

# Review of the Scottish Planning System

## **TECHNICAL PAPER**

### ***How six key changes to the planning system might work in practice***

This paper sets out the Scottish Government's current thinking on how key changes to the planning system could work in practice.

It has been prepared to further develop and inform stakeholder discussions on the forthcoming Planning Bill, subsequent secondary legislation and future related policy and guidance.

We recognise that many people are seeking further detail on how the proposals set out in *Places, People and Planning* and the subsequent *Position Statement* might work in practice. We do not expect this to be fully defined in primary legislation (the Planning Bill) and so previous consultations have not sought to define this in detail, focusing instead on the principles of change. However, we understand why greater clarity on our ongoing thinking might help stakeholders to come to a view on the main changes we are proposing in the forthcoming Planning Bill.

There will continue to be opportunities to get involved in shaping the more detailed proposals at subsequent stages in the process.

The paper focuses on the following key areas:

1. Strategic Planning and Regional Partnership Working.
2. Preparation of Local Development Plans.
3. Local Place Plans.
4. Calculating housing figures.
5. Infrastructure levy.
6. Development Management.

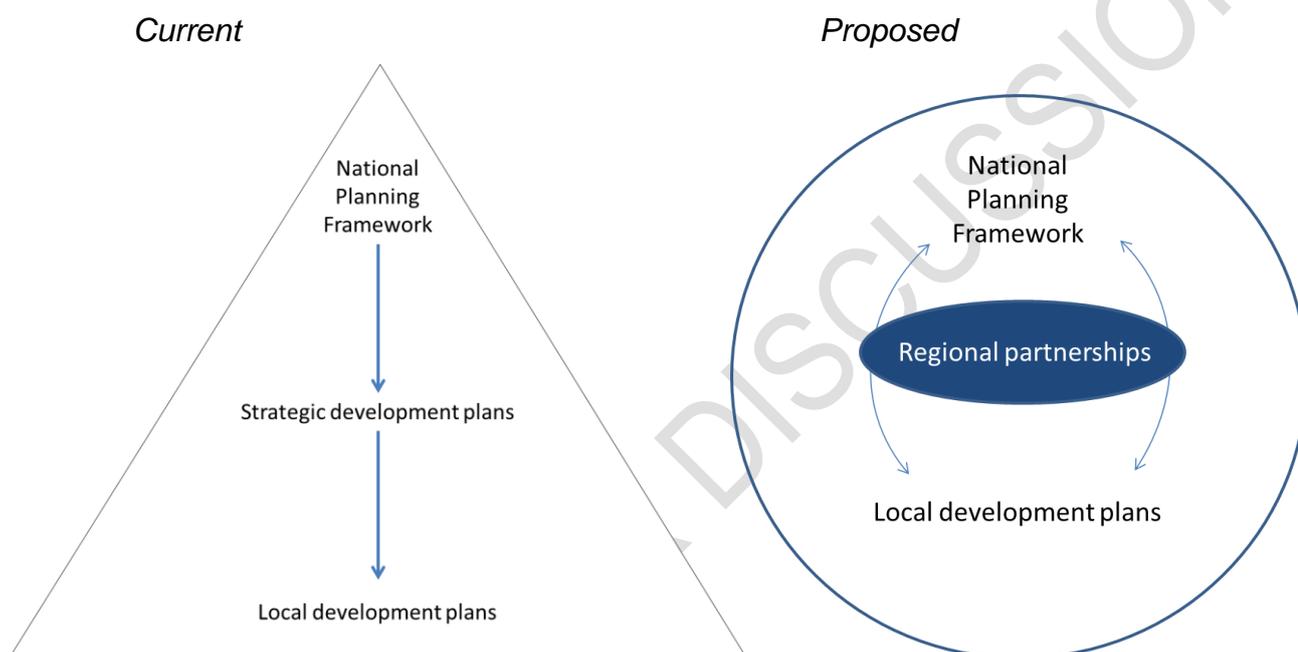
We believe these changes would ensure that the Scottish planning system is better equipped to operate within its changing context. Whilst the changes are carefully targeted, together with wider reforms which lie beyond the scope of the Planning Bill, they have the potential to reposition planning to act as a positive enabler of development which is better co-ordinated with infrastructure investment, inclusive growth, community empowerment and placemaking across Scotland.

# 1. Strategic Planning and Regional Partnership Working

## What we are proposing?

The June 2017 Position Statement proposed:

- Replacing the requirement to produce a strategic development plan for four city regions, with local authorities instead working together to address national and regional strategic planning issues.
- Enhancing the regional coverage of the National Planning Framework.



## How might this work?

### Governance

Regional partnerships have already been established, or are emerging, across Scotland. Arrangements for partnership working have already been reflected as part of the Enterprise and Skills Review and, regional transport governance will be considered during the review of the National Transport Strategy.

The Enterprise and Skills Review<sup>1</sup> recently outlined the types of arrangements which local authorities may choose to adopt including:

- a Partnership Agreement (underpinned by a Memorandum of Agreement);
- a Joint Committee of Councils (possibly accompanied by partnership agreements regulating wider partners' commitment); or
- a Limited Liability Partnership.

<sup>1</sup> <https://beta.gov.scot/publications/enterprise-skills-review-report-phase-2-regional-partnerships/>

Until now most partnerships have taken the form of a Joint Committee under the Local Government (Scotland) Act 1973. We would not expect to prescribe the form of partnership working that should take place within the Planning Bill. Rather, we wish to provide flexibility and expect that authorities themselves will come together and agree bespoke and voluntary partnerships. It is intended that all local authorities will be part of a regional partnership but it would be open to any authority to also contribute their views on regional priorities for the National Planning Framework to address on an individual basis through the normal consultation process.

Scotland is potentially of an ideal scale to achieve collaborative working in strategic planning in a way which reflects and responds to regional distinctiveness but also provides a coherent picture of both regional and national issues. We believe there would be significant benefit for authorities engaging in the preparation of a National Planning Framework which is well connected to wider infrastructure planning at a national and regional scales.

#### *Duties and powers to support co-production of the National Planning Framework*

Changing strategic planning to allow for greater flexibility would bring new opportunities for planning to be an integral part of the work that wider partners are involved in at a regional scale. There would be particular benefit in regional scale collaborative working that encompasses planning, economy, housing and infrastructure (including transport). One size will not fit all, however, and our proposals aim to recognise this and allow for regionally distinctive approaches.

The following activities, which could be undertaken in any part of Scotland, could be covered by a new duty for local authorities:

- *Joint working by planning authorities to gather evidence and address cross-boundary issues as required.* Ministers could direct that evidence gathering is undertaken at this scale where it addresses a nationally significant issue and / or is required to inform the National Planning Framework or associated infrastructure planning. There may be an opportunity to link collaborative working on strategic planning to the co-ordinated approach to analytical support that has been proposed under the Enterprise and Skills Review.
- *Bringing together the output from regional level evidence gathering to help inform and influence a single spatial strategy.* Regional partnerships could bring forward a proposed spatial strategy for their area as part of the preparation of the National Planning Framework. The National Planning Framework would continue to cover Scotland as a whole but would include additional detail on regional priorities.
- *Supporting the preparation and implementation of a delivery programme for the National Planning Framework.* Planning authorities and the key agencies could be expected to work together, and with the Scottish Government, to deliver on the shared commitments set out in the agreed spatial strategy and its delivery programme.

The contribution of regional partnerships to the National Planning Framework could be one of a number of activities that would characterise future strategic planning. More specific activities that may not be set out as individual duties, but which could add value at this scale might include:

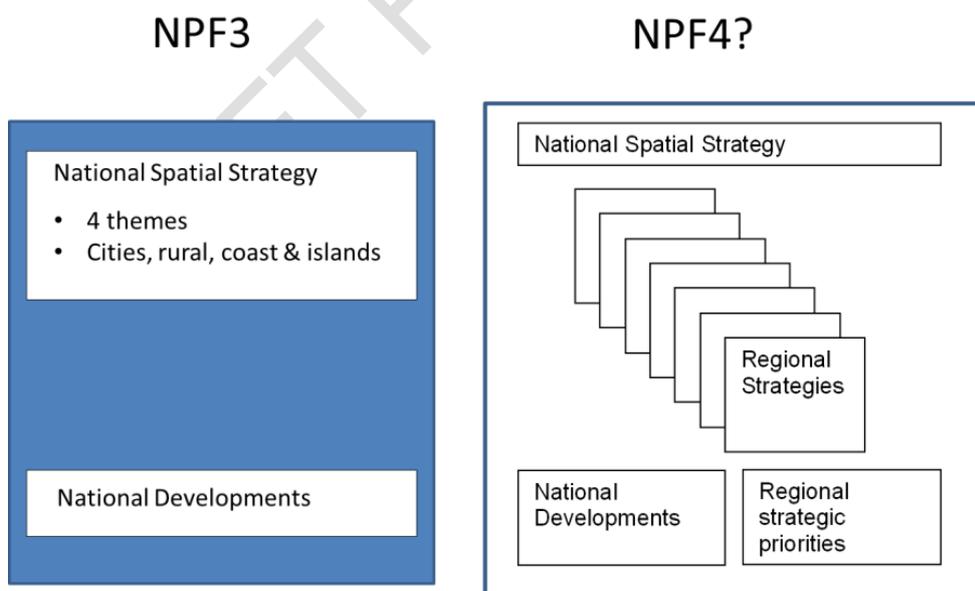
- Continuing to co-ordinate a partnership approach to planning for housing.
- Working with infrastructure providers to understand and address strategic infrastructure priorities, thereby driving forward an infrastructure first approach to the plan development process.
- Bringing forward innovative solutions to shared challenges such as climate change, low carbon and green infrastructure and inclusive growth.

Where a regional partnership exists for an area now or in the future, less formal joint working or liaison to inform individual contributions would also be acceptable under this more flexible approach.

*Involvement in the National Planning Framework*

We would propose establishing joint working arrangements for preparing the National Planning Framework and joint governance to oversee progress of the project, including reflecting any emerging regional arrangements. We have already confirmed that NPF4 will be aligned with the next Strategic Transport Projects Review and so this will be considered as part of the approach.

Preparation of the National Planning Framework would be undertaken through co-production, with the approach being jointly developed and taken forward. To illustrate the change in approach to the National Planning Framework, an example structure, incorporating strategies and priorities arising from regional partnership working, is set out below.



We would want to make use of existing knowledge and skills. We would be prepared to support research and expert input required to prepare the National Planning Framework. It is also important to recognise that NPF4 will not be starting from a blank sheet as NPF3 and the wider development plan context across Scotland can be a starting point to inform future thinking.

The scale and representation of regions within the National Planning Framework would be discussed as the work progresses, and we would aim to align this with the approach to the associated Strategic Transport Project Review. For example, as well as reflecting regional partnership areas, connections between the regions could be considered and it may make sense to combine inputs from several regional partnerships to set out a spatial strategy for a broader region within the National Planning Framework. The approach would be informed by regional partnership arrangements.

We would expect NPF4 to build on the open and collaborative approach taken with NPF3. Extensive public engagement would be undertaken. Working with the regional partnerships and local authorities will help to achieve this. It will be important for regional partnerships and local authorities to play an active role in gathering relevant views for their areas. The full approach to engagement would be set out in a Participation Statement, informed and shaped by early discussions with stakeholders.

#### *Responsibility for national and regional decision making*

Scottish Ministers would continue to adopt the National Planning Framework, taking into account Parliamentary consideration of the draft Framework.

We envisage that in doing so they would demonstrate how regional views have been taken into account and that this is made available at the stage of Parliamentary scrutiny, to allow a full debate on to take place. A National Planning Framework built from inclusion of regional voices will strongly represent Scotland's strategic needs and opportunities, this will allow a full debate to take place.

We would want to be clear about the parameters for collaborative working.

- Ministers would still be responsible for decisions on nationally significant issues and for adoption of the National Planning Framework as a whole.
- Regional partnerships would be invited to promote proposals for their respective regions as their contribution to the National Planning Framework and would also play a key role in nominating national developments for their areas.
- Ministers would be transparent about their grounds for deciding not to incorporate regional proposals (i.e. conflict with national policy objectives or inconsistency with wider programmes or strategies).
- The National Planning Framework itself would not be a spending document, but would be taken into account and inform, as well as being informed by,

wider Scottish Government programmes and strategies and would therefore have clear read-across to funding arrangements.

- The delivery programme would aim to set out a clear path to delivery and be developed in collaboration with organisations with a role in that delivery.

### *Resourcing and costs*

- We would expect some cost savings for local authorities, for example if there is no longer a need to contribute to the cost of an examination for a strategic development plan, or to publish individual documents.
- Additional savings could arise from sharing of skills and expertise, joint commissioning of evidence gathering and access to centrally gathered data and evidence.
- Some additional costs for authorities not currently located within strategic development plan areas might be expected, but it is envisaged this would be minor given that this will build on work to inform priorities and economic strategies and there is already extensive engagement in the preparation of the National Planning Framework.
- The Scottish Government would continue to take responsibility for the co-ordination and central administration of the programme of work.

Scotland's cities are expected to continue to be a focus for development pressure, and so we would suggest current investment in strategic planning teams be maintained to maximise the potential that regional partnerships could bring to local areas. We will also continue to support collaboration in other parts of Scotland, for example by linking with the Islands agenda and the emerging enterprise agency for the South of Scotland.

### *Timescales*

National Planning Framework would move to a 10 year review cycle, although it would be open to Ministers to bring forward a revised National Planning Framework within this timescale. We have indicated that we intend to adopt NPF4 in 2020. We propose commencing early work on this, together with a review of the Scottish Planning Policy, in 2018.

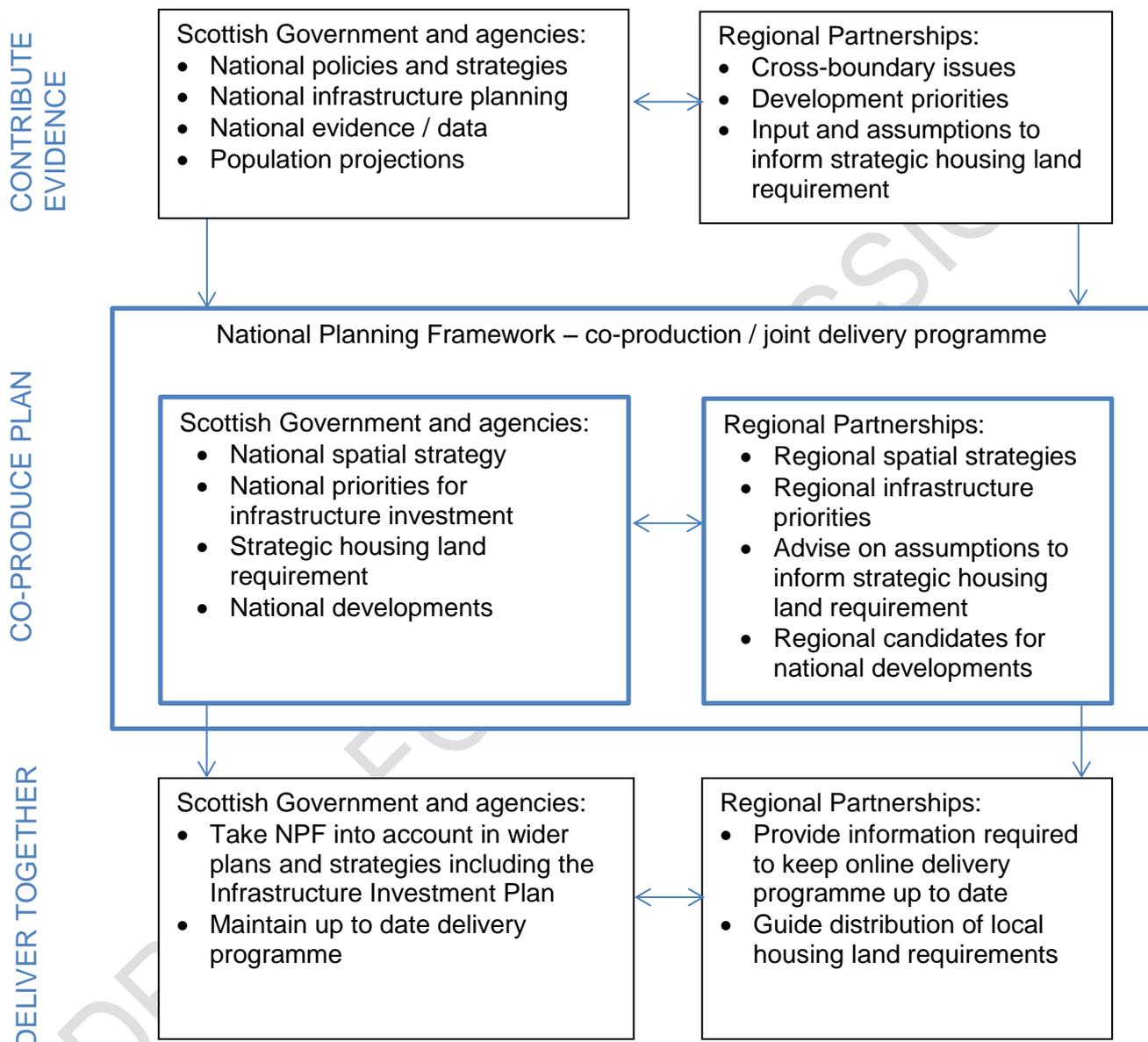
Working with strategic planning interests, we will seek to design the early stages of the process to ensure that work undertaken will be relevant regardless of Parliament's final decision on the Planning Bill and strategic development plans.

### *Transitional arrangements*

We will bring forward detailed arrangements for transitioning into the new planning system which will, for example, set out when and how planning authorities should move to any new arrangements. We are currently considering issues raised in the consultation and discussions with strategic development plan managers regarding

the timing of current strategic development plan preparation and their fit with the proposed 2020 adoption of NPF4. In the meantime, planning authorities should continue to undertake their duties as defined in the existing legislation.

*For discussion: a possible model for joint working in strategic spatial planning*



## 2. Local Development Plans

### What we are proposing?

The June 2017 Position Statement proposed:

- Including a 'gatecheck' to consider evidence early in the plan preparation process.
- Removing the requirement to replace main issues reports and replacing it with publication of a draft plan. The draft plan could be amended by the planning authority on the basis of consultee views.
- Moving from a 5 year to 10 year local development plan review cycle but allowing for interim updates.
- Removing supplementary guidance and moving from an action programme to a delivery programme.

### How might this work?

#### *Plan preparation*

Whilst the Planning Bill is expected to include key changes, further detail on local development planning may emerge in secondary legislation and guidance.

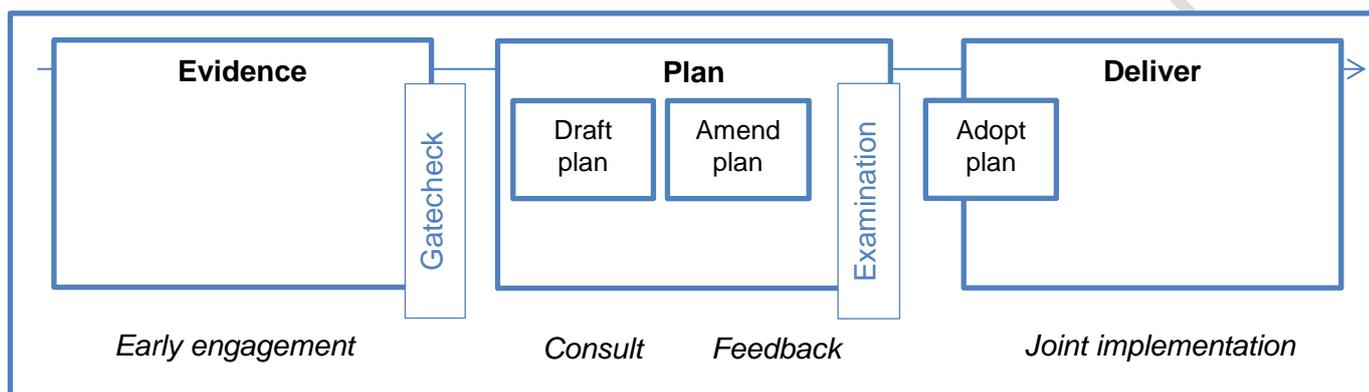
Our view is that new plans will focus on places, for example at the settlement and neighbourhood scale, making them more relevant to the people that need to engage with them. We see benefit in removing much of the policy content which generally repeats Scottish Planning Policy (SPP) in existing plans, and instead give SPP statutory status in decision making. The SPP could be prepared alongside NPF and given the same level of consultation and consideration by Parliament. As referred to previously, we would build on the open and collaborative approach and look to authorities to assist with engaging communities.

There would be some flexibility to retain local policy where local circumstances justify this. We would indicate nationally the circumstances where this may be justified and where authorities propose to do this it would be considered at gate-check. The Scottish Planning Policy would be drafted to provide clarity on national policies which are expected to apply across the country, and greater flexibility for policies, for example design and rural housing, where local tailoring is likely to be needed.

Plan preparation is currently a cycle of constant review. In the new system we envisage the plan preparation process itself to be shorter (2-3 years) and more streamlined than present. This provides more scope to resource important elements of the plan process that currently do not have much emphasis, including the development of a strong evidence base, implementation of the plan and ongoing stakeholder and community engagement. The 10 year timescale would be the maximum period within which a review of the LDP is required. The ability to review earlier would be at the discretion of the planning authority.

We have proposed removing the requirement to prepare a main issues report and replacing it with a draft plan. Whilst the form that draft plans might take will be for each planning authority to decide for themselves, we would provide guidance and support on the likely form and content of draft plans, should this change be taken forward. We expect that digital techniques will help to transform the way that plans are prepared and made accessible.

*Proposed plan preparation and implementation*



*Engagement*

Planning authorities would still undertake extensive early engagement from the outset of the plan preparation process and a strengthened development plan scheme would set out how they plan to do this. It would also be prepared on the basis of input from those who will be involved. Rather than the current stages of engagement, we expect the following:

- Early engagement.
- Consideration of the development plan scheme at the gatecheck.
- Involvement in preparation of the draft plan.
- Feedback on this engagement prior to the final examination.
- Unresolved representations to be considered at the final examination.
- Continuing engagement through to the delivery of the plan

Moving from a Main Issues Report to a draft plan aims to strengthen public engagement in the process by improving clarity. Earlier engagement could also be improved by involving people in evidence gathering, such as charrettes and use of the place standard. A requirement to provide feedback on how the plan has been amended to take account of contributions made will also move process driven consultation towards more meaningful and continuous involvement.

We also believe there is scope to strengthen engagement in the preparation of the development plan scheme.

## *Gatecheck*

The planning authority would not prepare the draft plan until after initial engagement and evidence gathering has been completed and they have passed a 'gatecheck'. The purpose of the gatecheck is to improve the quality of the plan by ensuring the consideration and agreement of key matters is frontloaded, and potentially reducing the scope of the final examination. It may be that authorities wish to use a gateway review approach to their project management for plan preparation and build in opportunities for further review at later stages. This would, however, be at the discretion of the planning authority. The gatecheck would be the minimum requirement required by legislation.

We would bring forward secondary legislation to define the remit and scope of the gatecheck, but currently expect it would be chaired by a DPEA Reporter and focus on a number of matters that would be brought together and submitted to the gatecheck in a report by the planning authority. As a way to demonstrate collective buy-in or to highlight where areas of disagreement remain, we would expect the authority to prepare a statement of agreement / dispute with key stakeholders, such as communities, agencies and Homes for Scotland. This would provide the basis for the Reporter to add value whilst being proportionate in their approach. We will consult further on the matters to be included at the gatecheck but currently expect them to include:

- Adjustment (if necessary) and agreement of the local housing land requirement, consistent with the strategic housing land requirement set out in the National Planning Framework.
- Other relevant evidence provided in a status report prepared and published by the planning authority, for example relating to infrastructure, environmental assessment and community engagement.
- Any proposed departures from national planning policy.

We are currently working with Moray Council on a pilot of the gatecheck. This is testing how the gatecheck could work in practice with a view to shaping future implementation. It includes consideration of what evidence is needed and how much. Whilst working within the parameters of the existing legislation the pilot will identify lessons learnt to inform improvements and guidance. We expect to report on progress in the Spring of 2018.

## *Updates to local development plans*

When a planning authority seeks to update a local development plan between full review cycles, a process will be designed to be proportionate, whilst still ensuring full transparency prior to adoption. We currently expect that such a process could be designed as follows:

- Amendments to be submitted to Scottish Ministers.
- A requirement to demonstrate that consultation has been undertaken.

- A report of consultee views, and an explanation of how views have been taken into account.
- A procedure for Scottish Ministers to require independent examination of the amendments when appropriate.

Discussions have indicated a range of potential triggers for when a plan should be updated. We expect to consult on these in future but they could include:

- Where a change to NPF or SPP would impact significantly on an LDP.
- Where housing land delivery is not being achieved.
- Where there is significant economic, environmental or social change to the future sustainability of the plan area.
- Where monitoring of the Delivery Programme indicates proposals are unlikely to come forward.
- Where a Local Place Plan is to be incorporated into the LDP.

#### *Local departures from national policy*

We propose allowing local authorities to take a different approach to policies set out in the Scottish Planning Policy, and for this to be considered and agreed at the gatecheck. We would prepare and consult on circumstances where such departures could be justified and to embed them in national policy or guidance.

#### *Supplementary Guidance*

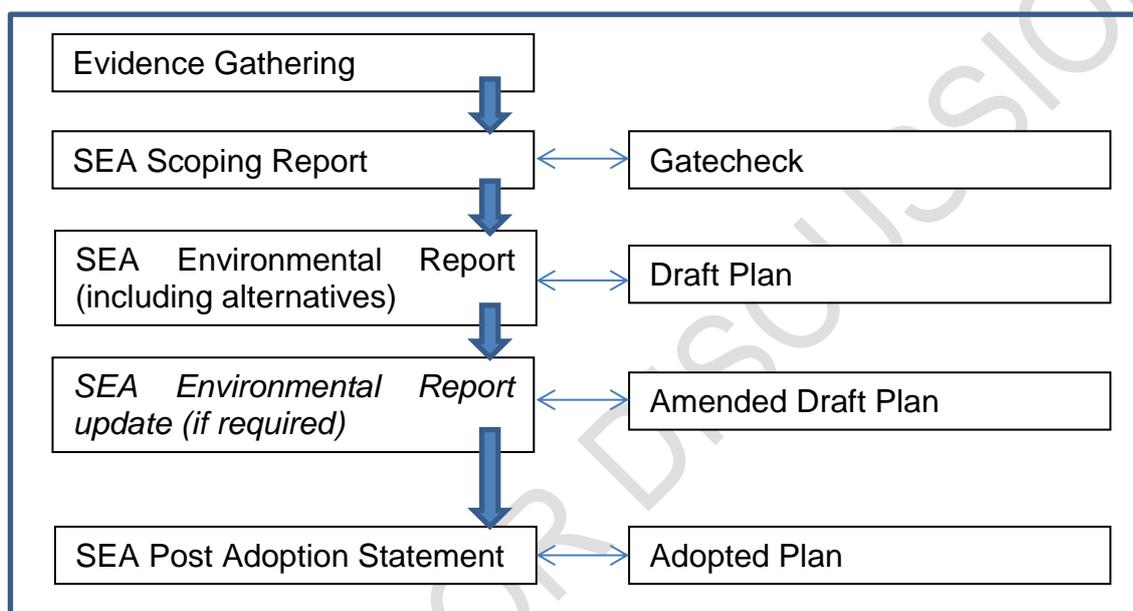
We propose removing current provisions for statutory supplementary guidance, to simplify and improve the accessibility and scrutiny of local development plans. Key policy areas would be addressed either in the Scottish Planning Policy or the local development plans, for example developer contributions. There would still be scope for place-specific policies to be included in local development plans. Local guidance may still be prepared and adopted by the planning authority which would have the status of a material consideration for decision makers to take into account as they deem appropriate. We would expect any guidance to be prepared with the involvement of relevant stakeholders and subject to public consultation.

*Environmental assessment*

The Environmental Assessment (Scotland) Act 2005 requirements to assess alternatives would still be applicable, and we would produce guidance on how this would work in the context of a draft plan rather than a main issues report. We are proposing that the draft plan can be amended by planning authorities at the pre-examination stage, to take into account outcomes from the consultation.

Where these amendments are viewed as significant changes to the spatial strategy, further consultation would be required under the terms of the 2005 Act.

The diagram below illustrates this:



The statutory consultation authorities have raised views and ideas on how the gatecheck could assist with mainstreaming the SEA process, and we will continue to liaise with them and wider practitioners to develop this thinking further. We would update our current guidance on Strategic Environmental Assessment of development plans and continue to promote iteration and proportionality within the process through good practice and advice. Sharing of expertise in this area may also be an opportunity that can be explored as part of wider work on skills and resourcing.

*What might a local development plan look like?*

We believe that giving statutory weight to the Scottish Planning Policy as part of the development plan would significantly reduce the level of policy wording required in local development plans. Instead, we would expect plans to focus on the geography of how a place works now and how it should develop in the future to support growth. Plans should have a clear vision, be accessible and engaging so that the role of planning in leading and co-ordinating a wider agenda on ‘place’ can be firmly established through the local development plan.

In time, where local place plans become incorporated into local development plans, or as site masterplans emerge and are incorporated, the plan's overview will develop into much more detailed coverage of land use for districts and local areas within the plan area. We believe that this, together with criteria based policies in the Scottish Planning Policy which are consistently applied, will provide a clearer steer for development management decision making.

We will work with planning authorities to develop our thinking on the content of local development plans further.

### *Costs*

- We expect that the move from a 5 year to 10 year plan review cycle and largely removing policy from plans will generate savings.
- These savings can then help to resource other duties and aspects of plan making, such as engaging with communities and supporting regional partnership working.
- New provisions, such as the ability to update plans between full cycles could also support greater efficiency as planning authorities would no longer have to review a plan as whole, should they wish to make specific amendments.

### *Timescales*

We currently expect that the Planning Bill will not take effect until it is followed up with secondary legislation on development planning. We would aim to have the new system up and running and supported by transitional arrangements ahead of NPF4 being adopted in 2020.

### *Transitional Arrangements*

We will bring forward detailed arrangements for transitioning into the new planning system. This will set out, for example, how and when new requirements will apply, depending on the stage of plan preparation at which local authorities are at the time they come into effect.

In the meantime, planning authorities should continue to undertake their duties as defined in the existing legislation.

### 3. Local Place Plans

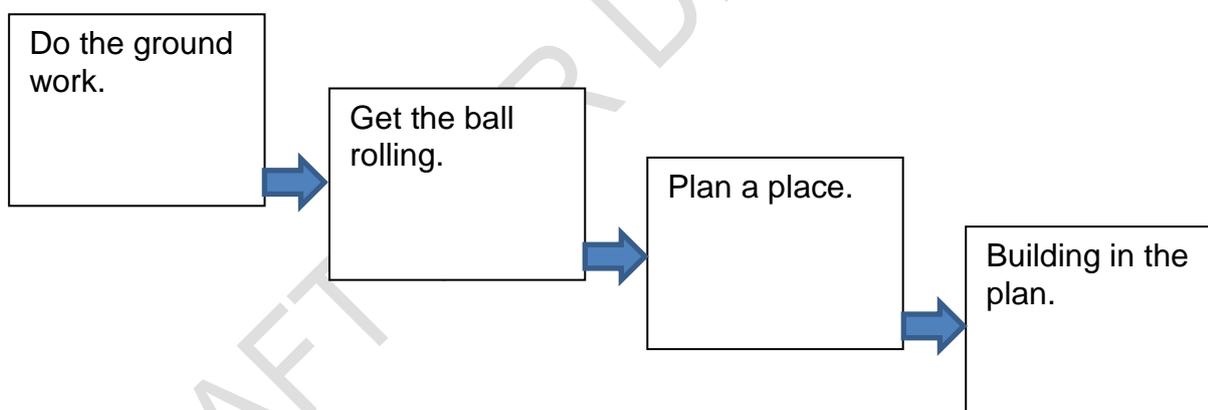
#### What are we proposing?

The June 2017 Position Statement proposed:

- leaving processes and procedures for the preparation of local place plans as flexible as possible so that communities themselves can define the best way of doing this for their area.
- local place plans that are consistent with the local development plan.
- defining how local place plans should be incorporated into the local development plan through an update.
- future guidance, learning and practice will need to be clear that a right to plan brings with it responsibilities, including to deliver on agreed needs and essential infrastructure.

#### How might this work?

Whilst much of the detail for local place plans would be defined in secondary legislation and or / guidance, we have been considering how local place plans could best be defined to address concerns emerging from the consultation.



#### *Purpose of local place plans*

We envisage that local place plans would be a community’s vision for its future development. We would expect all local place plans to contribute to inclusive growth and the positive development of an area.

#### *Prioritising where local place plans should be prepared*

We firmly believe that all users of the system should be able to find out everything they need to know about the future development of a place in one document – the local development plan. One purpose therefore of the local place plan is to give further detail to a local development plan, rather than adding a new additional tier to the system by forming a plan in its own right.

In consultation with communities from an early stage, planning authorities will have an opportunity to work with their communities by helping to identify in the local development plan, any areas where local place plans could most usefully be prepared. This would not prevent other communities bringing a local place plan forward.

There is potentially an important link between local place plans and locality plans (prepared in relation to local outcome improvement plans). We will be considering further how that firm connection can be made. This could significantly reduce any additional resourcing requirements arising from this provision and aid in improving alignment with community planning.

### *Process for preparing local place plans*

In exploring how this might work in practice, we have considered the experience of neighbourhood planning and noted stakeholder concerns that this could generate significant demands on community and planning authority time and resources. By being less prescriptive in legislation, we will provide communities and planning authorities an opportunity to innovate and come to the best local solution. We also wish to ensure that local place plans enable links into wider moves towards community empowerment rather than duplicating them. We are also mindful that the needs, expectations and capacity of communities will vary greatly, even across a single local development plan area.

We expect that secondary legislation and / or guidance will broadly outline, but not prescribe in detail, a process for preparing local place plans so that they can be integrated into the local development plan.

- **Stage 1 Ground work.** Communities would be encouraged to engage from an early stage in the preparation of the local development plan. This could set out the parameters for subsequent local place plans. Other changes to the planning system have been proposed to enhance community engagement in development plans. Details will come forward through secondary legislation. Communities may wish to use the preparation of a local development plan as the stimulus to preparing a local place plan as is contribution to the preparation of the local development plan.
- **Stage 2 Getting the ball rolling.** Community convene a body / existing body decides to take forward a local place plan. We would only in a limited way define the form or terms of reference for these bodies as in practice different arrangements will work in different areas.
- However, some further detail will be provided to guide bodies who are preparing local place plans to consider what it hopes to achieve / the scope of the plan; the area to be covered; evidence from the local development plan and local outcome improvement plan; requirements for further evidence gathering; how to engage with the wider community; necessary resources; and potential sources of support and possible paths to delivery. We will ensure that community bodies are aware at the beginning of the process what, if any, statutory requirements they will need to fulfil.

- **Stage 3 Local place planning.** Community bodies would be expected to engage with their wider community, including local businesses, before during and after their plan is in preparation. We would want pre-plan engagement to be taken forward, but the form that could take should broadly be defined by the community themselves. In practice, there could be scope, for example, for a charrette or other participative model to be used, or for parallel work to prepare locality plans to be the vehicle for supporting plan.
- **Stage 4 Build in the local place plan into the development plan.** We envisage a requirement for the local community body to submit a local place plan and possibly associated documents to the planning authority. These 'associated documents' could include: information setting out how the wider community was engaged and how any such views were reflected in the final plan; and how matters relating to the environment had been considered by the community body and other interested parties including agencies and NGOs.
- Following submission of the local place plan the following could apply:
  - as a minimum, by articulating a community's view on any proposed development in an area, the local place plan could act as a material consideration in subsequent decisions but not forming part of the statutory development plan.
  - all local place plans would all also be part of the evidence base which is used to inform the next full review of the local development plan. The planning authority will have regard to the LPP.
  - in some circumstances, the planning authority may decide that the local place plan is to be included in the local development plan as an update, between full review cycles. In such cases, the planning authority will have regard to the LPP and the update will be subject to the same procedures and scrutiny, possibly including an examination, as other interim updates to the plan (see section 2). As the local place plan may not have been discussed as part of the wider engagement on the local development plan, the community body should provide robust supporting information and evidence of consultation with people in the local area and other relevant communities of interest.
- Incompatibility with the local development plan (which will already have been subject to wide consultation and independent scrutiny, as well as environmental assessment) could be a valid reason for declining to incorporate elements of a local place plan into an update of the local development plan.

*How would requirements for strategic environmental assessment be met?*

The local development plan would set out the framework for local place planning across an area and should guide the key principles for any local place plan in their area. This would be subjected to full engagement and associated strategic

environmental assessment at the local development plan stage. If the local place plan aligns with the local development plan there would be no need for further environmental assessment specific to the place plan itself.

We would ensure that future guidance on development planning and environmental assessment sets out how SEA of local place plans would work in practice.

### *Incorporating local place plans into local development plans*

Where a local place plan is to be incorporated into the local development plan as an update, the planning authority would be required to follow the standard procedure that would be set out for all updates to plans between full reviews. This would include notification to Scottish Ministers and may involve an Examination where the changes are considered to be significant, to ensure full transparency and wider consultation as appropriate.

### *What we want to see from local place plans*

Several key principles will guide the development of detailed requirements and associated guidance for local place plans:

- They should reflect and recognise wider community aspirations as set out in local outcome improvement plans and any relevant locality plans.
- Local place plans should *generally* be in line with the local development plan, and therefore with national planning policy.
- Local place plans should support inclusive growth and aim to deliver on policy objectives. These objectives will be defined and consulted on but could include, for example, climate change adaptation, environmental sustainability, active travel, health and wellbeing.

### *Collaboration rather than conflict*

The consultation has shown concern that this new proposal could generate, rather than resolve conflict. Recognising this, we believe it would be important to make clear (through requirements or guidance) that local place plans should reflect the following key principles:

- Local place plans should be open and inclusive, involving local people but also seek to involve all those with an interest in an area including communities of interest and the development sector.
- Local place plans should not contradict local spatial strategies or national policy. The opportunity to change the spatial strategy is available through consultation on the development plan.
- Local place plans should not have a negative effect on development proposals that have already been consulted on and incorporated into the development plan.
- Local place plans should not seek to address matters that are more appropriately handled at a strategic level e.g. significant infrastructure, national developments.

- Many communities may include matters that lie outwith the scope of the planning system. Whilst this can be useful context for understanding how a community wants its place to work as a whole we do not intend to require local development plans to assume responsibility for delivering on all aspects of the local place plan.

### *Costs*

We recognise that this new provision could generate costs for planning authorities, communities and other stakeholders. We do not envisage that all communities will come forward with a plan - full coverage of local place plans within a local development plan area is unlikely in most cases. To make best use of communities' and authorities' time and resources, it would be useful to target their preparation (for example to reflect community planning priorities), to ensure that local place plans are taken forward in response to needs and opportunities.

A number of steps could be taken to help manage the introduction of local place plans in a practical way:

- Using the local development plan and its gatecheck to set out a framework within which local place plans can be prioritised and programmed. This would be informed by area-wide early engagement in the plan itself.
- Integrating the aspirations for local place plans with locality plans prepared in relation to community planning. We are exploring this further through an ongoing exemplar project and believe there is significant scope to avoid duplication by combining the two.
- Connecting with on-going community driven initiatives. Many communities are already empowered and having on-going debate about the future of their place.
- Targeting our support for the charrette programme towards communities who have significant disadvantage and / or have not had extensive engagement in the planning process.

We believe this approach could have a significant effect on the way in which communities engage in planning, particularly when combined with the other targeted improvements that are proposed. Should the Bill lead to significant additional proposals for local engagement in the planning process, a more measured approach to local place plans may be required in view of the limitations of available resources, planning authority and community capacity.

### *Timescales*

We would bring forward secondary legislation on local place plans and so we would not expect this proposal to take effect until 2019/20. In the meantime, we would support pilot work and early efforts to explore how they might work in practice. We would expect local place plans to come forward over a long timescale with few local development plans having full coverage.

### *Transitional Arrangements*

This is a new provision so transitional arrangements would not be required.

## **4. Calculating housing figures**

### **What are we proposing?**

The June 2017 Position Statement proposed:

- Addressing how we should plan for housing as a priority in future policy and guidance, rather than through structure change to the system.
- Continuing to work with housing professionals, planning authorities and developers to identify a solution which minimises the level of debate on how much land is required for housing.

### **How might this work?**

Over recent months there has been considerable interest in the status and application of our Draft Planning Delivery Advice on Housing and Infrastructure. Given that there remain outstanding objections to the draft advice and some concerns over the status of the document, we have taken the decision to remove the draft advice in advance of the Planning Bill. Meanwhile established advice will remain in force and we will focus on developing a new approach to calculating requirements for housing land which aligns with the changes emerging from the planning review

The appropriate time to define and agree national planning policy on housing is during the preparation of a new Scottish Planning Policy. However, we also recognise that early consideration of this issue could help to inform views the wider changes to the planning system that we are proposing. We have been reflecting on stakeholder thoughts on this, including a think piece prepared by the Royal Town Planning Institute.<sup>2</sup>

### *Strategic and local scales of planning for housing*

Views on whether or not the National Planning Framework should have a role in setting regional housing requirements, as recommended by the independent panel, vary. This has the potential to streamline planning for housing, create greater certainty, and support the effective coordination of major growth with infrastructure investment. However, we also recognise that a national approach needs to be informed by local knowledge, analysis and input.

Taking these views into account, and as an example of the type of approach that could be brought forward under a future revised Scottish Planning Policy, we believe that the following model could be a practical step forward.

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<sup>2</sup> People, Places and Planning. RTPi Think Piece: Delivering More Homes (2017)  
<http://www.rtpi.org.uk/media/2409171/Delivering%20more%20homes.pdf>

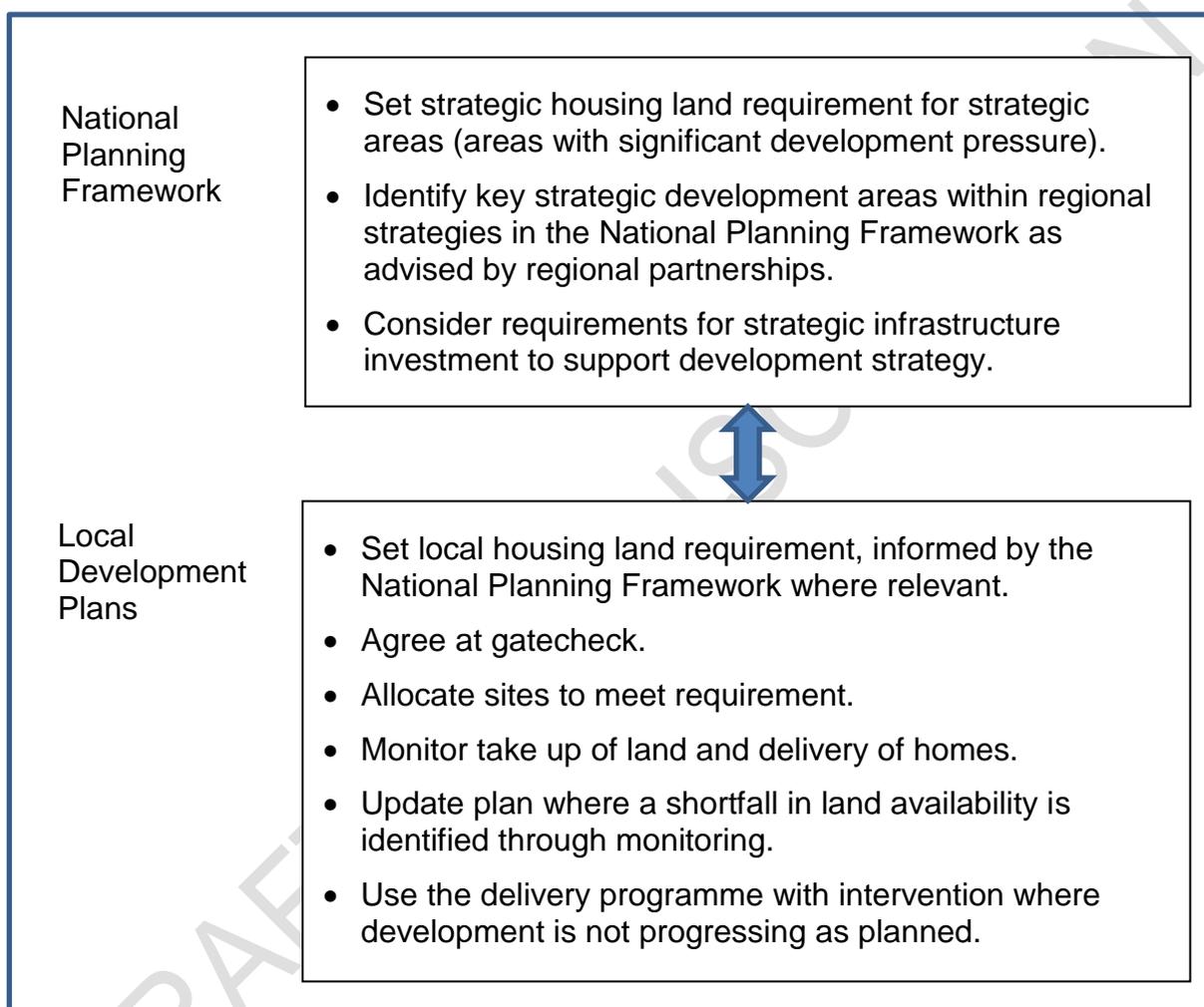
- **The National Planning Framework** could consider housing from a strategic perspective, setting overall scale and ambition for growth by identifying strategic housing land requirements, reflecting functional housing markets<sup>3</sup>, and focusing on those areas where there are significant pressures or constraints.
- The Housing Needs and Demands Assessment Tool could be used at a strategic scale to provide housing estimates, providing a consistent and robust evidence base.
- There would need to be full consultation on the strategic housing land requirements for the National Planning Framework involving regional partnerships. A supporting technical paper on the strategic housing land requirements could be prepared and published to support this and enable discussion and scrutiny.
- **Local development plans** would be expected to be largely consistent with the strategic housing land requirement where this has been defined for their area.
- There would need to be **limited scope for adjusting these figures locally**, for example adjusting timings to reflect development plan periods, considering windfall allowances and any further information arising from local monitoring of housing land and delivery. Any such adjustment could be agreed at the gatecheck, and thereafter the plan's preparation and consultation could focus on where the agreed land requirement would be met. Local authorities could also be required to publish and consult on a technical report on housing land that would be considered at the gatecheck stage.
- Authorities **outwith the areas covered by strategic housing land requirements** could continue to calculate their individual local housing requirement, supported by the ongoing requirement to prepare a HNDA at the local level. Linking this with wider requirements and work under the Housing Act would continue to be encouraged, although specific arrangements for this (e.g. whether or not to do this collectively through a regional partnership approach or individually) could be at the discretion of each authority. Local authorities could be required to publish and consult on a technical report on housing land that would be considered at the gatecheck stage.
- Our current preference would be for development planning to focus on **land availability** and so land requirements would relate to all tenures, rather than being tenure specific.
- We would produce **new guidance on monitoring housing land availability**.

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<sup>3</sup>Geographical areas where the demand for housing is relatively self-contained. Areas may significantly overlap and will rarely coincide with local authority boundaries.

- Where there is evidence that deliverability is an issue in some areas, we would want to significantly **strengthen the role of planning authorities in intervening to help development move forward**. However, we also recognise that planning is only one of a number of factors influencing delivery and so wider buy in to the plan and support for its delivery will also be needed.

The diagram below shows how this could work at the different scales.



### *Collaboration and transparency*

A detailed process for reaching this output is the subject of ongoing discussion and remains under consideration, but the following principles could form an important part of the process.

1. The approach to setting national housing land requirements is intended to provide early clarity and reduce conflict and complexity, and will be informed by local and regional input at all stages.
2. The Scottish Government could run the HNDA tool for each strategic area based upon agreed scenarios and geographies.
3. A national technical paper would be produced, providing scope for a 'reality check' on the numbers emerging from the HNDA tool to guide broad land requirement estimates. Collaboration between regional partnerships and Scottish Government departments would inform this paper.
4. Outputs would be set out in the draft National Planning Framework and subject to Parliamentary scrutiny.
5. There would be limited scope to depart from these figures in setting local housing land requirements. Where doing so this would need to be justified in the housing technical report and agreed via the gatecheck. Given the need for flexibility, generosity would continue to play an important role. Figures could also be adjusted where evidence emerges through the consultation process.
6. Local housing partnerships could play a key role in setting assumptions and establishing working geographies.
7. Pre-engagement with communities, developers and regional partnerships will be important strategically and locally.
8. The development industry should contribute to this work nationally and locally, not just as consultees but also in providing supporting information.

### *Costs*

It is recognised that providing greater clarity at a strategic scale is likely to require additional time and resources for the preparation of the National Planning Framework, thereby impacting largely at the national and regional scales. Local authorities could, however, expect significant time and cost savings if this clarity is provided up front – initially in the National Planning Framework and subsequently at local development plan examination, which would focus on sites as the amount would have been decided at the Gatecheck stage.

Authorities within existing strategic development plan areas could expect to maintain the current savings and benefits if they continue to work in partnership across their region to undertake the work required to define housing figures. The areas outwith existing strategic development plan areas are unlikely to experience much change, other than a significantly simplified method for calculating the amount of housing land that is required.

*Timescales*

Any of these changes would take effect following revision of the Scottish Planning Policy in 2020.

*Transitional Arrangements*

Work will commence on revising the National Planning Framework, together with the Scottish Planning Policy, in 2018. In the meantime current policy requirements for strategic and local development plans remain in place.

DRAFT FOR DISCUSSION

## 5. Infrastructure levy

### What are we proposing?

The June 2017 Position Statement identified that there appears to be general support for the principle of introducing a levy, but views vary on the form it should take. Many consultees are seeking further information before reaching a view.

The June 2017 Position Statement set out that:

- We remain of the view that options for a levy or charge merit further consideration.
- We will finalise and publish a Stage 3 research report which identifies options that could be tested further.
- We will continue to explore this with assistance from the Scottish Futures Trust before coming to a view on the level of detail that can or should be included in the Planning Bill.
- We remain open to considering whether changes to Section 75 may be required in connection with future decisions on the role of a levy.

### How might this work?

The Scottish Government commissioned research to help inform the more detailed design of this proposal, and the research reports are available to view online.

This is a particularly challenging proposal to implement in practice. Whilst the research has been thorough and informed by expert input, we believe that further work will be required to define a model which is both practical and meets the objectives defined by the independent panel. The form that a levy could take in the future therefore remains open to further work, stakeholder discussion and full consultation at an appropriate stage.

However, to provide some information around the overall principle of a levy, and to illustrate the level of detail that would be considered for secondary legislation should a new power be introduced, this paper sets out the possible approach as defined by the research work.

#### *Community Infrastructure Levy in England and Wales*

During the course of our research on this proposal, an independent group produced a report on the Community Infrastructure Levy (CIL), published in February 2017. The review found that:

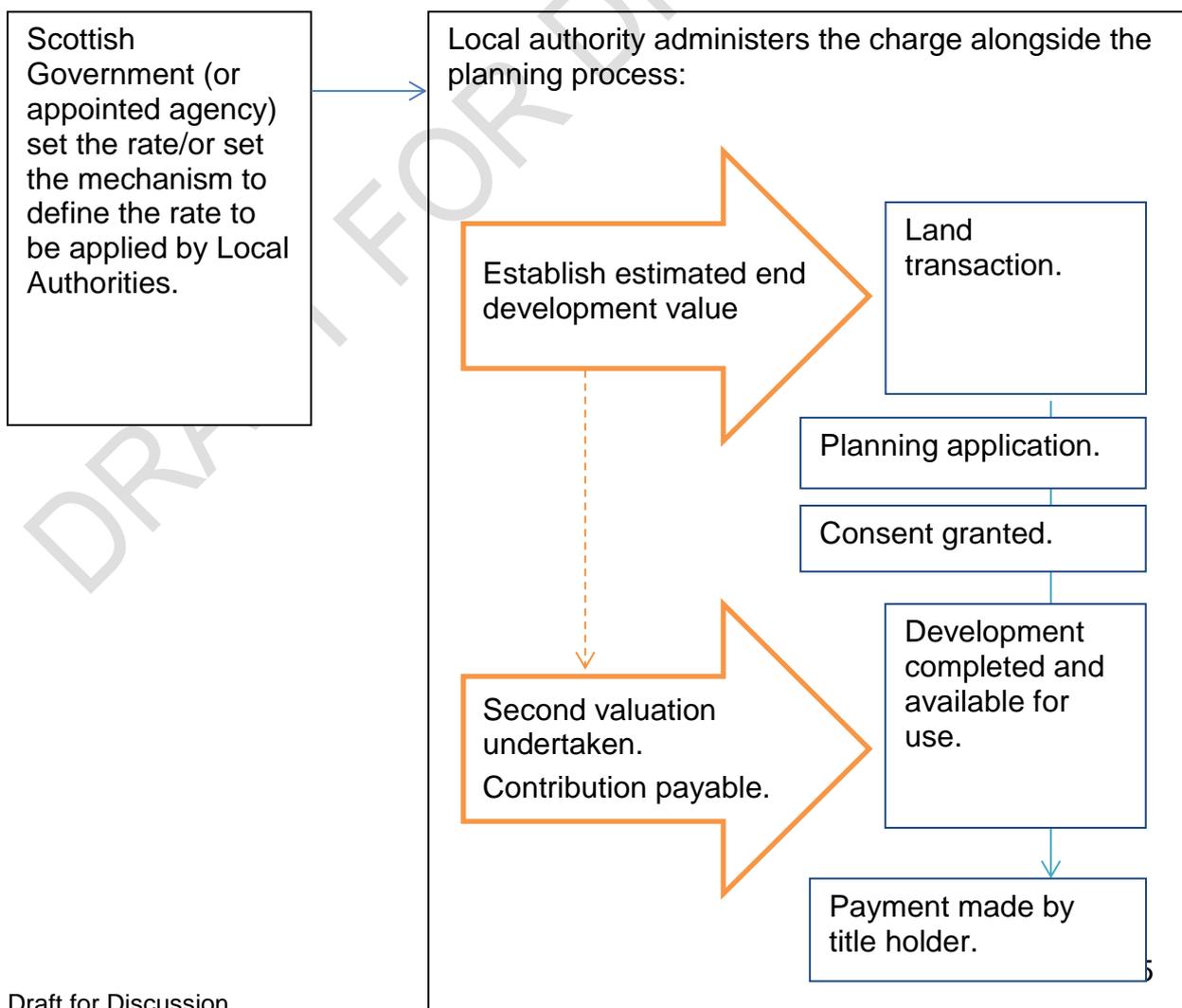
- CIL is not delivering as much income as anticipated. The expected receipts were overstated, with CIL yielding between 5% and 20% of the funding required for new infrastructure.
- Charges are often set at low levels in many local authority areas to ensure development viability, which has in some cases has resulted in lower payments compared to the previous system (Section 106).

- As a result of the relatively low receipts, the levy is not raising enough revenue to effectively support the funding of infrastructure. This combined with restrictions over borrowing against future CIL receipts has compounded the situation.
- The adoption of CIL by authorities has been relatively low (around 60%).
- The regulations have become complex, with a large number of amendments.
- There is also criticism that the process for charge setting is lengthy and expensive.

This timely report provided important insights into the feasibility of this type of approach, and was taken into account in the commissioned research project.

*Scottish Government Research*

The research has recommended establishing a levy, termed the Infrastructure Growth Contribution. Two sub-options were also proposed in relation to collection and administration of the levy. The first is a centrally co-ordinated option and the second is a locally co-ordinated option. The latter would be feasible and more likely fit within the scope of Scottish Ministers’ current devolved taxation powers. The diagram below sets out the key steps in the locally co-ordinated option.



As illustrated above, locally-co-ordinated levy could operate as follows:

- **The levy could raise funds for infrastructure so necessary services and amenities can enable land to be developed or to deliver infrastructure that is needed to serve the additional growth within an area. The importance of additionality has been highlighted by stakeholders**
- **Local authorities could collect and administer the levy.** This could be done individually or on a combined authority basis. Collection by local authorities for regional distribution will need to be investigated further. Local authorities could transfer funds to infrastructure bodies for required strategic infrastructure. Stakeholders agree the importance of funding infrastructure at this scale, as well as allowing for redistribution to reflect lower receipts anticipated for some areas.
- **A formula / or mechanism could be set nationally.** If a formula was used, this could be applied to the open market capital value per square metre of net additional floorspace for all buildings that are used by people. The levy would be spread as widely as possible, applying to all residential buildings, retail buildings, offices, and buildings for light industrial, other employment, educational, transport and leisure uses. Further work and consultation would be required to inform which types of development would be subject to the levy – views on this vary. The need to ensure that the levy does not impact on viability has been raised by stakeholders.
- **The contribution rate could be set by a predetermined formula** of the capital value of the floorspace created at the point that the floorspace is able to be used (less any equivalent levy for existing floorspace). The valuation would include any common facilities, amenities, or land uses (e.g. parking spaces) that are available to the users of, and associated with, that floorspace. The levy receipts would arise from the growth in value of land arising from pre-existing infrastructure provision (whether public or private) or arising from a planning consent.
- **Requirement for two valuations.** In order for the levy to be taken into account at the point of land transaction/negotiation (so it can be reflected in land values), an estimate of the end development value would have to be made as early as possible in the process. As the model requires the levy to be paid at the point at which the floorspace is useable, the liability to pay would likely sit with the developer. A valuation would be undertaken at this point to establish the actual level of the contribution. Stakeholders have expressed concern that making predictions of future liability through residual values is complex and imprecise and that there may be difficulty in getting agreement on valuations.
- A substantial lead in time is also recommended to mitigate potential impacts on the operation of the market.
- **There could be discretion for local authorities over whether to apply the levy or over the levy rate.** This would be consistent with CIL in England and

Wales which offered local authorities the discretion on whether or not to adopt the levy.

- **Development which has a value below a set threshold would not be subject to the levy**, thereby reducing potential negative impacts on low market areas and potentially affordable housing.
- **Other front funding sources still needed.** The research indicates that funds would not start to accrue until four years after the announcement of introduction. As payments are due upon completion of development, certainly in the short term, this does not assist with the front funding of required infrastructure, therefore, other funding sources or pump-priming will be required.

The research considered the likely levy receipts from different types of charges, concluding that a non-linear charge (i.e. not a flat rate) would be most effective. The levy receipts are likely to only cover a small proportion of infrastructure costs and that the levy receipts may be best used to lever other funding sources or service debt.

Stakeholder discussions have emphasised the importance of being clear about the purpose of a levy and ensuring it is properly aligned and integrated with the development plan. Many have called for it to be designed to allow for flexibility, and there are different views on the types of infrastructure it could fund. The need to address maintenance of existing infrastructure was also raised, highlighting that this is as important as the delivery of new assets. In terms of implementation, stakeholders have raised the issue of skills and resources for prioritising and administering the levy. Some have also suggested that changes to Section 75 could reduce the need for a levy, and have noted that the implications of a levy for planning obligations will require further consideration.

### *What are the next steps?*

We will consider the research recommendations further and will hold further discussions with stakeholders and experts, including the Scottish Futures Trust, regarding the feasibility of a levy in Scotland.

Whilst we are proposing an enabling power for the levy within the primary legislation at this stage, we are clear that this would not be enacted until a workable solution has been identified and fully consulted on and the costs and benefits of the approach have been fully evaluated.

In the meantime we will consider the findings of the research and explore the scope for testing or piloting the recommended option.

### *Costs*

This proposal has the potential to generate significant administrative costs for both the Scottish Government and local authorities. However, in broad terms, these costs, have already been factored into the research recommendations and the calculation of the expected outcome from a levy.

### *Timescales*

Given the potential impact of such a proposal, it is anticipated that any new system would take some time to be developed in secondary legislation and would also have a lengthy lead-in time.

### *Transitional Arrangements*

This would need to be fully factored into the process at a later stage, for example through further consideration of the relationship between a new charge and Section 75 planning obligations.

## 6. Development Management - Improving public trust and keeping decisions local

### What we are proposing?

Places, People and Planning and the subsequent position statement set out the following proposals:

- Legislative change to refresh and rebrand Simplified Planning Zones and allow them to be progressed in a wider range of circumstances.
- Changes to Pre Application Consultation (PAC) for major and national developments.
- Targeted improvements to development management.
- Strengthening enforcement.
- Extending permitted development rights.

### ***Simplified Planning Zones: rebranded Simplified Development Zones***

We believe that a more strategic, zoning approach to housing allocations, such as improving the use of Simplified Planning Zones, could be a simpler way of strengthening the development plan and establishing the need for development at an early stage.

### How might this work?

We are looking to amend the legislation to make the procedures for putting in place a scheme more straightforward, to reflect more recent consultation expectations, to enable schemes to be progressed in a wider range of circumstances and to broaden the type of consents they are able to include. To support the use of this form of proactive consenting, we will look to introduce powers to allow discretionary charging, to allow planning authorities to recoup costs of preparing schemes, where they feel that would be appropriate.

#### *Rebrand*

The Independent Panel who carried out the Review of Planning recommended SPZs should be rebranded, and the recent SPZ<sup>4</sup> research agrees with this, with some consultees seeing it as an opportunity to “recharge” this planning tool. We want to allow for a more holistic approach to supporting delivery of development, with schemes being broader than just planning with new scope to consider other consents – so intend to rebrand the mechanism as Simplified Development Zones (SDZs).

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<sup>4</sup> <https://beta.gov.scot/publications/simplified-planning-zones-equivalent-mechanisms-outwith-scotland-research-report/>

### *Legislative change*

Based on the research, pilot work and consultation responses we believe a number of changes could be made to update the procedures relating to SDZs. Some of these will require primary legislation and be included as part of the Planning Bill, whilst for other more detailed provisions it will be more appropriate to cover these in the secondary legislation. This use of secondary legislation provides further opportunity for engagement, and will allow the provisions to be more readily amended, if required.

### *Drivers for preparing SDZs*

We envisage SDZs will assist the achievement of the National Performance Framework outcomes on:

- *Realising our full economic potential* – by enabling local authorities to put in place a general consent for key sites or areas they want to promote for development and by allowing potential developers and investors to progress with greater speed and certainty.
- *Tackling inequalities in society* – by supporting new and alternative housing delivery models including self- and custom-build. For small and medium sized housing developers with less access to upfront capital, there is huge benefit in being able to raise finance on the basis of a surer, more clearly defined planning context and not having to bear the cost of going through a planning application process.
- *Living in well designed, sustainable places* - SDZs allow planning authorities to plan. By front-loading consideration of design and infrastructure earlier in the planning process, SDZs can include a design code to ensure delivery of high quality developments.
- *Protecting and enhancing the built and natural environment* - by front-loading consideration of environmental matters earlier in the planning process, and clearly setting out the parameters in the SDZ scheme of what the planning authority is, and is not, willing to consent.

### *Preparation*

We consider that SDZs have potential to support the delivery of local development plan strategies and to progress particular priorities, by providing a consent that has been subject to community consultation and is in place to support investment. Planning authorities are currently required to consider, and keep under review, which part or parts of their area it is desirable to create SPZs, and if it is they must prepare one. With only a small number of SPZs adopted to date, and a lack of clarity of how this duty has been considered, we feel it would be more transparent if planning authorities had to publish a record of how they have considered this duty. We consider this could potentially be fulfilled as part of the new LDP Delivery Programmes (which will require to be updated annually) which could show how the authority has considered use of SDZs to help deliver the plan.

In the new system LDPs could identify potential areas for SDZs in relation to particular places or allocations. When linked to the LDP like this it may allow efficiencies with the strategic environmental assessment covering issues the SDZ might raise. However, given the potential need to respond to economic events or

policy, we feel there should also be opportunity for planning authorities to consult on and prepare a SDZ at any time. We also intend to introduce new powers for Scottish Ministers to direct a planning authority to make a SDZ scheme where it would be in the national interest to support the delivery of a national priority as set out in the National Planning Framework or Scottish Planning Policy.

We want to allow SDZ schemes to be prepared following a request for example the landowner or developer, as was the case with the Hillington Park SPZ, and look to see joint working between the parties.

Building on the work with the pilot SPZs we intend to produce templates which planning authorities could use as guides to provide a means to consider the issues and structure the SDZ scheme and its conditions.

### *Scope*

Currently section 54 of the Act restricts that a SPZ scheme cannot be designated within certain categories or descriptions of land<sup>5</sup>. Having the restrictions prescribed in the primary legislation limits the opportunity to make changes or additions to the list, eg to be more responsive to other designations that could come forward, as happened in relation to Special Protection Areas, which are not covered by s54. Our intention is therefore that rather than setting out the restrictions in primary legislation that there should be a power conferred on Ministers to prescribe in regulations land or descriptions of land to which the restriction applies.

However, some of the restrictions in the Act have significantly limited where SPZs can be used, and could, we believe, be lifted. A SDZ does not mean a loss of standards for development, amenity or protection for the environment. Instead, it allows the local authority to proactively set out what it is looking to see developed in the area, and what it is willing to consent, rather than awaiting applications. Detailed design guidance can be produced, as part of the SDZ scheme's conditions to ensure that designated assets are preserved or enhanced. The scheme could include a masterplan with special sub-zones, in which the planning regime of the scheme is specifically tailored to take account of designated assets. Such sub-zones could be made subject to additional or different conditions to reflect their intended purpose.

We are aware of a number of planning authorities who were keen to establish SPZs to support town centre investment and regeneration but to date have been unable to because their town centres included land within a conservation area. We believe that a SDZ scheme could include design conditions which could protect the features of the conservation area it would be desirable to preserve or enhance, and that a complete restriction on SDZs coming forward for areas within conservation areas is not necessary or proportionate and therefore intend to lift the restriction in the regulations.

Similarly, we intend to legislate to remove the restriction on having a SDZ for developments for which EIA is required. That restriction could limit the mainstreaming of SDZs (particularly in relation to the Urban Development category in Schedule 2, with a threshold of just 0.5ha). We consider that with appropriate

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<sup>5</sup> within a conservation area, approved green belt, national scenic area, a site of special scientific interest or land expressly excluded by means of an order made by the Scottish Government.

procedures, to meet EIA requirements, a new approach could allow a SDZ to be prepared, which would involve the environmental effects being considered upfront as part of the preparation of the SDZ scheme, and the SDZ scheme could include conditions to ensure there was no significant environmental effect.

It is important to appreciate that statutory consultees will be consulted in the preparation of SDZ schemes, and will have an opportunity to comment on their content and conditions, ensuring heritage, environmental and other issues are appropriately considered upfront.

To promote a more holistic, and comprehensive approach to supporting delivery of development, by providing certainty, we are considering the extent to which a SPZ could cover other consents. We want to look at how schemes, that included appropriate conditions, could provide other consents need to start on site e.g. adverts consent, building warrants, Roads Construction Consent, hazardous substances consent, listed buildings consent, conservation area consent. This would require the planning authority, and agencies, to consider the potential issues upfront and set out what is and is not permissible in the SDZ scheme, and is more about a shift in when the issues are considered.

#### *Consultation / Engagement and Adoption of schemes*

We intend to modernise the consultation procedures. We will set out further detail on how the new SDZs will be set up and operate, looking to include more frontloading of engagement and revising arrangements for dealing with outstanding objections.

We want to update the consultation arrangements, and in the secondary legislation will look at whether there remains a need for adverts in the Edinburgh Gazette, and will seek to shift away from just notifying consultees to having engagement events on the content of SDZ schemes, with a more formal period for representations.

Where there are unresolved objections, under the existing system there are provisions allowing planning authorities to cause a Public Local Inquiry (PLI) to be held, prior to the adoption of the SPZ scheme. We intend to remove the provisions around Public Local Inquiries as these do not seem proportionate, and are not required under the other means of getting a consent in terms of the planning application route. We will replace the PLI stage, with a new requirement for a pre-determination hearing where the SPZ would be significantly contrary to the development plan, as is the requirement on planning applications for such major and national developments.

In addition, to ensure appropriate scrutiny is provided, we intend to make provisions in the detailed secondary legislation, so that in particular circumstances prior to a scheme's adoption Ministers are notified. We envisage this operating similarly to the Notification of Applications Direction, so could include triggers for notification where the local authority had an interest and which would consent development that would be significantly contrary to the development plan, or where there was an outstanding objection from a government agency to the scheme.

### *Resourcing*

With local development plans moving to a 10 year rather than 5 year cycle, we consider this should free up planner resources from the cycle of plan preparation, to focus on delivering the plan's priorities. We see the preparation of SDZs as a key tool to enhance the certainty and deliverability of key sites.

In addition it is our intention to introduce provision, in regulations, for discretionary charging to allow planning authorities, to recoup their costs in preparing the SDZ scheme, where desirable.

### *Developer Contributions*

A SPZ scheme may specify conditions or limitations subject to which it is granted. Such conditions or limitations may include a restriction on the commencement of development pending the conclusion of satisfactory arrangements to secure the payment of any financial contributions considered to be necessary or desirable to mitigate or offset the direct or indirect effects of the development.

### ***Pre-application consultation (PAC) – improved and clarified statutory requirements***

The Places, People and Planning consultation set out our proposal to improve and clarify statutory requirements for PAC for major and national developments, e.g. requiring more than one public meeting to be held. There was agreement in responses to the consultation, with support from civil society, policy and planning and the business sector, primarily as current requirements were not considered adequate. The June 2017 Position Statement proposed amending requirements for (PAC) for major and national developments, e.g. introducing a requirement to provide feedback to communities following engagement, and a time limit for submission of applications following PAC.

- We now propose, through legislation, to require that an application must be made within 18 months from when the proposal of application notice is given (and, as at present, no less than 12 weeks from when the notice is given). The intention is to minimise the risk of the PAC having taken place with a community or in a context that is no longer relevant by the time an application is made.
- We also propose that more than one meeting must be held as part of the pre-application consultation (a matter for subordinate legislation).
- We are also considering additional PAC requirements where proposals have not been allocated in a development plan (a matter for existing planning authority powers to require additional consultation where PAC is required).

### *Keeping PAC proportionate*

We propose to introduce an enabling power so that Ministers can use regulations to create exemptions from the requirement to carry out PAC in some circumstances. This will allow Ministers to specify some circumstances where a proposal for planning permission for a national or major development does not have to undergo pre-application consultation before the application is submitted. In particular, the

intention is this would apply to a revised application is made where PAC has already taken place on the initial application.

The existing screening procedure, whereby a prospective applicant can check with the planning authority whether a proposal is in a category that requires PAC, will be amended as necessary to ensure potential exemption cases can also be screened if the prospective applicant is uncertain (Note: this is not discretion for the authority to set aside PAC but for them to judge whether a statutory exemption applies).

For proposals not allocated in development plans, we intend guidance to promote the use of existing powers for planning authorities to require additional consultation steps where PAC is required.

### ***Targeted improvements to development management***

#### *Keeping decisions local: extending local reviews*

The Places, People and Planning consultation set out our proposal to expand the range of planning applications which are subject to local review and make provision for a wider range of other consents to be delegated. The June 2017 Position Statement proposed some change in the way minor developments are handled through to appeal, for example advertisement consents. It also signalled our belief that more can be done through consistency in local schemes of delegation to support greater consistency and subsidiarity of decision making.

The position statement also indicated that we do not propose to pursue the proposal for Ministers to take decisions more frequently and that we do not propose to introduce fees for lodging either reviews or appeals. The responses to the position statement did not signal strong consensus between sectors regarding local reviews.

- We propose through the bill to extend the range of applications that can be delegated to an appointed person such that they qualify for local review as opposed to an appeal to Scottish Ministers), to include, in addition to planning applications for local developments:
  - applications for any approval required under a development order (e.g. prior approval under the General Permitted Development Order);
  - applications for advertisement consent;
  - applications for a certificate of lawfulness of existing use or development (CLUD).

#### *Decisions by full council*

We propose to repeal section 56(6A) of the Local Government (Scotland) Act 1973 which requires that decisions on applications for certain classes of development could not be delegated by the planning authority to a committee or officer. This will have the effect of removing the requirement for decisions by full council. This in turn will mean that applications can be determined at the level appropriate to the

development, reducing the number of appeals which fall to be handled by the SG Division for Planning and Environmental Appeals (instead of by local review) purely on the basis that the original decision was made by full council. This repeal would not affect requirements for pre-determination hearings.

### *Duration and expiry of permissions*

Currently the period within which development must be started, or the planning permission will lapse, is specified either in legislation or, if they wish to specify a shorter or longer duration, in a direction made by the planning authority when granting permission.

- We propose reverting to having the duration specified in a condition on the permission. While this would allow an application for a new permission with a new duration condition to be made under Section 42 of the Planning Act, we are considering what the fee should be for such applications (a matter for the forthcoming Planning Fees consultation).
- The default time periods for duration conditions would be 3 years for full planning permission and 5 years for planning permission in principle. A planning authority could set a longer or shorter period as deemed appropriate. The applicant would have the right to make an appeal or seek local review of these along with other conditions within 3 months of the decision.
- We also intend to remove the time limits for applying for approval of matters specified in conditions attached to planning permission in principle. The planning authority will be able to include their own conditions in this regard. However, a developer will in any event need to have obtained the approvals necessary to start development within the period of the duration of the planning permission in principle.
- We intend to issue guidance about appropriate duration periods, including where a new period is to be set through a Section 42 application.

### *Repeat applications*

The June 2017 Position Statement proposed removing the opportunity for applicants to submit a revised or repeat application at no cost if an application is refused or withdrawn, or if an appeal is dismissed.

We propose to remove the exemption from fees for repeat applications, and this will be a matter for the forthcoming Planning Fees consultation.

### ***Strengthening enforcement***

The June 2017 Position Statement proposed introducing measures to strengthen enforcement. It also reflected stakeholder support for stronger enforcement, while also noting that those who disagree consider that existing powers are under-used.

We consider that new enforcement powers are not necessary, but propose measures to strengthen the effectiveness of existing powers. In light of consultation responses we intend, through the planning bill, to:

- enable planning authorities to make charging orders, similar to those in use in the Building Act. This would enable planning authorities to tie their expenses where taking direct action to the land registers. The intention is to make it more attractive for authorities to use their direct action powers after an enforcement notice or amenity notice has taken effect, by making it easier to recover the costs involved.
- increase the maximum fines on conviction for breach of notices;
- enable increased fees for retrospective applications.

***Permitted development: Sustainability appraisal***

Responses to consultation on Places People and Planning confirmed support for expanding permitted development rights across a wide range of developments and this work will be progressed in stages.

We are commissioning a sustainability appraisal to meet our statutory assessment obligations and to inform the prioritisation and development of draft legislative proposals.

In relation to the agricultural sector, the sustainability appraisal will include consideration of options for the conversion of agricultural buildings to housing and small business.

We expect the appraisal to be completed in Spring 2018. We anticipate progressing the detailed work on changes to permitted development, alongside a wider suite of secondary legislation, following the passage of the Planning Bill by the Scottish Parliament. This would include further detailed consideration and stakeholder engagement prior to amending legislation.