

# Planning Committee

2.00pm, Wednesday, 2 September 2020

## The Scottish Planning Policy and Housing – Technical Consultation on Proposed Policy Changes

Executive/routine	Executive
Wards	All
Council Commitments	<a href="#">1, 2, 4, 10, 11, 12, 18, 26</a>

### 1. Recommendations

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- 1.1 It is recommended that Committee:
- 1.1.1 notes the Scottish Government’s consultation on proposals for amendment of Scottish Planning Policy in respect of removing the presumption in favour of development that contributes to sustainable development and setting out a consistent method for calculating an effective five year housing land supply to give greater clarity to the decision making process;
  - 1.1.2 notes that these are interim measures to be replaced on the approval of National Planning Framework 4 (NPF4) by the Scottish Parliament, and any relevant policies in that document, currently scheduled to be before parliament in draft Form in September 2021 with approval to be considered September 2022.
  - 1.1.3 approves the proposed response to the consultation (Appendix 1) setting out the Council’s support for the proposed changes as positive measures which reflect the existing approach taken by the Council and which would simplify these areas of the planning system, which are the subject of significant unproductive activity; and
  - 1.1.4 agrees that the proposed response be submitted to the Scottish Government by 9 October 2020.

#### Paul Lawrence

Executive Director of Place

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## The Scottish Planning Policy and Housing – Technical Consultation on Proposed Policy Changes

### 2. Executive Summary

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- 2.1 The purpose of this report is to seek approval for a supportive response to the Scottish Government's consultation on proposed interim amendments to Scottish Planning Policy 2014 (SPP) in relation to planning for housing. The consultation proposes removing the existing presumption in favour of 'development that contributes to sustainable development', and by prescribing how the effective five year housing land supply should be calculated. The changes would apply in the interim period ahead of the approval of NPPF4) expected in 2022.
- 2.2 This is in response to the impact of the Covid-19 crisis on development plan cycles. The Scottish Government considers that this will lead to development plans going out of date due to delays to replacement plans. It is also in response to a recent Court of Session decision on the 'tilted balance' in favour of the presumption in favour of development that contributes to sustainable development as interpreted from policy and judgements in England. The Scottish Government considers that both the prospect of delay and the court decision undermine the plan-led system, the latter in ways not intended in the policies of SPP.

### 3. Background

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- 3.1 Local authorities have to prepare Local Development Plans (LDP) for their areas and keep them up to date. LDPs should not be older than five years.
- 3.2 Local authorities also have to maintain an effective five year housing land supply at all times, releasing land or granting planning permission as necessary to do so. There is no current standardised method for calculating a five-year housing land supply and this is a consideration often disputed in planning applications and appeals.
- 3.3 SPP has a presumption in favour of development that contributes to sustainable development where either a development plan is over five years old or there is not an effective five year housing land supply. It includes a list of criteria in respect of sustainability. This presumption and legal interpretations in favour of this being the key material planning consideration are sometimes referred to as a 'tilted balance.'

- 3.4 The outcome of these considerations can mean that planning applications for housing are made on land not allocated for housing, where either the development plan is more than five years old or there is disagreement that a five year effective housing land supply is in place. If not granted by the planning authority, such applications can be appealed to the Scottish Ministers and have often been granted under the presumption.
- 3.5 Scottish Ministers consider that the impact of the Covid-19 crisis and the Court of Session judgement could undermine the plan-led system and therefore seek to change SPP on an interim basis to protect the plan-led system. That would not prevent decisions being taken contrary to the development plan if the decision maker is of the view that there are material considerations which outweigh the provisions of the development plan, which could include the effectiveness of the housing land supply and the sustainability of the development proposed.

## 4. Main report

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- 4.1 The Scottish Government is consulting on proposed interim amendments to SPP 2014 in relation to planning for housing. The changes would apply in the interim period ahead of the adoption of NPPF4 expected in 2022.
- 4.2 The Scottish Government considers that the current Covid-19 pandemic has affected planning authorities' abilities to review development plan cycles within the necessary five-year time frame and that it is also affecting housing development delivery programmes and the completion rates of new homes.
- 4.3 The Scottish Government also considers that a recent Court of Session decision on the case of Gladman Developments vs Scottish Ministers on a housing development on a non-allocated site in Inverclyde has shown that the policy wording of SPP in respect of these matters needs clarification, as the Court of Session interpretation of SPP was not what was intended by Scottish Government.
- 4.4 The policy objectives of the proposed changes are to:
  - 4.4.1 support a plan-led approach to decision making, maintaining the legal status of the development plan as the basis for decisions;
  - 4.4.2 remove the presumption in favour of development that contributes to sustainable development as it has the potential for conflict with a plan led approach;
  - 4.4.3 provide a clearer basis for decisions on planning applications on non-allocated sites where there is a shortfall in the effective land supply; and
  - 4.4.4 clarify what is meant by a five-year effective land supply – in particular, preventing sites from being excluded from the effective land supply solely on the basis of programming assumptions.

## **Presumption in favour of development that contributes to sustainable development**

- 4.5 The presumption in favour of development that contributes to sustainable development is to be removed from SPP and paragraphs 32 and 33 are to be proposed to be removed in their entirety.
- 4.5.1 Paragraph 32: *“.....For proposals that do not accord with up-to-date development plans, the primacy of the plan is maintained and this SPP and the presumption in favour of development that contributes to sustainable development will be material considerations.”*
- 4.5.2 Paragraph 33: *“Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration.....”*
- 4.5.3 For clarity, it is not proposed in the consultation to remove the criteria in SPP of what constitutes sustainable development and the need for sustainability. What is proposed to be removed is that where there is not an effective five year housing land supply then any development which meets all of those criteria should have a presumption in favour, over and above any other material considerations.
- 4.6 These changes have significant implications for City of Edinburgh Council’s Housing Land Requirements and Housing Supply Targets, which were set by SESplan Strategic Development Plan 1 (SDP1) and its supplementary guidance. As SDP1 is now over five years old, it is regarded as out of date. When dealing with the recent called-in planning application at the Garden District, the Reporter’s opinion was that the policies relating to housing land requirements were out of date and as such, paragraph 33 of SPP was engaged – the presumption in favour of sustainable development. The Reporter considered that in the absence of an up to date SDP there were no housing targets to refer to and that therefore it must be assumed that there was a shortfall in the housing land supply. No reason was given for that assumption nor any attempt made to offer a housing target based on informed considerations. The Reporter’s opinion on this was the basis of the Ministers’ decision that planning permission in principle should be granted, subject to the conclusion of a Section 75 agreement.
- 4.7 There is a likelihood that that this opinion would be cited in support of applications on other non-allocated sites prior to the adoption of City Plan 2030.
- 4.8 The removal of the presumption would reduce the risk of successful appeals on green belt sites based upon the development plan being out of date.
- 4.9 In this consultation the Scottish Government recognises that an impact of the Covid-19 pandemic is that more development plans are likely to exceed five years age. The government is clear that it does not want that to undermine the plan led system at a time when the effectiveness of the housing industry in delivering new homes may well be compromised by other impacts of the pandemic on the economy and in particular, on employment and the mortgage market. It is considered to be an appropriate, temporary response to the circumstances of the time.

### **Definition of effective land supply**

- 4.10 The Scottish Government proposes to amend the paragraph of SPP that deals with requirement to maintain a five-year supply of effective land and also to amend the definition of effective land supply in the SPP glossary.
- 4.11 At present, many local authorities (and Scottish Government reporters), define the effective land supply as the number of homes programmed for completion over the next five years. There is a sentence in the planning advice note that deals with housing land audits (PAN2/2010) that gives support to this. The Planning Advice Note (PAN) is to be withdrawn on the finalisation of the new interim policy.
- 4.12 These proposed changes to SPP would do the following:
- 4.12.1 explicitly state that housing sites should not be excluded from the effective housing land supply solely due to programming assumptions included in the Housing Land Audit;
  - 4.12.2 give a clear definition of the effective land supply as “sites that they are capable of being, free of technical constraints including: ownership (i.e. a willing seller), physical constraints, contamination, deficit funding, infrastructure or land use within the period under consideration in normal economic circumstances.” (i.e. the effective nature of a site is not tied to the number of completions programmed over the next five years);
  - 4.12.3 explicitly state how the five-year effective land supply should be calculated – at present there is no such definition. The proposed calculation sets a target for the five-year effective supply as five times the average annual target from the development plan. Importantly, this calculation does not increase the target should delivery of homes be below target in some years; and
  - 4.12.4 allow decision makers to determine the weight to afford a shortfall in the effective land supply according to the facts and circumstances of each case and the contribution a proposal would make to addressing the shortfall.
- 4.13 The effect of these changes would be to reduce the significant level of resources which are taken up in application and appeal debates on the status of the effective housing land supply and remove unproductive work from the planning system, albeit on an interim basis. This would allow for greater clarity for decision makers in considering this factor in all proposals for housing development on non-allocated housing sites. The focus of decision making can then relate more strongly to the appropriateness or otherwise of the proposal, including its sustainability credentials.

### **Consideration of the proposed changes**

- 4.14 The proposed changes would not remove the requirement for a decision maker to consider the questions of the sustainability of an application proposal or how it relates to an assessment of the effective five-year housing land supply. Rather they

would simplify the assessment of both factors and allow for greater clarity in giving weight to them.

- 4.15 Decisions made on the basis of the presumption in favour of development that contributes to sustainable development in the case of development plans being over five years old or where a case has been accepted that there is a shortfall in the effective five year housing land supply have been justified on the grounds that the sites will make an early contribution to the housing land supply. However, the evidence of such decisions and their timescales for on-site completions does not support that justification, as set out in table 1 of Appendix 1.
- 4.16 It is therefore considered that the presumption does not serve effectively to provide for more housing completions and is a crude and ineffective measure. Indeed this, and the debates over the effectiveness of a land supply, can detract from the delivery of new homes on allocated sites by diverting resources elsewhere whilst also undermining the confidence of communities in the plan-led process and the infrastructure provisions that come with it.
- 4.17 At the time of writing the proposed changes have been supported informally by Heads of Planning Scotland on its blog and it is expected that formal support will be given.
- 4.18 The social media responses of many in the development industry have been critical and it is likely the case that this will follow through to formal industry responses.
- 4.19 It is proposed that the Council support the proposed changes to SPP for the reasons given above and as cited by the Scottish Government. They accord with the forward thinking practices of the Council. Support for the plan-led system is also critical to allow effective, cumulative assessments and provision of supporting infrastructure to come forward.
- 4.20 The proposed response set out in Appendix 1 of this report gives further detail of the reasoning for support for the proposed changes.

## **5. Next Steps**

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- 5.1 Subject to approval of the proposed response this will be submitted to the Scottish Government as the Council's formal response on this consultation. Officers will continue to promote these principles to the Government, including through any post-consultation process which follows.

## **6. Financial impact**

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- 6.1 This report has no direct financial impacts. There is the potential for resource pressures on the Council's Planning and other Services to lessen where there the plan-led system is robustly supported by Scottish Government policy, including SPP.

## **7. Stakeholder/Community Impact**

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- 7.1 Support for the plan-led system means greater certainty for communities, Councils and the development industry that development should happen where the plan allocates land for the relevant purposes.
- 7.2 The Scottish Government's proposals are clearly set out and communicated, allowing communities to give their views alongside those of the development sector.
- 7.3 There are no direct sustainability impacts arising from this report. The Scottish Government continues to emphasise the sustainable development policies of SPP.
- 7.4 Any required assessment of impacts would be addressed by the Scottish Government.

## **8. Background reading/external references**

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- 8.1 [Court of Session – Gladman Developments vs Scottish Ministers](#)

## **9. Appendices**

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- 9.1 Appendix 1 – draft Response to the Scottish Planning Policy and Housing – Technical Consultation on Proposed Policy Changes.
- 9.2 Appendix 2 - Scottish Planning Policy and Housing – Technical Consultation on Proposed Policy Changes <https://consult.gov.scot/planning-architecture/proposed-policy-amendments/>

## **Appendix 1**

### **Response to the Consultation.**

#### **Question 1: What is your view on our proposal to remove ‘the presumption’ from the SPP, through the changes set out?**

City of Edinburgh Council agrees with the proposed change. As stated in the consultation document, it is likely that a number of development plans will not be reviewed to the five-year timescale and the presumption in favour of development which contributes to sustainable development would likely lead to further rounds of ‘planning by appeal’ and undermine spatial strategies in emerging (delayed) development plans.

In doing this it would undermine the levels of certainty which all parties, and particularly communities, can gain from the plan-led system. It would also mitigate against the potential for sporadic and piecemeal development which damages the ability of local authorities and communities to understand and plan for the long term shaping of their communities, including cumulative infrastructure requirements.

The experience of City of Edinburgh Council and many other local authorities is that use of the presumption in decisions has not led to quick and effective contribution to the housing land supply, in that where decisions have been made against the spatial strategy and allocations of a development plan, there has generally been a considerable time lag, often two to three years before those sites have commenced, with further time before contributing completions. It would be helpful if the Scottish Government can publish collated countrywide statistics which evidence how effective that part of the policy have been as part of the consideration of the consultation.

The proposed change would reinforce the plan-led system, continue to support sustainability criteria and continue to allow decisions contrary to the development plan to be made where the weight of material planning considerations leads the decision maker to that conclusion.

**Question 2: What is your view on the proposed changes set out and our aim of clarifying the definition of the five-year effective housing land supply to reflect the currently exceptional market circumstances?**

A clear definition of the effective land supply has been absent from current SPP and has led to confusion, debate and disagreement between parties. The clear need for such a definition was identified in the independent review of the planning system.

Clarity of definition would be a significant benefit regardless of the current exceptional circumstances, which illustrate that under the current, widely used definition, the likely slowdown in house building due to economic, employment and mortgage market issues as well as general levels of uncertainty would lead to a shortage in completions compared to targets and therefore theoretical land supply shortfalls across the whole of Scotland. It is an unfortunate outcome of the current system that a planning authority can provide generous allocations of land but, having limited control of the delivery of homes on the ground, have to consider providing more land when the market cannot provide the homes required.

The absence of a defined method has led to considerable conflict in the planning system, with applications for development on non-allocated sites absorbing significant planning authority resource which could otherwise be directed to assisting with the better delivery of plan-led allocations on a strategic, planned, place making basis.

Therefore the principle of the change is welcomed as a means of helping to take unproductive work out of the planning system and promote a more collaborative culture for faster and more effective delivery of plan-led development along with cumulative infrastructure requirements.

**Question 3: What is your view on the proposed changes to paragraph 125, including:**

**(a) the proposed calculation to establish the scale of the five-year effective land supply in relation to alternatives and;**

**(b) the proposed approach to assessing proposals where a shortfall emerges?**

a) Giving a clear, simple definition of the how the calculation is to be carried out is to be welcomed as it will remove uncertainty and resource intensive processes which rarely assist with effective delivery of homes.

The proposed method is sensible and appropriate as an interim measure to cover the situation of older development plans which may have experienced delivery shortfalls early on. However, going forward, new development plans should be seeking to meet need and demand for housing in full and planning authorities should

be expected to work to increase delivery rates where there has been a shortfall in delivery.

b. As illustrated by the current economic situation, delivery rates can vary for economic reasons and be outwith the control of planning authorities. The suggested changes provide flexibility as to how shortfalls in the five-year effective land supply are addressed.

City of Edinburgh Council's approach to assessing the housing land supply is to treat programmed completions and land availability as separate things for precisely the reasons set out in the consultation document. The proposed changes are consistent with how the Council assesses the adequacy of the housing land supply through the housing land audit and completions programme. Therefore support is given for the proposed changes

**Question 4: Do you agree that the proposed amendments will not directly impact on other (non-housing) types of development? If not, please provide evidence to support your view.**

The proposed changes would lead to greater certainty on questions of land supply and key considerations for decision making in housing applications and therefore wouldn't have impact on the considerations for other land uses and application types. If anything, the greater certainty of what should be considered for housing land may raise a greater prospect of delivery of non-housing development which is often compromised due to the higher land values that are generated by housing uses.

**Question 5: Do you agree that fuller impact assessments are not required? If not, please provide evidence to support your view.**

The proposed changes are intended to add simplicity, clarity and greater certainty to the delivery of homes through the plan-led system. As noted above, they might also assist with better delivery of other intended plan-led outcomes. As such their impacts are accounted for in the plan-led process and should not be seen to require further impact assessment.

# **The Scottish Planning Policy and Housing**

## **Technical Consultation On Proposed Policy Amendments**

**July 2020**

## **Responding to this Consultation**

We are inviting responses to this consultation by 23:59 on 9 October 2020.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access the consultation online at <https://consult.gov.scot/planning-architecture/proposed-policy-amendments>. You can save and return to your responses while the consultation is still open. Please ensure that responses are submitted before the closing date of 9 October 2020.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and send it with your response by email to [spphousingconsultation@gov.scot](mailto:spphousingconsultation@gov.scot) or by post to:

Planning and Architecture  
Scottish Government  
Area 2F South  
Victoria Quay  
Edinburgh  
EH6 6QQ

## **Handling your response**

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

## **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above.

### **Scottish Government consultation process**

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

**Title:** The Scottish Planning Policy and Housing - Technical Consultation On Proposed Policy Amendments

## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:  
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

# The Scottish Planning Policy and Housing

## Technical Consultation On Proposed Policy Amendments

### Overview

1. The Scottish Ministers are consulting on proposed interim changes to the Scottish Planning Policy (SPP) (2014) to clarify specific parts of the Scottish Planning Policy that relate to planning for housing.
2. The changes, once finalised, will apply over the interim period ahead of the adoption of National Planning Framework 4 (NPF4). Publication of the draft NPF4 is expected in September 2021. Following consultation and consideration by the Scottish Parliament, SPP will be fully replaced when the final version of NPF4 is published in 2022.

### Why We are Consulting

3. The Scottish Government is committed to a plan-led planning system. This was comprehensively supported by a wide range of stakeholders through the review of the planning system. Development plans form the basis of planning decision-making to enable the right developments in the right locations.
4. The context for planning for housing in Scotland has changed significantly in recent months. The pandemic is having an impact on the ability of planning authorities to maintain the review cycle of local development plans within the timeframes they intended. We expect that more development plans will extend beyond five years in the coming months and are keen to support authorities in adapting to the current circumstances. The pandemic is also affecting delivery programmes and the rate of housing completions. This, coupled with revised plan timescales, has implications for the plan-led approach to development.
5. Furthermore, a recent decision by the Court of Session on an appeal by Gladman Developments Ltd raises a number of issues about the current wording of the policy that we now believe require clarification.

### Introduction

6. The Scottish Ministers want the planning system to support the delivery of good quality homes in the right locations. This is of even greater importance now, as it has become even clearer that the quality of our homes can contribute a great deal to our health and wellbeing, and that housing delivery will play a key role in our future economic recovery. However, to achieve housing development in a sustainable way that works with, rather than against, the needs of communities, we need to overcome current conflict in the system, and actively address the lengthy technical debates we are seeing about the numbers of homes that we will need in

the future. This will allow us to focus more on how we can strengthen delivery and enable good quality development on the ground.

7. Taking this into account, and to ensure that our policy is clear and can be more easily and consistently applied in practice, the Scottish Ministers wish to update and clarify specific parts of the SPP to achieve the following policy objectives:

- Supporting a plan-led approach to decision-making and maintaining the legal status of the development plan as a basis for decisions in all cases.
- Removing the presumption in favour of development that contributes to sustainable development from the SPP ('the presumption') given that it is considered to have potential for conflict with a plan-led approach and has given rise to significant number of issues it has generated for decision-makers in its application.
- Providing a clearer basis for decisions on applications for housing on sites that have not been allocated in the local development plan where there is a shortfall in the effective housing land supply.
- Clarifying what is meant by a 5 year effective housing land supply and in particular preventing sites that are capable of becoming effective being excluded solely on the basis of programming assumptions.

8. This consultation paper sets out proposed policy amendments to achieve these objectives and invites views on them. The relevant policies are set out in paragraphs 28, 29, 30, 32, 33 and 123-125 of the Scottish Planning Policy.

### **Proposed changes**

#### Paragraphs 28, 29, 30, 32, 33

9. The Scottish Ministers propose to remove the sentence on page 9 of the SPP that introduces the presumption.

10. The policy principles in paragraphs 28 and 29 will be maintained as they have an important role to play in ensuring the planning system enables the right development in the right place, rather than allowing development at any cost. They provide a range of factors that decision-makers should take into account as material considerations that are part of a balanced planning judgement.

11. The Scottish Ministers are minded to remove the reference to the presumption in paragraph 30, as well as paragraphs 32 and 33 in their entirety. Paragraph 30 of the SPP sets out that development plans should be consistent with the SPP policies – this part of the sentence will be maintained but the remainder of the first bullet will be removed. Paragraph 32 sets out that the presumption will be a material consideration for proposals that do not accord with up-to-date development plans. Paragraph 33 of the SPP sets out that where relevant policies in a development plan are out-of-date, the presumption will be a significant material consideration.

*Current text:*

## **Policy Principles**

**This SPP introduces a presumption in favour of development that contributes to sustainable development.**

28. The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

29. This means that policies and decisions should be guided by the following principles:

- giving due weight to net economic benefit;
- responding to economic issues, challenges and opportunities, as outlined in local economic strategies;
- supporting good design and the six qualities of successful places;
- making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;
- supporting delivery of accessible housing, business, retailing and leisure development;
- supporting delivery of infrastructure, for example transport, education, energy, digital and water;
- supporting climate change mitigation and adaptation including taking account of flood risk;
- improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;
- having regard to the principles for sustainable land use set out in the Land Use Strategy;
- protecting, enhancing and promoting access to cultural heritage, including the historic environment;
- protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;
- reducing waste, facilitating its management and promoting resource recovery; and
- avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

## **Delivery**

### **Development Planning**

30. Development plans should:

- be consistent with the policies set out in this SPP, including the presumption in favour of development that contributes to sustainable development;

- positively seek opportunities to meet the development needs of the plan area in a way which is flexible enough to adapt to changing circumstances over time;
- support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area;
- be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals; and
- set out a spatial strategy which is both sustainable and deliverable, providing confidence to stakeholders that the outcomes can be achieved.

### **Development Management**

32. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Proposals that accord with up-to-date plans should be considered acceptable in principle and consideration should focus on the detailed matters arising. For proposals that do not accord with up-to-date development plans, the primacy of the plan is maintained and this SPP and the presumption in favour of development that contributes to sustainable development will be material considerations.

33. Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP. The same principle should be applied where a development plan is more than five years old.

*Proposed text*

### **Policy Principles**

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- having regard to the principles for sustainable land use set out in the Land Use Strategy;
- protecting, enhancing and promoting access to cultural heritage, including the historic environment;
- protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;
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- support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area;
- be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals; and
- set out a spatial strategy which is both sustainable and deliverable, providing confidence to stakeholders that the outcomes can be achieved.

*Reasons for the proposed change:*

- This aspect of the SPP has caused considerable confusion and undermines the transparency of the system.
- We do not consider the Court's interpretation of the current wording of the presumption to be consistent with our policy intention.
- We do not wish to undermine the primacy of the statutory development plan in decision-making.

- The ‘tilted balance’ is not intended to be a feature of the Scottish planning system that overrides normal planning judgement based on the development plan and other material considerations.
- The reference to relevant policies of plans being ‘out-of-date’ has a range of interpretations, with decision-makers and applicants taking a range of positions on this.
- As a result of current restrictions and to ensure consultation can be properly undertaken, more development plans are likely to exceed five years in age in the coming months. We do not wish this to undermine a plan-led system.

**Question 1: What is your view on our proposal to remove ‘the presumption’ from the SPP, through the changes set out?**

### Paragraph 123 and the Glossary

12. Paragraph 123 of the SPP refers to the 5 year effective housing land supply and broadly describes the type of sites that could form part of it. The Scottish Ministers are minded to amend paragraph 123 and the glossary to provide more flexibility within the description of the effective land supply at this time.

*Current text:*

#### **Maintaining a 5 year effective housing land supply**

123. Planning authorities should actively manage the housing land supply. They should work with housing and infrastructure providers to prepare an annual housing land audit as a tool to critically review and monitor the availability of effective housing land, the progress of sites through the planning process, and housing completions, to ensure a generous supply of land for house building is maintained and there is always enough effective land for at least five years. A site is only considered effective where it can be demonstrated that within five years it will be free of constraints and can be developed for housing. In remoter rural areas and island communities, where the housing land requirement and market activity are of a more limited scale, the housing land audit process may be adapted to suit local circumstances.

*Glossary: Effective housing land supply:* The part of the established housing land supply which is free or expected to be free of development constraints in the period under consideration and will therefore be available for the construction of housing.

*Proposed text:*

### **Maintaining a 5 year effective housing land supply**

123. Planning authorities should actively manage the housing land supply. They should work with housing and infrastructure providers to prepare an annual housing land audit as a tool to critically review and monitor the availability of effective housing land, the progress of sites through the planning process, and housing completions to ensure a generous supply of land for house building is maintained and there is always enough effective land for at least 5 years. The definition of the effective housing land supply is set out in the glossary to this SPP (as amended). **Housing sites should not be excluded from the effective housing land supply solely due to programming assumptions included in the Housing Land Audit.** In remoter rural areas and island communities, where the housing land requirement and market activity are of a more limited scale, the housing land audit process may be adapted to suit local circumstances.

*Glossary: Effective housing land supply:* The part of the established housing land supply **comprising sites that are, or it can be demonstrated that they are capable of being, free of technical constraints including: ownership (i.e. a willing seller), physical constraints, contamination, deficit funding, infrastructure or land use within the period under consideration in normal economic circumstances.**

***Established housing land supply:* The total housing land supply, consisting of sites in the adopted development plan, sites with planning permission for housing development and other sites with potential for housing development.**

*Reasons for the proposed change:*

- A clear definition of the effective housing land supply is required that takes into account current circumstances.
- In practice the inclusion or exclusion of sites in the effective land supply is a matter of contention.
- Programming reported in Housing Land Audits can vary for a wide range of reasons beyond site availability. Programming assumptions (i.e. the number of units intended to be built-out on a site each year) are frequently subject to change.
- It is currently argued by some that sites that are technically capable of development should not be included in the effective land supply as a result of programming decisions unrelated to the planning status of a site.
- We are currently experiencing exceptional market circumstances and expect this to continue for some time. As a result, we do not wish to see the

availability of land conflated with the relevant, but separate, matter of site programming and build-out rates. The latter is based on business decisions related to changes in the market and wider economic circumstances.

- This approach would be broadly consistent with changes we proposed within the draft Housing Delivery Advice that was previously published and widely debated and consulted on but subsequently withdrawn as a result of continuing disagreement between stakeholders.

**Question 2: What is your view on the proposed changes set out and our aim of clarifying the definition of the 5 year effective housing land supply to reflect the currently exceptional market circumstances?**

#### Paragraph 125

13. Paragraph 125 of the SPP states that where a shortfall in the 5 year effective housing land supply emerges, development plan policies for the supply of housing land will not be considered up-to-date and paragraphs 32-35 will be relevant.

14. The Scottish Ministers propose to revise paragraph 125 to provide a clearer approach for decision-makers in establishing the extent of the 5 year effective housing land supply and taking this into account in decision making.

#### *Current text:*

125. Planning authorities, developers, service providers and other partners in housing provision should work together to ensure a continuing supply of effective land and to deliver housing, taking a flexible and realistic approach. Where a shortfall in the 5-year effective housing land supply emerges, development plan policies for the supply of housing land will not be considered up-to-date, and paragraphs 32-35 will be relevant.

#### *Proposed text:*

125. Planning authorities, developers, service providers and other partners in housing provision should work together to ensure a continuing supply of effective land and to deliver housing, taking a flexible and realistic approach.

**The extent of the forward 5 year effective land supply should be calculated by dividing the housing supply target set out in the adopted local development plan by the plan period (to identify an annual figure) and multiplying that figure by 5. That should be compared to the 5 year effective land supply, based on information collected as part of the housing land audit process.**

**Where a shortfall in the forward 5 year effective housing land supply has been identified, this will be a relevant material consideration to be taken into account alongside other considerations as part of a balanced planning judgement. Whilst the weight to be afforded to it is a matter for decision-makers to determine, recognising the facts and circumstances of each case, the contribution of the proposal to addressing the shortfall (in both scale and kind) should be taken into account to inform this judgement.**

*Reasons for the proposed change:*

- There are widely varying interpretations of this paragraph and its application in practice, generating confusion and undermining the transparency and operation of the system.
- Ministers are of the view that there is now a need to set out a standard calculation to determine the extent of the 5 year effective land supply.
- Based on previous consultation, we are aware that views on methodologies for calculating the 5 year effective housing land supply vary, and that the two main alternatives include an approach that accounts for previous completions (the residual or compound method), or a calculation based on an averaged rate of delivery over the life of the plan.
- Ministers are of the view that, despite current unprecedented circumstances, authorities should still be implementing the provisions of the development plan for new housing and working with stakeholders to make sure there is an adequate forward supply of effective land to help deliver new housing.
- Taking into account current circumstances and the impact of Covid-19, Ministers are not convinced that the residual approach will produce accurate outputs, particularly at this time where delivery rates are affected by the current pandemic. A calculation based on a more steady, average rate of build-out of the land contained within the development plan is considered more appropriate at this time.
- Ministers consider that the housing supply target (the total number of homes that will be delivered) is the appropriate basis for establishing the scale of the forward 5 year effective housing supply.
- The housing land requirement is a tool that is applied at the development planning stage. Its purpose is to help ensure that the housing supply target is achieved by including in the plan an additional allowance for generosity. It is essentially the Housing Supply Target with the addition of an agreed percentage added. The housing land requirement can be met from a range of sources, including the established land supply, sites which are already allocated, sites with planning permission and windfall sites (subject to evidence). The effective land supply is a subset of this wider land requirement. In many cases the housing land requirement relates to a different period – it may look ahead to the longer term or extend from plan base date, rather than adoption date. As a result, the housing land requirement is not directly applicable when assessing the 5 year effective housing land supply.

- The disputed matter of plans becoming ‘out-of-date’ should be removed for the reasons related to changes in plan timescales, as stated above.
- A shortfall in the housing land supply is relevant, but is not determinative, as part of a wider planning judgement, and Ministers believe this should be expressed more clearly in revised text.
- A shortfall in the supply of effective housing land may be addressed by exceptional releases of unallocated land but only if such proposals are appropriate and will meaningfully address any identified shortfall. The proposed text makes it clear that a shortfall will be a relevant material consideration. Scottish Ministers are of the view that this should now be explicitly referenced in relevant decisions.
- This provides a clearer policy to address cases where there is a shortfall in the land supply.
- Aspects of the existing guidance on this as set out in Planning Advice Note 2/2010 are out-of-date. We therefore propose that Section 2 – Housing Land Audits should be withdrawn.

***Question 3: What is your view on the proposed changes to paragraph 125, including (a) the proposed calculation to establish the scale of the 5 year effective land supply in relation to alternatives and (b) the proposed approach to assessing proposals where a shortfall emerges?***

#### Impacts of the proposed amendments

15. These proposals have been designed to address issues associated with planning for housing. We recognise that paragraphs 28, 29, 30, 32 and 33 have wider application but we do not expect that the proposed amendments will directly affect decisions relating to other types of development to the same extent as housing proposals.

***Question 4: Do you agree that the proposed amendments will not directly impact on other (non-housing) types of development? If not, please provide evidence to support your view.***

16. We have considered the requirements for statutory impact assessments, including by screening the proposals in relation to the criteria for Strategic Environmental Assessment, Equalities Impact Assessment, and Children’s Rights and Wellbeing Impact Assessment. Our view at this stage is that a fuller assessment is not required, given the procedural and technical nature of the proposals.

***Question 5: Do you agree that fuller impact assessments are not required? If not, please provide evidence to support your view.***

## What happens next

17. Respondents are asked to state their view on the proposed policy revisions by answering the questions set out in this paper, and to provide reasons for their view, supported by evidence where possible. Following the consultation, we will take all responses into account, finalise the policy, and adopt and publish it as an updated version of the Scottish Planning Policy.

18. When the policy is finalised, it is proposed that Section 2, Housing Land Audits, in PAN 2/2010 will be withdrawn. This advice was prepared before SPP (2014) and certain terms have changed in meaning as practice has continued to evolve.



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