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RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION ON
DRAFT PLANNING DELIVERY ADVICE: HOUSING AND
INFRASTRUCTURE

MARCH 2016

ABOUT HOMES FOR SCOTLAND

Homes for Scotland is **the** voice of the home building industry.

With a membership of some 180 organisations together providing 95% of new homes built for sale in Scotland each year as well as a significant proportion of affordable housing, we are committed to improving the quality of living in Scotland by providing this and future generations with warm, sustainable homes in places people *want* to live.

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PROCESS

Homes for Scotland represents members on a wide range of issues affecting their ability to deliver much needed homes.

Our views are endorsed by committees and advisory groups utilising the skills and expertise of key representatives drawn from member companies.

This consultation response has been extensively discussed with a wide range of Homes for Scotland members, and has been prepared with a high level of member input.

RESPONSE TO THE SCOTTISH GOVERNMENT'S DRAFT PLANNING DELIVERY ADVICE: PLANNING AND INFRASTRUCTURE

1. Introduction

- 1.1 Homes for Scotland support the principle of providing advice to assist local planning authorities in supporting the delivery of housing and infrastructure. The consultation comes in the midst of the wider review of planning. It also coincides with strong assurances from Scottish Ministers that increasing housing delivery is a strong priority. There are some aspects of this draft advice that cause significant concern to Homes for Scotland and our members and which we feel strongly could result in fewer homes being delivered, rather than more. Because of the wider signs of Scottish Government support for home building, we believe such consequences would be unintended. We have therefore sought, through our representations, to highlight the potential consequences of different aspects of the advice and, where appropriate, to suggest alternative wording.
- 1.2 Homes for Scotland cannot stress strongly enough the concerns raised by our members over the removal of marketability from the criteria that sites are expected to meet if they are to be considered effective. We recognise that the current definition of marketability (set out in PAN 2/2010) is unclear. However, simply removing the criterion is too blunt a response to this issue and risks removing market realities from the audit process. This is clearly evidenced by the City of Edinburgh's early use of the draft advice to move to a theoretical method of programming sites and calculating the 5-year supply of effective housing land. The industry's feeling on this point is so strong that, if marketability is not retained (albeit with an improved definition) – our preference would be for PAN 2/2010 to remain in place until the wider review of the Scottish Planning system has been completed and implemented.
- 1.3 Industry feeling is equally strong on another of other aspects of the advice, for example the need to ensure shortfalls-to-date during plan periods are not 'lost' when the 5 year supply of effective housing land is being calculated, and the need to ensure constrained sites do not feature in those calculations.
- 1.4 We hope the improved definition of marketability which we have provided, and the other suggested changes that we have outlined, will enable progress to be made, as there are other aspects of the advice which we support and which should help improve wider practice. We have highlighted these within our response. There are a number of detailed aspects of the advice which we believe would benefit from further round table discussions or working party consideration – if the advice is to provide the clarity intended and to have a real, positive impact on the delivery of new homes. Homes for Scotland would be very happy to take part in any such further work.
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1.5 The draft advice seeks to cover a very broad range of policy issues. This can make it hard to identify a clear course of action on moving on from the current difficulties and disagreements in practice that fuel the ‘numbers debate’. Homes for Scotland believes there would be merit in separating out the advice relating directly to housing need and demand and housing land supply into a standalone advice document which focusses on the following key areas:

- Preparing the Housing Need and Demand Assessment
- Setting the Housing Supply Target
- Generosity and the Housing Land Requirement
- Identifying the Housing Land Supply for the plan period
- Preparing the Housing Land Audit
- Calculating the 5 year effective housing land supply
- Preparing for and responding to any shortfall in that supply

1.4 Homes for Scotland welcomes the Scottish Government’s clarification that PAN 2/2010: Affordable Housing and Housing Land Audits remains in place until the draft advice has been finalised, and that the draft advice will not be finalised and adopted until consultees views have been taken into account. We have been very concerned to see heavy early reliance on the draft advice by some local planning authorities, and hope that will be corrected now that this clarification has been provided. We welcome the fact this draft advice has been subjected to consultation. We hope our views will aid its finalisation.

1.5 Homes for Scotland has no comments on Section 1. As above, we welcome the fact the Scottish Government has confirmed that until this advice has been finalised and adopted, PAN 2/2010 remains in place.

2. Planning to Deliver Homes (Section 2)

2.1 This section covers a wide range of issues, some of them quite complex. We believe it would be helpful to clarify the following:

- Advice that relates to plan preparation, and in particular to the identification of an effective housing land supply for the whole plan period

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- Advice that relates to calculating (through the annual housing land audit) whether or not there is a 5 year effective housing land supply

2.2 Clear advice on the latter is particularly important for establishing common ground between local planning authorities and the home building industry on

whether or not there is a shortfall in the 5 year effective housing land supply in each local authority area, from one year to the next.

- 2.3 Homes for Scotland's detailed comments on Section 2, largely taking a paragraph by paragraph approach, are set out below.
- 2.4 The strong opening statement to paragraph 12 gives a clear overview of the level of importance Scottish Ministers attach to increasing levels of house building and to providing sufficient land to meet housing need. For completeness and clarity, we think the words "and demand" should be added to the end of this sentence. Without this the advice could be interpreted as being more geared toward the delivery of affordable homes (to meet 'need') than market homes for sale or rent (to meet 'demand'). We note the desire to move beyond a focus on numbers. To enable this, the advice needs to do as much as it can to resolve differences of approach on numbers. In its current form we don't think the advice will achieve this – and many of our comments below reflect this view and seek to better resolve disagreements on numbers.

Where does housing fit into the vision of a place?

- 2.5 We support the advice (in paragraph 15) that the allocation of a housing site within the plan should carry with it a shared commitment to ensuring it is delivered. Home builders recognise that this applies to them where a site has been promoted by, or with the involvement of, a home builder. It is important, though that local authorities do not promote a view that home builders are wholly responsible for delivery (or non-delivery) of a plan's housing allocations. This is particularly important where the home building industry has raised concerns over deliverability through the plan-making process.

How much housing is required?

- 2.6 We support the advice in paragraph 17 on reaching early agreement on the number of homes to be delivered through a development plan.
- 2.7 We strongly support the advice in paragraph 18 that "there should be little or no debate at the local level within the four city regions on the scale of development required". This is essential if SDPs are to play a meaningful role in planning for housing delivery.

How should the 5 year effective housing land supply be calculated?

- 2.8 Homes for Scotland agrees that local planning authorities need to be clearly advised (paragraph 21) that Housing Land Audits should be prepared on an annual basis. It would be helpful if authorities were also advised when they should seek to publish their draft audit each year. Publication of some audits has slipped considerably in recent years, and the small number of authorities not preparing audits on an annual basis is increasing. In some cases this may

be resource-driven. However, having an up to date (preferably agreed) audit is central to the proper operation of the planning system and can save all parties time and expense during the planning application and appeal processes.

- 2.9 We feel paragraph 21 should be expanded to also advise that published audits should include a clear statement on whether or not they have been agreed by Homes for Scotland. Audits which have not been fully agreed with Homes for Scotland should include a summary explanation of why Homes for Scotland has not agreed to the programming of particular sites, or to the audit as a whole. Some authorities already do this, as good practice. We feel it is essential that all audits carry this information in the future, to enable proper transparency as to whether each audit is truly an “agreed audit”.
- 2.10 Audits should also, we feel, include a clear statement of the 5 year effective housing land supply, expressed as a percentage of the housing supply target for that 5-year period. If this statement has been agreed with Homes for Scotland there may be scope for it to serve as an agreed position for a 12 month period, until the next audit has been agreed. There would be merit in subjecting each audit and accompanying statement to independent testing and sign off, perhaps through the DPEA. The short term resource implications of that should be offset by a reduction in appeals based on a dispute over whether or not there is a shortfall in supply.
- 2.11 We support the unequivocal advice provided (in paragraph 22) that the HST is the baseline for determining whether there is a 5 year supply of effective housing land. Some local planning authorities continue to suggest alternative means of making this assessment, notably the comparison of the effective housing land supply to recent completion rates. The first sentence of paragraph 22 is important in discouraging this, and we would strongly support its retention in the final version of the advice.

Table 1: The Effective Land Supply Calculation

- 2.12 Whilst we support the principle of providing a simple method for calculating the 5 year effective housing land supply, we don't think the method set out here is the right one. Our key concern is that the method does not take account of shortfalls-to-date. The method shown at table 1 suggests each authority can start afresh each year, without looking to catch up with any shortfall in delivery that has arisen to date during their plan period.
- 2.13 Acknowledging and addressing any shortfalls that arise in the 5 year effective housing land supply is a crucial part of ensuring the housing supply target is met. Shortfall to date can be calculated by subtracting completions to date in the SDP / LDP plan period from the housing supply target for the same period. If there is a shortfall, our view is that local planning authorities should seek to 'catch up' on that within the current 5 year period. To achieve this, the HST for

the 5 year period would need to be increased in proportion to the shortfall to date. We believe this recalibration is a fair and logical approach.

- 2.14 Where an SDP or LDP breaks the housing supply target down into sub-periods (see, for example, the SESplan Housing Land Supplementary Guidance), this should be properly reflected in calculations of the 5-year housing land supply.
- 2.15 We strongly recommend that Table 1 be deleted from the advice. The method it promotes is not supported by the home building industry (for the reasons given above) and Homes for Scotland understands it has been dismissed by reporters during planning appeals. Alternative methods which *do* take into account shortfalls to date (and seek to recover these within the 5 year period) have been promoted through a number of appeals and supported by reporters.
- 2.16 Homes for Scotland would be happy to work with the Scottish Government and HOPs on an alternative to Table 1 which does take account of shortfalls to date in the plan period and recalibrates these to allow the effective housing land supply to be recovered in the current 5 year period. A worked example has been provided in the representations provided on behalf of Wallace Land Investments. This could provide a useful starting point for identifying an acceptable alternative to Table 1.
- 2.20 As we have followed the sequencing of the draft advice, we have provided further comments on HLAs and calculating the effective land supply elsewhere in these recommendations. For ease of use and to reduce the risk of confusion, we would recommend that the final version of the advice draws together all of the advice relevant the HLA and the calculation of the 5 year effective land supply into one place. That would include this section, elements of the section on establishing and effective housing land supply, and the section on the role of the HLA and what it should contain.

When does the ‘presumption’ take effect?

- 2.21 Paragraph 25 could be strengthened by giving examples of the circumstances in which a development plan is likely to be considered out of date. I.e. when the local planning authority cannot demonstrate there is a 5-year supply of effective housing land through comparison of an agreed housing land audit to the housing supply target set out in the SDP or LDP.
- 2.22 Paragraph 26 is useful but it could be improved by advising local authorities to take corrective action in advance of a shortfall arising, rather than after the event. HLAs, if used realistically, can be used to anticipate when a shortfall in the 5 year effective housing land supply may arise. The ‘flexibility policies’ suggested here would have more effect if they were used to enable the early

release of additional land to reduce or overcome the risk of that shortfall arising.

- 2.23 Following a recent English Court of Appeal decision¹, we feel there is merit in clarifying the scope of the development plan policies which may be considered out of date in the event of a shortfall in the 5 year supply of effective housing land. Our understanding is that this could extend to any policy which has the effect of limiting the supply of land for housing – for any policy which restricts the release of land in certain areas / types of area.

Housing Need and Demand Assessment (HNDA)

- 2.24 HNDAs play a very significant role in planning for housing as they provide the foundation from which housing supply targets are derived. The information which is fed into the HNDA, and the views and circumstances of those managing the HNDA process, can make a dramatic difference to the evidence produced on need and demand. Sometimes, however, HNDAs are prepared without Homes for Scotland or home builders having an opportunity to genuinely influence the information used to determine need and demand, and the range of scenarios which are planned for. In preparing the HNDA a sensible balance is needed between aspiration and caution. A collaborative approach is needed and Homes for Scotland would strongly recommend that this opportunity be taken to advise local planning authorities to involve home builders in HNDA preparation. This will enable market forecasts to be taken into account – rather than just past trends, and help ensure that the industry's ability to grow and substantially increase housing supply is not suppressed unnecessarily. This should also help share the burden of HNDA preparation and resist what is perceived to be a creeping politicisation of some HNDAs.
- 2.25 Homes for Scotland's strong view is that, in their current form, the factors listed under paragraph 31 are too open to negative interpretation. We are not convinced it is helpful to include this list in the advice. If the list remains, we feel it should be better balanced – reflecting the fact that Scottish Planning Policy requires HSTs to properly reflect the HNDA estimate of housing demand in the market sector and allows HSTs that are higher than the need and demand figures identified through the HNDA. Comments on some of the factors listed (and suggested deletions) are set out below:
- 2.26 **Economic factors which may impact on demand and supply.** We do not consider it necessary to include this factor. The HNDA will have considered economic factors. Economic factors should not be used twice, particularly

¹ Concerning the meaning and effect of paragraph 49 of the National Planning Policy Framework, in particular the meaning of the requirement that policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites", and the way in which the policy is to be applied in the making of planning decisions. <http://www.no5.com/cms/documents/Hopkins%20Homes%20and%20Richborough%20Estates%20judgment%2017%20March%202016.pdf>

where this results in HST numbers even lower than the need and demand figures identified in HNDAs which have been prepared on the basis of a pessimistic view of the economy.

- 2.27 **Construction sector capacity.** Again, we do not consider it necessary to include this factor. There is currently no agreed source of data from which to gauge the current or future capacity of the construction sector. Our recent experience of discussions with some local authorities suggests construction capacity is being used, without evidence, as a reason not to release additional land (even where there are agreed shortfalls in the effective housing land supply) or set ambitious housing supply targets. Inclusion of this factor in the advice will only encourage this.
- 2.27 **Potential inter-dependence between delivery of market and affordable housing at the local level.** Homes for Scotland considers this inter-dependence to be absolute, not just potential. This is particularly the case in areas where local authorities do not have a strong track record of delivering affordable housing other than through developer contributions. The supply of affordable housing rises and falls with the supply of private sector housing and any ambition to significantly increase the supply of affordable housing will need to be supported by generous targets and policies supportive of new market homes. It is also essential that authorities are pragmatic in any link they make between the need for affordable homes and the degree to which they expect home builders to meet that need. Higher demand for affordable homes does not automatically justify a high percentage requirement for affordable homes on market sites. The level of the requirement in each area must be based on what is viable and reasonable. Resisting developments that are not able to provide 25% of homes as affordable, but that could viably make a lower contribution, will restrict the supply of affordable homes rather than increase it.
- 2.28 **Availability of resources.** Until there is greater long term certainty over the availability of funding to support the delivery of affordable housing, this factor can only have a constraining effect. In the meantime, the evidenced demand for affordable homes will not be met.
- 2.29 **Likely pace and scale of delivery, based on completion rates and recent development.** Where this factor is currently applied by local planning authorities their approach tends to be flawed. Home builders are now consistently reporting increases in activity, including visits to sites, reservations, sales, starts and opening of new sites. Recruitment has also increased. None of these positive factors are reflected in past completion rates. In some instances lower completion rates in recent years, when the economic down turn was still in effect, are being used to argue there is a more than adequate supply of effective housing land – even where the supply does not meet the housing supply targets set in an SDP or even an authority's own LDP. We think this factor should be deleted.

- 2.30 We believe there is an additional factor required on **consistency with other policy and initiatives**, to ensure housing supply targets match local, regional and national ambitions, for example for inward investment and economic growth. Housing supply targets (and the approach taken to HNDAs) should be consistent with the wider vision for an area and with any major initiatives underway which will require an increase in the number and range of new homes available. Such initiatives could include City Regional Deals or bids, or other economic development strategies. Efforts to attract inward investment and job growth need to be supported by concerted efforts to increase the supply of effective housing land and the delivery of new homes.
- 2.31 Without a review of these factors we feel the advice encourages local planning authorities towards HSTs that are lower than the need and demand figures emerging from HNDAs. They also discourage an ambitious approach to HNDAs themselves.
- 2.32 Paragraph 32 should encourage local authorities to discuss housing supply targets with the home building industry and, where possible, seek their agreement at an early stage. This certainly needs to happen before the Proposed Plan is published for consultation (as the settled view of the authority) if we are to reach a point where there are fewer disagreements over housing numbers at the Proposed Plan and examination stages. The need to move on from discussion of housing numbers is frequently included in consultation and policy documents – including this one. To achieve that, HNDAs, housing supply targets, housing land requirements, spatial strategies and housing land allocation decisions all need to be better informed by the home building industry’s views and evidence.
- 2.33 In our experience LPAs lean much more towards HSTs which do not fully reflect need and demand, rather than seeking to exceed them. This needs to be strongly discouraged. The paragraph 32 reference to HST figures being higher or lower than the housing estimate in the HNDA should be replaced with a reference to the SPP requirement to ensure the HST properly reflects the HNDA estimate of market demand, and the need for development plans to seek to fully meet need and demand unless there is compelling evidence that this would cause significant harm.
- 2.34 We strongly support (ref. paragraph 33) the need for local planning authorities in city-regions to demonstrate more commitment to delivering the number of new homes that the SDP has allocated to them. Within the SESplan area (for example) some authorities have sought, through the examination process, to argue that the SESplan numbers are unachievable and should be set aside. Others have sought to ignore the two time periods into which the housing supply targets have been split. This is despite the very clear statement in the National Planning Framework 3 that the Scottish Government wants to see concerted efforts, led by SESplan, to deliver a generous supply of housing

land in this area. We also strongly support the clear advice to strategic development plan authorities that effective implementation by LDPs depends on SDPs being clear rather than flexible. The inclusion of the HST in the Main Issues Report is clearly essential if there is to be meaningful engagement and consultation on this point. In light of the draft advice, Homes for Scotland has offered to discuss housing supply targets with SESplan prior to the Proposed Plan being published for consultation. Their recent MIR did not give any indication of what the HSTs may be. We feel strongly that this engagement and transparency gap should be addressed before the housing supply targets are agreed and published for consultation as the settled view of SESplan and its member authorities.

Generosity

- 2.35 Homes for Scotland strongly support the inclusion of advice on the purpose of generosity. In our experience most authorities misunderstand this, and propose the minimum 10% (or sometimes no generosity) being applied without appropriate reasoning. This seems to be largely based on a misunderstanding that the generosity will result in more development than is required by the housing supply target – which encourages a do-minimum approach, particularly in areas where there is pressure to minimise new land releases.
- 2.36 Paragraph 35 could be strengthened by giving some examples of when a generosity allowance at the higher end of the 10-20% range may be appropriate. We think the following are reasonable examples:
- Areas where there is a track record of undersupply, i.e. where completions have consistently fallen short of housing supply targets
 - Areas where achieving the housing supply targets is reliant in part on sites which are currently constrained
- 2.37 Paragraph 36 provides important advice and it is good to see this point being expressed so clearly. SPP makes it clear that, in city-regions, housing land requirements should be set out in the SDP. The SESplan MIR suggested a different approach, which was effectively to delegate the final decision on generosity and housing land requirements to future LDPs. We feel strongly that this undermines an important role of the SDP in providing clarity and removing the need to re-debate these issues as each LDP in the city-region comes forward.
- 2.38 It would be helpful to advise local authorities that providing a good level of generosity provides them with a 'buffer' to help minimise the risk of a shortfall arising in the 5 year supply of effective housing land, and of their housing land supply policies not being considered up-to-date (for the purposes of SPP paragraph 125 and 32-35).

Housing Land Requirement

- 2.39 As with generosity, we strongly support paragraph 38's clear advice on the need to settle housing land requirements for LDPs at the SDP stage.
- 2.40 Paragraph 39 refers to the fact that existing allocations can contribute towards meeting the housing land requirement. It would be helpful if this could be qualified with a reference to ensuring there is up to date evidence that the sites can be delivered within the plan period. Equally, it would be helpful if a reference could be added on minimising reliance on constrained sites. As drafted, this paragraph could be interpreted as discouraging authorities from taking a fresh look at their land supply and from making adjustments to spatial strategies and land allocations in response to market information.
- 2.41 Paragraph 40 should be amended to make it clear that constrained sites should not be counted towards the housing land required unless there is clear evidence that the constraints will be overcome in time to allow new homes to be developed within the plan period.
- 2.42 Paragraph 41 should be amended to make it clear that the main purpose of the HLR is to ensure the HST will be met within the plan period.

Split Plan Periods

- 2.43 Homes for Scotland believes the advice needs to be provided on what to do in instances where an SDP or LDP subdivides the plan period into two or more sub-periods, with different housing supply targets and housing land requirements for each. This approach has been taken by SESplan and Clydeplan. In practice there is no agreed approach for ensuring LDPs are consistent with this aspect of those SDPs. Some authorities have sought to honour split time periods. Some authorities have sought to average the combined housing supply targets out over the whole plan period. Others have done their calculations on the basis of the two time periods only to then argue that it doesn't matter if they fail to meet the housing supply target for the first time period. This has had an impact on LDP preparation and on monitoring the effective housing land supply through housing land audits – and is a major contribution to the protracted discussions on housing numbers that we are all encouraged to move away from.
- 2.44 We believe that, at minimum, this advice needs to include a clear statement along the lines of the following:

Where the SDP or LDP has split the plan period into two or more sub-periods, and identified different housing supply targets and housing land requirements for each of those periods, the following actions will be required:

- *LDPs will need to identify land that is capable of meeting the housing supply target for each sub-period, within that sub-period*
- *Local Planning Authorities will need to monitor their effective housing land supply in a way which reflects the housing supply targets for each sub-period.*

2.45 It would be helpful to provide a worked example. Homes for Scotland would be happy to work with Scottish Government and HOPs on preparing one.

Tables 2 – 4: Housing Figures in Development Plans

2.46 It is important here to reiterate the clear advice given elsewhere in the document that LDPs in city regions should not revisit the housing supply target set in the SDP. The word ‘reflect’ in Table 3 is too soft and suggests scope for variance. ‘Reflect’ should be replaced with ‘repeat’ or ‘confirm’.

Having established the scale of housing required, how are housing sites identified?

Methods to Identify Housing Land

2.47 We support paragraph 43’s advice on identifying a diverse range of sites. This is necessary to ensure choice and competition in the market for land – and it would be helpful if the advice referred to this. The range and mix should include smaller sites that are viable for small and medium sized developers as well as larger sites that offer the scale required for investment by larger home builders. The site sizes required will differ from area to area, and the range and mix of sites for each LDP should be informed by discussions with home builders.

2.48 We strongly support paragraph 45’s encouragement to local authorities to make use of the interventions available to them to move sites forward. In many parts of Scotland there are sites allocated for home builders which are not economically viable – often because there is no current market demand. Intervention is necessary if these sites are to become economically viable and marketable. It is right that local authorities should take the lead on this, though some support from the Scottish Government may be required.

2.49 In relation to paragraph 46, housing delivery in some parts of Scotland is hampered by LDPs and HLAs containing large sites or collections of sites which cannot be delivered through market forces alone. Where there is no identified alternative delivery model for these sites, they should be identified for longer term development but not included in the effective housing land supply, which can prevent home builders from bringing forward alternative, sustainable sites which do have a real prospect of helping to meet the HST.

Build to Rent

- 2.50 The PRS Champion and Working Party will provide representations on this section of the advice.

Establishing an Effective Housing Land Supply (*in LDPS?*)

- 2.51 We think it is important to be clear from the outset which sections of the advice are about identifying the effective land supply for the LDP plan period, rather than identifying the 5-year effective housing land supply through a housing land audit. Pages 12 and 13 of the advice seem to be about the former. The remainder of this section applies both to plan preparation and HLAs.
- 2.52 The paragraph 55 advice on understanding the deliverability of sites is essential. We need to move away from the reliance on sites for which there is no truly reliable route to delivery. Many sites are allocated or retained in HLAs because there is no irrefutable proof that they will not deliver. This is the wrong emphasis and results in many sites retaining their allocation status over a succession of development plans just because an authority “can’t see why it won’t come forward”.
- 2.53 It would be helpful if the advice could include indicators of which sites are likely to be deliverable and developable. These could include:
- The site is available for development (or will be available in time to achieve delivery when programmed)
 - The location is suitable for housing development, and there is market demand for new homes in that location
 - There is a realistic prospect that housing will be delivered at the time it is needed
 - Development of the site will be viable, taking account of planning ‘asks’
- 2.54 Recently a number of LDP examination reporters have used Further Information Requests to ask local planning authorities for evidence on how the 5 year effective housing land will be maintained throughout the plan period. Sometimes an illustration is sought of the 5 year effective housing land supply. This information can be difficult to assemble at short notice at the examination stage, if it has not been considered from the outset of plan preparation. This is particularly the case for those LDPs which are not accompanied by detailed information setting out how the housing supply target will be met. Homes for Scotland believes there would be merit in advising LPAs to accompany their consultation and examination Proposed Plans with a ‘trajectory’ setting out how housing will be delivered throughout the plan period to meet the HST and maintain a 5 year effective housing land supply. Details on this approach were included in the recent Local Plan Expert

- 2.55 On paragraph 57, Homes for Scotland has strong concerns over the practice of inclusion of constrained sites in the effective land supply. It is essential that the advice makes it clear that constrained sites cannot be included in calculations of the 5-year effective housing land supply. There may be more of an argument for allowing LDPs to allocate sites which are constrained during the plan preparation stage, or at the point of adoption – but in these instances it is essential that the constrained sites are not programmed to deliver homes until there is certainty the constraints will have been resolved – with appropriate lead-in times for marketing the land, securing planning consent and beginning to build homes. We would recommend replacing the last sentence of paragraph 57 with:
- 2.56 *The LDP can include sites which are constrained at the time the plan is adopted, providing there is a realistic expectation that those constraints will be removed in time to allow development in the plan period. The steps that will be undertaken to overcome these constraints should be set out in the Action Programme.*
- 2.57 To avoid confusion, this advice should also state:
- 2.58 *For HLA purposes, constrained sites should not be included in the 5 year effective housing land supply until the constraints have been fully overcome.*
- 2.59 In line with our earlier comments on generosity, we feel there is merit in advising local planning authorities that the level of generosity should fully reflect the extent of reliance on constrained sites. Our view is that, to minimise risks to delivery, the generosity margin should be at least equal to the proportion of the housing supply target that is expected to be met from constrained sites.

Criteria for effectiveness

- 2.60 The following would be a helpful precursor to the list of effectiveness criteria:
- 2.61 *To be considered 'effective' there should be evidence to demonstrate that within the following 5 years each of the following criteria is likely to be met:*
- 2.62 We feel the following would be a helpful precursor to the list of effectiveness criteria:

² <https://www.gov.uk/government/publications/local-plans-expert-group-report-to-the-secretary-of-state>

- 2.63 **Ownership** Homes for Scotland believes the current description of the 'ownership' criterion places insufficient emphasis on the availability of land. We suggest the following alternative wording:
- 2.64 **Ownership** A site in private ownership should not be included in the 5 year effective housing land supply until it is already in the ownership or control of a home builder or there is evidence it is being marketed and is available for residential development. A site in the ownership of a local authority or other public body should not be included in the 5 year effective housing land supply until there is evidence it is in a program of disposal and is available for residential development.
- 2.65 Homes for Scotland has very strong concerns over the likely implications of removing marketability from the criteria which must be met for a site to be considered effective. This is particularly important for any reliable calculation of the 5-year supply of effective housing land. We recognise that the current PAN 2/2010 definition of marketability ("the site, or a relevant part of it, can be developed in the period under consideration") is unclear. We and our members have therefore made concerted efforts to establish a more workable definition. Our suggestion is as follows:
- 2.66 **Marketability:** *To be marketable, a site must be in a location where there is market demand for new homes and where there is a reasonable prospect of homes being developed to meet that market demand.*
- 2.67 For increase clarity, we feel this criterion could be retitled 'Demand'.
- 2.68 A wider view of marketability may need to be taken in circumstances where a new settlement or a major urban extension is planned. In such instances SDP and LDP authorities should work closely with the home building industry to establish whether there is realistic potential to create market demand in that location.
- 2.69 On paragraph 59, we would repeat our view that constrained sites should not be included within the 5-year effective housing land supply. We accept there may be room for including them in the established housing land supply, providing they are only programmed to deliver homes after such time as the constraints have been fully resolved. We feel strongly that there needs to be a clear line between land that is effective and will begin to deliver homes in the current 5-year effective housing land supply period, and land that will remain constrained within that 5-year period. There should be no encouragement for including sites within the 5-year effective housing land supply if they do not fully satisfy the definition of effective.
- 2.70 We recommend that paragraph 59 be reworded as follows:

- 2.71 *Whilst sites should meet all of these criteria to be classed as effective, a case can still be made for including a site in an LDP where some are not met, but there is a clear and realistic commitment to overcoming a constraint, for example in the relevant Action Programme.*

What about marketability?

- 2.72 On paragraph 60: As outlined above, our clear preference is for a site's marketability (or market demand) to remain as a defining criterion of its effectiveness. If that happens, paragraph 60 is not required. There would, though, be merit in providing some additional narrative on marketability, as this seems to be the least understood of the criteria for effectiveness. Homes for Scotland would suggest the following wording:
- 2.73 *Marketability is an important consideration that is fundamental to the development and sale of private sector homes. Without home builder confidence that new homes can be sold on a particular site, new homes will not be built. Planning authorities should liaise with the home building industry to understand the marketability of their housing land supply as a whole. The promoters of sites are responsible for providing evidence on whether or not a site is marketable. Early involvement and investment by a home builder or strategic land investor is a good indication that a site is likely to be marketable.*
- 2.74 We do not think it is helpful to advise that planning authorities have a role in considering the attractiveness of a site or area to future buyers. They do not typically have the resources or expertise to enable them to supplement the home building industry's knowledge with their own. We would also discourage the use of past completion rates and land values as a measure of marketability – as these do not paint a complete picture, particularly in a changing market.
- 2.75 It is essential that industry expertise is given considerable weight in deciding whether or not a site can be relied upon to deliver homes within any 5-year period. The approach mooted in the draft Planning Delivery Advice does not support that. If marketability is a consideration that sits beside – but not within – the determination of effectiveness, advice needs to be given on how that consideration is expected to affect decisions – and indeed what decisions it is expected to affect. There is nothing in national planning policy that allows anything other than effectiveness to determine whether or not a site is counted towards the calculation of the 5-year supply of effective housing land. In practice, the effect of this advice is likely to be that marketability is simply set aside. Emerging practice by the City of Edinburgh suggests this is the case. We have also seen the removal of the marketability criteria being raised by other local planning authorities in discussions on emerging audits.

- 2.76 If home builders feel their advice on marketability is not likely to affect the content of a housing land audit they will have no incentive to engage in their preparation. Non-marketable sites will be added to housing land audits on the basis of their theoretical capacity and delivery timescale – these audits will suggest there is an adequate 5-year supply of housing land – but those homes will not be delivered. This will significantly limit the use of the SPP presumption in favour of sustainability to allow the release of land which is effective (and marketable) and which could contribute to meeting evidenced need and demand.
- 2.77 In summary, the likely implication of removing marketability from the definition of effectiveness will be to significantly limit the ability of home builders to increase the supply of new homes on sustainable sites, in instances where the sites specifically identified in the development plan have not delivered homes on time. The Cabinet Secretary has made it clear that Scottish Ministers place a high priority on increasing the delivery of new homes. We cannot stress enough that this can only be achieved if the realities of market demand are taken into account in the preparation of housing land audits and in calculations of the 5-year supply of effective housing land.
- 2.78 On paragraph 61: We would strongly advise that local authorities should not simply guess at what changes may happen in local markets over a 5-year period or a plan period. Development plan policies should, in any case, have the flexibility to allow for changes in market conditions over time.
- 2.79 It is essential that the advice does not give the impression that the likely delivery of housing on a site no longer matters and the theoretical capacity of the site is more important than what will happen in the real world.
- 2.80 We support the emphasis given in paragraph 62 to reviewing the audit status of sites which remain constrained beyond the time at which they were expected to deliver new homes.
- 2.81 We support the recognition here that local planning authorities should not continue to rely on longstanding development sites if there is a lack of market interest. This point merits greater emphasis and should be supported by the changes we have recommended elsewhere in this paper.

Development Viability

- 2.82 On paragraphs 64-68: The viability of a development site is clearly a deciding factor in whether or not it will go on to deliver new homes. The consideration of viability as a material consideration in plan preparation and in development management decisions is, rightly, becoming more prevalent. It will take time for local authorities to increase their expertise in considering viability assessments, and there is no firmly established method for demonstrating the viability of a site. Homes for Scotland's view is that local planning authorities

should be discouraged from introducing significant new information requirements on viability until such time as this issue has been looked at in more detail, perhaps through the wider planning review. We would additionally point out that existing allocations should be subject to the same level of scrutiny as new site proposals: the promoters of new sites should not have a significantly higher bar than the owners of longstanding development sites – particularly those that were first allocated or added to the established land supply before delivery and viability became significant planning considerations.

- 2.83 We also consider it essential that any increase in information requirements relating to viability should be matched by significantly improved information, from local authorities, on developer contributions and other policy ‘asks’ (such as design standards). It is not possible to undertake a robust and reliable viability statement without this information – and it would be unreasonable to ask a site promoter to go to significant expense to produce an assessment which is not fully informed.

What is the role of the Housing Land Audit and what should it contain?

- 2.84 Paragraph 69 seems too focussed on the capacity of land. It should reflect the strong delivery focus of National Planning Framework 3 and Scottish Planning Policy, and the central role that audits play in measuring performance on maintaining a 5-year supply of effective housing land. We would suggest the following explanation of the purpose of the housing land audit:
- 2.85 *The purpose of the Housing Land Audit is to provide a realistic annual snapshot of the housing land supply (including the realistic output of new homes from the effective housing land for the following 5-year period).*
- 2.86 We welcome the advice that housing land audits should be undertaken annually.
- 2.87 In relation to paragraph 70, we agree that an audit should provide evidence to establish whether there is a 5-year supply of effective housing land. Whether an audit achieves this or not will depend upon the extent to which it sets out a realistic output. It would be very helpful if the advice could make it crystal clear that audits should be based on evidence and discussion with the home building industry, and that programming should reflect market realities and not be undertaken on a theoretical basis. An audit which only articulates the theoretical capacity of land can play no useful role in a delivery-focused planning system.

Content of the Housing Land Audit

- 2.88 The third bullet of paragraph 71 should be qualified, to ensure sites are not included in the audit unless there is clear support for housing development. Housing land audits should not contain ‘other land’ that is being considered for other forms of development, or which is not yet available for housing development.
- 2.84 In relation to paragraph 73, the key variables to report in the audit should also include:
- The date the site was first identified in the audit
 - Whether the site benefits from planning consent, and if so...
 - ...what level of consent and the date the consent was granted
- 2.85 On paragraph 74, audits should make it clear which sites are considered to be part of the effective housing land supply. It is helpful if a distinct schedule is provided to show all of the sites that are considered to be part of the 5-year effective housing land supply. It is equally helpful if constrained (non-effective sites) are listed in a separate schedule.
- 2.86 Homes for Scotland does not agree with the paragraph 75 advice that “where past completion rates are lower than expected, it does not always follow that additional land needs to be allocated for housing”. We feel this cuts across the SPP ‘presumption’ by introducing a separate, less clear rule on when additional land can be released by applying that presumption. It would be more helpful to advise local authorities to undertake realistic monitoring so that it is possible to anticipate when a shortfall in the 5-year effective housing land supply is likely to occur, and take proactive steps from an early stage to stop that from happening. If this does not happen – and a shortfall does occur – there should be no question as to whether or not the SPP presumption applies. The advice in this paragraph appears to provide wriggle room on this, and we consider this to be counterproductive to the aim of increasing supply.
- 2.87 The paragraph 76 reference to “a small number of sites” being ineffective does not appear to be evidenced, and we feel it should be removed. In some parts of Scotland there is continued reliance on sites which have proven to be non-effective over a long period of time. In our experience, sites are only very rarely removed from the effective housing land supply – and it can take many years of discussion to achieve those removals. Asking site promoters whether or not their site remains effective is not a reliable measure: If the answer is that yes, the site is effective, consideration needs to be given to why progress is not being made. This is particularly the case for sites which have not yet been marketed, or which have been marketed but have attracted no home builder interest.

Land with agreed potential

- 2.88 Homes for Scotland agrees with the advice that careful consideration should be given to whether to include 'land with agreed potential' in the effective land supply and audit. It would make sense for such land to appear in audits only during the latter stages of LDP preparation. In the years following LDP adoption the audit should only comprise land that has been specifically identified for housing development, or which benefits from an extant planning permission which can still be lawfully commenced. It would be helpful to include this advice within paragraph 79. Urban capacity study sites (for example) should not remain in an audit beyond a decision having been taken that they should not be allocated.

Windfall sites

- 2.89 On paragraph 81: An allowance for windfall sites is routinely made during the LDP preparation process, often based on past trends. The inclusion of windfall sites in housing land audits is more problematic. Homes for Scotland's preferred approach would be to include windfall sites in the audit only once they have gained planning consent. If a site has been identified as being suitable for housing development, and is considered to be effective, it should be allocated. An audit, and the calculation of the effective housing land supply, should be firmly grounded in what is happening or very likely to happen in reality. We do not believe assumptions about unidentified windfall sites should form part of this.
- 2.90 We agree strongly with the statement made at paragraph 82. As above, we believe windfall sites without planning permission should be excluded from the audit altogether.

Small sites

- 2.91 Where small sites comprise a substantial proportion of the effective housing land supply, information should be provided on these sites. Without this, Homes for Scotland (and other stakeholders) have no way of gauging how realistic the reliance on small sites is.
- 2.92 The advice on housing land audits is silent on the subject of constrained sites. Homes for Scotland believes constrained sites should be recorded in a separate audit schedule and should not be added to the effective land supply until the constraints preventing delivery have been fully resolved. Constrained sites, we feel, should never be included within the 5-year supply of effective housing land. It would be helpful if this clarification was added to the advice. This would be consistent with paragraph 123 of SPP, which states "a site is only considered effective where it can be demonstrated that within five years it will be free of constraints"

3. Planning for Infrastructure (Section 3)

- 3.1 There is much in Section 3 to be commended and we welcome this early opportunity being taken to support implementation of aspects of the Ryden report on Planning for Infrastructure. We do though have some issues to outline.
- 3.2 We have concerns over one particular aspect of Section 3. Paragraphs 32 and 33 relate to health and community facilities. There is nothing in current national policy that supports the use of developer contributions towards healthcare provision. We do not consider it appropriate for this advice to introduce new Government policy and we believe this section of the guidance should be deleted.
- 3.3 We think there would be benefit in highlighting the need for local planning authorities to secure buy-in and commitment from home builders at an early stage of plan preparation, as well as from other council departments, statutory consultees and utility providers. This is vital for many aspects of planning – from developing the spatial strategy to selecting sites for allocations, preparing development briefs and masterplans and putting in place policy and guidance relating to developer contributions and infrastructure delivery. It is particularly important that plans are not supported by action programmes that commit individual companies or organisations to actions which they have not clearly indicated they can deliver.
- 3.4 Whilst we see the sense in examining deliverability before allocations are confirmed, we are concerned that some local authorities may place too much of an onus on developers to demonstrate this, with very demanding information requirements which will be costly and difficult to meet. This could significantly increase the costs of supporting a site for allocation. It is important that existing allocations are subjected to the same level of rigour as new sites, when a plan is reviewed. Without a level playing field, those promoting new, deliverable sites will be unfairly disadvantaged in comparison to older sites which were added to plans before NPF3 and SPP introduced the sensible focus on deliverability.

4 Affordable Housing

- 4.1 We note that the PAN 2/2010 content on Affordable Housing has been copied across into the draft Planning Delivery Advice. We would prefer that this part of the advice should remain in its current place until it has been reviewed. Republication of this advice could be interpreted as re-endorsement. As this part of the PAN has not been through the same review process we do not think it should be included in the new advice. Homes for Scotland would be very happy to work with Scottish Government and others on reviewing the PAN 2/2010 guidance on affordable housing, if that would be helpful.

5 Next Steps

- 5.1 Homes for Scotland is keen to contribute to any further work required to finalise this advice, if it is taken forward. We would be happy to discuss detailed changes to particular sections of the advice. This could happen in a round-table manner including representatives of Heads of Planning and other stakeholders, if that would be helpful.
- 5.2 We note the recent work of the Local Plans Expert Group³ in England, and consider their recent report to the UK Government Communities Secretary and Housing and Planning Minister to be very helpful. If the Scottish Government opted to establish such a group to take forward this advice, or to implement relevant aspects of the wider Planning Review, Homes for Scotland would be very keen to play an active role.

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³ Local Plans Expert Group website - <http://lpeg.org/>