conversion of agricultural buildings to residential and other commercial uses subject to a number of conditions and limitations, including prior approval in respect of a number of matters;
- Make equivalent provision in respect of the extension of forestry buildings, and PDR for conversion to commercial uses.

Part 6: Peatland Restoration:

- Introduction of PDR in general for peatland restoration operations, this does not however include PDR for hill tracks for peatland restoration purposes.

Part 7: Active Travel:

- Introduce PDR for a storage shed in the front garden of properties – subject to height and size limit (these will be intended to provide space sufficient for 1-2 bikes and/or an adapted bike or mobility scooter);
- Introduce PDR for storage sheds in the rear garden and/or car park of shared properties (i.e. flats) – subject to a height/size limit;
- Introduce PDR for storage sheds/shelters in certain public spaces (e.g. on roads in dense residential areas, near train stations) – subject to height/size limits. Some shelters (e.g. those on a road) would still be subject to the TRO process.
- Clarify which active travel ‘developments’ already enjoy PDR (e.g. cycle lanes on a road).

4.4 Digital Telecommunications Infrastructure

4.4.1 Planning plays an important role in the provision of digital telecommunications infrastructure and one which supports various initiatives of the Scottish Government seeking to assist in the provision, enhancement and rolling-out of vital and improved digital communications for all regions of Scotland. This includes 5G telecoms networks, emergency services communication networks and enhanced rural broadband provision. The importance of this has been heightened by the ongoing Covid 19 pandemic and it is recognised that permitted development rights (PDR) can support this.

4.4.2 The Scottish Government are therefore considering an enhancement of current PDR for digital communications development. The proposed enhanced measures within the current consultation paper can be broadly categorised into two main strands:

1. Increase existing size limits for PDR for digital infrastructure, i.e. new masts, extensions to existing masts, antennae and other equipment on buildings, equipment cabinets on the ground and on buildings, other apparatus, and underground equipment, and,
2. Extend PDR for some types of digital infrastructure into sensitive areas, subject to lower size/height limits than elsewhere.

- 4.4.3 The Scottish Government accepts within the consultation that there are existing tensions between the desire to promote the effective and timely roll-out of much needed telecommunications infrastructure on the one hand and the proper assessment of such development and, where necessary, restrictions to inappropriate forms of digital communications development on the other. The consultation also identifies the requirement to strike the correct balance in extending PDR. They are not looking to extend existing PDR for new masts into sensitive 'designated areas' but are aiming to broaden existing PDR in various ways and seek comments from interested parties on each aspect of the proposed changes.
- 4.4.4 In the main, it is considered that the proposals for extending PDR on Digital Telecommunications Infrastructure are a pragmatic means of reducing regulation on the roll out and improvement of infrastructure which is of ever increasing importance to connectivity of both communities and economic activity. Whilst a number of the proposed PDR extensions have potential to impact negatively upon valued characteristics of the natural and historic environment these concerns are generally shared by the Scottish Government and appropriate provision appears to be made to the extension of existing 'prior notification/prior approval' procedures (as described in detail in Annex A of the consultation) that would include neighbor notification, and would provide the planning authority with a period of at least 56 days to consider the implications of the proposal and the ability to withhold prior approval in circumstances where the development is considered to be unacceptable. General support for these proposals is set out within the proposed responses to Q.1, Q.4, and Q.5-9. It is noted that officers and members are aware of complaints relating to lack of awareness from nearby property owners in relation to new masts which have previously been progressed through existing 'prior notification/prior approval' processes. These concerns are reflected by commentary to Q.28 which suggests that these submissions be subject to a requirement for a newspaper advert (at cost to the applicant) and/or enhanced neighbor notification covering a wider locality.
- 4.4.5 The notable exception in this respect relates to proposals to allow the potential for significant extensions to the height of existing ground based masts under 25m by 50% (max. 30m), and existing ground based masts above 30m between 30-50% (max. 50m) with (what appears to be) a lesser form of existing 'prior notification' procedure that simply requires the developer to provide the planning authority 28 days notice prior to undertaking the works and with no formal mechanism requiring any concerns raised by the planning authority to be taken on board, and/or any formal mechanism for the planning authority to intervene where it considers the development to be unacceptable. It is proposed that the Council should raise objection to the elements of the proposals which are covered by Q.2 and Q.3 but include commentary that those concerns could be satisfied by implementation of lower thresholds where development is subject to the 'simple' prior notification process, and that beyond those limits that the 'prior notification/prior approval' procedure be applied to allow proportionate consideration of issues on a case by case basis.
- 4.4.6 The proposals also include extension of PDR relating to installation of antenna

systems, small cell systems, equipment housings (both freestanding and on buildings), other apparatus installed in buildings, and underground equipment; the proposals include discussion on the potential impact of these PDR within 'designated areas' that may have an increased sensitivity to development. The proposed responses to Q.10-27 offer support for the extension of PDR in respect of these items but identifies that the sensitivities of 'designated areas' would merit consideration of the acceptability of proposals on a case by case basis and advises that it would be appropriate to extend the 'prior notification/prior approval' procedure to include some PDR categories within 'designated areas'.

Commentary on existing 'prior notification/prior approval' for telecommunications.

4.4.7 Currently there are three potential submission routes for Telecommunication Code System Operators seeking to implement development:

- Full planning permission (PP) is required for all development that doesn't benefit from PDR and would usually incur a fee of £401.00. Annually the Council might expect around 20 such submissions, although significant increases have been seen during the roll out of programmed network expansion.
- Prior Notification/Prior Approval (as described in Annex A of the consultation) (PNTEL) is required for development that benefits from PDR but subject to a requirement to obtain the prior approval of the planning authority before development proceeds. These procedures provide an initial 56 days for the planning authority to issue a direct on whether its prior approval is required. If an opinion is not issued within 56 days then the prior approval of the planning authority is deemed to have been given. Where the planning authority has concerns it can issue a direction setting out its intent to consider the matter further, and can issue a decision which either withholds prior approval, or provides approval subject to conditions intended to mitigate against any adverse impacts of the development. The PNTEL 'prior notification/approval' process is unique to telecommunication development and incurs a fee of £300.00 and a requirement for neighbor notification to be undertaken.
- Minor telecommunications developments which neither require PP or 'Prior Notification/Prior Approval' are subject to a prior notification process simply requiring developers to notify the planning authority at least 28 days in advance of undertaking works. There is no formal process for the planning authority to prevent the development being undertaken in the event that it has concerns about its potential impact.

4.4.7 The proposals to extend PDR would maintain the existing consenting procedures. Whilst there is no readily available data to review how the proposed extension and introduction of new PDR might impact upon the volume of the different type of submissions it is anticipated that this would see a reduction in the requirement for full planning permission, and an increase in the amount of

development requiring 'prior approval/prior notification'.

Submissions for Telecommunication Development by Procedure Type/Year			
	Full Planning (PP) Fee £401	Prior Notification/Prior Approval (PNTEL) Fee £300	Prior Notification (TELNOT) Fee £0
2017/18	46	7	77
2018/19	19	11	13
2019/20	19	13	30

Prospectively the proposals could have some financial implications for the Council arising from a loss of income to the Development Management Service arising from the £101 difference between applications for full planning permission and 'prior notification/prior approval' submissions. It is however considered that, given the relatively low number of telecommunication submissions received annually, that any potential loss of income would be negligible. It would however be appropriate to remind the Scottish Government within the consultation response to Q.28 of its commitment to delivery of full cost recovery for the Development Management process. In this respect there is an outstanding requirement on the part of the Scottish Government to deliver on proposals to review statutory planning fees and to align these more closely with processing costs; when this is undertaken it would be essential that any fees relating to 'prior notification/prior approval' are similarly aligned to full cost recovery.

4.5 Agricultural Development

Larger Agricultural Buildings:

- 4.5.1 Currently agricultural buildings of up to 465sqm can be erected under (Class 17) PDR (subject to specified limitations); (Class 18) PDR also allows for the 'significant extension' of existing buildings by extensions of up to 10% of the cubic volume of the original building (subject to limitation on height). The consultation identifies that the 465sqm size limit has for some time been out of step with modern farming practices that have evolved as farm machinery has increased in size and complexity. It is proposed to increase the size of an agricultural building that can be built or extended under PDR from 465sqm to 1000sqm; and to amend the definition of 'significant extension' of such a building to permit a 20% increase in the cubic content of the original building. PDR proposals for extension of existing buildings would also be applied to forestry buildings (Class 22 PDR).
- 4.5.2 It is accepted that existing PDR is out of step with modern agricultural practices, particularly those associated relating larger farms. Whilst there is support for increasing PDR allowances for erection of new and extended agricultural buildings this is tempered by concern that a 'one size fits all' approach. In this

respect it is highlighted that in many parts of Argyll and Bute that farming continues to be undertaken on a much smaller scale than other parts of Scotland, particularly within localities with complex and/or contained landscapes. In such circumstances the existing agricultural buildings are key components and often the largest built elements within areas designated for their scenic value, traditional crofting patterns of development, or rural conservation area designations where larger PDR for larger buildings could have unintentional consequences upon the natural and/or historic environment. It is proposed that the Council support the principle of extended PDR floorspace for new agricultural buildings (Q.29) but seeks to temper this by responding that these benefits be restricted to existing PDR levels in areas where there are national or LDP designations relating to landscape and/or built heritage, and in relation to registered croft land (Q.31 – Q.32).

- 4.5.3 The consultation considers whether the proposals may inadvertently encourage land owners to erect new agricultural buildings for the sole purpose of benefiting from PDR to convert such buildings to residential or commercial uses. It is accordingly proposed to limit the PDR for new buildings on farms that have previously benefited from PDR conversions, and also to impose a time barrier to new buildings that would benefit from PDR for conversion. The proposed response to Q.33, Q.39, and Q.45 accepts that such provisions are essential but raises questions as to how this might work in practice, and in particular seeks clarification on matters of ownership in relation to the associated farm holding, and expresses concern that these proposals add to the complexity of establishing the 'lawful' planning status of buildings and how PDR may be applied on a case by cases basis. Concern is also expressed that the proposals may inadvertently result in the unnecessary loss of agricultural land to replace buildings that remain fit for purpose but were converted for financial gain – in this respect clarification is also sought on whether a redundancy test should also be applied to PRD for conversion.

New PDR Allowing Conversion of Agricultural Buildings to Residential Use:

- 4.5.4 The proposals identify that at present there is no PDR within the TCP Use Classes Order which would allow for the change of use of an agricultural building to an alternative use without a requirement for planning permission. Any such application would require to be determined in accordance with the development plan and any material considerations. It is proposed to support the provision of new homes in rural areas by making it simpler to convert existing agricultural buildings to residential use. This measure is being aligned by the Scottish Government with wider initiatives to support Scotland's rural economy and promote rural repopulation.
- 4.5.5 The aim of the PDR is to allow the *conversion* of existing buildings to dwellings. It is not intended that this right would permit their wholesale redevelopment, although the PDR would encompass works to the exterior of the building to facilitate it to function as a dwelling (e.g. installation of windows, doors, services). The new PDR would include:

- Change of use of an agricultural building (and any land within its curtilage) to one or more dwellings (houses or flats); and the reasonable building operations necessary to convert the building to a dwelling (or dwellings).

4.5.6 The consultation recognises that dwellings are very different from agricultural buildings in terms of their function and relationship to (and impact on) the surrounding area. There is also a requirement to ensure that dwellings provided under this PDR are safe and of good quality. The proposals set out a number of limited matters to be considered and approved by the planning authority but seek to do this through a “lighter touch” process than submitting a planning application. The matters to be proposed to be considered and approved by the planning authority would include:

- Design and external appearance (if building operations are proposed);
- The provision of natural light within proposed habitable rooms;
- Transport and access;
- Flood risk;
- Contamination issues; and
- Noise

It would be open to planning authorities to impose conditions relating to these matters when prior approval is given. The consultation also notes that in some cases that the impacts of the development may be such that it is not possible for the impacts of the development to be acceptably mitigated, and in such cases prior approval may be refused. The consultation recognises that the scope of such a prior notification/prior approval mechanism goes beyond that of any existing PDR mechanism (even that which applies to telecommunications); and views are sought on how this would operate. The consultation also notes that the fee associated with a prior notification/prior approval process would be expected to be less than a planning application fee for a comparable development.

4.5.7 In order to limit the impact upon local infrastructure and facilities it is proposed to impose limits on the total number of new homes that may be provided under PDR, and it is suggested that a maximum of 5 dwellings within an agricultural unit may be developed, and that the maximum size of each home created under PDR would be 150sqm. It is proposed that the PDR would not apply to listed buildings or scheduled ancient monument. The consultation also recognises the potential incentive for ‘gaming’ where agricultural buildings are erected or extended under PDR for the sole purpose of conversion to residential use and proposes measures to prevent this by restricting its application to any agricultural building brought into use before 5th November 2019, or if built subsequently, requiring it to have been in continuous agricultural use for a minimum period of 10 years.

4.5.8 Whilst the Scottish Government’s intent to encourage rural development and repopulation is commendable the proposal to introduce PDR allowing for conversion of agricultural buildings to residential units give rise to multiple concerns. It is considered that the Council’s LDP already provides an appropriate level of support for residential development in rural locations

(including conversion of existing buildings) but does so in a manner which is supported by a co-ordinated settlement strategy and policies which seek to address all relevant constraints and infrastructure requirements to ensure that sustainable development is delivered, and that a high degree of certainty for all parties is delivered through a plan led process. This is evidenced through 381 grants of planning permission for new residential development outwith settlement areas since 1st April 2017 which would amount to 589 new dwelling units if fully implemented. The proposals would significantly undermine this approach and would impose a complex 'prior notification/prior approval' process that would be deliver little or no benefit in comparison to the current planning application process for such development. The imposition of such a 'prior notification/prior approval' process is expected to give rise to additional cost and staff resource issues to the Council, and may disenfranchise other interested parties from engagement in the determination process. It is recommended that a strong objection to the Scottish Government's intentions are raised in this respect. The additional complexity that would be created to the planning system as a result of the proposed new PDR is also likely to give rise to additional pressure upon the Council's already stretched enforcement resource as a result of additional breaches of control arising from misinterpretation of this approach. The proposed responses to Q.34 – 39 set out the grounds of objection in detail and, if the Scottish Government are minded to proceed, identify additional limitations that may be desirable to impose.

New PDR Allowing Conversion of Agricultural and Forestry Buildings to a 'Flexible' Commercial Use

4.5.9 The proposals identify that at present there is no PDR within the TCP Use Classes Order which would allow for the change of use of an agricultural building to an alternative use without a requirement for planning permission. Any such application would require to be determined in accordance with the development plan and any material considerations. It is proposed to support the rural economy by making it simpler to convert existing agricultural buildings to a 'flexible' commercial use which includes Class 1(Retail), Class 2 (Financial, Professional, and Other Services), Class 3 (Food and Drink), Class 4 (Business), Class 6 (Storage or Distribution), or Class 10 (Non-residential Institutions). As with the proposed PDR for residential conversion, the new right would include reasonable building operations necessary to convert the building to a commercial use.

4.5.10 The proposals aim to strike a balance between the economic benefits that this relaxation may deliver, while limiting the potential harm that unconstrained development of commercial uses might have on a local area and accordingly a number of conditions and limitations are proposed upon development which exceeds 150sqm within an agricultural unit. These would include:

- Design and external appearance (if building operations are proposed);
- Contamination risks;
- Noise;
- Transport and highways; and

- Flood risk.

Below the 150sqm threshold, no prior notification/prior approval process would apply although the planning authority would still need to be notified of the change of use in such cases. It is proposed that a total cumulative floorspace that may be converted within a farm unit under PDR would be limited to 500sqm. The PDR would not apply to a building which is listed or if the site is a scheduled monument. Provisions which seek to limit incentives for landowners to erect new buildings solely for the purpose of converting them would also be applied.

- 4.5.11 The proposals to introduce to allow the conversion of agricultural buildings to commercial uses give rise to identical concerns to those raised in respect of proposals for residential conversion (see 4.5.7 above) with regard to undermining the certainty provided by assessment of planning applications as part of a plan-led system; being unnecessary (the LDP is generally supportive of retail and business and industry development up to 200sqm in rural locations, including conversion of existing buildings); not delivering any tangible benefit in respect of time or cost required to submit or process application; and, being likely to give rise to additional financial and staff resource issues for planning authorities having regard to both fees and potential for increased pressure upon enforcement resources arising from the additional complexity of the proposed new process. The proposed responses to Q.40 – Q.45 set out the grounds of objection in detail and, if the Scottish Government are minded to proceed, identify additional limitations that may be desirable to impose.

Conversion of Forestry Buildings:

- 4.5.12 The proposals seek views on whether PDR for conversion of forestry buildings should be undertaken on the same basis as agriculture or separate to a separate PDR review. The proposed responses to Q.46 and Q.47 seek to identify that whilst such buildings may be of similar appearance and construction their circumstances may be significantly different and as such should be considered through a separate review of PDR for forestry buildings.

Polytunnels:

- 4.5.13 The proposals do not seek to define any new PDR for polytunnels but identifies that the application of existing PDR and planning fees for new development is undertaken inconsistently dependent on local interpretation of legislation. It is proposed that the Scottish Government amend fee regulations to provide clarity on how these apply to polytunnels, and that they provide new guidance in relation to application of PDR rights for agricultural buildings to polytunnels, and new guidance seeking to identify relevant material considerations (including economic/agricultural benefits) when assessing planning applications for new/extended polytunnel developments. This proposal is not expected to give rise to any significant concern or resource implications to the Council and accordingly the proposed response to Q.48 sets that the Scottish Government's approach to polytunnels is to be welcomed.

4.6 Peatland Restoration

- 4.6.1 The primary benefit of peatland restoration is in relation to climate change and storing carbon although this activity has many other benefits including biodiversity, improvement of water quality, and reduction of flood risk. The National Peatland Plan (2015) identifies that peatland covers approximately 20% of Scotland's land mass but estimates that as much as 80% of this area has been damaged. The Scottish Government's Climate Change Plan sets targets to restore 50,000 hectares of degraded peatland by 2020, increasing to 250,000 hectares by 2030.
- 4.6.2 In February 2020, the Scottish Government announced multi-annual investment in peatland restoration of more than £250m over the next 10 years. Currently Scottish Government funding for this activity is administered largely by Peatland Action, but also Forestry and Land Scotland, the national park authorities, and Scottish Water. There is also an International Union for Conservation of Nature (IUCN) mechanism – the Peatland Code – for validating schemes seeking private funding.
- 4.6.3 The consultation identifies that as far as planning is concerned, peatland restoration activity does not appear to have been regarded, on the whole, as a matter requiring planning permission despite the definition of 'development' including various engineering and 'other operations'. Currently there are in the region of 70 restoration projects started each year, with a small number of these requiring planning permission. In future the scale and number of projects is expected to increase to meet the annual target of 20,000 hectares. It is expected that this increase will likely affect the extent to which projects may be regarded as requiring planning permission as the scale or use of machinery or more intrusive works increases, especially in large areas of open, uncultivated, or undeveloped land. The intention of the PDR review on peatland restoration is to provide clarity on the planning position for peatland restoration projects.
- 4.6.4 The consultation identifies that the majority of future restoration schemes shall either be delivered by Peatland Action, or will require certification under the IUCN Peatland Code and as such will already be subject to assessment to ensure compliance with legislative requirements and good practice. It is considered unlikely that projects would proceed without a significant degree of scrutiny and as such it is contended that wide ranging PDR can be granted for such projects.
- 4.6.5 The consultation outlines that it would be difficult to comprehensively or accurately define 'peatland' in the absence of mapped designations, or indeed to cover the full range of activities that might be undertaken in 'peatland restoration' and seeks views on whether this can be loosely defined as a general understanding of such matters for the purpose of applying PDR. Officers do not have any specific concerns about this approach and the proposed responses to Q.49 – Q.50 supports the proposals. The response to Q.51 sets out that the introduction of a light touch 28 day consultation procedure would ensure that planning authorities are aware of the project and would allow opportunity for any concerns re. potential impact upon constraints or existing permissions to be highlighted and taken into account by Peatland Action/addressing requirements of Peatland Code.

4.6.6 The consultation highlights that peatland restoration activity has potential to impact upon cultural heritage or archaeological assets, natural heritage sites, and built heritage designations. It is identified that archaeological matters are considered by Peatland Action in their assessment of proposals; and natural heritage designations, namely Sites of Special Scientific Interest and European Sites have their own safeguards in addition to the provisions of the Conservation (Natural Habitats &c.) Regulations 1994. Peatland Action also work directly with Historic Environment Scotland to ensure that undesignated features and the effects of restoration are fully considered and understood. Under the Peatland Code applicants are required to prepare statements that cover restoration and management activities including statements of environmental and social impact that will, where appropriate, include consideration of historical, cultural and archaeological heritage. Given the extent of scrutiny already applied to these projects it is not proposed to have restrictions or requirements upon PDR relating to designated areas. Officers agree that there appears little value in utilising the planning system to undertake assessment of matters that are already subject to scrutiny both by other legislation and by Peatland Action in their assessment of projects for funding, or require to be addressed by private projects under the Peatland Code; the proposed response to Q.52 supports the proposals.

4.6.7 Where peatland restoration sites are remote from existing roads then peatland restoration projects may require a new access track to be constructed. The installation of new access tracks do have potential to have wider ranging impacts including landscape. The proposed response to Q.53 raises concern in respect of this aspect of the proposals if the formation of new tracks is not properly controlled through the level of oversight provided by Peatland Action/Peatland Code. The response to Q.54 sets out that any PDR should expire along with the requirement for the new track, and Q.55 agrees that if the Peatland Code does not provide sufficient oversight for tracks relating to privately funded schemes that these be dealt with differently to schemes authorised by Peatland Action.

4.7 Active Travel

4.7.1 The Active Travel element of the PDR proposals have been moved from Phase 2 to Phase 1 in the Scottish Government's work programme. This has been brought forward in light of the experience during the COVID 19 pandemic where there has been a marked increase in walking and cycling. Active travel means cycling, walking and wheeling and includes the use of bikes, adaptive bikes, wheelchairs and mobility scooters for everyday journeys. The proposed changes to the PDR are aimed at encouraging the use of bikes as a means of travel as part of Scotland's strategy to achieve its net zero greenhouse gases emission target and improving health in support of the Active Scotland Delivery Plan.

Proposals for extensions to PDR for storage sheds/structures for bicycles:

4.7.2 The proposals seek to give all householders the right to erect bicycle/scooter stores to the front of their properties. It is also proposed to extend the same rights to owners of flats with a private garden space, and to allow flatted

properties with private garden space to erect communal storage sheds within the curtilage of the flat block. This would also apply to flats and houses within Conservation Area. It is also proposed to increase the floorspace restriction of four square metres for sheds in the rear gardens of houses in conservation areas to eight square metres, to allow for the storage of adaptive bikes and bike trailers as well as bikes and mobility scooters. Where flats do not have external private gardens, it is proposed to introduce PDR for communal bike storage sheds (hangars) in public places. The front garden single household bike storage containers would measure 1.2 metres in height, 2 metres in width and 1 metre in depth. It is proposed that finishing materials for the stores in conservation areas should be restricted to timber and that sheds would not be permitted if they would compromise traffic and pedestrian safety by blocking a sightline.

- 4.7.3 It is also proposed to bring communal cycle stores within the curtilages of offices, commercial and industrial buildings (class 4, 5 and 6 uses) into PDR. These would be a size suitable to accommodate a number of bikes proportionate to the floorspace of the office. PDR for the siting of up to four cycle stores of up to 1.36 metres in height, 2.55 metres in length and 2 metres in depth within a street block of 100 metres length in public places is also proposed. These would be placed on the road carriageway replacing on street parking spaces (other than disabled) and would not reduce the width of the public footpath.
- 4.7.4 There is general support for the proposals to extend PDR for cycle storage for houses, flats, and commercial property and this is expressed in the proposed responses to Q.60, Q.64, and Q.66. There is however some concern that the extension of this PDR to locations which are subject to a conservation area designation is not appropriate. It is contended that each conservation area has its own unique character and requirements in relation to siting of new structures, their scale, and finishing materials and this concern is reflected specifically within the proposed responses to Q.61, Q.62, and Q.66 although this response is tempered to acknowledge a greater sensitivity in general to development within front garden/street-facing areas as opposed to rear garden areas within conservation areas
- 4.7.5 There is however some concern in relation to proposals that would introduce new PDR for persons/organisations other than the Council and/or Roads Authority to erect cycle storage structures on on-street locations. Whilst there is no objection in principle to the presence of on-street cycle stores there is concern that to do so without a requirement for planning permission may have implications for vehicle/pedestrian safety and/or visual amenity, and it is highlighted that dispensing with the requirement for planning permission would disenfranchise local residents/businesses who may be affected by the development.
- 4.8 Other Matters:

- 4.8.1 The consultation is accompanied by a 'Strategic Environmental Assessment draft post adoption statement' setting out how the assessment and consultation responses (from an earlier consultation on the proposals for inclusion in the programme of PDR review) have been taken into account at this stage in the process – this additional document is attached as Appendix C. Q.71 seeks the Council's views on the statement. It is the consideration officers that the content of this document is generally acceptable with the exception that consideration of the environmental, social and economic considerations in relation to the introduction of PDR for conversion of agricultural buildings do not identify the potential negative impacts that could arise to rural infrastructure and services, or potential impacts upon the quality of development delivered and amenity.

Assessment of Impacts

- 4.8.2 In addition to the Strategic Environmental Assessment the Scottish Government have undertaken a number of other assessments of the draft proposals. Q.72 seeks feedback on the content of these draft assessments which are set out as Annexes B-F in the Scottish Government's main consultation paper and include:

4.8.3 Annex B – Business and Regulatory Impact Assessment (BRIA)

This assessment considers the costs and benefits of the proposals and identifies that extending PDR is expected to help to improve certainty of outcome for developers, and can help to reduce timescales for securing any necessary permissions or approvals. Removing more proposals from the planning application process is expected to help free up resources for planning authorities; where prior approval is required, these benefits will be offset in part by the need to submit an application for prior approval. It is also identified that the fee for prior approval would be less than that for a planning application. It is identified that removal of the requirement for planning permission may encourage development to be brought forward as a result of a reduction to both complexity of process and cost to applicants.

- 4.8.4 Officers would raise concern that the consideration of costs and benefits within the BRIA does not accurately reflect that proposals set out in the Phase 1 consultation would result in much of the development that is removed from the planning application process requiring to be the subject of a prior notification/prior approval process to allow an assessment of its individual circumstances. It is contended that any complex prior approval process that may be required to consider proposals for conversion of agricultural buildings will deliver very little benefit to applicants in respect of certainty of outcome, cost of preparing a submission, or timescale of determination. There is not expected to be any significant benefit to the planning authority as the scope of the new procedure that would be required for assessment of PDR agricultural conversion has the potential to be more complex than the planning application process and may in fact actually increase the resource required by the planning authority to undertake the assessment in some cases. This, coupled with the reduction in fees associated with prior approval would increase cost pressures upon delivery of the Development Management Service and is contrary to the

Scottish Government's stated aspiration that local authorities seek to move to full cost recovery for this regulatory activity. These concerns are reflected in the proposed response to Q.72.

4.8.5 Annex C – Equality Impact Assessment (EqIA)

This assessment considers the impact of the draft proposals on various equalities groups defined by protected characteristics. The EqIA concludes that the Phase 1 proposals are not expected to give rise to negative impacts for any equality groups; officers are in agreement with this position.

4.8.6 Annex D – Children's Rights and Wellbeing Impact Assessment (CRWIA)

This assessment considers the impact of the proposed changes on children. The proposals for review and extension of PDR in relation to agricultural buildings and peatland restoration is expected to have minimal impact upon young people. The review and extension of PDR for digital communications infrastructure and active travel is expected to have indirect positive impacts for young people by creating conditions in which digital infrastructure can be improved to be more responsive to changing demands in technology, and through provision of safe and secure cycling infrastructure. Accordingly, the Scottish Government do not propose to undertake a detailed CRWIA in respect of the proposal; officers are in agreement with this position.

4.8.7 Annex E – Fairer Scotland Duty Assessment

This assessment considers how the Scottish Government can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions. The Scottish Government set out that the proposals do not give rise to a Strategic Change to policy as they are, for the most part, amending existing permitted development rights, with the exception of peatland restoration. The consultation considers that a Fairer Scotland Duty Assessment does not require to be undertaken.

4.8.8 Officers would however highlight that whilst there may well be existing permitted development rights relating to agriculture buildings these operate solely to support the undertaking of existing agricultural activity through reduction in planning regulation. The Phase 1 proposals would introduce an entirely new concept that that a wide range of alternative land uses can be accommodated within an agricultural holding without requiring the benefit of express planning permission. Whilst the Council is supportive of the Scottish Government's aspirations to enhance the rural economy and farm diversification it is highlighted that the conversion of agricultural buildings outwith the normal planning process give rise to a significant shift in policy from one where new development will be supported where it accords with the Development Plan, or other material considerations to a position where every agricultural holding in Scotland larger than 0.4ha (with limited exceptions) would gain an inherent right to convert buildings providing up to 5 dwelling units and/or up to 500sqm of commercial floorspace within each farm unit unless the planning authority are able to demonstrate that this is inappropriate on a case by case basis.

4.8.9 It is contended that this shift in emphasis not only represents a significant strategic change in national planning policy, but also that any move to a 'prior notification/prior approval' process to manage this type of development has the potential to disenfranchise communities and third parties who would otherwise have been afforded the opportunity to engage with the development of local policy through the Development Plan process, and the right to make representation on individual planning applications. The proposed response to Q.72 accordingly sets out that the proposals in relation to PDR for conversion of agricultural buildings are of sufficient significance to merit a full and detailed assessment under the Fairer Scotland Duty in their own right. In the response to Q.73 it is highlighted that planning authorities will hold data relating to approval of new development outwith settlement areas that may assist the Scottish Government in reviewing the necessity for this proposed intervention which will impact upon the ability of local authorities to make provision for the good planning for their locality within a plan led system.

4.8.10 Annex F – Island Communities Impact Assessment (ICIA)

This assessment considers the impact of proposed changes on Scotland's islands. The Scottish Government consider that the proposals will deliver positive benefits for Island Communities, particularly those relating to digital communication, agriculture, and peatland restoration. Officers are in general agreement with this position but would note their concerns raised elsewhere in respect of proposals for the conversion of agricultural buildings and the view that the benefits to the rural economy associated with this proposed PDR are overstated, and there is no evidence put forward to suggest that these are not already, or cannot adequately be delivered through the existing procedures requiring planning applications to be determined having regard to the Local Development Plan and other material considerations.

5.0 CONCLUSION

Digital Telecommunications:

5.1 The proposals to extend and review PRD for digital telecommunications are generally acceptable subject to retention/expansion of the telecommunications 'prior notification/prior approval' process where significant change might occur, or where development is located within a 'designated area' and requires closer scrutiny. This position is outlined in the proposed responses to Q.1-27. Commentary requesting that the Scottish Government be mindful of previously stated aspirations to deliver full cost recovery for Development Management and the implications of extending the scope of development subject to telecommunications 'prior notification/prior approval' procedures are highlighted in the proposed response to Q.28.

Agricultural Development

5.2 Proposals setting out the intention to increase PDR floorspace limits for new agricultural buildings, and extended agricultural/forestry buildings are also

considered to be generally acceptable with the exception of circumstances where this has potential to impact adversely upon landscape, built heritage and croft land interests where it is recommended that existing limits be retained. Proposals relating to PRD to forestry buildings and clarification of PRD for polytunnels are also supported. The proposed responses to Q.29-Q.33, and Q.46-Q.48 reflect this position.

5.3 Proposals for the introduction of new PRD that would allow the conversion of agricultural buildings to residential development and/or commercial development give rise to significant cause for concern. It is considered that these proposals:

- Are unnecessary to secure the Scottish Government's objectives of supporting agriculture and the rural economy
- Has potential to significantly undermine settlement strategy for the management of countryside locations set out within a Local Development Plan that seeks to provide for the good planning of a locality through policies geared toward local (as opposed to nationally applicable, 'one size fits all') requirements; and
- Will give rise to a significant additional level of complexity to all parties in respect of the interpretation/operation of planning legislation as it relates to PDR for agricultural buildings.

Furthermore, the introduction of a new, and complex prior approval process for conversion of agricultural buildings is considered:

- Likely to remove any tangible benefits to land owners or planning authorities in respect of the resource or costs relating to the preparation of submissions, or their assessment when compared to current planning application requirements;
- Likely to give rise to additional financial cost to the Council in undertaking its statutory function as planning authority given that fees for prior approval will be lower than equivalent planning applications fees;
- Has potential to disenfranchise local communities and third party interests from engagement and participation in decisions relating to developments of a scale that have potential to give rise to significant effects upon their locality.

The proposed responses to Q.34-Q.45 set out a position raising objection to these proposals; additionally the response to Q.72 identifies that the costs and benefits relating to these proposals are not adequately addressed in the BRIA (Annex B), and that they are of such significance that they merit a full assessment under the Fairer Scotland Duty (Annex E).

Peatland Restoration

5.4 The proposals to clarify and extend PDR for peatland restoration are considered to be generally acceptable and pragmatic; this position is outlined in the proposed responses to Q.49-Q.59.

Active Travel

- 5.5. The proposals to clarify and extend PDR to active travel are generally considered to be acceptable subject to additional limitations relating to front garden/street facing development in conservation areas, and the installation of on-street structures by parties other than the Council/roads authority which gives rise to concern in respect of both road safety, and visual amenity. This position is outlined in the responses to Q.60-Q.70.

6.0 IMPLICATIONS

- 6.1 Policy – The proposals include provisions which may undermine elements of the ‘settlement strategy’ set out in the Local Development Plan.
- 6.2 Financial – The proposal is likely to give rise to additional cost pressures to the Council through reduction in fees payable for the assessment of planning submissions relating to conversion of agricultural buildings, and additional demand upon enforcement resources if additional breaches of planning control arise as a result of the additional complexity introduced to PDR.
- 6.3 Legal - None
- 6.4 HR - None
- 6.5 Fairer Scotland Duty: It is considered that the proposals seeking to introduce PDR for conversion of agricultural buildings represent a significant shift in national planning policy that has potential to impact significantly upon communities and individuals who would otherwise have been afforded opportunity to engage in Development Plan and/or planning application processes. It is recommended that the Scottish Government undertake a full assessment of these proposals under the Fairer Scotland Duty.
- 6.5.1 Equalities - protected characteristics - None
- 6.5.2 Socio-economic Duty - None
- 6.5.3 Islands – None
- 6.6. Risk – Elements of the proposals would introduce new and complex ‘prior notification/prior approval’ processes for conversion of agricultural buildings that give rise to additional necessity for the delivery of timely decisions (to avoid deemed permission/approval being granted by default) whilst simultaneously reducing the financial resource to the Council required to deliver the expected outcomes.
- 6.7 Customer Service – Elements of the proposals would introduce new and complex ‘prior notification/prior approval’ processes for conversion of agricultural buildings that give rise to additional customer expectation on the delivery of timely decisions whilst simultaneously reducing the financial resource to the Council required to deliver the expected outcomes.

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6th November 2020

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APPENDICES

Appendix A – [Scottish Government Consultation on Reviewing and Extending PDR in Scotland – Phase 1](#)

Appendix B – Proposed response to the consultation

Appendix C – [PDR Extension and Review: Strategic Environmental Assessment – draft post adoption statement](#)