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## NORTH AYRSHIRE COUNCIL

30 September 2020

### Planning Committee

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**Title:** The Scottish Planning Policy and Housing – Technical Consultation on Proposed Policy Amendments

**Purpose:** To (1) advise of proposed interim changes to Scottish Planning Policy regarding housing, and (2) seek approval of the response to the consultation on the changes.

**Recommendation:** It is recommended that Planning Committee:

- 1) notes the detail of the consultation on proposed policy amendments to Scottish Planning Policy.
- 2) approves the submission of the response to the consultation, as set out at Appendix 1.

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### 1. Executive Summary

- 1.1 Scottish Ministers are consulting on proposed interim changes to the Scottish Planning Policy (SPP) (2014) to clarify specific parts of the SPP that relate to planning for housing. The changes would remove all references to the presumption in favour of development that contributes to sustainable development from the SPP and set out a clear definition of ‘five-year effective housing land supply’ and how this should be calculated.
- 1.2 The proposed policy amendments address the impact of the COVID-19 pandemic on the preparation of development plans and housing delivery; move planning away from lengthy technical debates over housing numbers, allowing greater focus on enabling good quality development on the ground; and support a plan-led approach to decision-making that maintains the legal status of the development plan as a basis for decisions in all cases.

### 2. Background

- 2.1 Scottish Ministers are consulting on proposed interim changes to the Scottish Planning Policy (SPP) (2014) to clarify specific parts of the SPP that relate to planning for housing. The changes, once finalised, will apply over the interim period ahead of the adoption of National Planning Framework 4 (NPF4).
- 2.2 The implications of the COVID-19 pandemic on the ability of planning authorities to maintain the five-year review cycle of local development plans; on delivery programmes and the rate of housing completions; and a recent decision by the Court of Session

provide the context for the proposed changes. These issues could potentially undermine the commitment to a plan-led planning system, whereby development plans form the basis of planning decision-making to enable the right developments in the right locations.

### 2.3 Two key changes are proposed:

#### **a) Removing the presumption in favour of development that contributes to sustainable development from the SPP.**

2.4 SPP introduced a “presumption in favour of development that contributes to sustainable development”. SPP states that this presumption will be a material consideration for proposals that do not accord with up-to-date development plans. Where relevant policies in a development plan are out-of-date, the presumption will be a significant material consideration. In this regard, where a development plan is more than five years old or where an authority does not have a five-year effective housing land supply, the development is considered ‘out-of-date’, according to SPP.

2.5 The application of the presumption – including by the Courts, in particular in the consideration of large-scale housing releases – according to Scottish Government, has caused considerable confusion, undermines the primacy of the statutory development plan in decision-making and has not been consistent with the Scottish Government’s original intentions.

2.6 With more development plans likely to exceed five years in age in the coming months, the Scottish Government proposes to remove all references to the presumption in favour of development that contributes to sustainable development from the SPP.

#### **b) Clarifying what is meant by a five-year effective housing land supply**

2.7 Planning authorities are expected to maintain a five-year effective land supply. In practice, however, there is widespread inconsistency in how effective housing land supply is calculated and defined.

2.8 The proposed amendment to SPP would define effective housing land supply as: “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” and clarify that housing sites should not be excluded from the effective housing land supply solely due to programming assumptions included in the Housing Land Audit.

2.9 Furthermore, it is proposed that the extent of the five year effective land supply should be calculated by dividing the housing supply target set out in the adopted local development plan by the plan period (to identify an annual figure), multiplying that figure by five and comparing this to the five year effective land supply, derived from the annual Housing Land Audit, to indicate either a surplus or shortfall. This approach, notably, does not take into account previous completions.

2.10 Where a shortfall in the forward five-year effective housing land supply is identified, the proposed SPP wording states this will be a relevant material consideration to be taken

into account alongside other considerations as part of a balanced planning judgement. The weight to be afforded to the shortfall is a matter for decisionmakers to determine, recognising the facts and circumstances of each case, including the contribution of the proposal to addressing the shortfall (in both scale and kind).

- 2.11 In providing a clear definition of the effective housing land supply and standard calculation for the five-year effective land supply, the Scottish Government hope to move planning away from lengthy technical debates over the number of homes we will need in the future to allow greater focus on how we can strengthen delivery and enable good quality development on the ground.
- 2.12 The proposed policy amendments would also address exceptional market circumstances arising from COVID-19 that are likely to affect housing delivery, avoiding the conflation of the availability of land with the relevant, but separate, matter of site programming and build-out rates.
- 2.13 The proposed changes do not dismiss any shortfall in the supply of effective housing land but instead of being determinative, any shortfalls become relevant as part of a wider planning judgement; a shortfall in the supply of effective housing land may be addressed by exceptional releases of unallocated land but only if such proposals are appropriate and will meaningfully address any identified shortfall.

#### Implications for North Ayrshire

- 2.14 Arguments around housing numbers and the application of the presumption in favour of development that contributes to sustainable development have been most keenly contested in areas in Scotland with high demand for private housing development and/or a limited supply of housing land. The application of the 'presumption' has not been an issue in North Ayrshire. Our Local Development Plan, adopted in November 2019, is up-to-date and we have a five-year effective housing land supply. We will continue to work with the house building industry to ensure the five-year supply is maintained, as evidenced in our approach to LDP2 and monitored via the annual Housing Land Audit.
- 2.15 Nevertheless, the deletion of the presumption and the clarity provided by the proposed definition of 'effective housing land supply' and how it should be calculated is supported. The proposed policy amendments will protect the status of LDP2 in decision making moving forward, including in the event that the consequences of COVID-19 impact on housing delivery in North Ayrshire and the effectiveness of our housing land supply. A full response to the consultation is provided at Appendix 1.

### **3. Proposals**

- 3.1 It is recommended that Planning Committee notes the detail of the consultation on proposed policy amendments to Scottish Planning Policy and approves the response to the consultation, set out at Appendix 1.

### **4. Implications/Socio-economic Duty**

#### **Financial**

- 4.1 None.

## **Human Resources**

4.2 None.

## **Legal**

4.3 Scottish Planning Policy is a material consideration in the determination of planning applications.

## **Equality/Socio-economic**

4.4 Scottish Government has considered the requirements for statutory impact assessments, including by screening the proposals in relation to the criteria for Strategic Environmental Assessment, Equalities Impact Assessment, and Children's Rights and Wellbeing Impact Assessment and consider, at this stage, that a fuller assessment is not required given the procedural and technical nature of the proposals.

## **Environmental and Sustainability**

4.5 As above.

## **Key Priorities**

4.6 Affordable, modern and well-designed homes that meets residents' needs is a key priority of the Council, as set out in the Council Plan, along with the action that we will actively promote a mix of homes by facilitating private housing development. This will be supported by a plan-led approach to housing delivery.

## **Community Wealth Building**

4.7 Planned new housing projects which are in accordance with the Local Development Plan can build and retain local wealth in support of community wealth building principles.

## **5. Consultation**

5.1 This committee item reports on and outlines a response to a current Scottish Government consultation on proposed policy amendments to the Scottish Planning Policy concerning housing. Following the consultation, Scottish Government will take all responses into account, finalise the policy, and adopt and publish it as an updated version of the Scottish Planning Policy.

RUSSELL McCUTCHEON  
Executive Director (Place)

For further information please contact **Alistair Gemmell, Strategic Planning Manager**, on **01294 324021**.

## **Background Papers**

None



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

## **Proposed Response from North Ayrshire Council**

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

Scottish Ministers proposal to remove all references to “the presumption in favour of development that contributes to sustainable development” from the SPP is supported. This is considered particularly welcome due to the likelihood that development plans will not be replaced within the five-year review period, both in the coming months due to the restrictions imposed by the coronavirus pandemic but also in the longer-term as the development plan system transitions to the new provisions introduced by the Planning (Scotland) Act 2019. As you are aware, COVID-19 has had an impact on the timetable for these provisions coming into force and the publication of the associated regulations and guidance. This in turn will have a knock-on effect on the programme for preparing LDPs at planning authorities, like North Ayrshire, who have a recently adopted LDP and intend not to prepare their next plan under the existing (old) regulations.

Recent planning reform has reinforced the importance of a plan-led system and the primacy of the development plan at the heart of the planning system. This was being undermined by the presumption, especially in areas of high housing demand and/or limited supply. Removing the ‘presumption’ will help support a plan-led approach to decision-making and maintaining the legal status of the development plan as a basis for decisions in all cases.

*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?*

The proposal to clarify SPP definitions of effective and established housing land supply is also supported.

The availability – or otherwise – of effective land for housing should not be wrapped up in the programming and build-out rates of such sites: there is a clear distinction between available housing land and the rate at which it is delivered. The clarity brought on this point, including the definition of effective land supply, is helpful.

Whilst the term ‘effective housing land supply’ is clearly defined, the term ‘5-year effective land supply’ may require further explicit clarification. Within the land audit, the 5-year component of the effective supply will be that element of the effective land supply programmed over five years: the five-year delivery programme. This will be different to programming based on delivery rates expected in “normal economic circumstances” as referenced in proposed amended paragraph 123. It will be critical to the calculation of the years of effective supply, to define which of these two is to be used, the 5-year programme or programming based on delivery rates expected in “normal economic circumstances”.

As noted in HoPS response to this consultation, the clarification in the glossary that ownership includes the availability of a willing seller, is particularly supported. 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.

*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*

A unified approach to calculating the five-year land supply is long overdue. The different methodologies employed by various stakeholders including at Development Plan Examinations, Planning Appeals and in court has consumed significant resources within planning services and has caused significant delay, debate and confusion. The proposed approach is straightforward and a robust method of calculating a five-year effective land supply, which is welcomed. It is recommended that the revised SPP is accompanied by a detailed technical note that comprehensively defines all elements of the calculation methodology to ensure it is clear, unequivocal and not open to misinterpretation.

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

It is appropriate that any shortfall in the effective housing land supply is addressed as a material consideration in the assessment of specific proposals to remedy such a shortfall, rather than being fed into calculations for housing land calculations of effective supply. The proposed approach to assessing proposals where a shortfall in the five-year effective land supply emerges is broadly welcomed and supported.

*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.*

It is agreed that the proposed amendments will not directly impact on other types of development.

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

Agreed.