

**Scottish Planning Policy and Housing**  
**Technical Consultation on Proposed Policy Amendments**  
**HoPS Response (October 2020)**

**Role of HoPS**

Heads of Planning Scotland (HoPS) is the representative organisation for senior planning officers from Scotland’s local authorities, national park authorities and strategic development planning authorities.

The purpose of HoPS is to:

- I. Promote the profile of public sector land use planning
- II. Support and promote excellence in planning leadership
- III. Ensure the delivery of a culture of continuous improvement in planning authorities, and
- IV. Provide advocacy and coordination to ensure that planning authorities are properly resourced to deliver quality outcomes.

**Introductory Comments**

1. Covid 19 has served to highlight the importance of the connections between health and the quality of living environments and this is where our profession’s endeavours must be squarely focused. HoPS previous submission, the appendix to our Call for Ideas, entitled “Creating Great Places”, focussed on a number of issues that are now reflected in part in this consultation on proposed amendments to SPP. We appreciate, the requirement for a considered response to the recent Court of Session decision, ([2020] CSIH 28, XA104/19)<sup>1</sup>, however noting that these proposals are “interim” we would comment that the proposed SPP amendments could and should go further and HoPS will continue to engage with the Scottish Government to assist in evolving national planning policy which is to become embedded in NPF4.
2. We also wish to emphasise, that the planning community that HoPS represent, have been dismayed at the increasingly litigious nature of planning disputes relating to housing developments which consume scarce resources that could better be utilised in positively supporting the creation of great places to live. Perceived or real policy loopholes are skewing some market led behaviours which in turn may be resulting in some poor planning decisions that are not consistent with the intentions of SPP and the plan-led system. Whilst the principle is supported that local authority decisions must be open to scrutiny, some authorities have experienced tactical and vexatious challenges to development plans, planning decisions and further challenges against Scottish Ministers’ decisions, that have consumed significant resources. Examples include the unsuccessful challenge to Scottish Ministers’ decision on Clydeplan and the experience in Inverclyde, which these proposed amendments are in part a response to. Individual authority responses will provide further detail on these matters and some further evidence is provided in Appendix A. Further policy clarifications and simplifications are encouraged and the proposed amendments, which assist in that regard, are therefore strongly supported. Given the recent Court of Session Challenges to Scottish Ministers, the Ministers will require to be satisfied that these policy revisions will stand up to the legal scrutiny that will inevitably arise.

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<sup>1</sup> <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020csih28.pdf?sfvrsn=0>

3. The current model of private housing delivery including the policy context, is not delivering optimal results with post pandemic delivery now at risk of following the pattern post Global financial recession of 2007/08. Whilst there has been a short term spike in demand for homes with gardens, the longer term post pandemic/post Brexit economic impacts, are likely to mirror and accentuate the general trends following the financial crisis which involved moves away from the delivery of lower cost housing in more difficult market areas, towards higher end products in stronger markets where there are willing buyers.<sup>2</sup> During this period several housebuilders ceased trading and the capacity of the industry was severely eroded. These trends will continue to militate away from the delivery of public interest led development and the purpose of planning.<sup>3</sup> The Scottish Land Commission recently found that “the speculative private development model, which is currently responsible for delivering most housing in Scotland, is not suited to increasing the supply of new homes or to making homes more affordable.”<sup>4</sup> They go on to say that much of rural Scotland (where development costs tend to be higher) and parts of urban Scotland (where market demand is lower and there may be a need for expensive land remediation), are not well served by the speculative land model.
4. Throughout the history of housebuilding over the last 100 years, it has been those times when the public sector has intervened with vigour, that public interest led housing delivery at scale has been achieved. A relevant and more recent take on this, the SFT Publication<sup>5</sup> “Can Local Authorities Deliver Housing for Sale or Rent” explores the potential for expansion of the role of local authorities in delivering market housing.
5. Fundamentally if we want to achieve the quality, scale, type and location of housing development, that our policies aim for, and which meet climate change and health and wellbeing objectives, we need to reconsider our entire approach to housing delivery. To deliver this HoPS continue to argue for a much holistic policy context, joining across key services including housing and planning, that recognises the realities and limitations of the housing market, conjoined with more public sector activity to ensure that we achieve the delivery of the right homes in the right places. Whilst recognising that these policy revisions are interim, the fuller review of Scottish Planning Policy requires to take cognisance of the current limitations in our approach to housing delivery in these respects.
6. HoPS also would comment that the debate over housing delivery and land supply is often mis-represented factually, and commend to the government for publication the annual housing data collected through the HoPS annual Planning Performance Framework the latest version of which is included at Appendix B.
7. Given the above comments, whilst there are areas where HoPS wish the Scottish Government policy changes to go further, the response below focuses on those matters where the Government proposed interim changes could be further clarified or strengthened.

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2 Table 12: Volume of new build residential property sales by house type (unadjusted), Scotland, (<https://www.ros.gov.uk/data-and-statistics/house-price-statistics>)

3 The Delivery of Public Interest Led Development in Scotland A discussion paper Steven Tolson and Archie Rintoul March 2018

4 [https://landcommission.gov.scot/downloads/5ee21ef5b327a\\_LAND-FOCUS\\_Land-for-Housing-and-Dev-June-2020.pdf](https://landcommission.gov.scot/downloads/5ee21ef5b327a_LAND-FOCUS_Land-for-Housing-and-Dev-June-2020.pdf)

5 <https://www.scottishfuturetrust.org.uk/media/can-local-authorities-deliver-housing-for-sale-or-market-rent-in-scotland>

8. Detailed comments in answer to the five consultation questions now follow and to assist the Government, HoPS have set out specific suggested wording sought in policy changes. If any of these suggestions are accepted, a further consistency of the rest of SPP may be required.

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

9. The proposal to remove ‘the presumption’ from the SPP as set out, for the reasons provided by Scottish Government, is firmly supported.
10. The challenge determined in the recent Court of Session decision demonstrates that the terms of the presumption in favour of sustainable development where plans are out-of-date, was increasingly being interpreted and used in a manner that generally militates against the primacy of the development plan and decisions based on “balanced planning judgment”. HoPS therefore welcomes and strongly supports the clarifications provided in the proposed amendments including the removal of paragraphs 32 add 33 from SPP as housing and other development plan policies do not become irrelevant or out of date simply because they are five or more years old.
11. HoPS are clear that the presumption in favour of sustainable development remains a tenet of international, national and local planning policy within SPP and Development Plans. The UN Sustainable development goals and principal policies in SPP on Sustainability and Placemaking remain in place and are strongly reflected in strategic and local development plans. Perhaps this requires to be more clearly stated within the policy revisions as this aspect of the proposed amendments has been characterised by some as a removal of the presumption in favour of sustainable development which is not the case. Based on national data<sup>6</sup>, 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, as reflected within the relevant development plan. The proposed amendments add clarity as to how proposals are to be assessed and should not result in a reduction in approvals of proposals that contribute to sustainable development. Strategic Environmental Assessment and any site evaluation frameworks are also relevant tools for assessing the contribution of new developments to sustainable development and could potentially be referenced in Scottish Planning Policy. A suggested glossary definition of “balanced planning judgment” covering these issues is provided.
12. The fourth bullet at paragraph 30 and reference to development plans being ‘up-to-date’ may also require some attention and could be deleted. This maintains the primacy of the development plan whilst giving flexibility to authorities where plans may be older than five years and reduces the potential for confusion and challenge on the interpretation of that wording.
13. The term “balanced planning judgment” is introduced at proposed paragraph 125 and bearing in mind the scrutiny being applied to planning policy exemplified in court decisions, it may be helpful to provide absolute clarity to this term within the proposed policy amendments by including it in the glossary. This would include reference to the principles in Paragraph 29 and the purpose of planning as stated within the Planning (Scotland) Act 2019. It is also recommended that SPP explicitly states, in an existing or new paragraph in this section, that the term “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. To avoid any further use of this term or challenge on this

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<sup>6</sup> <https://www.gov.scot/publications/planning-performance-statistics-2019-20-annual/>

basis, HoPS are of the view that this should be reflected in the text of SPP and a form of wording is suggested for inclusion in SPP paragraph 28.

14. Also given the Climate Emergency and importance of health and wellbeing considerations highlighted during the pandemic, the Government may also require to reflect on the priority and ordering of the policy principles referred to in paragraphs 28 and 29. HoPS suggest that the bullet points are reordered, in order to assist in achieving the principle aim of well designed, healthy and sustainable places.
15. Given these above comments the following policy wording changes are suggested affecting paragraphs 28, 29, 30 and the Glossary.

## HoPS Suggested Policy Wording Changes

**Bold** is suggested new

**Blue** is suggested reordering

**Red** is suggested deletion

### Policy Principles

28. 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, **exercising balanced planning judgment**; it is not to allow development at any cost. **The concept of ‘tilted balance’ is not applicable nor does it have any status in the Scottish Planning System.**

29. This means that policies and decisions should be guided by the following principles **which form part of balanced planning judgement**:

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

### Delivery

#### Development Planning

30. Development plans, **which together with their relevant assessment and appraisal documents (including Strategic Environmental Assessment), and SPP, provide the principle basis for assessing new development proposals**, should:

- be consistent with the policies set out in this SPP;
- positively seek opportunities to meet the development needs of the plan area in

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

**Glossary:**

**Balanced planning judgment:** a planning decision, based on the relevant development plan and its relevant assessment and appraisal documents, and Scottish Planning Policy and in particular the principles outlined in paragraph 29, which achieves the purpose of planning to manage the development and use of land in the long term public interest.

**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?**

16. The proposal to clarify Paragraph 123 and the glossary definitions of effective and established housing land supply, for the reasons provided by Scottish Government is strongly supported.
17. The circumstances of Covid-19 and dramatic impacts particularly on *market led* housing delivery, have served to throw into focus the distinction between available housing land and the rate at which it is delivered. The term “5 year effective land supply” has often been utilised in a manner that conflates these two separate matters: available land and the rate or programming of its build. The clarity brought on this point, including the definition of effective land supply, is helpful, however, we would wish to suggest a further related change to replace the term “5-year effective supply” with the term “5 year delivery programme” to reinforce the distinction. This is that part of the effective land supply that is programmed for delivery in the next 5 years within the housing land audit. We also suggest within the definition of “effective land supply” that the term “within the period under consideration” is removed as this could lead to continuing confusion and protracted debate over the distinction between the two separate matters of: available land supply and the rate of its delivery.
18. We note the reference in the Scottish Government “reasons for the proposed change” that the changes are considered to be broadly in line with the previously published Draft Housing Delivery Advice. Assuming it is the intention that the calculation included in the draft advice and also in the annual Planning Performance Frameworks is used, it may be helpful to set out the calculation explicitly within Scottish Planning Policy, and this matter is covered under our response to Question 3.
19. The clarification in the glossary that *ownership* includes the availability of a willing seller, is particularly supported. 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.
20. While comment has not been asked for paragraph 18 of the consultation states “When the policy is finalised, it is proposed that Section 2, Housing Land Audits, in PAN 2/2010 will be withdrawn. This advice was prepared before SPP (2014) and certain terms have changed in meaning as practice has continued to evolve”. HoPS are concerned that such a key component of guidance (including important definitions) is being proposed to be withdrawn which could detract from the intention of the proposed amendments to provide clarity. HoPS suggest that a replacement mechanism or guidance will be required and would like to work with Scottish Government in co-producing any new Land Audit Guidance. We also encourage priority to be given to the development of the audit on a national digital platform as part of the activities of the Digital Task Force. Some of the findings of the Ryden report on Housing Land Audits will be relevant for consideration in future guidance on Housing Land Audits.
21. Additionally, it seems appropriate to highlight that delivery of public sector led housing is subject to entirely different delivery drivers and therefore rates of delivery are influenced by different factors from market led development. The distinctions and clarifications in the delivery roles between the different actors in the delivery process are explored in more detail

within HoPS submission on Creating Great Places, and is commended to Scottish Government for further consideration during policy drafting.

22. Given these above comments the following policy wording changes are suggested affecting paragraph 123 and the Glossary.

## HoPS Suggested Policy Wording Changes

**Bold** is suggested new

**Red** is suggested deletion

Maintaining an ~~a 5-year~~ effective housing land supply

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

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

**5 year delivery programme: The part of the effective housing land supply that it is anticipated will be delivered in the next 5 years based on the most up to date Housing Land Audit at the point of determination or date of lodgement of an appeal.**

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.

**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?**

23. The proposals to clarify Paragraph 125 and related calculations of land supply, for the reasons provided by Scottish Government are strongly supported.

**Question 3 (a)**

24. The different methodologies for the calculation of land supply employed by various stakeholders at Development Plan Examinations, Planning Appeals and in court has consumed scarce resources within planning services and has caused significant debate and confusion, not least of all for the general public. The revisions and suggested methodology for the calculation of a five year effective land supply is largely in line with the Scottish Government calculation included within the Draft Housing Delivery Advice and HoPS calculations within the Planning Performance Framework and is considered by HoPS to be the most straightforward and robust method of calculating a five year effective land supply.
25. The clarification between the housing land requirement and housing supply targets given in the “reasons for the proposed change”, concurs with HoPS understanding and could also be written into the proposed policy amendments to provide further clarity. Suggested changes to paragraph 115 and the glossary are provided below.
26. We also welcome the clarification that the Scottish Government have provided that the residual or compound method should not be used in the calculation of housing land and 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. Suggested additional wording at paragraph 125 is provided to cover these matters.
27. At the commencement of paragraph 125, it was thought useful to provide some suggested contextual text highlighting the role of the housing land audit in evidencing some of the key measures that form part of the development pipeline including completions, the total remaining effective supply and the estimated programming for the next 5 years.
28. The approach to the calculation of the sufficiency of the land supply is not fully set out and it is suggested, for the avoidance of doubt, that the changes would be aided by inclusion of the calculation either within Policy or the associated guidance. This would ensure that the methodology is clear, unequivocal and not open to mis-interpretation.
29. In particular, proposed amendments or related guidance require to be explicitly clear on the definition of effective housing land supply and 5 year effective land supply. This is to enable the calculation of available years supply, currently included within annual Planning Performance Frameworks, to be applied with absolute clarity. In this regard, and as covered above, it is suggested that the term “5 year delivery programme” should replace the term “5 year effective supply”.
30. Rather than introduce the new term, “extent of the forward 5 year effective land supply” it may be preferable to state explicitly that this is “*The years of remaining effective land supply...*”.

31. Furthermore, HoPS recommends that SPP clarifies the base date for the calculation of whether there is a shortfall or not, to reduce debate and confusion over how these matters are addressed. A finalised Housing Land Audit at the date which an application is submitted to the Local Authority or appeal lodged with the DPEA, should be used as the basis for the five year delivery programme and total remaining effective supply. This should reduce ad hoc interim housing land assessments outwith the audit process being required during assessment of applications or appeals. This matter is addressed within the proposed glossary definition of “5 year delivery programme”.

### Question 3 (b)

32. We again welcome and support the proposed approach to assessing proposals where a shortfall in the five year effective land supply emerges. The approach suggested encourages reflection on the fuller policy context provided by SPP and the development plan.

33. The term “balanced planning judgment” is introduced and bearing in mind the scrutiny being applied to planning policy exemplified in court decisions, it will be helpful to provide absolute clarity to this term within the proposed policy amendments including the glossary. This would include reference to the principles in Paragraph 29. A suggested wording is provided within the response to Question 1 above.

34. The additional text for Paragraph 125 is welcomed however, could be strengthened further 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. Speculative proposal sites brought forward to address shortfalls in a 5 year delivery programme and/or effective supply, should be required to demonstrate that they have clear potential for delivery within that timeframe through provision of an estimated annualised programme. This is critical to ensure that such proposals do not simply become part of the longer term established supply.

35. To provide further clarity and reduce the scope for unnecessary debate that can detract from core policy considerations, HoPS recommend that the phrase “(in both scale and kind)” is deleted. A shortfall is a shortfall and there is potential that the scale of shortfall could be used to create an argument for proposals that would otherwise be deemed unacceptable. The context encourages decision makers to arrive at “balanced planning judgment” taking into account the wider context of SPP and the development plan and HoPS are satisfied that the proposed wording enables the unique circumstance of each proposals including the environmental considerations, to be taken into account.

36. The proposed text of paragraph 125, requires to be amended to reflect that Strategic Development Plans are still relevant in some local authority areas and suggested wording is provided.

37. The recent Court of Session Decision in Inverclyde ([2020] CSIH 44), resulting in the quashing of the housing chapter of that Plan, highlighted the complexities introduced to the setting of the Housing Land Requirement and Targets, as a result of the **timing** of Plan preparation and adoption of the LDP in Strategic Development Plan areas where the Housing Land Requirement and Targets are set earlier in the process. Similar timing issues may arise under NPF4 and/or RSS preparation and the Scottish Government may wish to consider reflecting this detail in SPP or in related technical advice to provide further clarity and remove debate at this stage in plan making. So for example, if the Housing Land Requirement and/or Target is set by NPF4 in 2021, but the LDP is not prepared until 2025, does the Requirement and /or Target remain the same or is some adjustment to be made for

completions in the intervening years. HoPS have not provided specific suggested text to cover this issue but thought it important that this matter is addressed in the development of policy and guidance for NPF4.

38. Given the above comments, we therefore suggest that the following revisions to paragraphs 115, 125 and the glossary. The HoPS proposed wordings do not cover every circumstance but attempt to provide further clarity to the Scottish Government proposed SPP amendments.
39. Finally, HoPS would like to reiterate the points it has previously made, most notably in the response to the NPF 4 Housing Technical Paper in the Appendix “Creating Great Places”, of our desire to reduce time and energy spent on debating numbers to enable more focus on the creation of high quality, healthy and sustainable places. HoPS would encourage a move away from a simple numerical approach towards a more nuanced place based approach to plan making and decisions. Calculations of housing land that imply a spurious level of numerical accuracy, fail to capture the reality and complexity of the development pipeline, housing need and demand, and environmental and place based local considerations. Going forwards within NPF4, a much more intelligently informed approach to land releases is recommended which captures these relevant matters. Therefore, and recognising that these are interim amendments, we would hope that the final changes to SPP within NPF4, are more substantive and move in the direction recommended. HoPS will be happy to work with Scottish Government and give direct assistance and support to the development of the new policy context for planning for housing.

## HoPS Suggested Policy Wording Changes

**Bold** is suggested new

**Red** is suggested deletion

115. Plans should address the supply of land for all housing. They should **provide land to meet the housing land requirement and** set out the housing supply target .....

Maintaining **an a-5-year** effective housing land supply

**125 (a) Each year as part of the annual Housing Land Audit, planning authorities should set out how much of the total Housing Supply Target has been delivered, the total remaining effective supply and the 5 year delivery programme. The years of remaining effective land supply** should be calculated by dividing the housing supply target set out in the adopted local development plan **or Strategic Development Plan if relevant**, by the ~~plan~~ projection period (to identify an annual figure) and multiplying that figure by 5 **to achieve a 5 year Housing Supply Target**. That ~~should be~~ is then compared to the ~~5-year~~ effective housing land supply, based on information collected as part of the housing land audit process. **The Housing Supply Target is not to be adjusted to account for past completions (the compound or residual method).**

The calculation is as follows:

**Five year effective housing supply target** =  $\left( \frac{\text{Development Plan Housing Supply Target}}{\text{Period of Projection (years)}} \right) * 5$

**Years of effective supply** =  $\left( \frac{\text{effective housing land supply (units)}}{\text{5-year housing supply target (units)}} \right) * 5$

**125 (b)** Where a shortfall in the ~~forward-5-year~~ years of 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 (**see glossary**). 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 **within a five year period** ~~(in both scale and kind)~~ should be taken into account to inform this judgement.

Glossary:

**Housing land requirement:** This is the total amount of land to be provided for within the development plan at the date of its adoption. Its purpose is to help ensure that the housing supply target is achieved by including in the plan an additional allowance for generosity. The housing land requirement is not directly applicable when assessing the effective housing land supply which is to be measured against the Housing Supply Target.

**Housing supply target:** The total number of homes that **is estimated** will be delivered **and is applicable when assessing the 5 year effective housing land supply**.

**Glossary: Effective housing land supply:** The part of the established housing land supply comprising sites that are, or it can be demonstrated that they are capable of being, free of

technical constraints including: ownership (i.e. a willing seller), physical constraints, contamination, deficit funding, infrastructure or land use ~~within the period under consideration~~ in normal economic circumstances **for the development plan area.**

**5 year delivery programme: The part of the effective housing land supply that it is anticipated will be delivered in the next 5 years based on the most up to date Housing Land Audit at the point of determination or date of lodgement of an appeal.**

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.

***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.***

40. HoPS are satisfied that the proposed amendments will not directly impact on other types of development and reiterate the point made earlier that national statistics confirm 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, as reflected within development plans.

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

41. HoPS agree with the Scottish Government that there is no need for further impact assessments as the changes to SPP are not significant enough to trigger further assessments or alter the original impacts assessments undertaken on SPP which it was published in 2014.

## Appendix A - SPP Housing Amendments - HoPS List of Evidence

### Aberdeen City

#### Evidence regarding need to treat programming and supply separately

In preparation of the Strategic Development Plan 2020 the Aberdeen City and Shire Strategic Development Planning Authority undertook extensive analysis of completions and programming of housing land supply. The Housing Land Audit 2016 was used as the base year for establishing the effective land supply. The housing allowances for the Aberdeen City and Aberdeenshire Local Development Plans are set in the SDP 2020. Changes in the programming of sites over the course of the preparation of the SDP 2020 and its examination have a resultant impact on the quantum of housing allowances for subsequent LDPs.

Aberdeen City Council does not have a shortfall in its 5-year or post 5-year effective land supply. The Housing Land Audits (HLA) coproduced by Aberdeen City and Aberdeenshire Councils, and agreed with the development industry, clearly demonstrate a robust housing land supply. Such a robust supply is the result of substantial housing land allocations through the development plan process. In order to provide sufficient evidence to support this submission an analysis of the base year and examination year HLAs for the Proposed Strategic Development Plan 2018 is offered in the context of Aberdeen City Council's part of the Aberdeen Housing Market Area.

The HLA 2016 stated that the Aberdeen Housing Market Area (AHMA) had:

- A 7.3-year housing land supply.
- a total effective land supply in the Aberdeen City part of the AHMA of 18,106.
- an established land supply in the Aberdeen City part of the AHMA of 21,126.

The Housing Land Audit 2019 stated that the AHMA had:

- 7.2-year housing land supply.
- a total effective land supply in Aberdeen City part of the AHMA of 16,318.
- an established land supply in the Aberdeen City part of the AHMA of 19,911.

Aberdeen City Council's LDP contains a number of strategic housing allocations which have enabled the city to maintain a robust land supply. In order for these strategic allocations to steadily deliver a supply of new homes a number of significant infrastructure requirements were required to be in the pipeline or in place. This is now the case and these allocations have been consistently delivering new homes. The HLA 2016 indicates that 14% of sites were classified in the Aberdeen Housing Market Area as constrained due to infrastructure. The HLA 2019 indicates that this figure has reduced to 2%.

However, such strategic allocations can be devalued through the current definitions of effective land supply. If programming of these sites is reduced due to market conditions at the time of preparation of HLAs this can result in a narrative emerging that there is a land supply issue when there is not. The dialogue is then turned to the need for new sites to meet an apparent shortfall in supply. This moves the focus away from the delivery of new homes on existing allocations to finding and servicing new sites.

Programming of sites can change the narrative around the effectiveness of housing land supply in a number of ways. One component of this is a reduction in the number of

anticipated completions in the coming years. During the course of the development of the SDP 2020 the issue of programming occurred frequently.

The average anticipated housing completions for the Aberdeen City and Shire HLAs 2016, 2017, 2018 and 2019 are set out in the table below for the eight-year period following their respective year of publication. It can be seen that since the HLA 2016 was published the average annual anticipated housing completions has reduced from 2,614 new homes to 2,368 new homes, a reduction of almost 10%. The HLA 2016 was the base year for the calculation of the effective land supply for the Proposed Strategic Development Plan 2018. A

	2016	2017	2018	2019	2020	2021	2022	2023	Average
<b>HLA 2016</b>	2,309	2,793	3,053	2,829	2,635	2,576	2,420	2,297	2,614
	2017	2018	2019	2020	2021	2022	2023	2024	
<b>HLA 2017</b>	2209	2697	2868	2937	2463	2393	2319	2478	2,545
	2018	2019	2020	2021	2022	2023	2024	2025	
<b>HLA 2018</b>	2,388	3,138	3,246	3,196	2,585	2,420	2,097	1,899	2,621
	2019	2020	2021	2022	2023	2024	2025	2026	
<b>HLA 2019</b>	2127	2586	2854	2936	2564	2186	1943	1747	2,368

collective reduction in the programming of sites from 2016 to 2019, reflective of reduced market demand, reduced the overall effective land supply. However the allocations and permissions did not reduce, not was there such an increase in delivery that it warranted additional allocations to “top up” supply.

In addition to reduced programming the percentage of sites in the Aberdeen Housing Market Area (AHMA) classified as constrained under marketability in the HLA 2016 was less than 1%. By the time of the HLA 2019 the percentage of sites classified as constrained under marketability had increased to 14%. These changes were a result of demand which reflected the impact of the downturn in the Oil and Gas experienced in the north east. This created a narrative that there was a need for increased allocations in the Proposed SDP 2018 and subsequent LDPs. However, the established Housing Land Supply remained stable across both Housing Market Areas.

The anticipated completions across both HMAs of the HLA 2016 have been compared in table 2 to actual completions in the recently published HLA 2019. It has been argued by the development industry that by not delivering the anticipated completions there is yet again a need for additional housing land. In reality the allocations and permissions for many of these sites are still extant and the under delivery is a result of lack of market demand, infrastructure issues or business decisions made by developers themselves. Yet again this under delivery turned into a narrative that there was a need for greater housing land allocations in the Proposed SDP 2018 and subsequent LDPs to compensate for an artificial need for additional housing land. During the course of the examination of the Proposed SDP 2018 some of the court judgements which have been a catalyst for this consultation were emerging.

	2015 (Actual)	2016 (Anticipated)	2017 (Anticipated)	2018 (Anticipated)
<b>HLA 2016</b>	2,093	2,309	2,793	3,053
	2015 (Actual)	2016 (Actual)	2017 (Actual)	2018 (Actual)
<b>HLA 2019</b>	2,082	1,968	2,061	2,194
<b>Total</b>	-11	-341	-732	-859

It can be seen from the table 2 that anticipated levels of delivery did not transpire into reality but there can be numerous reasons for this such as current market demand for new housing or infrastructure delivery.

Anticipated completions in the first few years after the base date of the Housing Land Audit are generally ambitious. In reality some sites end up not coming forward immediately or are built more slowly, partially as housebuilders will not flood the market as it would affect prices. As such the number of houses actually built will always be controlled by the number that the market can absorb without reducing prices.

The development plan is obliged to allocated sufficient land to meet the HMAs Housing Supply Target. The development management system can issue planning permissions for detailed proposals to come forward. However, this is where the planning systems ability to influence housing land supply ends. Delivery of homes on privately held sites is the responsibility of the development industry.

## **Aberdeen City and Shire SDPA**

### Evidence from Examinations

In Q1 of 2018 the SDPA published its MIR which followed a City Region wide HNDA 2017 being regarded as Robust and Credible by the CHMA. Numerous submissions on Housing Land Supply were received. Those submissions which related to housing land supply, generally, covered four main themes: 1) the HST, 2) the HLR, 3) HMAs and 4) Housing allowances for the subsequent LDPs. In response to these submissions the SDPA amended the HST and the HLR, changed the percentage split of the HMAs to increase allocations in the Aberdeen HMA which had been put forward by the development industry and increased the Housing Allowances for subsequent LDPs. The Cumulative Transport Appraisal which would accompany the Proposed SDP and subsequent LDPs required revision to incorporate the changes resulting from the consultation.

In Q3 2018 the SDPA published its Proposed SDP supported by a detailed Housing Methodology Paper. Numerous submissions on Housing Land Supply were received. Despite the MIRs submissions having been taken into consideration in the production of the Proposed SDP the submissions received again generally related to housing land supply and covered four main themes: 1) the HST, 2) the HLR, 3) HMAs and 4) Housing allowances for the subsequent LDPs. The submissions generally argued for:

- the introduction of the high migration scenario (which would require a rate of delivery never achieved on more than one occasion in the 30-year period previous and never over a sustained period),
- a 20% increase to the HLR across the entire plan period
- increased allowances in subsequent LDPs due to; a shortfall in the delivery of housing in the period 2016-2019 and a reduction in programming from the base HLA 2016 used to inform the Proposed SDP to the HLA 2019 which had been approved at the point of examination.
- A further increase in allocations to the Aberdeen HMA

The SDP was submitted to the DPEA in April 2019 and was concluded in January 2020. The matter of housing land supply dominated the examination of the Proposed SDP and resulted

in a Hearing on the above listed issues. Additionally, further information was required to be submitted to respond to detailed questions before the hearing and an additional two further information requests followed the hearing. During the development of the Proposed SDP and its examination resources were required from the SDPA officer team, the Aberdeenshire LDP team, the Aberdeenshire Information and Research Team, the Aberdeenshire Housing Team, the Aberdeen City LDP team and the Aberdeen City Housing team.

Parallel to the examination of the SDP 2020 both the Aberdeenshire LDP MIR and the Aberdeen City LDP MIR consulted on bid sites which aligned with the Housing Allowances of the Proposed SDP. The emerging Local Development Plans were produced on the basis of the housing allowances in the Proposed SDP. The publication of the report of examination of the Proposed SDP recommended a modification to increase the housing allowances for both LDPs of an additional 900 new homes. As a result additional sites were included in the Proposed Aberdeen City LDP which were in addition to those consulted on in the MIR. Such a considerable change from MIR to LDP, and given the time constraints in replacing an LDP, can cause a loss of confidence on the public's part in the consultation process.

#### Evidence regarding need to treat programming and supply separately

The HLA 2016 was the base date for the Proposed SDP's Effective Housing Land Supply. The HLA 2016 had a total Effective Land Supply of 37,077. At the time of examination of the Proposed SDP the HLA 2019 had a total Effective Land Supply of 34,906. This reduction in the Effective Land Supply occurred due to a reduction in programming in each HLA subsequent to the HLA 2016. At the same time the completions recorded in subsequent audits were lower than those anticipated in the HLA 2016. Through a combination of lower than anticipated completions and a reduction in programming the Effective Land Supply was reduced. The total Established Land Supply did reduce for this period however this was as a result of completions rather than programming and the reduction in the total Effective Land Supply was double that of the Established Land Supply. Through a combination of under delivery and collective reduction in programming an assertion was made in submission on the Proposed SDP for a need to increase the Proposed SDP's allowances for future Local Development Plans.

### **East Dunbartonshire Council**

#### Evidence from appeals

From 2014 to 2017 the Council handled 5 planning appeals made on the basis of housing land supply. All of the proposals, at both the application and appeal stages, required significant specialist input from the Land Planning Policy Team, and in some cases in-house and/or external (paid for) legal advice. Whilst there were clear commonalities in the approach taken in all 5 applications/appeals, there were also differences which required resources to understand and interpret the details and nuances of the alternative housing figures pursued by each applicant/ appellants. During this period the Local Development Plan was also examined, which included a hearing on the proposed approach to housing land.

#### Evidence regarding need to treat programming and supply separately

The National Headline Indicators used in the Planning Performance Framework have recently been updated to include the total capacity of the effective supply to reflect this issue. The housing land supply indicators now set out not only the total number of units

programmed within the 5 year period but also details the total capacity of these sites by including the number of units on each site where development will continue into years 6, 7 and so on. In the 2020 Planning Performance Framework this additional measure demonstrates that the volume of unconstrained available for housing development is actually 126 units greater than the figure provided by the traditional method of including only actual programming for the 5 year period. The difference of 126 units between the two figures for 2020 is considered to be modest however it nonetheless demonstrates that the full extent of the supply that is effective in planning terms can currently be excluded from the 5 year effective supply calculations. An important point however, given current economic uncertainty, is the potential for the rate of delivery to reduce significantly and therefore the gap between the 5 year programming and the total capacity of effective sites could widen significantly.

#### Evidence from consultation with HfS on Housing Land Audits

Representations to the East Dunbartonshire Main Issues Report, which was subject to consultation in 2019, disputed the effectiveness and deliverability of the sites proposed in the preferred option stating that only 1 of 25 proposed new sites had a volume housebuilder attached. Similar comments were made on existing Local Development Plan/ Council disposal sites that have subsequently been acquired and developed by national builders (such as Broomhill Hospital in Kirkintilloch and Cadder Works in Bishopbriggs). It should be noted that many of the proposed new sites in the emerging LDP are for the development of affordable housing and the development industry's comments on effectiveness are not relevant in any event.

### **Fife Council**

#### Evidence from appeals

There needs to be a greater focus on the creation and delivery of great places and less focus placed on numbers. We need to look at communities and the amount of housebuilding that an area can sustain, particularly relating to infrastructure. The approval of planning permission on unallocated sites is likely to be in direct competition with the land already allocated. The allocation of land must benefit communities as well as developers and allocation of land which is far in excess of what is reasonably deliverable can undermine the confidence of communities in the planning process.

In Fife, examples of such sites approved by appeal include:

- Spencerfield, Inverkeithing - 15/01147/PPP

Planning permission in principle for erection of residential development with associated access road and infrastructure at Spencerfield, The Avenue, Inverkeithing, Fife – approved by appeal June 2016

<https://planning.fife.gov.uk/online/applicationDetails.doactiveTab=documents&keyVal=NM4H6WHFLO300>

- Crossford - 17/03471/PPP

Residential development, access roads, SUDS, landscaping, and other associated infrastructure at land to the West of Crossford, Cairneyhill Road, Crossford, Fife - approved by appeal December 2019

<https://planning.fife.gov.uk/online/applicationDetails.do?activeTab=documents&keyVal=OYP8S7HFHDR00>

#### Evidence regarding need to treat programming and supply separately

Dunfermline is the strongest housing market within Fife. However, it has around 9,000 houses allocated to its west, north west, north and north east. Some of these sites are beginning to progress with significant activity now being seen on the Strategic Development Areas to the north-west and south-west of the town. It is difficult to see where there is capacity in the housing market to deliver any further houses in this area, particularly with the addition of the new sites allocated in the Local Development Plan. Due to the capacities in the market, these sites are programmed to deliver houses over the next 30 years, long beyond the timeframes of the current Local Development Plan.

At present, in Dunfermline, there are 3,073 homes approved in principle or in detail (4,473 including Halbeath which is awaiting a section 75 legal agreement to be concluded) but with no work started on site. This represents a ready supply with no planning constraint and yet the Council is still receiving planning applications for unallocated sites as it is considered that we have a shortfall in the five-year housing land supply. In addition to these consented sites there are other ongoing developments from Miller Homes (220 units), Barratt Homes (197 units), Taylor Wimpey (400+ units), Bellway Homes (86 units) and Persimmon (165 units).

### **North Ayrshire Council**

#### Response to Annex B of Homes for Scotland Response

Our DPS indicates plan adoption in 2024 (not 2023 as stated in Annex B) which is within 5 (not 4) years but with no slack and was an early/pre COVID timetable. Since then the Scottish Government's timetable for publishing Development Planning regulations and guidance has slipped and I would suggest our April 2020 timetable is very ambitious.

### **Stirling**

#### Evidence from appeals

The Council have had a number of appeals where Housing Land Supply has been highlighted as an issue as part of the appeal. 2 such appeals have been going on for a number of years and have been subject to successful legal challenges, and in the case of 1, a further legal challenge so that it has been returned to DPEA for the 3rd time. In the case of the first legal appeal it was on the basis of Scottish Ministers not taking account of a change in the land supply from when the reporter made their decision and the time ministers issued the decision. This was refused again by DPEA and has now been returned to DEPA for a 3rd time. In the case of the 2nd the reporter accepted the Council's methodology and adopted it for her own purposes. This was successfully challenged on the basis that the reporter did not reach their own conclusions and is now back with DPEA. A significant amount of officer time from both the Development Management and Development Planning

Teams has been required to respond to DPEA on these matters and is still ongoing, in 1 case 6 years after the original application was submitted and 10 years since the site was first considered as part of the LDP. In both the above cases it has become very legalistic and focused on the numbers rather than the quality of the plans themselves. Local confidence in both the Planning Authority and the planning system in general has been significantly eroded due to the time taken to reach a final decision on these applications and the manner in which they are being sought by the developers.

#### Evidence from Examinations

The Council has been unfortunate that in examinations in 2013 and 2017 for the first and second LDP's respectively, the reporters made fundamental calculation errors that has resulted in implications for the authority in terms of development planning and development management. In both cases the Council's effective supply has been questioned extensively, despite there being agreed HLA's in 2015, 2016, 2017 and 2018. For the 2nd examination a hearing was held specifically for housing land and a number of FIR's were issued that involved evidence being required of differing approaches to calculating the 5 year supply across Scotland. This was a significantly time consuming exercise and a large portion of the hearing involved debating the calculation method for the 5 year effective supply and what the base date for the plan should be. Ultimately the reporter decided that the base date should be from the previous plan period and not the current plan period. The reporters then used the wrong figures from the programming and the direction to use them resulted in a shortfall against the increased target. The Council finds itself in a position where a shortfall in the target was found but not in the 5 year supply and despite the debate on the methodology the reporter did not specify a methodology to be used.

#### Evidence regarding need to treat programming and supply separately

The Council notes that through the HLA programming assumptions around the development of the site can change each year whilst the overall planning status and effectiveness of the site remains the same. An example is where a site has been pushed back in terms of the developers programming and this results in part or all of the site leaving the 5 year programming period. Given the nature of sites this scenario can be repeated across multiple sites which cumulatively has a large impact on the 5 year programming total resulting in a loss of supply. The current methodology sets out that where a shortfall exists the Council may require to approve developments it may otherwise not have approved in order to meet the shortfall. This is problematic as the effectiveness of the site in planning terms has not changed, only the speed at which it is to be developed. In this regard there is a need to separate out the availability of land for building and the programming to develop that land as they are 2 different, but related, matters.

#### Evidence from consultation with HfS on Housing Land Audits

The Council has worked extensively with HfS and their members to ensure a robust and swift process to conclude the HLA. These meetings had previously been combative in nature and unpleasant and unconstructive for all involved. For 4 years in a row until the 2019 HLA, the Council and HfS agreed on the programming for all sites. In 2019 7 sites were disputed, primarily as a result of the site not being in the control of a HfS member and therefore not meeting the ownership test of PAN 2/2010. The Council disputed this fundamentally as the test does not require it to be in the hands of a HfS member, rather it requires to be in the control of someone who can develop the site or is willing to divest the site for development.

The Council remains of the view that the information and characteristics of the sites demonstrate that this test has been met.

## **West Dunbartonshire Council**

### Evidence from appeals

PA-160-2030 - Duntiglenan. The crux of this case resulted on the methodology employed to calculate a five year effective land supply. The appellant promoted the following methodology which the Reporter accepted in preference to the Council's: subtracting the available effective housing land supply from 2019-2024 divided by the remaining Housing Land Requirement of the Plan x 5 to get the years supply, and is expressed as follows:

$358$  (five year effective land supply for 2019-2024)  $\div$   $889$  (housing land requirement for Clydebank for 2019-2024)  $\times 5 = 2$  years effective land supply. The Council argued the methodology used by Hops/Scottish Government and the one advocated in the revisions to SPP should be used: This is the approach we argued throughout the appeal should be used, which is five year effective land supply divided by the housing land requirement  $\times 5$ , which is expressed as follows:

$505$  (effective land supply for 2020-2025)  $\div$   $430$  (five year housing land requirement)  $\times 5 = 5.9$  years supply.

The Reporter also based the five year effective land calculation on the HLR and favoured the residual approach.

### Evidence from consultation with HfS on Housing Land Audits

Extensive evidence of constant battles with HFS and their members on effective sites. Constantly want sites removed as their isn't a house builder attached or in the case of new sites or windfall sites they want it removed as they don't agree it has residential potential despite being marketed for that. Also they will want it removed if they don't think the programming will be started in a 7 year period, usually where it isn't a site they are interested in or attached to another non HFS member.

**Appendix B – Planning Performance Data Collated\***

	Established housing land supply		5-year effective housing land supply (PROGRAMMING)		5-year housing supply target		5-year effective housing land supply		Housing approvals		Housing completions over the last 5 years	
	2018-19	2017-18	2018-19	2017-18	2018-19	2017-18	2018-19	2017-18	2018-19	2017-18	2018-19	2017-18
Aberdeen City	16318	23509	10816	12142	7509	7509	7.2	8.1	2015	804	4704	4390
Aberdeenshire	12845	13135	3597	3605	3206	3206	5.6	5.6	2309	2843	5695	5903
Angus	3859	4041	2112	2138	1550	1550	6.8	7.2	685	544	236	1126
Argyll and Bute	5387	5471	3742	3808	3725	3725	5.0	5.1	909	539	1080	1088
Cairngorms	3165	2827	835	753	614	615	6.8	6.1	97	116	318	296
Clackmannanshire	5063	5339	1608	1231	2382	1521	5.0	4.0	145	241	642	605
Comhairlie nan Eilean Siar	904	904	623	623	360	360	8.6	8.6	304	164	361	489
Dumfries & Galloway	8866	9012	3101	2914	3118	2856	5.0	5.1	496	575	1719	1790
Dundee	4924	5236	3452	3340	2400	3050	7.2	5.5	789	459	1580	1318
East Ayrshire	5662	8171	2416	6332	2670	2670	4.5	11.9	462	239	-	1600
East Dunbartonshire	2420	2738	1787	2298	933	933	10.3	12.3	333	275	1590	1751
East Lothian	11818	12586	6896	6720	5308	5466	6.6	6.1	2475	2200	3038	2404
East Renfrewshire	4104	4223	1983	1798	1170	1170	8.5	7.7	12	276	1242	1359
Edinburgh	30164	30204	13748	12155	10256	11469	6.5	5.3	2523	2690	11243	10921
Falkirk	5743	5865	2850	2893	3375	3375	4.2	4.3	511	807	2627	2671
Fife	35750	36790	18146	7605					178	173	5098	4815
Glasgow	40236	39791	20514	17581	15900	12487	6.5	7.0	6835	6967	9493	9087
Highland	29433	30136	6145	4965	-	4472		5.5	1738	1738	4140	4140
Inverclyde	5412	5235	2059	1546	1315	1315	7.8	5.9	512	329	701	681
Loch Lomond & Trossachs	601	641	527	556	375	375	7.4	7.4	25	88	139	126
Midlothian	13580	13708	5133	5371	4410	4336	6.1	5.9	2601	1253	3146	3189
Moray	12387	12848	2328	2391	2690	2690	7.8	6.8	1141	704	1475	1618
North Ayrshire	9110	9249	2443	2405	1585	1585	7.7	7.6	551	451	1359	1350
North Lanarkshire	23241	22212	8674	8100	5300	5295	8.9	7.6	1479	1770	4981	4673
Orkney	1653	2069	1569	1629	539	539	13.7	14.5	125	308	673	682
Perth & Kinross	18777	14798	4252	4115	4230	4230	-	4.9	1317	768	2998	2561
Renfrewshire	9626	10297	4506	4524	3195	3520	7.0	6.4	746	609	3698	3271
Scottish Borders	9342	8586	3668	3469	3589	3898	5.1	4.5	904	171	1405	1489
Shetland	1419	1277	1033	1034	710	710	7.3	7.3	114	101	416	416
South Ayrshire	7975	8084	2761	2476	2545	2545	5.4	4.9	588	174	1219	1045
South Lanarkshire	14266	18275	6138	6171	1058	960	5.8	6.4	1458	1239	5871	4604
Stirling	7858	7030	2708	2217	2080	2080	6.5	5.3	573	125	1448	1490
West Dunbartonshire	5305	5398	1953	1697	1150	1150	8.5	7.4	299	271	1037	1010
West Lothian	24198	24763	7100	7853	6414	6238	5.5	6.3	1023	604	934	3394
<b>Total</b>	<b>391411</b>	<b>404448</b>	<b>161223</b>	<b>148455</b>	<b>105661</b>	<b>107900</b>			<b>36272</b>	<b>30615</b>	<b>86306</b>	<b>87352</b>

Source: <https://hopscotland.org.uk/publications/planning-performance-framework-reports>

\*Please note there may be some missing data due to availability to the local authority at the time of submission

\*\*Fife is covered by two strategic development plans, TAYplan and SESplan. Only TAYplan from 2017 set a housing supply target (HST) for part of Fife. SESplan was prepared under Scottish Planning Policy 2010 which did not require a HST.