

Local Government and Regeneration Committee
Scrutiny of the Draft Third National Planning Framework



**Evidence for Local Government and Regeneration Committee
22nd Jan 2014**

From Planning Democracy

What is Planning Democracy?

Planning Democracy is a registered charity which campaigns for a fair and inclusive planning system in Scotland. We advocate for transparent and accountable decision-making, based on a level playing field between all stakeholders. We do this because planning decisions have a long lasting, often permanent effect on the lives of individuals and communities.

The mission of **Planning Democracy** is threefold:

- to undertake practical and academic research on the state of **community participation** in the Scottish planning system
- to campaign for **just and open decision-making** within the planning system
- to promote practical changes for a more **equitable, inclusive and transparent** planning system.

We recognize the reasoning behind the Government's review of the NPF and SPP in tandem, and understand that the committee is interested in taking a strategic look at these planning changes alongside parallel developments in the delivery of regeneration and the Community Empowerment Bill.

Our response will therefore include:

1. Response to the Government's NPF consultation
2. Recommendations regarding future community empowerment in planning
3. Recommendations regarding inequalities within planning

We believe that reforms have failed to address the democratic deficit inherent in the planning system. We therefore welcome an assessment of the system against the original goals of the reform, particularly in the context of community empowerment.

However, we are concerned that the committee does not lose focus on the 60-day scrutiny period for the NPF, which as the only opportunity to scrutinize the draft NPF3 should remain the key priority.

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Our Evidence for the NPF3

Support for the NPF3

Planning Democracy supports the NPF as a means of democratically shaping key priorities for Scotland's spatial development.

National-level planning and priority-setting are basic democratic requirements. It is important, for example, that undesirable developments are not displaced to areas less able to advocate for their priorities. The NPF must ensure that the necessary infrastructure is developed in line with Scotland's commitments to social welfare and climate change.

In making national planning decisions, it is crucial that power and influence flows from the bottom up as well as from the top down. The local impacts - positive and negative - of nationally important infrastructure developments (e.g. a power station) must be considered. Under the Aarhus Convention, Scotland is required to ensure that the views of those affected are fully incorporated into the decision-making process.

We understand that this is a challenging proposition. However, our ongoing research and contact with community networks across Scotland indicates that the current trajectory of the NPF3 falls far short of what Scotland should aspire to achieve. Instead, for most people in Scotland, the plan remains remote and many of those who have sought to contribute feel alienated from the process.

Learning from the NPF2 process

In their report on NPF2¹ the previous Local Government and Communities Committee recognized that more work was required to *effectively engage people and raise awareness of the NPF, particularly at a local level and amongst those affected by prospective national developments*. The Committee recommended using local authorities alongside *“improved consultation mechanisms to be deployed when in the process of finalising its list of national developments, to allow for further engagement with stakeholders”*.

We recognize that, during the NPF3 consultation process, the Government made extra efforts to carry out additional meetings and stakeholder events. However, we have found little evidence that Local Authorities were involved in raising awareness at a local level (beyond their Community Council Liaison officers forwarding

¹ Local Government and Communities Committee 5th Report, 2009

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consultation documents to Community Councils).

More disappointingly, we have found no evidence of significantly improved consultation mechanisms being deployed in the process of developing either the plan or the list of national developments. We certainly welcome the Government's commitment to ensuring that candidate developments are proposed early in the process (and a proposed list was published). However, we have some continued concerns about the definition of national developments (see below), and believe that it is still not clear how the Government intends to engage in an authentic debate about different options.

Lack of debate and short 60 day scrutiny period

The lack of opportunity for authentic debate is still evident in the NPF3 process. The Government's own review of the consultation responses to the Main Issues report recognised that some issues were *clearly controversial*. However, the only opportunity to review and consider those issues comes during the *short* period of parliamentary scrutiny of the Proposed Plan. The process by which these controversial issues are considered and resolved between the Main Issues Report and the Proposed Plan remains opaque, with no opportunity for further engagement on what are complex issues. The short period of a 60 day scrutiny by parliament gives too little opportunity to debate the issues and hardly does justice to a decision making process that has important implications for Scotland's future. This is unlikely to improve public trust in the decisions made, or to help secure widespread support for the plan or national developments within it.

Early in the NPF3 process, Planning Democracy recommended that the Government investigate the use of innovative deliberative techniques to improve public understanding and scrutiny of the plan, particularly its more controversial provisions. We also argued that such processes could enable input by local communities affected by prospective site-specific national developments.

Although officers showed some interest in this proposal, it was not pursued, apparently due to resource constraints. We maintain that this was a missed opportunity to address the fundamental challenges that the Government faces in creating a robust and legitimate plan. Citizens' juries, consensus conferences, grand debates and other similar deliberative approaches are increasingly used in major planning and infrastructure decision-making in other countries and should be seen as emerging best practice. (Appendix 1 provides an outline of how such approaches could work in a modified NPF process).

We therefore welcome the suggestion that the revised SPP should give greater priority to engagement and endorse the use of innovative deliberative techniques.² However, if the government truly recognizes the value of such techniques they

² p4-5, Key Issue 3, SPP Position Statement, Scottish Government, January 2014

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should commit to ensuring that the flagship NPF process becomes a standard-bearer for their use.

We also suggest that **members of the committee** could participate in such processes, leading deliberative hearings *and acting as representatives of their results* during the statutory period of parliamentary scrutiny of the Proposed Plan.

Time, resources and new approaches are required to realise the full democratic potential of the NPF3. The consultative methods currently pursued (workshops, written responses, online publicity, etc.) are certainly better than nothing; however, participants often cannot see how their views are taken into account. The interrogation of key issues is limited by time, spatial, and methodological constraints. Fundamentally, such traditional methods have proven ineffective in engaging many people. This is particularly problematic when people belatedly discover that they will be directly affected by the provisions of the plan. Moreover, such techniques do little to assist the participation and understanding of ordinary citizens, for whom the planning system, the NPF and the complex range of other strategies to which it relates are often inaccessible.

The example below highlights the democratic deficit entailed by this limited methodology, and its effects on those who seek to engage with the planning system:

Community Council resignations and national developments

This year we followed the story of two previously energetic and committed community councils. One community will be affected by two national developments (Grangemouth). Both organizations suffered from mass resignations ultimately resulting in their closure, as a **direct consequence** of feeling unheard, unsupported, and excluded from a purportedly democratic planning system. These are clear examples **that the planning system is not working for people**.

With specific reference to Grangemouth as a community affected by NPF national developments:

The issues that led to the mass community council resignations were mainly concerning air pollution and the lack of enforcement of Air Quality Standards and the concern that the health and wellbeing of the community and its environment was being systematically undermined by the intent to focus industrial developments in Grangemouth. The Carbon Capture and Storage plants planned for Grangemouth was part of a package of developments proposed for the area that had the potential to impact on air quality which concerned the community. Given that there are legitimate concerns it would seem reasonable to ask more of the NPF process in terms of involving the local community in the consultation.

However, it was not deemed necessary to hold an event in the local area or give specific information to the community of Grangemouth, despite the fact that two

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proposed national developments were intended for the area. The community council received a generic email informing of the NPF process, the same as any other community who may have been unaffected by any developments. The only planned opportunity given to residents was to travel to Edinburgh for a drop-in session (which they did). (A further drop in session was later organised at the request of a local councillor *once* she had become aware of the proposals through other means). This does not demonstrate an effective effort towards “*improving mechanisms of consultation*” (NPF2 Committee recommendation) for key stakeholders. This example highlights the urgent need for a process that can effectively acknowledge and use local knowledge, experience and expertise to support an effective NPF.

Our concern is that now the residents of the “sacrificial” community of Grangemouth are now facing further large scale development without the benefit of a working Community Council to represent their views.

With regard to the NPF consultation

Types of National Development

We also draw to the committee's attention national developments in the proposed NPF3 that describe *classes* of development (as opposed to specific developments), in particular 'National Development 5: Pumped Hydro Electric Storage'.

In general, we would argue that there is a need for greater clarity over the definition of national developments and a commitment to ensuring that all candidate national developments can be subject to a thorough process of assessment and democratic scrutiny.

If the Government does wish to confer national development status on a class of development it is important that this is used sparingly and the criteria describing the class is well thought-out. The proposed NPF3 appears to give national development status to any development (new-build or refurbishment) that is *related* to a pumped storage scheme over 50MW, regardless of the development's location or impact.

People should be able to have influence over the principle of a major development, such as a pumped storage scheme, when one is proposed. We are concerned National Development 5 is excessively permissive and believe certainty for communities and developers would be better served by site specific designations. At this late stage however it is unclear how a meaningful public debate could be had over site specific national developments.

Towards a democratic Scotland in 2014

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As Scotland builds to a defining democratic moment, many people are questioning why, as an area that is already devolved, the planning system is not achieving a greater level of public participation and greater equality. The NPF3 process as part of that system clearly remains undemocratic.

Recent planning reforms were justified by promises of increased public participation at the front end of the system, whereby public views would be taken into account earlier in decision-making processes.

However, our research indicates that these promises have not been fulfilled. Instead, people continue to feel shut out of a system that, through its increasingly dominant focus on sustainable economic growth, has turned its back on participatory and representative democratic decision-making. The public is losing faith in a system that is demonstrably asymmetric, with far greater resources available to developers than to communities.

We recommend that:

1. The committee should be aware that the NPF3 process, whilst improved, has not provided sufficient opportunities to resolve controversial or complex issues.
2. Committee members consider the role of the 60-day period of parliamentary scrutiny, whether this provides a suitable opportunity for democratic overview and input into the NPF and, if not, how it could be changed to be made more effective.
3. The committee should as a matter of priority undertake to investigate the reality of planning for people and whether promises of increased public influence and involvement have been realised (for example by listening to the community councillors who resigned, speaking to the constituents and public who feel unable to influence national and major developments).
4. The committee ask the Government to set up a working group to re-evaluate the NPF process and consider how it might be changed to ensure that it is designed to promote a full and open conversation about the spatial development of the country. This should include a full investigation of the potential to use new deliberative methods as a way of generating public understanding, debate and influence on the plan (some methods and successes are outlined in Appendix 1). The Government should provide a budget for developing such techniques for future NPF revisions.

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Issues relating to the SPP

As the committee is interested in taking evidence on a wider range of planning issues we offer the following.

Our concerns

The planning system exists to provide a forum for democratic debate about what kinds of developments serve public interest: the relative costs and benefits of different proposals and their potential economic, social and environmental value.

This debate is not possible within a system that views development - in and of itself - as the prime public good. In a society where increasing reliance on market forces has led to growing inequalities and environmentally unsustainable patterns of development and resource consumption, ***it is imperative that alternative means of measuring and understanding growth and well-being can be debated and developed.***

In this way the current commitment to sustainable economic growth hinders the capacity of the planning system to deliver true sustainability and thereby contribute to building a fairer, more prosperous Scotland.

There is a serious inequality of arms between participants in the planning system which remains dominated by professionals. It is important that the costs of participation incurred by citizens are recognised by people in power. Our research and case studies³ tell a story of people who genuinely want to engage with local decision-making (often not through their own choice but because their lives are affected by the decision) but find this involves an uphill struggle. People have to learn how a system works, spend hours reading thick documents, struggle to access information, and then find themselves on a playing field tipped in favour of groups whose resources are far greater, and who already 'speak the language' of the system.

We recommend the following:

1. 'Sustainable development' should be understood as the overarching purpose of the planning system and the best means available to manage a dynamic

³ http://www.planningdemocracy.org.uk/resources/PAP_discuss_draft_web_April12.pdf

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balance between environmental, social and economic concerns to ensure that development meets current needs without compromising the well-being of future generations. We therefore believe that the Scottish Government should replace all references to sustainable economic growth.

2. In keeping with the proposed revision to the SPP, all levels of planning should be encouraged to experiment with various innovative deliberative techniques to bring public voices together with those of elected members in relation to key decisions as per our NPF suggestions (see appendix 1);
3. Public rights to participate should be strengthened at the business end of the system, where decisions are made. Contrary to the scaremongering of development interests, this need not cause long delays in decision-making, but would mean that people are empowered to influence developments and would increase the legitimacy of the planning process.
4. More effort should be put into supporting and resourcing civic participation in Development Planning. In relation to this, community planning priority setting needs to be more responsive to local democratic opinion and concerns. There is room for more active experimentation with deliberative techniques in the setting of such priorities as one way of responding to the challenge of how to engage people in such processes (e.g. participatory budgeting). Councillors need the capacity to properly consider important planning applications plus training and support to help them fairly balance diverse priorities.
5. Dedicated officers should be appointed to ensure that all locally affected individuals and groups are able to participate effectively in development planning and development management decision-making
6. Community Councils should be given more resources and capacity-building support, so that they can participate in the planning process more fully;
7. Explore greater flexibility in defining 'statutory consultees' for the purposes of local planning processes, so that these other voluntary bodies can have equivalent influence in planning matters.
8. People who have made representations on development plans or specific planning applications should be given the right to speak at planning

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committee hearings and the right to be heard in any subsequent public hearing. This is common practice in England but still rare in Scotland. This would make local authority decision-making more identifiably local.

9. More weight should be given to local planning priorities throughout the planning process; for the duration of any planning permission; and, where relevant, following closure of site. Thus:
- The development plan should represent a presumption in favour of locally agreed planning priorities and that any departure from these should be grounds for appeal.
 - Planning permission should be seen as a legally binding social license to operate and there should also be a clear understanding that this needs to be enforced.
 - Reports of breaches of permission need to be investigated fully. All relevant conditions should be legally enforceable, including restoration, as this is key to ensuring public trust that the system is fair and aimed at protecting the public interest (rather than acting as a means of creating commercial opportunities for developers).

Appendix 1 Innovative and deliberative techniques

The deliberative techniques outlined below would provide a means of building a fuller and more open conversation about the spatial development of the country at both the national and local levels. These techniques are not a panacea, and will not necessarily ensure a fully democratic process. However, they can provide a focus for attention and debate that can help raise the wider public profile of emerging plans and strategies, whilst ensuring that citizen expertise is fully harnessed in a more accountable process.

A number of mechanisms which have increased citizens' participation in local development have been implemented in different countries around the world. Most of these involve processes beyond planning and encompass local government and policy planning more widely. Despite not being planning specific, Planning Democracy would welcome efforts to include such mechanisms in the NPF and SPP and to encourage and resource their widespread use in the planning system.

- **Citizen juries.** A very recent example in Australia has shown a successful way of incorporating wider deliberative techniques into the plan making process in South Australia. Looking to move beyond the normal consultation process involving paper submissions or "road show" events, the South Australia government decided to hold a citizens' jury over a period of three months to deliberate a specific "policy issue" (night time economy) in the development of the South Australia Plan. The government invited people to volunteer to be part of the jury. Following random selection of these volunteers, 43 local citizens, of a wide cross section of ages, gender, and professions formed the jury. The jury met 6 times and were able to listen to programmed expert presentations which informed their deliberations. The jury could also request specific expertise to answer questions they had.

We believe a citizen jury of this type could be easily included in the NPF process, particularly to clarify or expand deliberation on specific national infrastructure or controversial issues. For example, -it is evident from the NPF3 consultation responses, and subsequent report, that wind power developments are a key example of divided opinion between Government policy and local community opinions. A jury process exploring the issues in depth, via expertise and informed deliberation, could enhance the NPF process greatly.

- **Participatory budgeting**, first used in Brazil, and has been adopted in over 200 cities worldwide. To date, the majority of participatory budgeting processes involve a citizen driven process to allocate municipal funds to specific local infrastructure projects. Nonetheless, Brazil, which pioneered the process at city level, now has examples at state level planning and resource allocation. Given that participatory budgeting is widely recognised as a

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mechanism which increases state-citizen dialogue and funding allocation legitimacy, incorporating a variation of this at Scottish national or regional level planning could also be considered.

- **Citizen Assemblies.** Regarded as direct democracy mechanisms at the local level, citizen assemblies could form a key part of the NPF or policy process, particularly to allow local communities to decide upon the infrastructure or projects which will be implemented in their local communities. It is after all the local citizens who bear the brunt of development in their local area. Decisions made by a local citizen assembly can help make decisions regarding policy or projects more acceptable rather than being implemented from the top down.

In British Columbia, Canada, a citizen assembly (160 members) was created to deliberate to review the province's electoral system over an 11 month period, culminating in a referendum on the issue. Although the citizens' assembly recommendations for electoral reform were voted against at the referendum, the assembly *process* was regarded as a successful example. It was concluded in reports and studies following the event that citizens demonstrated the capacity to engage with, and deliberate, complicated policy issues and come to reasoned decisions.

In Ireland 2011, following polls showing the lowest ever citizen confidence in political representatives in Ireland, a large experiment, based on a citizen's assembly model, was trialled in Ireland. The experiment involved a representative random sample. Similar to the British Columbia example above, participants were found to be able to deliberate and deal with contentious and difficult issues extremely well. The final report states that participants evolved as much as the deliberations showing greater interest in politics, their ability to influence issues and greater understanding of the difficult choices needed to be made in policy making.⁴

- **Sortition**, or other mechanisms of random selection, can help decide on which community members would be involved - a way of getting beyond the "same old faces" to decide on community matters. Sortition can be implemented as part of any of the mechanisms outlined above at a macro or micro scale.

Using the methods in the NPF process

As noted above, Planning Democracy has previously recommended the use of such techniques in the NPF process to the Scottish Government. We believe such mechanisms would provide a means of improving democratic consideration of key

4 <http://www.wethecitizens.ie/pdfs/We-the-Citizens-2011-FINAL.pdf>

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issues, including the often wide-ranging effects of particular national developments. Our proposal, developed in conjunction with experts at the University of Edinburgh, would have involved *added deliberative scrutiny of the proposed NPF*. Members of a chosen parliamentary committee would each have attended deliberative events in either key localities identified within the plan, or their own constituencies. These would have heard evidence from various stakeholders before producing a set of recommendations. Members of the Committee would then have been responsible for ensuring that these recommendations were duly considered by Parliament and the Government. The Government in turn would have been expected to provide a written response to the issues and recommendations raised. Such a technique would have *significantly augmented the currently limited provisions for public scrutiny of the proposed plan* whilst offering an innovative means of linking participatory mechanisms to representative democratic processes, helping to build a stronger, more active democracy in Scotland and create a stronger and a more legitimate NPF.

1. **We recommend that the committee ask the Government to set up a working group to investigate these methods and provide a budget for developing such techniques for future NPF and other planning consultations.**