

# **The Scottish Planning Policy and Housing Technical consultation on proposed policy amendments**

**Analysis of consultation responses**

**November 2020**



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# Executive Summary

## Background

This summary presents key findings from the analysis of responses to a consultation on Scottish Planning Policy (SPP) and Housing: Technical Consultation on Proposed Policy Amendments that ran from 17 July to 9 October 2020.

The consultation paper<sup>1</sup> explains that the Scottish Ministers are consulting on proposed interim changes to SPP to clarify specific parts that relate to planning for housing. Once finalised the changes will apply over an interim period ahead of the adoption of National Planning Framework 4 (NPF4), to be published in 2022.

## Number and profile of respondents

A total of 244 responses were available for analysis. The majority of respondents were organisations (150 respondents) with 94 individual members of the public also making a submission. A number of these individuals identified themselves as residents of Quarriers Village.

Among the organisations, housing developers (40 respondents), planning consultancies (25 respondents) and local authorities (24 respondents) were the largest respondent groups.

A number of organisations drew on or offered support to responses submitted by Homes for Scotland (referenced primarily by housing developers) or Heads of Planning Scotland (referenced primarily by local authorities).

## Removing ‘the presumption’

The consultation paper explained that the Scottish Ministers propose to remove the sentence on page 9 of the SPP that introduces the presumption in favour of development that contributes to sustainable development (‘the presumption’). It was proposed that the policy principles in paragraphs 28 and 29 would 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.

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

All respondents answered Question 1, with many making a clear statement either in support of, or disagreement with, either the proposals more widely or the removal of ‘the presumption’ specifically. Of those who made a clear statement in support of or opposition to the proposed changes covered at Question 1, around 3 in 5 respondents gave their support, while around 2 in 5 opposed the proposals.

A large majority of Individual respondents supported the proposals as did all members of the Community Council, Local Authority, Greenbelt Campaign Group,

<sup>1</sup> Available from the Scottish Government’s website at: <https://consult.gov.scot/planning-architecture/proposed-policy-amendments/>

Public Body and Third Sector groups who indicated a clear view. In contrast, all Energy Suppliers and Housing Developers and all but one Planning Consultancy opposed the proposals, while Representative Body respondents were evenly divided, with their position reflecting the sectors of their members.

## **Support for the proposals**

**Importance of a plan led system:** Many of those supporting the proposal noted their support for a plan-led system, which they sometimes contrasted with a court-led system. It was argued that development plans have been subject to rigorous and transparent preparation processes and that they should take precedence to ensure that communities and infrastructure providers are provided with the certainty they are entitled to expect from the planning system.

There was also a view that resources, both in the public and private sectors, have been wasted in constantly debating housing numbers, site effectiveness and the most appropriate methodology for calculating the 5 year effective housing land supply, rather than concentrating on the delivery of quality housing on the ground.

There was specific reference to the determination from the recent Court of Session decision in the case of Gladman Developments Ltd. It was suggested that, while this judgement addressed a long-running debate over exactly if, how and when the concept of 'tilted balance' is applied, the 'tilted balance' is not and should not be a feature to be used to override normal planning judgement based on the primacy of the development plan and other material considerations.

**Primacy of sustainable development:** It was reported that the proposed removal of 'the presumption' has been characterised by some as a removal of the presumption in favour of sustainable development. However, many of those who supported the proposal disagreed with this interpretation and suggested that the removal of 'the presumption' will not prejudice the approval of proposals that fit the definition of sustainable development.

One suggestion was that the ongoing commitment to sustainable development could be more clearly stated within the policy revisions.

## **Opposition to the proposals**

**Clarity of policy:** The most common view among respondents opposing the proposals was that 'the presumption' supports the plan-led system and the achievement of sustainable development, and that it will continue to do so in the future, irrespective of the recent Court of Session judgement in the case of Gladman Developments Ltd. It was argued that 'the presumption' does not override normal planning judgement based on the development plan and other material considerations, and that the Court of Session judgement will not cause it to do.

The proposed changes were argued to not represent a clarification of the intended approach but rather a wholesale deletion of a significant cornerstone of the planning system in Scotland, and to be neither a reasonable nor a proportionate approach to addressing perceived transparency issues. This perspective was sometimes connected to a suggestion that any major policy changes must be reserved for NPF4 so that they can be considered and consulted on appropriately.

**The sustainability principle:** The concept of sustainable development was seen as not only a key feature of the planning system but is also a keystone of wider economic and environmental policy in Scotland, and it was considered fitting that a presumption in its favour is a key feature of the planning system. There was a view that the current proposals send mixed messages by proposing to remove a provision which helps underpin the delivery of sustainable development through the discretionary system.

Any implication that ‘the presumption’ has been used to bring forward ‘bad’ development was challenged. In terms of what ‘the presumption’ brings, it was said to support the delivery of new development, particularly new housing, in sustainable locations where there is both an established need and demand that is not being met within a local authority area. There was a view that ‘the presumption’ is there necessarily to deal with a failure to provide sufficient housing land.

**Relationship to a plan-led approach:** A number of respondents questioned any suggestion that ‘the presumption’ creates the potential for conflict with a plan-led approach. It was suggested that ‘the presumption’ does not in fact undermine the primacy of the development plan but ensures that development plans have the required flexibility to respond to sustainable development opportunities as they arise. Undermining the principle of a discretionary system was seen as risking binding developers and planning authorities to outdated Local Development Plans (LDPs) which no longer reflect needs and aspirations on the ground.

**Timing of development plans and impact on housing supply:** On the theme of the currency of LDPs, and also with reference to the potential impact of the COVID-19 restrictions, some respondents suggested that this means it is even more essential to allow flexibility in the system so that sustainable development can continue. It was also reported that a significant number of the LDPs that are more than 5 years old are ‘out of date’ and that this would have been the case irrespective of any COVID-19 delay.

Overall, it was thought that the removal of ‘the presumption’ before addressing other problems with the planning system would exacerbate COVID-19 related disruption to housing supply.

## **Proposed changes to paragraph 123**

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 consultation paper set out that 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.

**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?**

To a very great extent, those who had agreed with the removal of ‘the presumption’ (at Question 1) also supported the proposal to amend paragraph 23 and the

glossary. Equally, those who had objected to the removal of 'the presumption' very much tended to disagree with the proposals covered at Question 2.

### **Support for the proposals**

**Clarity around 5 year housing land supply:** A number of respondents commented that the existing wording of SPP has led to uncertainty and is open to different interpretations. Clarity was seen as key to avoiding the interpretation of 'effective land supply' leading to disputes about programming assumptions.

In terms of sources of potential confusion, it was reported that the way '5 year effective housing land supply' has often been used conflates the two separate matters of available land and the rate or programming of its build. It was suggested that any conflation of these issues provides developers with an opportunity to bring forward sites previously rejected when strategic planning decisions were made as part of the process of agreeing an LDP.

**Exceptional market circumstances and COVID-19:** A number of respondents commented on the consultation paper's reference to exceptional market circumstances that are expected to continue for some time. However, some respondents who supported the proposed changes suggested that that the proposed amendments should not be restricted to being a response to dealing with COVID-19 but should be taken forward into NPF4.

### **Opposition to the proposals**

**Support for the aim of clarifying the definition:** Whilst noting their overall opposition to the proposals as set out, a number of respondents commented that they supported the aim of clarifying the definition of the 5 year effective housing land supply to reflect current market circumstances.

**Integrity of Housing Land Audits:** It was reported that most Housing Land Audits are agreed with Homes for Scotland and that this is usually done without dispute. They were described as a solid basis for planning that is trusted by all parties. However, respondents also raised a number of issues or concerns about how the approach works currently, including that there is already a tendency for Housing Land Audits to be quite optimistically programmed.

**Programming assumptions:** There was a concern that the impact of the proposed changes on the outcome of planning decisions could be significant. In particular, it was suggested that while the 5 year supply of effective housing land would appear to increase on paper, there would be little chance that the increase would translate into new homes within that 5 year period.

**Exceptional market circumstances:** It was reported that the housing market appears very strong at present and that seeing the COVID-19 emergency as a justification for the proposed changes is out of line with the Programme for Government messaging on using this time to accelerate positive change. There was also a view that the pandemic is not the core matter holding back the delivery of housing and that any changes should be focused on ensuring that sites allocated are delivering, and on mechanisms to allow shortfall in delivery to be addressed.

## Proposed changes to paragraph 125

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. 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.

**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?**

There was again a very clear correlation between respondents' perspectives at Questions 1 and 2 and their views on the proposed changes to paragraph 125.

### Support for the proposals

**(a) The proposed calculation to establish the scale of the 5 year effective land supply in relation to alternatives:** It was reported that the lack of a recognised or definitive methodology for calculating the 5 year effective housing land supply has given rise to repeated disputes between opposing parties in the housing and planning sectors. Removing the scope for the variety and types of calculation that are currently being adopted was seen as a desirable outcome under all circumstances and not only in current conditions. There was also a call for the issue of methodology to be settled once and for all, including to allow resources to be deployed more constructively.

General comments on the proposed calculation to establish the scale of the 5 year effective land supply in relation to alternatives included that it is clear and appropriate. It was also described as being the most straightforward and robust method of calculating a 5 year effective land supply and it was noted that the proposed approach is largely in line with the calculation included within the Draft Housing Delivery Advice and the Planning Performance Framework.

**(b) The proposed approach to assessing proposals where a shortfall emerges:** There was support for a shortfall in supply being considered as a material consideration, although one perspective was that it should be considered as one material consideration amongst several others.

However, while the proposed approach was welcomed it was suggested that it could be strengthened by referring to the need for proposals to fully demonstrate they are effective and capable of delivering completions within a 5 year period to address any identified shortfall. Further, it was suggested that speculative proposal sites brought forward to address shortfalls should be required to demonstrate that they have clear potential for delivery within the timeframe through provision of an estimated annualised programme.

It was also suggested that there needs to be a mechanism that allows local authorities to bring forward the 'next best option' for when a housing land shortfall arises.

### **Opposition to the proposals**

One note of agreement between some of those supporting and some of those opposing the proposals was that a clearer approach for decision-makers in establishing the extent of the 5 year effective housing land supply would be beneficial for all. However, it was also suggested that the methodology proposed favours the small minority of authorities that seek to write-off shortfalls in housing delivery on a year-by-year basis, rather than working to recover those shortfalls within the lifespan of the plan.

It was reported that the problem now is one of supply, not demand and that the homes that were not completed in 2020/2021, as a result of the site shut down and subsequent need for greater physical distances for those working on site, are still needed.

Objections to the proposed calculation generally centred around a concern that it would overlook the shortfalls that commonly occur as a plan period progresses. Using the residual approach to calculate the 5 year effective housing land supply was described as essential to establishing whether the housing land requirement will be met, and there was an associated concern that the language used in the consultation is designed to downplay the significance of a shortfall. Going forward, it was suggested that any undersupply of homes over the previous plan period must be recognised as part of any approach to establishing the land supply needed.

### **Impacts of the proposed amendments**

The consultation paper stated that the proposed amendments have been designed to address issues associated with planning for housing. While recognising that paragraphs 28, 29, 30, 32 and 33 have wider application, the Scottish Government does 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.**

A majority of respondents answering the question - 58% - agreed that the proposed amendments will not directly impact on other (non-housing) types of development, while 42% disagreed. Among organisations answering the question, Community Council, Greenbelt Campaign Group, Local Authority and Third Sector respondents were likely to agree, while Housing Developer, Planning Consultancy, Energy Supplier and Representative Body respondents were all likely to disagree.

### **The proposed amendments will not directly impact on other (non-housing) types of development**

Respondents who did not foresee direct impacts on non-housing development often made limited additional comments. Residents of Quarriers Village along with

associated Greenbelt Campaign Groups and Community Councils argued that genuinely positive non-housing developments that accord with the principles set out in paragraphs 28 and 29 of SPP and which are aligned with paragraph 30 will continue to be supported, while developments not in accord with these principles should not be supported.

### **The proposed amendments will directly impact on other (non-housing) types of development**

A majority of respondents who did not agree that the proposed amendments will not directly impact other (non-housing) development argued that the policy presumption applies to all development. The types of non-housing development mentioned most frequently were renewable energy and housing-related infrastructure supported by developer's contributions.

Renewable energy projects were frequently thought to be impacted by the proposed amendments with some respondents noting this would be the case whether projects were proceeding under the Town and Country Planning (Scotland) Act 1997 or other legislation including the Electricity Act 1989. Potential negative implications with respect to a green recovery from COVID-19 were highlighted and the proposals were suggested to represent a move away from the Programme for Government.

Some respondents argued that housing and other forms of development are inextricably linked, and that since housing development supports funding and delivery of infrastructure such as schools and transport links, housing should be considered as part of a whole system approach rather than in isolation.

### **Requirement for fuller impact assessments**

The consultation paper explained that the Scottish Government has considered the requirements for statutory impact assessments, including by screening the proposals in relation to the criteria for Strategic Environmental Assessment (SEA), Equalities Impact Assessment (EIA), Children's Rights and Wellbeing Impact Assessment (CRWIA) and Business and Regulatory Impact Assessment (BRIA). The view at the stage of issuing the consultation paper was that a fuller assessment was 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.**

A majority of respondents answering the question - 61% - agreed that fuller impact assessments are not required, while 39% disagreed. As at Question 4 there was a marked difference between the views of individual and organisational respondents: while 87% of individuals agreed fuller impact assessments are not required, only 42% of organisations took this view.

Among organisations answering the question, Community Council, Greenbelt Campaign Group, Local Authority and Third Sector respondents were likely to agree, while Housing Developer, Planning Consultancy, Energy Supplier and Representative Body respondents were all likely to disagree.

### **Fuller impact assessments are not required**

Those who agreed with the Scottish Government's view that fuller impact assessments are not required made limited comments beyond noting this agreement. Other reasons given included that this is a procedural and technical proposal, and the changes are not significant enough to trigger further assessments or alter the original impact assessments.

### **Fuller impact assessments are required**

Respondents taking this position often expressed a very different view of the scale and effect of the amendments being proposed. It was argued that the proposals should not be regarded as a procedural and technical exercise not requiring such assessment and that they are major or significant changes that will have a negative impact on supply of new homes.

It was suggested that the proposed changes will have an impact on the determination of planning applications, or that the intention is to change the way planning decisions are taken otherwise there would be no point in making the amendments. In the absence of what were considered proper impact assessments, some respondents argued that the consultation process is flawed, not valid or not lawful and will be open to legal challenge.

# Introduction

## Background

This report presents the analysis of responses to a consultation on Scottish Planning Policy and Housing: Technical Consultation on Proposed Policy Amendments that ran from 17 July to 9 October 2020.

The consultation paper<sup>2</sup> explains that the Scottish Ministers are consulting on proposed interim changes to the Scottish Planning Policy (SPP) (2014) to clarify specific parts of the SPP that relate to planning for housing. Once finalised the changes will apply over an interim period ahead of the adoption of National Planning Framework 4 (NPF4), to be published in 2022.

The proposed amendments to the SPP are intended 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 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 (LDP) 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.

Reasons for the timing of the consultation are explained further in the section below (Comments on the consultation process) along with respondents' comments on both the timing and the content of the consultation paper.

## Number and profile of respondents

A total of 244 responses were available for analysis. The majority of respondents were organisations (150 respondents) with 94 individual members of the public also making a submission.

Organisational respondents have been allocated to one of nine categories by the analysis team and the Scottish Government<sup>3</sup>. A breakdown of the number of

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<sup>2</sup> Available from the Scottish Government's website at: <https://consult.gov.scot/planning-architecture/proposed-policy-amendments/>

<sup>3</sup> Organisations were placed into a group based on name and, where available, after accessing information on relevant websites including the organisation's own website. The web search was carried out in October 2020. Some organisations could have been placed in more than one group, in which case a judgement was made based on the main focus of the response.

responses received by respondent type is set out in Table 1 below and a full list of organisational respondents is provided at Annex 1.

The groups listed below have been named to reflect their membership but, for simplicity, throughout the body of the report shortened versions (in bold) are used.

**Table 1: Respondents grouped by organisation type**

<b>Respondents by type</b>	<b>Total</b>
<b>Community Council</b> , Residents' Association or Civic Trust	20
<b>Energy Supplier</b> , Developer, Association or Body	13
<b>Greenbelt Campaign Group</b>	5
<b>Housing Developer</b> , Landowner or Investor	40
<b>Local Authority</b> or Planning Authority	24
<b>Planning</b> , Development, Real Estate or Legal Firm or <b>Consultancy</b>	25
<b>Public Body</b>	3
<b>Representative Body</b> or Professional Institute	14
<b>Third Sector</b>	6
<b>Organisations</b>	<b>150</b>
<b>Individuals</b>	<b>94</b>
<b>All responses</b>	<b>244</b>

As with all consultation exercises, it should be remembered that respondents tend to have a particular interest in the subject area and consultation responses should not be seen as representative of the views of the population as a whole.

Other points to note about responses are:

- Around 35 respondents either identified themselves as residents of Quarriers Village, the Committee to Protect Quarriers Village, or submitted a response containing related text. (Carsemeadow, Quarriers Village was the subject of the appeal brought by Gladman Developments Ltd referenced below.)
- Around 25 respondents in the Housing Developer and Planning Consultancy groups drew on the response submitted by Homes for Scotland to varying extent.
- Some Energy Supplier respondents submitted versions of a response prepared by a planning consultancy while other respondents in this group and elsewhere drew on the submission of Scottish Renewables.
- A number of Local Authority respondents drew on text from or offered support for the response from Heads of Planning Scotland.
- Other individuals or organisations may have drawn on information provided by groups such as Planning Democracy or The Campaign to Protect Rural Scotland.

It should also be noted that some responses were both detailed and extensive, some with appendices including evidence from appeals cases, and some making specific editing suggestions. Although such responses can only be summarised very briefly in a report of this type, all responses were available in their entirety to the policy team at the Scottish Government. Organisational responses, and those of individuals who gave their permission to do so have been published at: <https://consult.gov.scot/planning-architecture/proposed-policy-amendments/>

A number of responses made specific reference the recent Court of Session decision in the case of Gladman Developments Ltd<sup>4</sup>. Where more general references were made, for example to the recent court case or the Court of Session judgment, it has been assumed that these refer to the Gladman Developments Ltd case unless further comments suggest to the contrary.

## **Comments on the consultation process**

While some respondents expressed satisfaction, others voiced concerns with respect to various aspects of the consultation process.

### **Timing**

The consultation paper states that the context for planning for housing in Scotland has changed significantly in recent months. It explains that:

- The pandemic has had an impact on the ability of planning authorities to maintain the review cycle of LDPs within the timeframes they intended. The Scottish Government expects 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 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 SPP that the Scottish Government believes require clarification.

Nevertheless, some respondents disagreed with the timing of this consultation process with arguments that:

- The consultation has been rushed or has lacked engagement with stakeholders.
- Consultation on the proposed changes would be better taken forward as part of the development of NPF4.
- The urgency of tackling climate change and ensuring sustainability should be the driving force for all planning policy development and that the removal of ‘the presumption’ threatens to undermine this approach.

However, an alternative perspective was that there is an urgent requirement to remove ‘the presumption’ and that any interim policy changes made can eventually be included in NPF4.

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<sup>4</sup> Available at <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020csih28.pdf?sfvrsn=0>.

## **The scale of the proposed changes**

The consultation is described in its title as being 'technical' and to 'clarify specific parts of the SPP that relate to planning for housing'.

Some respondents disagreed that this is a minor or primarily technical clarification of planning policy but rather that it represents a significant change to national planning policy - what one respondent described as 'a fundamental change... being presented as a minor tweak'. It was also suggested that the significance of consultation has been downplayed, potentially making it less likely that people will engage with it, and that the title is misleading, suggesting the proposed changes are applicable only to housing.

## **Lack of supporting evidence and impact assessments**

The consultation paper was also argued to lack both appropriate background information and suitable evidence in support of the Scottish Government's position. Respondents views on the absence of impact assessments are discussed at Question 5.

## **Other issues**

The language used in the consultation paper was suggested to be overly technical and the paper 'too complicated for ordinary people to understand and get fully involved in improving planning democracy'. Use of a double negative in the text at a closed question was also noted.

# Proposed amendments

## Removing ‘the presumption’

The consultation paper explained that the Scottish Ministers propose to remove the sentence on page 9 of the SPP that introduces the presumption. It was proposed that the policy principles in paragraphs 28 and 29 would 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. The Scottish Ministers were also minded to remove the reference to the presumption in paragraph 30, as well as paragraphs 32 and 33 in their entirety. These proposals are summarised in Boxes 1 and 2 below, and the full text of paragraphs 28 – 33, 123 and 125 before and after the proposed amendments, is set out in Annex 2.

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

All respondents answered Question 1, with many making a clear statement either in support of, or disagreement with, either the proposals more widely or the removal of ‘the presumption’ specifically. Of those who made a clear statement in support of or opposition to the proposed changes covered at Question 1, around 3 in 5 respondents gave their support, while around 2 in 5 opposed the proposals.

A large majority of Individual respondents (including those identifying themselves as being resident in Quarriers Village) supported the proposals as did all members of the Community Council, Local Authority, Greenbelt Campaign Group, Public Body and Third Sector groups who indicated a clear view. In contrast, all Energy Suppliers and Housing Developers and all but one Planning Consultancy opposed the proposals, while Representative Body respondents were evenly divided, with their position reflecting the sectors of their members.

## Support for the proposals

### Importance of a plan led system

The consultation paper states that one of the reasons why Scottish Ministers wish to update and clarify specific parts of the SPP is to support a plan-led approach to decision-making and to maintain the legal status of the development plan as a basis for decisions in all cases.

#### Box 1

**Page 9 of SPP includes the statement that ‘This SPP introduces a presumption in favour of development that contributes to sustainable development’.**

*Proposal: to remove the above statement (referred to as ‘the presumption’).*

**Paragraph 30 includes (at the first bullet) that 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;**

*Proposal: to remove the reference to ‘the presumption’. Revised bullet to read:*

- *be consistent with the policies set out in this SPP;*

Many of those supporting the proposal noted their support for a plan-led system, which they sometimes contrasted with a court led system. It was noted that development plans have been subject to rigorous and transparent preparation processes and that they should take precedence to ensure that communities and infrastructure providers are provided with the certainty they are entitled to expect from the planning system.

There was also a view that resources, both in the public and private sectors, have been wasted in constantly debating housing numbers, site effectiveness and the most appropriate methodology for calculating the 5 year effective housing land supply, rather than concentrating on the bigger picture of improving wellbeing, enhancing the economy, and eradicating inequality, through the delivery of quality housing on the ground.

Further comments included that 'the presumption' as it stands undermines development plans as the key document in decision-making, including by encouraging the interpretation that sustainable development is any development that will deliver housing. Other concerns raised about the impact of 'the presumption' on the plan-led approach included that:

- The levels of certainty which all concerned, and particularly communities, can gain from the plan-led system are being undermined.
- The potential for sporadic and piecemeal development damages the ability of local authorities and communities to understand and plan for the long term shaping of their communities, including cumulative infrastructure requirements.
- It has been used in assessments of planning applications for housing on unallocated land, often in conjunction with challenges over housing land supply figures. In these cases, decisions are being made in isolation about a single site rather than assessing sustainability over the whole LDP area.

There was specific reference to the determination from the recent Court of Session decision in the case of Gladman Developments Ltd 'that a housing development in a location with a recognised housing shortfall which will remedy, to some extent, the housing shortage, is something which will almost inevitably contribute to sustainable development...'. It was suggested that, while this judgement addressed a long-running debate over exactly if, how and when the concept of 'tilted balance' is applied, the 'tilted balance' is not and should not be a feature to be used to override normal planning judgement based on the primacy of the development plan and other material considerations. A specific concern was that 'tilted balance' will make it harder for planning authorities to deliver the more complex sites that other SPP policies promote, such as urban redevelopment or brownfield redevelopment.

It was also reported that, in the experience of many local authorities, the use of 'the presumption' has not resulted in a rapid and effective contribution to the housing land supply. Instead it was reported that where decisions have been made against the spatial strategy and allocations of a development plan, there has generally been a considerable time lag before those sites have commenced, with further time before contributing completions. An associated suggestion was that the Scottish Government could helpfully publish collated countrywide statistics which evidence how effective the use of 'the presumption' has been.

One perspective was that removing the presumption would discourage more speculative applications on poor quality unallocated sites, and there were also suggestions that some landowners and developers are relying heavily on 'the presumption' to undermine LDPs. There was an associated view that in practice 'the presumption' has sometimes resulted in development at any cost or in the wrong places rather than the right development in the right place.

Specifically, it was suggested that decisions seem to be weighted to address perceived or real shortages in effective land supply, over other aspects of sustainable development. Gaining permission to build on sites that could be prone to flooding was given as an example.

There were also particular concerns that 'the presumption' has been and will be used to enable development of greenfield sites not allocated in LDPs. There was also reference to permission for housing development on designated greenbelt land being granted on numerous occasions in recent years.

Advantages identified as stemming from a clear return to a plan-led approach included:

- Improved trust in the planning system amongst the general public if they can see a more plan-led approach working in practice.
- Supporting early community engagement in land use decisions, including around decisions relating to location of development. It was reported that effective early engagement tends to benefit the development process and delivers better outcomes for communities, landowners and developers.
- A reduction in the number of appeals freeing up local authority planning department resources to take a more proactive approach to planning in their areas.

Finally, one respondent supported the removal of 'the presumption' overall but thought that it should not be removed for community-owned or led development. It was suggested that this would incentivise community owners and those types of development they have a proven record in developing, such as housing in rural areas, renewable energy, and the generation of vacant town centre buildings.

### **Primacy of sustainable development**

It was reported that the proposed removal of 'the presumption' has been characterised by some as a removal of the presumption in favour of sustainable development. However, many of those who supported the proposal disagreed with this interpretation and suggested that the removal of 'the presumption' will not prejudice the approval of proposals that fit the definition of sustainable development.

Further comments included that the presumption in favour of sustainable development remains a tenet of planning policy within SPP and Development Plans. The retention of paragraphs 28 and 29, and the continuation of the policy principles set out therein, was seen as demonstrating that ongoing commitment. It was also reported that the vast majority of applications for development are approved and those approvals are based on the principal policies in SPP on

Sustainability and Placemaking, including the economic, environmental and social principles set out at paragraph 29 and as reflected within development plans.

One suggestion was that the ongoing commitment to sustainable development could be more clearly stated within the policy revisions. Other suggestions included that:

- The primacy afforded to economic factors in both paragraphs 28 and 29 does not match the principle that ‘The aim is to achieve the right development in the right place; it is not to allow development at any cost.’ To better reflect this principle, paragraph 28 could be reworded to read:

*‘The planning system should support environmentally, socially and economically 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.’*

The bullet points in paragraph 29 could also be re-ordered to reflect this emphasis.

- Since Strategic Environmental Assessment (SEA) and any site evaluation frameworks are also relevant tools for assessing the contribution of new developments to sustainable development, these could be referenced in SPP.
- A definition of the term ‘balanced planning judgment’ should be included in the glossary. This should also link to the sustainability principles set out in Paragraph 29.
- It will be important that the policy principles are properly reflected in LDPs, as required by paragraph 30. How the planning authority has done this, and the adequacy of this, could form part of the examination process.
- Clarity on the criteria of sustainable development is fundamental, and detailed guidance is very important. There was argued to be an urgent need for the upcoming NPF4 and SPP to redress the balance between economic, social and environmental criteria.
- Clarity is needed on applications for housing on sites that have not been allocated in the LDP where there is a shortfall in the effective housing land supply. A paragraph should be inserted that due to the climate emergency greenbelt sites should be exempt from being used to meet any site shortfall.

Other suggested changes to the current proposals as set out included that the bullet at paragraph 30 which currently reads that Development Plans should ‘be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals’ should be revised or deleted. Specifically, the fourth bullet at Paragraph 30, and reference to plans being ‘up-to-date’ could be deleted, helping to maintain the primacy of development plans whilst giving flexibility to authorities where plans may be older than five years.

## Box 2

**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 sets out that where relevant policies in a development plan are out-of-date, the presumption will be a significant material consideration.**

*Proposal: to remove paragraphs 32 and 33<sup>5</sup>*

On a similar theme, some respondents also noted their support for the proposal to remove paragraphs 32 and 33.

Reasons given for supporting this particular aspect of the proposals included that, as discussed above, the recent Court of Session decision in the case of Gladman Developments Ltd highlights the potential for out of date plans to result in decisions that are not based on 'balanced planning judgment' and the primacy of the development plan. The likelihood that a number of development plans will not be reviewed to the five year timescale was highlighted, and there were associated concerns that further rounds of 'planning by appeal' would be likely if the presumption remains in place. One perspective was that the key factor is whether a plan remains relevant, irrespective of its age or the existence of a notional housing land shortfall.

It was also suggested that paragraph 33 is in any case at odds with the general principle that it is for the decision maker to determine the weight to be given to material considerations in respect of any given application, and whether these outweigh the development plan.

While agreeing it should be removed, respondents highlighted a small number of issues they saw as arising from deletion of paragraph 33:

- A reference at national level is needed to replace the text which advises on cases where the plan does not contain policies relevant to the proposal. It was noted that the last decade had seen new types of development for which development plans had no specific policies, such as coal bed methane extraction. It was suggested that SPP should outline the general principles that are applicable to all development, providing a basis for making decisions in such circumstances.
- Deleting the reference to decision-makers taking account of any 'adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP' could be an issue if an LDP does not include a requirement for those impacts to be considered and does not provide criteria to inform such an assessment.

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<sup>5</sup> The existing text of paragraphs 32 and 33 is set out in Annex 2 as part of a comparison of SPP before and after the proposed changes.

## **Opposition to the proposals**

As noted previously, among respondents who expressed a clear view, all Housing Developers and Energy Suppliers, and all but one Planning Consultancy respondent opposed the removal of 'the presumption' and the associated proposals. Representative Body respondents with members in these sectors also opposed the proposed changes.

A number of those opposing the proposals were from the renewable energy sector, with their concerns driven by the view that the removal of 'the presumption' will have an impact that extends beyond the housing sector. These issues are covered further in the analysis presented at Question 4, which covers many of the issues raised by Energy Supplier respondents in particular.

The analysis presented below focuses on the implications for the housing sector and is taken primarily from responses submitted by a number of Housing Developers, by Homes for Scotland and other representative bodies such as Scottish Land and Estates and the Scottish Property Federation, and by many of the Planning Consultancy respondents.

### **Clarity of policy**

In setting out the reasons for the proposed changes, the consultation paper suggests that 'the presumption' and associated aspects on planning policy has caused considerable confusion and undermines the transparency of the system.

The paper also notes that the recent Court of Session's interpretation of the current wording of the presumption in the Gladman Developments Ltd case is not consistent with the Scottish Government's policy intention and that 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.

While those supporting the proposals often saw 'the presumption' as undermining the plan-led system and as not necessarily supporting the right development in the right place, those opposing the proposals tended to the opposite view. In summary, the most common view among respondents opposing the proposals was that 'the presumption' supports the plan-led system and the achievement of sustainable development, and that it will continue to do so in the future, irrespective of the recent Court of Session judgement in the case of Gladman Developments Ltd.

It was argued that that 'the presumption' does not override normal planning judgement based on the development plan and other material considerations, and that the Court of Session judgement will not cause it to do. There was also a view that the Gladman ruling has provided clarity: for example a Planning, Consultancy respondent reported that they believe the ruling is clear and have seen no indication of difficulty in emerging appeal decisions since the Gladman ruling.

Another perspective was that with recent Court decisions establishing the application of the presumption and a tilted balancing exercise in law, any proposal to amend the policy should not be treated as a relatively minor technical consultation. The proposed changes were argued to not represent a clarification of the intended approach but rather a wholesale deletion of a significant cornerstone

of the planning system in Scotland, and to be neither a reasonable nor a proportionate approach to addressing perceived transparency issues. This perspective was sometimes connected to a suggestion that any major policy changes must be reserved for NPF4 so that they can be considered and consulted on appropriately.

### **The sustainability principle**

In terms of the policy intention, it was reported that the concept of sustainable development is not only a key feature of the planning system but one that has enjoyed general support amongst stakeholders.

It was noted that SPP introduced the presumption as a policy principle in September 2014, that the concept of sustainable development is also a keystone of wider economic, environmental and social policy in Scotland, and it was considered fitting that a presumption in its favour is a key feature of the planning system. There was a view that the current proposals send mixed messages and that, on the one hand Scottish Government has included sustainable development as a specific principle in the Purpose of Planning, included in the new Planning (Scotland) Act 2019, but on the other hand it is proposing to remove a provision which helps underpin the delivery of sustainable development through the discretionary system. It was suggested that such mixed messages will send confusing signals to everyone involved with the planning system. There was an associated concern that the removal of 'the presumption' creates a narrative that Scotland does not actively encourage sustainable development, and that this could drive investment to other parts of the UK.

Any implication that the 'presumption' has been used to bring forward 'bad' development was challenged. It was reported that while 'the presumption' has been a consideration in 152 planning appeals decisions on proposed developments of 10 or more homes only 37 of these were approved and the Scottish Government has not identified any of these as examples of 'bad development'.

In terms of what 'the presumption' brings, it was said to support the delivery of new development, particularly new housing, in sustainable locations where there is both an established need and demand that is not being met within a local authority area. The connection was made to development plans as the starting point for all decision makers, as discussed further below. However, it was also considered that 'the presumption' provides an important safeguard that means that development that is sustainable can be allowed even if the plan is not explicit on the matter or has an allocation within it that becomes out of date during the lifetime of the plan.

There was a view that 'the presumption' is there necessarily to deal with a failure to provide sufficient housing land. For example, that in instances where a Council is failing to maintain a suitable effective housing land supply and continually failing to deliver the number of homes required to meet needs, significant weight must be afforded to proposals that come forward to address this. 'The presumption' was said to provide that mechanism and there was an associated concern that removing it would lead to multiple applications and/or appeals being determined differently and that the delivery of many fewer new homes would result. The potential for any issues to be further exacerbated by a move to 10-year LDPs was also highlighted.

## **Relationship to a plan-led approach**

A number of respondents questioned the consultation paper's suggestion that 'the presumption' creates the potential for conflict with a plan-led approach. It was suggested that 'the presumption' does not in fact undermine the primacy of the development plan and that this is not only expressly stated in SPP (at paragraph 32) but was also recognised in the decision of the Court of Session in the case of Gladman Developments Ltd.

Further, it was suggested that 'the presumption' ensures that development plans have the required flexibility to respond to sustainable development opportunities as they arise and that this allows plans to remain relevant and able to deliver their key ambitions for their duration. Undermining the principle of a discretionary system was seen as risking binding developers and planning authorities to outdated LDPs which no longer reflect needs and aspirations on the ground.

Further comments relating to the relationship between the plan-led approach and 'the presumption' included that:

- In most cases involving residential development, the presumption only becomes a material consideration if the 5 year effective housing land supply allocated in the development plan fails to be delivered.
- Paragraphs 32 and 33 are particularly important and should be retained. Removing paragraph 33 would put the development that would deliver the key ambitions of the LDP at risk and has the potential to jeopardise local authorities' ability to be agile and respond to economic development opportunities, to achieve sustainable economic growth, to meet their climate change and net zero carbon targets and to meet their housing needs if some of the sites they are relying on to deliver that vision become unavailable or undeliverable during the plan period.

A number of other comments also focused on the role of 'the presumption' as either a safeguard or an incentive. For example, it was reported that 'the presumption' is an important means of both incentivising local authorities to ensure LDPs are kept up to date and also, as noted earlier, for allowing sustainable development to continue when the LDPs fall out of date.

## **Timing of development plans and impact on housing supply**

The consultation paper notes that, as a result of current COVID 19 restrictions, and to ensure consultation can be properly undertaken, more development plans are likely to exceed five years in age in the coming months. It notes that the Scottish Government does not want this to undermine a plan-led system.

Some respondents who disagreed with the removal of 'the presumption' also noted their express disagreement with the removal of paragraphs 32 and 33.

On the theme of the currency of LDPs, and also with reference to the potential impact of the COVID-19 restrictions, some respondents suggested that this means it is even more essential to allow flexibility in the system to allow sustainable development to continue.

It was also reported that a significant number of the LDPs that are more than 5 years old are 'out of date' and that this would have been the case irrespective of any COVID-19 delay. Delays and lack of progress in updating development plans was seen as a long-standing problem and one of the reasons for introducing 'the presumption' in the first place.

It was suggested that even if accepting there may be problems, they could be readily addressed by a narrow and targeted intervention, rather than by removing 'the presumption'. For example, it was suggested that the obvious change would be to extend (even if temporarily) the lifespan of existing development plans, by a year or two. This would address a range of potential policy issues related to the development plan becoming out of date, not just concerns about unallocated housing sites coming forward.

Further, there was a view that, with the 'life' of LDPs being extended to 10 years, the removal of 'the presumption' would leave no policy basis for Scottish Ministers to require local authorities to address under-delivery of housing or out of date plans.

Also in reference to the relationship between the proposed changes and the impact of COVID-19, a number of the comments addressed the likely and emerging impact of the pandemic on the housing market. It was reported, for example, that developers are reporting increased demand for homes with gardens and space to work from home. The associated challenge identified was that existing development plans will not have identified suitable unconstrained land where such homes could be built in time to meet development plan targets.

Overall, it was thought that the removal of 'the presumption' before addressing other problems with the planning system would exacerbate COVID-19 related disruption to housing supply. It was suggested that planning policy should be to encourage investment, support the economy and promote housebuilding to keep homes affordable and accessible. In contrast, it was considered that the proposed policy change will discourage housebuilders from continuing to pursue sites in Scotland, as there is no accountability for failing to meet housing targets.

## **Proposed changes to paragraph 123**

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 consultation paper set out that 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<sup>6</sup>.

**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?**

Around 230 respondents commented at Question 2. To a very great extent, those who had agreed with the removal of 'the presumption' (at Question 1) also supported the proposal to amend paragraph 23 and the glossary. Equally, those

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<sup>6</sup> The proposed additions and deletions are set out in full in Annex 2.

who had objected to the removal of 'the presumption' very much tended to disagree with the proposals covered at Question 2.

## **Support for the proposals**

Respondents offering their support to the proposals included Heads of Planning Scotland, most Local Authority, Community Council and Third Sector respondents, and all of the Greenbelt Campaign Groups. The majority of individuals (including those linked to Quarriers Village) supported the proposals as did some Representative Body respondents.

### **Clarity around 5 year housing land supply**

A number of respondents went on to note their agreement with some or all of the reasons for the proposed changes set out in the consultation paper. In particular, a number of respondents commented that the existing wording of SPP has led to uncertainty and is open to different interpretations. Specifically, it was suggested that potential confusion exists in relation to what is meant by '5 year effective housing land supply'. It was also suggested that a transparent planning system relies on all aspects of the process being as easy to follow as possible and that clarifying the definition of the '5 year effective housing land supply' is crucial to this.

Clarity was seen as key to avoiding the interpretation of 'effective land supply' leading to disputes about programming assumptions. Respondents connected to Quarriers Village reported that they have experienced the damage that can arise from the exclusion of parts of the effective land supply from consideration due solely to programming assumptions.

In terms of sources of potential confusion, it was reported that the way '5 year effective housing land supply' has often been used conflates the two separate matters of available land and the rate or programming of its build. It was suggested that any conflation of these issues provides developers with an opportunity to influence 5 year housing land supply figures, and hence increase the possibility of an LDP becoming 'out of date', in order to bring forward sites previously rejected when strategic planning decisions were made as part of the process of agreeing an LDP.

Specific suggestions included alternative wording to replace the term '5 year effective housing land supply'. These included:

- '5 year delivery programme', helping reinforce the distinction between available land and the rate or programming of its build.
- 'Effective Land available to meet the 5 year housing supply target'.

It was also suggested that it would be helpful to:

- Differentiate between and define 'total effective housing land supply' and the '5 year delivery programme'.
- Provide a full definition of what constitutes a completion and the approved source of completions data being used in the Housing Land Audit.

Other suggestions as to how any proposals should be taken forward and/or how SPP should refer to effective or established land supply included:

- To make the distinction between the availability of effective land and programming/build out rates clearer, after the sentence ‘Housing sites should not be excluded from the effective housing land supply solely due to programming assumptions included in the Housing Land Audit’ add ‘There is therefore a distinction between the 5 year delivery programme, as expressed in the Housing Land Audit, and the potentially larger 5 year effective housing land supply.’
- Within the definition of ‘effective housing land supply’, the term ‘within the period under consideration’ should be removed, since its inclusion is likely to lead to further confusion and debate.
- ‘Established land supply’ should include ‘agreed’ as per paragraph 60 in PAN 2/2010 Affordable housing and land audits<sup>7</sup>, in relation to sites ‘with potential for housing development’. The PAN should be amended to define what ‘agreed potential’ includes given the primacy of the development plan.
- The proposed Glossary addition for ‘Established housing land supply’ should be amended to clarify the meaning of ‘and other sites’ so that it reads ‘the total housing land supply, consisting of sites in the adopted development plan, sites with planning permission for housing development and suitably located windfall sites with potential for housing development.’
- The final sentence in the proposed Paragraph 123 that addresses rural housing needs to be improved as it contains vague language which may be misinterpreted and is not sufficiently robust policy for rural housing.
- The proposed definition of effective housing land supply needs to be reviewed as it excludes many, if not most, sites of interest to community owners.
- Under what jurisdictions an effective 5 year housing supply should be held: whether at Local Authority level, at housing sub-market level and/or at local level should be made clear.
- The method for calculating the 5 year land supply should be set out explicitly within SPP.

### **Exceptional market circumstances and COVID-19**

A number of respondents commented the consultation paper’s reference to exceptional market circumstances that are expected to continue for some time. The paper goes on to note that the Scottish Government does not wish to see the availability of land conflated with the relevant, but separate, matter of site programming and build-out rates (as discussed above). It suggests that the latter is based on business decisions related to changes in the market and wider economic circumstances. The proposed Glossary reference to the ‘effective housing land supply’ refers to ‘normal economic circumstances’.

Respondents who supported the proposed changes sometimes went on to comment on economic circumstances, with those who did so generally suggesting either that the reference to ‘normal economic circumstances’ should be removed or

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<sup>7</sup> Available at: <https://www.gov.scot/publications/planning-advice-note-2-2010-affordable-housing-housing-land-audits/>

that the proposed amendments should be permanent, not restricted to being a response to dealing with COVID-19, and should be taken forward into NPF4.

Further comments with reference to 'normal economic circumstances' included that the housing market is cyclical in nature, characterised by periods of growth in output and periods of decline and that economic fluctuation results in significant changes to the housing market and delivery of sites both nationally and also across different parts of a local authority area. The Local Authority respondent making the last point went on to note that the economics of housing land have changed greatly over the last 10-15 years with significant peaks and troughs, including pre and post the 2008 recession. They argued that local authorities require a baseline guide for their area to demonstrate what a normal economic situation is.

The north east of Scotland was also cited as a good example of where housing market conditions have varied widely over very short periods of time, and it was seen as important to ensure that any new definition is applicable to any market circumstances.

### **Other issues**

There were also a small number of other comments about specific aspects of the proposed policy changes.

**Glossary reference to ownership:** There was support for the clarification in the glossary that ownership includes the availability of a willing seller. It was reported that experience has been that a common source of disputes within land audits has been the lack of a Homes for Scotland member or housebuilder interest attached to a site, irrespective of the evident effectiveness of some such sites.

One local authority respondent reported that much of the housing supply in their area has been successfully and consistently delivered by locally based, smaller housebuilding companies rather than large national housebuilders.

**Housing Land Audits:** The consultation paper states that when the SPP is finalised, it is proposed that Section 2, Housing Land Audits, in PAN 2/2010 will be withdrawn. There was a concern that withdrawing such a key component of guidance, which includes important definitions, could detract from the intention of providing clarity. It was suggested that a replacement mechanism or guidance will be required.

Another suggestion was that changes to wording should be made to ensure that local communities are involved in Housing Land Audits.

**Public Sector delivery:** The importance of recognising that that delivery of public sector led housing is subject to entirely different delivery drivers was highlighted and it was noted that rates of delivery are influenced by different factors from market led development. It was suggested that the distinctions and clarifications in the delivery roles between the different actors in the delivery process should be explored in more detail during policy drafting.

## **Opposition to the proposals**

Respondents opposing the proposals included Homes for Scotland, a number of other Representative Body respondents, Housing Developers and most of the Planning Consultancy respondents.

### **Support for the aim of clarifying the definition**

Whilst noting their overall opposition to the proposals as set out, a number of respondents commented that they supported the aim of clarifying the definition of the 5 year effective housing land supply to reflect current market circumstances.

Broader reasons given for not supporting the specific proposals included that:

- They would not achieve the clarity sought.
- No evidence has been presented to support the reasons behind the proposed amendment.
- Any changes should be fully thought out as part of the run up to NPF4 rather than resources and cost being diverted to making short term changes to the current SPP.

### **Integrity of Housing Land Audits**

A number of the other comments focused on the expected impact of the changes as proposed on the delivery-focus of the planning system more generally and on Housing Land Audits in particular.

It was reported both that most Housing Land Audits are agreed with Homes for Scotland, and that most are agreed without dispute. They were described as a solid basis for planning that is trusted by all parties, with their role said to be critical to monitoring the performance of development plans.

However, respondents also raised a number of issues or concerns about how the housing land supply approach works currently, including that:

- There is already a tendency in practice for Housing Land Audits to be quite optimistically programmed when compared at a later date to the completions that come forward.
- Planning authorities were reported to be 'massaging' the land supply figures by including sites that have remained in the Housing Land Audit for many years without the backing of the housebuilding industry.
- The housing land supply is easy to manipulate, which is illustrated by a number of LDP Examinations where the planning authority has argued strongly that it has an adequate land supply and the Reporters have not agreed.

In reference to the impact of the proposed changes on Housing Land Audits, it was suggested that:

- The collaborative way in which planning authorities have produced Housing Land Audits would be undermined.
- PAN 2/2010 (Section 2) remains the only Scottish Government document that provides a guidance for the production of Housing Land Audits. Removing this

guidance will lead to planning authorities overestimating the housing land supply.

- Housing Land Audits would lose their usefulness as reliable indicators of when additional land may need to be released through planning decisions.
- There would be more conflict as it is likely fewer appeal Reporters would benefit from having an agreed view of the land supply with which to work.

### **Programming assumptions**

It was noted that the proposed changes to paragraph 123 centre around the insertion of text relating to programming assumptions. It states that 'Housing sites should not be excluded from the effective housing land supply solely due to programming assumptions included in the Housing Land Audit'.

The essential role the programming of sites plays in determining a site's contribution to either the 5 year effective supply, or its delivery within an LDP period, was highlighted. There was a concern that, when coupled with the deletion of Part 2 of PAN 2/2010 and its criteria for effectiveness, the impact on the outcome of planning decisions could be significant. In particular, it was suggested that while the 5 year supply of effective housing land would appear to increase on paper, there would be little chance that the increase would translate into new homes within that 5 year period. In effect, therefore, less land would be identified for housing.

It was suggested that, where disagreements do arise they relate almost exclusively to sites which are not in the hands of a party expected to develop the site for housing, are constrained by ownership or infrastructure requirements or are simply not viable due to their market location and associated abnormal costs and planning gain burden. Rather than the current proposals, it was thought that requiring a site to be in the hands of a developer in order to be effective would be a more useful change. It was suggested that this would improve the accuracy of the process by eliminating undeliverable programming assumptions regarding sites under construction.

Other aspects of programming assumptions seen as critical included that they are used by planning authorities when preparing Action Programmes in order to support the development plan. It was reported that they are also used by Scottish Water and other infrastructure providers in planning and programming new infrastructure investment. It was also reported that Education Authorities take account of programming of new housing development in order to plan investment in new schools, nurseries and school extensions. The associated concern was that the proposed changes would result in the production of Housing Land Audits that will inhibit the planning and delivery of essential infrastructure, and exacerbate existing issues relating to education and healthcare provision, transport improvements and other infrastructure upgrade works.

### **Exceptional market circumstances**

Other comments addressed the consultation paper's suggestion that the proposed changes are required because of 'current exceptional market conditions'. There was a query as to what is meant by this, and it was suggested that no evidence or detail is provided. This was associated with a suggestion that the housing market appears very strong at present and that there is an ongoing urgency to deliver on

housing targets set by LDPs. A similar perspective was that while the current market conditions have constrained supply, need and demand have remained the same or increased.

It was also suggested that seeing the COVID-19 emergency as a justification for the proposed changes is out of line with the Programme for Government messaging on using this time to accelerate positive change rather than putting a brake on it. It was recognised that the Scottish Government may think planning authorities require some form of policy protection in anticipation of a possible (though as yet non-existent) temporary drop in the demand for new homes if changes in the employment market have a knock-on effect on the housing market. However, as above, it was suggested that supply, rather than demand, has been the issue because of the temporary shutdown of sites and the impact on site productivity of social distancing measures in place to protect construction workers.

It was also noted that, in any case, the proposed changes would have a greater reach than just addressing the impact of the market conditions brought about by COVID-19. There was also a view that the pandemic is not the core matter holding back the delivery of housing and that any changes that are required should be focused on ensuring that sites allocated are delivering, and putting in place the appropriate mechanisms to allow shortfall in delivery to be addressed.

### **Marketability**

There were concerns about the proposed change to the Glossary to exclude 'marketability' which was described as irrational. It was suggested that if the Scottish Government considers that there is a need to acknowledge existing ownership - 'a willing seller' - it is surprising that they do not consider that there is a need to consider new ownership - 'a willing investor'. It was also suggested that due regard should be given to the importance of a site's marketability in any proposed definition of effective housing land supply.

### **Alternative approaches**

As noted earlier, whilst noting their overall opposition to the proposals as set out, a number of respondents commented that they supported the aim of clarifying the definition of the 5 year effective housing land supply.

As an alternative approach to the changes outlined in the Consultation Paper it was suggested that all current SPP policy should be retained, along with Section 2 of PAN 2/2010. If it proves necessary the Scottish Government could address the unique impact of the COVID-19 site shutdown by issuing guidance (in the form of a Chief Planner Letter) on how planning authorities should deal with and/or adjust for any COVID-19 related shortfalls in the 5 year effective housing land supply.

It was also suggested that in instances where the temporary disruption from the COVID-19 pandemic results in the effective housing land supply moving from a surplus in the 2020 (2020/21) Housing Land Audit to a shortfall 2021 (2021/22) Housing Land Audit, decision makers could give weight to the short term impact of the pandemic.

## Proposed changes to paragraph 125

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. 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.

**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?**

Around 220 respondents answered Question 3.

There was again a very clear correlation between respondents' perspectives at Questions 1 and 2 and their views on the proposed changes to paragraph 125.<sup>8</sup>

### Support for the proposals

Some of those supporting the proposals made a general statement of support or noted that they agreed with the proposed changes to paragraph 125. Others went on to make more extensive or detailed comments on (a) the proposed calculation or (b) the proposed approach where a shortfall emerges.

A small number of respondents agreed with some parts of the proposed changes but not all. Their perspectives are also set out in the analysis presented below.

#### **(a) The proposed calculation to establish the scale of the 5 year effective land supply in relation to alternatives**

A number of respondents commented on why they saw change as needed. It was reported that the lack of a recognised or definitive methodology for calculating the 5 year effective housing land supply has given rise to repeated disputes between opposing parties in the housing and planning sectors. It was also suggested that the different methodologies for calculating land supply employed currently, including at Development Plan Examinations, Planning Appeals and in court, has caused significant debate and confusion and has been resource intensive for planning authorities. This was seen as undermining the primacy of the development plan and the development plan process.

Removing the scope for the variety and types of calculation that are currently being adopted was seen as a desirable outcome under all circumstances and not only in current conditions. There was also a call for the issue of methodology to be settled once and for all, including to allow resources to be deployed more constructively. In particular, it was hoped that an agreed defined methodology has the potential to avoid planning authorities having to defend decisions at Appeal, allowing planning decisions to remain with the local authority.

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<sup>8</sup> The proposed additions and deletions are set out in full in Annex 2.

### Box 3

#### **Proposed additional text at paragraph 125**

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.

It was thought that the overall approach proposed will encourage balanced planning judgments based on a full policy context provided by SPP and other relevant local plans.

One Local Authority respondent reported that the proposed approach is consistent with the methodology they use currently for their Housing Land Audit work. They commented that they feel it is important that decisions should be based on the most recent and adopted Housing Land Audit and not on *ad-hoc* assessments provided during the assessment of planning applications or appeals.

Another Local Authority respondent reported that the proposed SPP approach is in line that used currently in their LDP, commenting that it provides adequate flexibility should a shortfall in supply arise. They went on to explain that the policy is clear that working with landowners, developers and infrastructure providers to bring forward the early release of sites planned for later phases of the plan, as well as sites identified as constrained or non-effective, is preferential. Only if the shortfall is not met from existing sites will proposals for housing development on alternative sites be supported where they are consistent with other policies of the plan.

General comments on the proposed calculation to establish the scale of the 5 year effective land supply in relation to alternatives included that it is clear and appropriate. It was also described as being the most straightforward and robust method of calculating a 5 year effective land supply and it was noted that the proposed approach is largely in line with the calculation included within the Draft Housing Delivery Advice and the Planning Performance Framework. Not using the residual or compound method to calculate housing land was also supported, and the Scottish Government's clarification on this point was welcomed. It was thought that calculations based on average rate of build-out of the land contained within the development plan are more appropriate, including because it does not rely on past completion figures which, it was suggested, are often inaccurate.

A possible tension was identified if build rates result in the housing supply target being met earlier in a plan's lifetime, with an authority still having to identify additional land to maintain a 5 year supply. An associated concern was that this would have to be taken forward outwith a plan process and there was a query as to whether the relevant comparison is between the 5 year housing supply target and the 5 year programmed land supply or the overall effective land supply.

A number of respondents went on to make suggestions as to how the proposals could be developed further or suggested revisions<sup>9</sup>. These included that:

- The clarification of the differences between the housing land requirement and housing supply targets (given in the 'reasons for the proposed change' at Question 3 in the consultation paper) could also be written into the proposed policy amendments to provide further clarity. Contextual text highlighting the role of the housing land audit in evidencing some of the key measures that form part of the development pipeline would also be helpful.
- The definition of effective housing land supply and 5 year effective land supply needs to be explicit.
- As referenced at Question 2, it was suggested that the term '5 year delivery programme' should replace the term '5 year effective supply'. 'Effective land available to meet the 5 year housing supply target' was another suggestion.
- Rather than the 'extent of the forward 5 year effective land supply', it may be better to refer to 'the years of remaining effective land supply'.
- The calculation of the sufficiency of the land supply should be included either within Policy or the associated guidance.
- The proposed calculation needs to be amended. It is not the 5 year effective supply figure but the total effective supply that should be used as in the previous section the proposed text states that sites should not be excluded from the effective housing land supply due to programming assumptions. This would allow planning authorities to take into account all sites which are not currently expected to come forward in the short term, not because they are constrained, but because of marketability or programming assumptions.
- The base date for the calculation of whether there is a shortfall or not should be clarified. A finalised Housing Land Audit at the date when an application is submitted to the Local Authority or an appeal lodged with the Planning and Environmental Appeals Division, should be used as the basis for the 5 year delivery programme and total remaining effective supply.

Other comments suggested changes or additions are set out in turn below.

**Tenure-based approach.** There was a call for the requirements for the 5 year land requirement to be sub divided by tenure.

**Application to small sub-housing market areas.** It was suggested that consideration be given to whether any approach can be applied to sub-housing market areas, including in relation to supply targets, shortfalls and housing land requirements. The implications of applying macro level statistics and processes to a micro level community were highlighted, and it was suggested that consideration is given to placing a floor on the size of sub-market housing areas under which either local authorities are given discretion to include or exclude development candidates or, if the demand and supply analysis is referenced as part of an assessment, this takes second place to other planning judgements.

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<sup>9</sup> As at previous questions Heads of Planning Scotland, supported by a number of local authorities, also submitted detailed suggestions for policy wording changes. These can be found within the Heads of Planning Scotland response.

**Brownfield or greenfield/belt sites.** It should be made clear that use of brownfield sites would take priority over land previously not allocated for housing, such as designated Green Belt.

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

**Box 4**

**Proposed additional text at paragraph 125**

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.

There was support for a shortfall in supply being considered as a material consideration, although one perspective was that it should be considered as one material consideration amongst several others and should not be determinative, or even the only or most important consideration, when deciding whether or not to approve a planning application.

However, while the additional text (Box 4 above) was welcomed it was suggested that it could be strengthened by referring to the need for proposals to fully demonstrate they are effective and capable of delivering completions within a 5 year period to address any identified shortfall. Further, it was suggested that speculative proposal sites brought forward to address shortfalls should be required to demonstrate that they have clear potential for delivery within the timeframe through provision of an estimated annualised programme. This was seen as critical to ensuring that such proposals do not simply become part of the longer term established supply.

It was also suggested that where a shortfall becomes apparent, the planning authority should be given time to correct this rather than being put into the position of having to accept applications from developers that do not comply with the spirit of the LDP. It was thought that such an approach would help to maintain the primacy of development plans.

However, it was also suggested that there needs to be a mechanism that allows local authorities to bring forward the 'next best option' for when a housing land shortfall arises. It was thought that this could avoid the worst aspects of speculative development proposals, including those that have long-lasting detrimental consequences for the community and the environment. A mechanism to allow the planning authority and local community to work together, with input from potential developers, to consider and identify the most appropriate sites to meet any shortfall in a set period before the shortfall becomes a material consideration was preferred. A similar suggestion was that since communities (including Community Councils) have the opportunity to provide input on land use proposals during the formation of LDPs, they should have the opportunity to comment on any additional proposals to address the shortfall rather than only be able to react to developer proposals.

Other suggested changes or clarifications included that:

- The proposed text of paragraph 125 should be amended to reflect that Strategic Development Plans are still relevant in some local authority areas until the approval of NPF4.
- Reflecting the perspective on the shortfall being a material consideration amongst several others, the text in paragraph 125 should say that a shortfall is 'not determinative'.
- Providing clarity as to what is meant by 'balanced planning judgment' within the proposed policy amendments including the Glossary. This would include reference to the principles in Paragraph 29.
- A shortfall is a shortfall, so to reduce the scope for unnecessary debate, the phrase 'in both scale and kind' should be deleted. Alternatively, 'location' should be added, to read 'in scale, location and kind'.
- It would be helpful if the existing status of both Section 2 and remainder of PAN 2/2010 were clarified, as the proposed changes to SPP do not seem to cover all of the aspects of PAN 2/2010 Section 2.
- It may be useful to consider how best to provide time for the local planning authority to bring forward proposals for consultation. This would help enable a more considered approach and allow the planning authority a pro-active rather than a reactive role in identifying the most appropriate site(s) to meet the shortfall.

Finally, while supporting the need for interim amendments, a small number of respondents did raise concerns or make comments about the approach going forward. One of these concerns was that despite the proposed changes there remains an emphasis on the importance of being held to have an adequate land supply or be in surplus. It was suggested that the incentives to prove a shortfall have not been removed and without clear guidance on the use of Housing Land Audits as the basis of the five year period and the derivation of completions, the requirement to produce *ad hoc* interim housing land assessments, outwith the audit process will continue.

Going forward towards NPF4, there was a call for a move away from a simple numerical approach and towards a more nuanced place-based approach to plan making and decisions.

## **Opposition to the proposals**

One note of agreement between some of those supporting and some of those opposing the proposals was that a clearer approach for decision-makers in establishing the extent of the 5 year effective housing land supply would be beneficial for all.

However, it was also suggested that the methodology proposed favours the small minority of authorities that seek to write-off shortfalls in housing delivery on a year-by-year basis, rather than working to recover those shortfalls within the lifespan of the plan. It was argued that the changes as proposed appear to completely reject the findings of independent Reporters and seek to reverse the direction of travel in both court and appeal cases (most recently in Gladman). It was described as

reverting to a methodology which is consistently put forward by local authorities in appeals and which has almost always been found to be incompatible with the aims and aspirations of the planning system.

On this point, it was noted that paragraph 110 of SPP provides that, amongst other things, the planning system should 'identify a generous supply of land for each housing market area within the plan area to support the achievement of the housing land requirement across all tenures, maintaining at least a 5 year supply of effective housing land at all times'. It was seen as right that development plans should seek to err on the side of over-provision of effective housing land in the first place but equally important that there is flexibility to respond to emerging shortfalls in 'real time' during the plan period.

As at previous questions, the rationale that the proposed changes are required to allow the planning system to respond well to the COVID-19 pandemic was questioned. In particular, the consultation paper's assertion that '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.' was said to suggest a misunderstanding of how such calculations work in practice and why the impact of COVID-19 on housing delivery needs to be addressed rather than written-off.

It was also noted that while the proposed approach is intended to offset any impacts from COVID-19, it fails to consider completion rates and under delivery of homes pre-COVID. It was reported that previous completion rates within a number of local authority areas were well below the required annual target, resulting in significant shortfalls across Scotland.

In summary, it was reported that the problem now is one of supply, not demand and that the homes that were not completed in 2020/2021, as a result of the site shut down and subsequent need for greater physical distances for those working on site, are still needed. It was reported that the need for any previously 'undelivered' homes is real and will remain. The scale of the current backlog of affordable housing need in Scotland was highlighted in particular.

**(a) the proposed calculation to establish the scale of the 5 year effective land supply in relation to alternatives**

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

The arguments made by those who did not support the proposed calculation to establish the scale of the 5 year effective land supply in relation to alternatives tended to be closely linked to addressing any shortfall, and a single analysis of issues is presented below.

Objections to the proposed calculation generally centred around a concern that it would overlook the shortfalls that commonly occur as a plan period progresses. As at previous questions, any suggestion that the only reason why shortfalls exist is because the housebuilding industry have been unable to deliver previously allocated market housing was challenged. Issues relating to protracted consents processes, applications being refused contrary to Officer Recommendation and appeals and allocated land being controlled by a party who does not want to sell the land were some of the reasons given for sites not being developed in the anticipated period set out in the Housing Land Audit.

While those supporting the changes often highlighted their agreement with taking an annual rather than residual approach to calculating the 5 year effective housing land supply, those who disagreed with the proposed changes often raised concerns. Using the residual approach to calculate the 5 year effective housing land supply was described as essential to establishing whether the housing land requirement will be met, and there was an associated concern that the language used in the consultation is designed to downplay the significance of a shortfall.

It was predicted that adopting the annualised approach proposed in the consultation paper would result in thousands of new homes not being delivered. It was also thought that a calculation of the type proposed would be blind to situations where an abnormal event, such as site closures, impacts on completions.

Going forward, it was suggested that any undersupply of homes over the previous plan period must be recognised as part of any approach to establishing the land supply needed. It was suggested that shortfalls in delivery cannot simply be ignored and that the proposed approach offers no solution to the supply shortfall that arise, instead encouraging a 'steady-as-she goes' approach rather than the flexible, responsive planning that focuses on delivering much-needed new homes. There was also a view that the changes will further undermine the system just when more certainty is required.

It was seen as critical that the importance of housing supply shortfall as a material consideration is not diluted. In terms of that shortfall being a material consideration, it was reported that SPP is currently clear that the presumption becomes a significant material consideration in the determination of applications or appeals when a shortfall arises. Failure to do so, alongside the removal of 'the presumption' was seen as risking continual shortfalls in housing delivery emerging, with no formal recourse.

It was argued that new homes not being delivered where there is a recognised need must be considered as a significant issue, with all necessary measures taken to address the matter, but that the proposed amendments are unclear as to how much weight should be afforded to such circumstances. This gave rise to a concern about possible inconsistent application, resulting in more planning by appeal and more scope for dispute.

Respondents also identified a range of other negative impacts they thought were likely to flow from the proposed changes to paragraph 125. These included that:

- Removing consideration of levels of delivery risks accountability being lost from the process of planning for housing.
- This type of approach has not worked in the past as there is no requirement or onus on local authorities to work with other providers.
- The changes will make it harder for those involved in the delivery of strategic housing sites to secure necessary infrastructure from the Council and other parties, such as utility providers.

There was also a suggestion that a potentially unintended consequence of the proposed methodology could be that, if an authority over-performs on delivery in

initial years of a plan period, they could be found to have a shortfall in the remaining plan period as the past completions have not been taken in to account.

If proposals are taken forward it was suggested that:

- The methodology should be clear that shortfalls require to be addressed (irrespective of whether the Scottish Government favours the Housing Supply Target or the Housing Land Requirement as the base against which the land supply should be measured).
- The proposed reference at paragraph 125 to 'the contribution of the proposal to addressing the shortfall (in both scale and kind) should be taken into account to inform this judgement' should be removed. It was noted that elsewhere the consultation paper says that a tilted balance should not be applied to the planning system yet the proposed text at paragraph 125 includes what is a form of tilted balance.

It was also recommended that any revised SPP has a distinct and definitive section on Development Management which clearly addresses and clarifies a range of considerations that will improve the support for approving planning applications for housing developments. Any stakeholder agreed effective housing land supply calculation should be in this new section.

### **Alternative proposals**

As part of their submission, Homes for Scotland reported that before this consultation was published, they had begun work on how a universal, plain-English methodology could be set out in a way that is clear for planning authorities, applicants and wider stakeholders to understand and use. They set out their proposal (endorsed by a number of other respondents, particularly Housing Developer respondents) within their response. For example, one Housing Developer commented that the proposed methodology reflects good practice established before recent court decisions and is used by Appeal Reporters and accepted by most planning authorities.

Elements which Homes for Scotland themselves highlight included that:

- If the presumption and other extant SPP policy remained in place, they would, on balance, be content for any new policy or guidance to clarify that the 5 year effective housing land supply to be measured against the housing supply target and not the housing land requirement.
- Their priority is for any methodology to consider shortfalls in the housing supply that in some, but not all cases, start to arise as a development plan period progresses. Although their preference would be for planning authorities to plan to recover any shortfall within 5 years, they would be willing to compromise and support a methodology that seeks to recover any shortfalls by the end of the plan period.

# Impacts of the proposed amendments

## Impact on non-housing developments

The consultation paper states that the proposed amendments have been designed to address issues associated with planning for housing. While recognising that paragraphs 28, 29, 30, 32 and 33 have wider application, the Scottish Government does 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.**

Responses to Question 4 are set out in Table 2 below.

**Table 2: Question 4: Do you agree that the proposed amendments will not directly impact on other (non-housing) types of development?**

Respondent type	Yes	No	N/A	Total
<b>Organisations</b>				
Community Council, Residents' Association or Civic Trust	15	3	2	20
Energy Supplier, Developer, Association or Body		13		13
Greenbelt Campaign Group	5			5
Housing Developer, Landowner or Investor		38	2	40
Local Authority or Planning Authority	21	1	2	24
Planning, Development, Real Estate or Legal Firm or Consultancy	2	20	3	25
Public Body			3	3
Representative Body or Professional Institute	3	8	3	14
Third Sector	3		3	6
<b>Total organisations</b>	<b>49</b>	<b>83</b>	<b>18</b>	<b>150</b>
<b>% of organisations answering question</b>	<b>37%</b>	<b>63%</b>		
<b>Individuals</b>	<b>80</b>	<b>9</b>	<b>5</b>	<b>94</b>
<b>% of individuals answering question</b>	<b>90%</b>	<b>10%</b>		
<b>All respondents</b>	<b>129</b>	<b>92</b>	<b>23</b>	<b>244</b>
<b>% of all respondents answering question</b>	<b>58%</b>	<b>42%</b>		

Please note that, in a very small number of cases where a respondent's answer at the closed question was clearly at odds with their additional comments, the answer to the closed element has been changed to match the comments.

A majority of respondents answering the question - 58% - agreed that the proposed amendments will not directly impact on other (non-housing) types of development, while 42% disagreed. However, there was a marked difference between the views

of individual respondents where 90% agreed that other types of development would not be impacted, and organisations where only 37% agreed.

Among organisations answering the question, Community Council, Greenbelt Campaign Group, Local Authority and Third Sector respondents were likely to agree, while Housing Developer, Planning Consultancy, Energy Supplier and Representative Body respondents were all likely to disagree.

To a large extent, respondents answering “Yes” at Question 4 had previously indicated support for removal of the presumption in favour of sustainable development at Question 1, while those answering “No” at Question 4 objected to removal of ‘the presumption’. However, a small number of respondents who supported removal of ‘the presumption’ did go on to identify types of non-housing development they thought would be impacted or to identify what they suggested would be positive impacts of the proposed amendments.

A total of around 165 respondents made an additional comment at Question 4.

The analysis below is divided according to the respondent’s answer to the closed question, with the comments of those who did not answer the question included where most appropriate.

### **The proposed amendments will not directly impact on other (non-housing) types of development**

Respondents who did not foresee direct impacts on non-housing development often made limited additional comments. Residents of Quarriers Village along with associated Greenbelt Campaign groups and Community Councils argued that genuinely positive non-housing developments that accord with the principles set out in paragraphs 28 and 29 of SPP and which are aligned with paragraph 30 will continue to be supported, while developments not in accord with these principles should not be supported.

Other points, largely made by Local Authority respondents included that:

- The vast majority of applications for development are approved based on the principal policies in SPP on Sustainability and Placemaking, including the economic, environmental and social principles set out at paragraph 29.
- For non-residential applications, an implicit presumption in favour of employment-generating types of application is made in most instances, unless they adversely impact their surroundings or are unsuitably located. An appeal on the grounds of sustainable development for non-residential development due to a shortfall in supply is therefore unlikely to occur.
- The wording is clearly targeted at house building, not other non-housing types of development and existing wording which is also directly applicable to housing has not created confusion.
- The proposed changes would lead to greater certainty on questions of land supply and key considerations for decision making in housing applications and therefore would not impact on the considerations for other land uses and application types.

## **The proposed amendments will directly impact on other (non-housing) types of development**

A majority of respondents who did not agree that the proposed amendments will not directly impact other (non-housing) development argued that the policy presumption applies to all development. The types of non-housing development mentioned most frequently were:

- Renewable energy.
- Housing-related infrastructure supported by developer's contributions.
- Development types, technologies or places not specifically addressed in LDPs.

Reasons for the view that other development types will be affected by the proposed amendments included that:

- Of the various sections which the Scottish Government proposes to delete or change, only paragraphs 123 and 125 and PAN 2/2010 relate specifically to planning for housing.
- 'The presumption' applies where there is a shortfall in the 5 year land supply and also becomes a material consideration where LDPs are more than 5 years old or where their policies are out of date. Delays in local authorities updating LDPs were suggested not to be solely COVID-related with one respondent suggesting that, at the time of writing, eleven of the LDPs within Scotland are older than 5 years. There will therefore be development needs not anticipated when plan was adopted.
- The presumption in favour of sustainable development is a major element of SPP and its removal could remove important flexibility from the planning system.

### **Renewable energy**

Renewable energy projects were frequently thought to be impacted by the proposed amendments with some respondents noting this would be the case whether projects were proceeding under the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) or other legislation including the Electricity Act 1989. Potential negative implications with respect to a green recovery from COVID-19 were highlighted and the proposals were suggested to represent a move away from the Programme for Government of September 2019 when the First Minister highlighted the need for planning policy to undergo a 'fundamental review' to 'more radically reduce emissions'. It was also noted that the Climate Emergency Response Group's report 'Eight Policy Packages for Scotland's Green Recovery' (July 2020) suggested the Scottish Government should 'Update existing planning guidance to enable new and existing onshore wind planning consents and enhance the competitiveness of Scottish projects'.

It was also argued that:

- Although the emphasis of the consultation is on maintaining the plan-led system under section 25 of the 1997 Act, that section does not apply to projects such as onshore wind farms greater than 50MW proceeding under

the Electricity Act. As a result, there is no conflict to resolve between ‘the presumption’ and a plan-led system for such projects.

- A number of renewable energy section 36 Electricity Act developments coming to local inquiries in the next few months would be adversely impacted if the proposals in the consultation are taken forward.
- Renewables projects currently in the planning system could be impacted since Planning Authorities may refer to this consultation and the Scottish Government’s intent and afford ‘the presumption’ minimal weight by treating the consultation as a material consideration. Some respondents expressing this opinion thought it still to be of concern after the clarification provided in the letter of 4 September 2020 from the Chief Planner to Heads of Scottish Planning Authorities.<sup>10</sup>

Respondents making these points, who came predominantly from the Energy Supplier group, concluded that the Scottish Government should retain ‘the presumption’ or, if it is changed, should immediately put in place a replacement of equal if not greater weight to ensure there is no adverse impact on the policy to encourage further deployment of renewables, and of onshore wind in particular.

With respect to existing challenges faced by onshore wind developments, one respondent noted that while paragraph 29 of SPP does reference giving due weight to net economic benefit and supporting climate change mitigation, it also calls for the protection and enhancement of cultural and historic environments, landscapes and the wider environment. Highlighting the extensive considerations for wind farm developments set out in paragraph 169 of SPP they suggested that, without the presumption in favour of sustainable development, the issues set out in paragraph 169 could attract undue weight set against the sustainable credentials of renewable energy.

It was also observed both that there have been significant developments in energy policy and targets since some LDPs were adopted and that some new plans do not reference the climate emergency or net zero targets.

### **Housing-related infrastructure**

Many respondents, predominantly from the Housing Developer and Planning Consultancy groups argued that housing and other forms of development are inextricably linked, and that since housing development supports funding and delivery of infrastructure such as schools and transport links, housing should be considered as part of a whole system approach rather than in isolation.

It was also suggested that:

- Negative impacts on housing will have knock-on effects for other land uses with demand for retail space, offices and leisure facilities also slowing.
- The changes would run counter to the town centres first principle and sequential test for new development and will not assist in achieving a

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<sup>10</sup> Available at <https://www.gov.scot/publications/current-consultation-on-housing-and-the-scottish-planning-policy/>.

brownfield first approach or promoting sustainable and accessible mixed-use developments.

### **Development types, technologies or places not specifically addressed in LDPs**

It was argued that the presumption in favour of sustainable development is important because although LDPs look forward, they cannot anticipate all new developments or technologies and 'the presumption' allows recognition of this as a material consideration without undermining the premise of the plan. Respondents suggested that removal of 'the presumption' and loss of discretionary powers through the removal of paragraphs 32 and 33 could lead to impacts on development types that are not specifically addressed through bespoke policies in LDPs, with huts given as one example. It was also suggested that transmission infrastructure does not readily benefit from specific policies in LDPs in relation to substation and overhead line infrastructure.

New technologies including renewable solar were also identified as developments that may not be anticipated in LDPs and for which it was argued there should be scope for planning officer discretion to take a wider view as to the contribution of the proposal to 'sustainable development'.

With respect to land use it was suggested few LDPs specifically identify new locations suitable to meet the growing needs of the renewable energy industry. Removal of 'the presumption' was also thought likely to deter proposals for development that might generate employment on unallocated sites, or to negatively affect proposals for economic development purposes where there are no LDP allocations or policy provisions for such.

### **Other development**

Small numbers of respondents referenced other business or development that they thought could be impacted by the proposed changes including:

- Mixed use sites.
- Essential infrastructure and waste-related infrastructure. The latter was suggested to pose a risk to zero waste plans.
- Tourism related development.
- Businesses looking to expand or restructure via the sale of redundant land for windfall opportunities.

### **Points on the consultation paper**

In general, it was argued that the consultation paper does not present adequate evidence regarding potential impacts of the proposed amendments on other development types, and publication of evidence to support the Scottish Government's position that only housing development will be affected by withdrawal of 'the presumption' was requested.

The title of the consultation was also suggested to be inappropriate, with only those with an interest in housing likely to respond.

## Requirement for fuller impact assessments

Moving on to impact assessments, the consultation paper explains that the Scottish Government has considered the requirements for statutory impact assessments, including by screening the proposals in relation to the criteria for Strategic Environmental Assessment (SEA), Equalities Impact Assessment (EIA), Children’s Rights and Wellbeing Impact Assessment (CRWIA) and Business and Regulatory Impact Assessment (BRIA).<sup>11</sup> The view at the stage of issuing the consultation paper was that a fuller assessment was 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.**

Responses to Question 5 are set out in Table 3 below.

**Table 3: Question 5: Do you agree that fuller impact assessments are not required?**

Respondent type	Yes	No	N/A	Total
<b>Organisations</b>				
Community Council, Residents’ Association or Civic Trust	16	3	1	20
Energy Supplier, Developer, Association or Body		7	6	13
Greenbelt Campaign Group	5			5
Housing Developer, Landowner or Investor		37	3	40
Local Authority or Planning Authority	20		4	24
Planning, Development, Real Estate or Legal Firm or Consultancy	3	16	6	25
Public Body			3	3
Representative Body or Professional Institute	4	8	2	14
Third Sector	4		2	6
<b>Total organisations</b>	<b>52</b>	<b>71</b>	<b>27</b>	<b>150</b>
<b>% of organisations answering question</b>	<b>42%</b>	<b>58%</b>		
<b>Individuals</b>	<b>79</b>	<b>12</b>	<b>3</b>	<b>94</b>
<b>% of individuals answering question</b>	<b>87%</b>	<b>13%</b>		
<b>All respondents</b>	<b>131</b>	<b>83</b>	<b>30</b>	<b>244</b>
<b>% of all respondents answering question</b>	<b>61%</b>	<b>39%</b>		

Please note that, in a very small number of cases where a respondent’s answer at the closed question was clearly at odds with their additional comments, the answer to the closed element has been changed to match the comments.

<sup>11</sup> The screening documents were provided alongside the consultation paper and are available at [https://consult.gov.scot/planning-architecture/proposed-policy-amendments/supporting\\_documents/Scottish%20Planning%20Policy%20%20Housing%20and%20the%20presumption%20%20Assessments%20%20PDF.pdf](https://consult.gov.scot/planning-architecture/proposed-policy-amendments/supporting_documents/Scottish%20Planning%20Policy%20%20Housing%20and%20the%20presumption%20%20Assessments%20%20PDF.pdf)

A majority of respondents answering the question - 61% - agreed that fuller impact assessments are not required, while 39% disagreed. As at Question 4 there was a marked difference between the views of individual and organisational respondents: while 87% of individuals agreed fuller impact assessments are not required, only 42% of organisations took this view.

Among organisations answering the question, Community Council, Greenbelt Campaign Group, Local Authority and Third Sector respondents were likely to agree, while Housing Developer, Planning Consultancy, Energy Supplier and Representative Body respondents were all likely to disagree.

Around 145 respondents made an additional comment at Question 5.

### **Fuller impact assessments are not required**

Those who agreed with the Scottish Government's view that fuller impact assessments are not required made limited comments beyond noting this agreement. Other reasons given (each by only one or a small number of respondents) included that:

- This is a procedural and technical proposal, and the changes are not significant enough to trigger further assessments or alter the original impact assessments.
- Since the proposed changes are intended to bring greater certainty to delivery of homes through the plan-led system and might also assist with better delivery of other intended plan-led outcomes, their impacts are accounted for in the plan-led process and should not require further assessment.
- It is an interim policy amendment and the forthcoming NPF4 will set out a new framework for planning.

### **Fuller impact assessments are required**

Respondents taking this position often expressed a very different view of the scale and effect of the amendments being proposed. It was argued that

- 'The presumption' and SPP policy on maintaining an effective housing land supply have had positive effects in maintaining housing delivery where LDPs are out of date or where a housing supply shortfall has been identified, and deleting or diluting these policies would lead to negative impacts.
- The proposals should not be regarded as a procedural and technical exercise not requiring such assessment. They are in fact major or significant changes that will have a negative impact on supply of new homes, and of affordable homes. One respondent requested reassurance that the proposed changes will not affect the supply of affordable or social housing.

It was also argued that a number of National Outcomes or National Indicators will be impacted by proposals and that the consultation paper provides no evidence to support the Scottish Government's view that changes will not impact National Outcomes.

The SEA pre-screening document provided with the consultation paper states that *'The amendments themselves are a safeguard, to protect against misinterpretation*

*and would not influence the outcome of planning decisions, and are not therefore expected to lead to any new environmental effects, directly or indirectly.'*

However, respondents suggested that, in reality, the proposed changes to SPP *will* impact the determination of planning applications, or that the intention is to change the way planning decisions are taken otherwise there would be no point in making the amendments. Some respondents expressed a view that the letter of 4 September from the Chief Planner to Heads of Scottish Planning Authorities indicates that the proposals do have the potential to affect planning decisions, or asked that the Scottish Government should provide evidence that they will not. Examples of previous appeal cases were also cited to illustrate situations where respondents thought the proposed changes would influence the decision-making process.

In the absence of what were considered proper impact assessments, some respondents argued that the consultation process is flawed, not valid or not lawful and will be open to legal challenge. It was proposed that the Scottish Government should:

- Conduct proper screening assessments and prepare full assessments where appropriate.
- Reconsult based on adequate assessments and provide better evidence or explanation of the likely effects of the proposed changes. Current screening assessments were suggested to over-simplify impacts and it was argued effects on sectors other than housing have not been considered.
- Alternatively, withdraw the present consultation and carry out a full consultation on these matters during preparation of NPF4. Clarification as to how the present proposals align with the programme to develop NPF4 was also sought.

### **Comments on specific assessments**

**SEA:** A full SEA was suggested to be necessary with a specific request that impacts in relation to onshore wind, other renewable energy targets and the ability to meet net zero targets should be considered. A Sustainability Appraisal Report, incorporating the requirements of the SEA was also proposed.

Potential environmental effects were suggested to include a reduced stock of energy efficient new homes, as well as lost opportunities to improve the quality and connectivity of the green network, to address deficiencies in public open space and to regenerate or re-use vacant and derelict sites and any other sites that unexpectedly fall out of productive use.

**EIA and CRWIA:** Arguments for further assessments with respect to equalities and children's rights largely focused on impacts on affordability for those on low incomes and on children/young people if sufficient new homes are not delivered. A Health impact Assessment was suggested to be appropriate for similar reasons.

Increased unemployment rates and hardship in the homebuilding industry, wider construction sector and supply chains were also suggested as potential outcomes of the proposed amendments.

**BRIA:** Contrary to the Scottish Government's view, some respondents argued that a BRIA is necessary, with potential impacts on businesses, wider economic issues and economic recovery all suggested. Particular impacts on renewables and housebuilding industries were highlighted.

Homes for Scotland quoted evidence gathered from their own members that 'the presumption' has been a consideration in approval of 37 planning appeals for around 8,000 homes in the past 6 years. They argued that on a pro-rata basis, removing 'the presumption' could mean that around 2,700 homes are not built, with resultant losses in jobs supported, spending in local economies, and monies to the public purse – all of which should be properly screened and mitigated.

It was also argued that the proposed changes could disadvantage development in Scotland relative to England where the presumption in favour of sustainable development remains and could result in Scotland falling behind the rest of the UK.

### **Other assessments**

Finally, a number of respondents interpreted the question in respect of the impact assessments required in relation to individual development proposals while another suggested it would be useful to clarify that this question refers just to impact assessments of the proposed policy changes, not impact assessments for individual projects or policies.

## Annex 1: Organisational respondents (n = 150)

<b>Community Council, Residents' Association or Civic Trust (n = 20)</b>
Aberdour Community Council
Biggar and District Civic Society
Biggar Community Council
Bridge of Weir Community Council
Culter Community Council
Cults, Bielside and Milltimber Community Council
Fossway and District Community Council
Hillhead Community Council
Jackton and Thorntonhall Community Council
Kilmacolm Civic Trust
Kilmacolm Community Council
Kilmacolm Residents' Association
Linlithgow and Linlithgow Bridge Community Council
Monkton Community Council
Old Aberdeen Community Council
Reddingmuirhead and Wallacestone Community Council
Scone and District Community Council
Stepps & District Community Council and Save Stepps Greenbelt Campaign Committee
Strathblane Community Council
Symington Community Council
<b>Energy Supplier, Developer, Association or Body (n = 13)</b>
BayWa r.e. UK Limited
EDF
Energy UK
ESB Asset Development UK Ltd
GreenPower
Natural Power
Red Rock Power Limited
Renewable Energy Systems
RWE Renewables UK
Scottish and Southern Electricity Networks Transmission
ScottishPower Renewables
SSE Renewables
Statkraft UK Ltd

<b>Greenbelt Campaign Group (n = 5)</b>
Clydebelt
Committee to Protect Quarriers Village
Helensburgh Green Belt Group
Residents Against Greenbelt Erosion, (Bridge of Allan)
Save Steps Greenbelt Campaign Committee
<b>Housing Developer, Landowner or Investor (n = 40)</b>
A & J Stephen Ltd
Aisby Enterprises
Allanwater Developments Ltd
Ambassador Group
Ashfield Land Ltd
Bancon Homes Ltd
Banks Group
Barratt Homes
CALA Management Ltd (on behalf of CALA Homes East, CALA Homes North and CALA Homes West)
Campion Homes Ltd
Comer Homes Group
Dandara
David Wilson Homes
Elan Homes (Scotland) Ltd
Gladman Developments Ltd
Goldcrest Communities Limited
Graham's, The Family Dairy
Hadden Group
Headon Developments
Kirkwood Homes Ltd
Lichfields
Mactaggart and Mickel
Malcolm Allan Housebuilders Ltd
Miller Homes Limited
Persimmon Homes (East Scotland) Ltd
Persimmon Homes North Scotland
Persimmon Homes West Scotland
Places for People Group
Robertson Residential Group Ltd

Royal London Mutual Insurance Society Ltd
Rural Renaissance Ltd
Springfield Homes
Springfield Properties PLC
Stewart Milne Homes Ltd
Stirling Developments Ltd
Taylor Wimpey
Tulloch Homes
Turnberry Homes Ltd
West Craigs Limited
Winchburgh Developments Limited
<b>Local Authority or Planning Authority (n = 24)</b>
Aberdeen City Council
Aberdeenshire Council
Angus Council (Officer Response)
Argyll & Bute Council
City of Edinburgh Council
Dundee City Council
East Ayrshire Council
East Dunbartonshire Council
East Lothian Council
East Renfrewshire Council
Falkirk Council
Fife Council
Glasgow and the Clyde Valley Strategic Development Planning Authority
Inverclyde Council
Local Authority Recycling Advisory Committee
Midlothian Council (Officer response)
North Ayrshire Council
North Lanarkshire Council
Perth & Kinross Council
Scottish Borders Council
South Ayrshire Council
Stirling Council
West Dunbartonshire Council
West Lothian Council

<b>Planning, Development, Real Estate or Legal Firm or Consultancy (n = 25)</b>
Aurora Planning Limited
Avison Young
Barton Willmore
Burness Paull LLP
Case Consulting Limited
Colliers International
David Bell Planning Ltd
E&A Partnerships
Felsham Planning and Development
Ferguson Planning Ltd
Geddes Consulting
Holder Planning
Iceni Projects
John Brown and Company
Montagu Evans LLP
Pegasus Consultancy Ltd
Pegasus Group
Pinsent Masons LLP
Ryden
Savills (UK) Ltd
Scott Hobbs Planning
Shepherd and Wedderburn LLP
Shoosmiths LLP
Wallace Land Investments
Wright Planning Ltd
<b>Public Body (n = 3)</b>
Key Agencies Group
Scottish Land Commission
Scottish Water
<b>Representative body or professional institute (n = 14)</b>
Built Environment Forum Scotland
Community Land Scotland
Heads of Planning Scotland
Homes for Scotland
Royal Incorporation of Architects in Scotland

Royal Town Planning Institute Scotland- RTPI Scotland
Scotland's Towns Partnership
Scottish Ecological Design Association (SEDA)
Scottish Environment LINK Planning Group
Scottish Federation of Housing Associations
Scottish Land & Estates (SLE)
Scottish Planning Consultants Forum
Scottish Property Federation
Scottish Renewables
<b>Third Sector (n = 6)</b>
Cycling Scotland
National Trust for Scotland
PAS
Paths for All
Planning Democracy
The Association for the Protection of Rural Scotland

## Annex 2 - Proposed changes to Scottish Planning Policy (Proposed deletions/additions are highlighted in bold).

Current text:	Proposed text:
<p><b>Policy Principles</b></p> <p><b>This SPP introduces a presumption in favour of development that contributes to sustainable development.</b></p>	<p><b>Policy Principles</b></p>
<p>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.</p>	<p>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.</p>
<p>29. This means that policies and decisions should be guided by the following principles:</p> <ul style="list-style-type: none"> <li>• giving due weight to net economic benefit;</li> <li>• responding to economic issues, challenges and opportunities, as outlined in local economic strategies;</li> <li>• supporting good design and the six qualities of successful places;</li> <li>• making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;</li> <li>• supporting delivery of accessible housing, business, retailing and leisure development;</li> <li>• supporting delivery of infrastructure, for example transport, education, energy, digital and water;</li> <li>• supporting climate change mitigation and adaptation including taking account of flood risk;</li> <li>• improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;</li> </ul>	<p>29. This means that policies and decisions should be guided by the following principles:</p> <ul style="list-style-type: none"> <li>• giving due weight to net economic benefit;</li> <li>• responding to economic issues, challenges and opportunities, as outlined in local economic strategies;</li> <li>• supporting good design and the six qualities of successful places;</li> <li>• making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;</li> <li>• supporting delivery of accessible housing, business, retailing and leisure development;</li> <li>• supporting delivery of infrastructure, for example transport, education, energy, digital and water;</li> <li>• supporting climate change mitigation and adaptation including taking account of flood risk;</li> <li>• improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;</li> </ul>

<ul style="list-style-type: none"> <li>• having regard to the principles for sustainable land use set out in the Land Use Strategy;</li> <li>• protecting, enhancing and promoting access to cultural heritage, including the historic environment;</li> <li>• protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;</li> <li>• reducing waste, facilitating its management and promoting resource recovery; and</li> <li>• avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.</li> </ul>	<ul style="list-style-type: none"> <li>• having regard to the principles for sustainable land use set out in the Land Use Strategy;</li> <li>• protecting, enhancing and promoting access to cultural heritage, including the historic environment;</li> <li>• protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;</li> <li>• reducing waste, facilitating its management and promoting resource recovery; and</li> <li>• avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.</li> </ul>
<p><b>Delivery Development Planning</b></p> <p>30. Development plans should:</p> <ul style="list-style-type: none"> <li>• be consistent with the policies set out in this SPP, <b>including the presumption in favour of development that contributes to sustainable development;</b></li> <li>• 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;</li> <li>• 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;</li> <li>• be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals; and</li> <li>• set out a spatial strategy which is both sustainable and deliverable, providing confidence to stakeholders that the outcomes can be achieved.</li> </ul>	<p><b>Delivery Development Planning</b></p> <p>30. Development plans should:</p> <ul style="list-style-type: none"> <li>• be consistent with the policies set out in this SPP;</li> <li>• 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;</li> <li>• 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;</li> <li>• be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals; and</li> <li>• set out a spatial strategy which is both sustainable and deliverable, providing confidence to stakeholders that the outcomes can be achieved.</li> </ul>

<p><b>Development Management</b></p> <p><b>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.</b></p>	
<p><b>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</b></p>	
<p><b>Maintaining a 5 year effective housing land supply</b></p> <p>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. <b>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.</b> In remoter rural</p>	<p><b>Maintaining a 5 year effective housing land supply</b></p> <p>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. <b>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</b></p>

<p>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.</p>	<p><b>supply solely due to programming assumptions included in the Housing Land Audit.</b> 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.</p>
<p>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. <b>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.</b></p>	<p>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. <b>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 decisionmakers 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.</b></p>
<p><b>Glossary:</b></p> <p>Effective housing land supply: The part of the established housing land supply <b>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.</b></p>	<p><b>Glossary:</b></p> <p>Effective housing land supply: The part of the established housing land supply <b>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.</b></p>

	<p><b>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.</b></p>
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