



Law Society
of Scotland

Consultation response

Draft National Planning Framework 4

March 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Planning Law Sub-committee welcomes the opportunity to respond to the Scottish Government's consultation on *Draft National Planning Framework 4*¹ (NPF4). We have the following comments for consideration.

General comments

General remarks

Given the additional statutory requirements (duties and responsibilities) for NPF4 contained in section 3A of the Town and Country Planning (Scotland) Act 1997, we consider that it would be prudent to cross-check that the draft NPF4 is fully compliant. In particular, we note further comments below regarding housing needs including those of older people and disabled people, in connection with Policy 9. The structure of the document makes the checking exercise somewhat challenging, and we suggest that a short chapter be included setting out those statutory requirements in a single place and identifying where these are discharged in the document itself. We consider that this will reduce the potential for the legality of NPF4 being challenged.

We note that there was previously, under Scottish Planning Policy (SPP, para 28-29), a policy principle of a presumption in favour of sustainable development which was considered to be a matter of great importance with clearly set out with criteria to assess applications. This presumption had been engaged in a number of key planning decisions. While we appreciate that the presumption is now being cast in a different way to in the past and that there is a need to allow some flexibility within NPF4, we consider that the concept of sustainable development needs to be more clearly embedded across the draft NPF4 with explicit references included. National Outcomes are fairly high level and therefore this is vague. The context of NPF4 is more progressive than the legislation itself and so we consider that there is a potential to end up with conflicting policies. We suggest that stronger reference sustainable development and the national outcomes within the document would assist in this regard.

¹ <https://consult.gov.scot/local-government-and-communities/draft-national-planning-framework-4/>

While we consider that the document is clear around the policies to be included in development plans themselves, greater clarity is required as to the status of the various aspects of NPF4 in terms of forming part of the Development Plan for decision making. It is not clear if it is the intention that only Part 3 on National Planning Policy requires to be complied with in this regard. We suggest that guidance may be needed around how the policies set out in Part 3 are to be interpreted and included in the Local Development Plan (LDP).

Part 3 – National Planning Policy

National Planning Policy in the NPF4 sets out policies that will apply across Scotland other than where these need to be adjusted to meet local requirements. While we welcome this proposal, it is important to recognise that these will form the central plank of policies against which a proposal will be consented or refused including what conditions are to be attached. They are therefore matters of the first importance in the planning system. While interpretation of policy is ultimately a matter for the courts, it is vitally important that these policies are clear-cut, and their meaning is fully understood. Some of the policies relate to development planning and as such, it would be helpful if the document stated that they are not to be used for decisions on applications. This might seem an obvious point, but we consider a clear statement is needed for the sake of clarity and certainty.

We consider that there is a potential for conflict between the policies set out in NPF4 and those within existing LDPs or what may be emerging in LDPs, when under the Town and Country Planning (Scotland) Act 1997, the later policy will prevail in terms of primacy. If a latter LDP trumps the national planning policy, this has the potential to undermine the approach. We expect that the 'gate-check' process and LDP inquiry will have a key role to play in this going forward. We note that the Scottish Government has launched a consultation on *Local development planning - regulations and guidance*². We suggest that this may seek to address some of the potential transitional issues.

Some policies are entirely new and arise from new priorities such as the climate crisis and community wealth building. Others have had only minor changes made to their previous iteration in SPP 2014, while others have been changed considerably or have been significantly expanded. We question to what extent the policies have been 'stress-tested', particularly against the background that a number of existing policies have developed (and are well understood) over a period of a number of years. While we recognise that there is an impact assessment available, this covers matters at a fairly high-level and in line with statutory requirements. For example, policy 5 focusses on community wealth building which is a new policy. It is not clear how this will work in a planning context or how this sits with existing duties on planning authorities for sustainable economic development. The concept itself does not seem to be defined within draft NPF4 and there is the potential to create uncertainty in the system given the lack of clarity.

The policies appear to require a number of additional assessments to be undertaken as part of assessing planning applications. This is potentially fairly burdensome, with burdens resting on planning authorities and/or

² <https://consult.gov.scot/planning-architecture/local-development-planning/>

development itself. The extent to which additional content in the consideration of planning applications is expected is unclear.

Greater clarity and certainty around the wording used in the policies would be beneficial. For example, a number of the policies refer to development being “supported” or “not supported” but the meaning of this is unclear. Does this mean that development is to be approved or not to be approved? It is important that there is strong degree of consistency across the policies. At present, Scottish Planning Policy has a ‘right development in the right place’ basis, however, this is not reflected in these policies. The concept of a ‘presumption in favour’ has also previously been used in planning policy.

In addition, we note that a number of the policies use the word “should”. We consider that this is ambiguous – it is not clear where this means that the relevant policy must be complied with. The meaning of planning policy including development plan policies is a matter of law, rather than judgment³. The legal meaning of planning policy must therefore be clear and be able to be understood by all parties. While we note that Scottish Government explained the rationale behind the use of the word “should” during a Scottish Parliamentary evidence session before the Local Government, Housing and Planning Committee on 18 January 2022⁴, we do not consider this explanation to be sufficient to provide the necessary clarity for those using NPF4 going forward.

It is important that the wording used is as unambiguous as possible so as to enable a decision maker to make out a clear assessment on whether development proposals comply with the relevant policy and if not, the extent of non-compliance. This assessment will enable a decision maker to decide whether the proposals overall comply with the development plan.

We consider that the use of the word “should” as well as other ambiguous language within the policies has the strong potential to render policies unenforceable due to the lack of clarity as to whether development meets the requirements of the policy. This potentially has significant consequences for the effectiveness of NPF4.

Further, we note that some policies use language to suggest that ‘if X is not done, the application should not be granted’. It is not clear from such language whether this is intended to mean that one or more policies will trump others in the development plan. We suggest that consideration may be merited as to the effects of using such language. We note that the model followed in policy 32(g) could perhaps be mirrored elsewhere – i.e. a purposive statement followed by qualification and clear language around when planning permission can be granted if criteria are met.

As indicated above, the presumption in favour of sustainable development appears to have been retained across the breadth of NPF4 but we consider there is merit in including a specific presumption in favour of sustainable development. The existing presumption in SPP was considered by some to be unwieldy and

³ *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13, paras 17 to 23

⁴ SP OR LGHP 18 January 2022, col 19-20

containing too many factors. Consideration could be given to examining how the English NPF incorporates the presumption by reference to three overarching objectives as follows:

- a) an economic objective
- b) a social objective and;
- c) an environmental objective

However, we recognise the move in Scotland away from focusing on these three objective parts and towards the wider national outcomes and Sustainable Development Goals. This in itself has a degree of complexity but we recognise that the previous model has also caused difficulty with no clear priority between these three factors.

At present, the interpretation of sustainable development is not clearly set out in the document. For example, while the 'sustainable places' section of the Spatial Strategy defines the concept with ecological sustainability at its core, this itself is not defined in NPF4. This could be defined in the glossary. That said, there is a need to be clear as to the prioritisation of possible competing factors within the concept of sustainable development. We consider that stronger content on sustainable development is required within NPF4 so as to clearly show how this is threaded through the document and through each of the policies in particular. We note that this could be done by way of a strong link to the national outcomes.

The policies here differ from what has gone before and the application of national policies across Scotland is likely to be challenging. While NPF4 contains ambitious and laudable principles, it is difficult to see how these can be implemented in practice across the five different geographical areas and the document lacks in detail as to how many aspects will be achieved in practice. The policies are varying in their breadth and depth, and therefore appear to have differing scope for diversion at a local level. It would be helpful if the document was more explicit about the circumstances in which local diversion from the policies may be appropriate and the extent to which that may be appropriate. Specific policies do not always appear to align with the more general statements within NPF4.

We note that it is stated on page 68 that "The following Universal Policies should apply to all planning decisions", however this conflicts with the policies themselves on multiple occasions. It may be helpful to split policies into those requiring to be addressed in LDPs (development planning) and those that require to be considered in each application (development management).

There is also uncertainty as to the hierarchy of the policies and guidance must be provided on which policies are intended to take precedence over others.

There is a clear need for cross-consistency within the NPF and there are some issues within the policies around the internal consistency of the contents of the document itself. For example, policy 30, part (c) on greenfield developments cuts across other aspects of the document and it is not clear how a decision-maker is supposed to grapple with this.

It is also notable that there are no development plan or development management policies on some of the matters of importance to the national economy including the role of air travel, oil and gas and the transition

from fossil fuels, or nuclear energy proposals. We suggest that consideration of these matters in national policies should be considered.

Consultation response

Part 1 – A National Spatial Strategy for Scotland 2045

1. Sustainable places. Our future net zero places will be more resilient to the impacts of climate change and support recovery of our natural environment. Do you agree that this approach will deliver our future net zero places which will be more resilient to the impacts of climate change and support recovery of our natural environment?

No comment.

2. Liveable places. Our future places, homes and neighbourhoods will be better, healthier and more vibrant places to live. Do you agree that this approach will deliver our future places, homes and neighbourhoods which will be better, healthier and more vibrant places to live?

No comment.

3. Productive places. Our future places will attract new investment, build business confidence, stimulate entrepreneurship and facilitate future ways of working – improving economic, social and environmental wellbeing. Do you agree that this approach will deliver our future places which will attract new investment, build business confidence, stimulate entrepreneurship and facilitate future ways of working – improving economic, social and environmental wellbeing?

No comment. We question how the Productive Places strategy translates into the policies required to deliver it.

4. Distinctive places. Our future places will be distinctive, safe and pleasant, easy to move around, welcoming, nature-positive and resource efficient. Do you agree that this approach will deliver our future places which will be distinctive, safe and pleasant, easy to move around, welcoming, nature-positive and resource efficient?

No comment. Per our comment at Q3, we question how the Distinctive Places strategy translates into the policies required to deliver it.

5. Distinctive places. Our future places will be distinctive, safe and pleasant, easy to move around, welcoming, nature-positive and resource efficient. Do you agree that the spatial strategy will deliver future places that overall are sustainable, liveable, productive and distinctive?

No comment.

6. Spatial principles. Do you agree that these spatial principles will enable the right choices to be made about where development should be located?

The document is not clear as to the status to be given to the spatial principles in planning decision making.

While NPF4 acknowledges that a flexible approach will be needed, it is not clear how all of the policies will work in practice. For example, we question how the concept of 20-minute neighbourhoods is intended to work in rural parts of Scotland.

7. Spatial Strategy Action Areas. Do you agree that these spatial strategy action areas provide a strong basis to take forward regional priority actions?

No comment.

8. North and west coastal innovation. Do you agree with this summary of challenges and opportunities for this action area?

No comment.

9. North and west coastal innovation. What are your views on these strategic actions for this action area?

No comment.

10. Northern revitalisation. Do you agree with this summary of challenges and opportunities for this action area?

No comment.

11. Northern revitalisation. What are your views on these strategic actions for this action area?

No comment.

12. North east transition. Do you agree with this summary of challenges and opportunities for this action area?

No comment.

13. North east transition. What are your views on these strategic actions for this action area?

Paragraph 10 lacks strong promotion and improvement of public transport to address high car ownership. Paragraph 12 appears to focus on the area as outward transport hub and does not address this matter.

14. Central urban transformation. Do you agree with this summary of challenges and opportunities for this action area?

No comment.

15. Central urban transformation. What are your views on these strategic actions for this action area?

It is not clear how Regional Developer contributions are proposed to function in the Central Urban Transformation area. Consideration is required as to whether this is competent within the current section 75 agreement framework.

We note that this is a fairly diverse area to apply one approach and consideration is likely to be required as to how to achieve this in practice.

16. Southern sustainability. Do you agree with this summary of challenges and opportunities for this action area?

No comment.

17. Southern sustainability. What are your views on these strategic actions for this action area?

No comment.

18. National Spatial Strategy. What are your overall views on this proposed national spatial strategy?

We do not seek to comment on the specific question asked.

Reference is made in this section to “nature positive” however we do not consider that the definition of this is clear from the document. While National Planning Policy 3 concerns ‘Nature Crisis’, it is not clear from NPF4 what “nature positive” itself means and how it relates to other factors. It would be of assistance if this were included in the glossary.

Part 2 - National developments

19. Do you think that any of the classes of development described in the statements of need should be changed or additional classes added in order to deliver the national development described?

We do not seek to comment on the particular classes of development.

We note that based on the information available within the draft NPF4 and attachments, the assessment of the various candidate sites appears somewhat cursory, and it is not clear whether there is a robust evidence-base for assessing the sites. While there is some commentary in the document around why new sites have been added, for example, relating to the climate crisis, justification for individual decisions is lacking to some extent. There is a differing approach in some cases between the approach being taken here and previously (for example, Ravenscraig was previously given great significance but now has a lesser focus) and so clear justification for this would be of benefit. We note that airport enhancements and Grangemouth which were previously national development have been deleted. Some justification for this would be appropriate.

In addition, it is not clear how some of the national developments are intended to be delivered, for example, those focussing on green sustainability. The nature of these makes them unlikely to be delivered entirely on a private basis, but the Scottish Government appears to consider them key to achieving the net zero vision.

Where a National Development has a locational component (e.g. 500 metres from the river-Clyde Mission) what happens if only part of a development which otherwise qualifies falls within that locational requirement? Is that development national development or part national development and if so how does NPF4 apply to the decision-making?

We consider that the document could more clearly set out how national developments might interact with regional spatial strategies and with the 'action areas' identified in part 1 of the draft NPF4.

20. Is the level of information in the statements of need enough for communities, applicants and planning authorities to clearly decide when a proposal should be handled as a national development?

We consider that the level of information is not enough in some cases to allow parties to clearly decide when a proposals should be handled as a national development.

In relation to 'Urban, Sustainable Blue and Green drainage solutions', we consider that the scope of the designation is unclear. It is not clear whether this national development is meant to apply to any form of major development that requires a drainage or water management solution.

In connection with the Clyde Mission, we consider that the location for when major applications become national development appears ill defined under the document as it stands: "The river and land immediately next to it (up to around 500 metres from the river) along its length." This is likely to lead to conflict on when an application should have been defined as national development. We suggest that this could be resolved by the revised wording emphasised in the following: "The river and land immediately next to it (**where any part of an application site is within** 500 metres from the river) along its length."

Turning to the Edinburgh Waterfront, we consider that the location for when major applications become national development appears to be ill defined, with the document referring to "Edinburgh, initial focus on Leith to Granton". The intended extent of Leith and Granton would be better expressed via a map or plan. We consider that greater clarity in the wording is required including a more precise geographical location. For example, what does 'initial focus' mean? Does this reference the focus of investment or set a limit in scope of

when applications become national development? It is not clear whether it is intended that during the lifetime of NPF4, this policy is to begin applying to all of Edinburgh or to all of 'Edinburgh Waterfront'. As drafted, this development could be interpreted as meaning that any major development in Edinburgh constitutes national development which we do not expect was what was intended.

21. Do you think there are other developments, not already considered in supporting documents, that should be considered for national development status?

No comment.

Part 3 – National Planning Policy

22. Sustainable Places. We want our places to help us tackle the climate and nature crises and ensure Scotland adapts to thrive within the planet's sustainable limits. Do you agree that addressing climate change and nature recovery should be the primary guiding principles for all our plans and planning decisions?

We consider that the question of addressing climate change and nature recovery as the primary guiding principles for all plans and planning decisions is a policy choice for the Scottish Government in drafting NPF4 and for the Scottish Parliament in its role in approving the plan. We recognise the international and domestic legal framework relating to climate change and in light of the ambitious net zero targets and Scottish Governments' commitments in relation to tackling climate change, it is important that policies and plans are fully considered against the background of achieving the desired climate change objectives while providing the necessary detail as to how the objectives will be achieved in practical terms.

While it appears implicit that it is the Scottish Government's intention, we do not consider that the NPF4 as currently drafted frames climate change and nature recovery as the primary guiding principles as the document does not give these factors any greater weight than others.

We consider that the content in the Sustainable Places section of the document is very broad and as such, does not directly relate to the policies which follow it. It is therefore unclear as to how the universal policies are expected to be translated into practice and what LDPs will require to do.

23. Policy 1: Plan-led approach to sustainable development. Do you agree with this policy approach?

We refer to our comments above at Q22. In light of the legislative purpose of planning to "manage the development and use of land in the long term public interest" and the reference within the provisions of section 3ZA of the Town and Country Planning (Scotland) Act 1997 to sustainable development and achieving the national outcomes, we consider that there has to be a plan-led approach to sustainable development in order to align with the purpose.

The intention of this policy seems to be that it only applies to the creation of development plans and not decision making on individual applications. This appears contradictory to the statement at page 68 of the NPF4 that “The following Universal Policies should apply to all planning decisions”.

24. Policy 2: Climate emergency. Do you agree that this policy will ensure the planning system takes account of the need to address the climate emergency?

We refer to our comments above at Q22.

We suggest that some explanation of what “significant weight” and “significant emissions” mean in practice should be provided.

25. Policy 3: Nature crisis. Do you agree that this policy will ensure that the planning system takes account of the need to address the nature crisis?

We note that this policy applies in relation to development planning and development management. Some greater explanation within the policy as to the ‘nature crisis’ and its justification would assist users of the NPF4.

We do not consider that the policy is clear as to what is actually required for compliance. We note that the requirements for local developments and national/major developments vary, with a differentiation appearing to be based on quantum, however, it is not clear from the policy how this is to be measured. For example, in part (d), reference is made to including “nature networks within and adjacent to the site” – does this mean that offsite habitat enhancement works is expected in all cases? No guidance provided in the policy on this issue.

We note that NatureScot has consulted on its Developing with Nature guidance⁵. While the guidance contains a lot of detail about biodiversity enhancement measures, the guidance itself acknowledges that the decisions around what measures are appropriate in the circumstances are for the planning system. It is therefore not clear from the NPF4 document or the guidance how the appropriate level of measures is identified. In addition, this guidance appears to focus on local development only.

The policy uses the expression “**should** facilitate” (our emphasis) biodiversity which is ambiguous. Does that mean this policy must be complied with? In terms of securing positive effects for biodiversity, we question whether this policy may be more explicit in allowing ‘offsite’ enhancement where a particular proposal cannot in terms of its development footprint deliver such effects.

26. Policy 4: Human rights and equality. Do you agree that this policy effectively addresses the need for planning to respect, protect and fulfil human rights, seek to eliminate discrimination and promote equality?

We note the existence of legal duties under the Town and Country Planning (Scotland) Act 1997, Human Rights Act 1998 and the Public Sector Equality duty. As the policy is currently drafted, it is not clear if it is

⁵ <https://www.nature.scot/doc/consultation-developing-nature-guidance>

intended to add something to the legal duties that already exist. If it is not intended to add to existing legal duties, we consider that this does not require a stand-alone policy and the content could be moved to the overarching content of the document. If the policy is intended to add to these duties, we consider that the policy lacks clarity as to what is required for applications to comply with this policy.

This policy uses the expression “**should** respect” (our emphasis) which we consider is ambiguous. Does that mean this policy must be complied with?

We welcome the reference in this policy to the responsibility to consult and engage others collaboratively, meaningfully and proportionately. It is important that all members of the community have an opportunity to engage with planning. This includes individual disabled people, and the representative groups and organisations which are more likely to know and understand particular circumstances and needs of disabled people. Steps should be taken to facilitate engagement with organisations for disabled people, organisations of disabled people, and with individual disabled people. The full range and diversity of disabilities should be recognised, both in ways to notify disabled people and to support them in expressing their views. The resource implications of such engagement should be recognised and supported.

27. Policy 5: Community wealth building. Do you agree that planning policy should support community wealth building, and does this policy deliver this?

We consider that there is a lack of clarity as to what is required in terms of this policy. While there is material available which concerns community wealth building from out-with the planning system, this concept is not clearly defined within NPF4. Given the potentially wide scope of the concept of community wealth building generally, it is not clear what is required from the planning point of view in order to comply with this policy. We suggest that this could be usefully defined within the glossary.

This policy refers to the “Development Plan” although it appears that this should in fact be a reference to “Local Development Plan”. This seems to be correctly stated elsewhere in the document.

This policy uses the expression “should address Community Wealth Building” (our emphasis). Does that mean this policy must be complied with?

28. Policy 6: Design, quality and place. Do you agree that this policy will enable the planning system to promote design, quality and place?

The policy uses the expression “**should** be designed to a high quality” (our emphasis) and thereafter the word “should” is referred to in terms of compliance. Does that mean this policy must be complied with?

29. Policy 7: Local living. Do you agree that this policy sufficiently addresses the need to support local living?

This uses the expression “**should** support” (our emphasis). Does that mean this policy must be complied with?

30. Policy 8: Infrastructure First. Do you agree that this policy ensures that we make best use of existing infrastructure and take an infrastructure-first approach to planning?

The policy uses the expression “should”. Does that mean this policy must be complied with?

We consider that this policy lacks clarity as it does not clearly set out how the various component parts work together or what the mechanism for delivering infrastructure will be. For example, it is not clear whether it is envisaged that section 75 agreements are to be used to deliver infrastructure across Scotland.

We consider that it is important for the policy to describe the continued role of section 75 Agreements in infrastructure delivery and possibly to set out the Scottish Government’s position on the possible introduction of the Infrastructure Levy.

We suggest that there would be merit in Section 75 Agreements and related agreements having their own policy.

Given the potential for infrastructure to span across more than one planning authority, it would seem appropriate for reference to be made in this policy to the use of regional spatial strategies.

31. Policy 9: Quality homes. Do you agree that this policy meets the aims of supporting the delivery of high quality, sustainable homes that meet the needs of people throughout their lives?

This policy uses the expression “should”. Does that mean this policy must be complied with?

We consider that the detail contained within items a) – j) of this policy are fairly major policies in and of themselves on the broad topic of homes. It may be clearer to separate these components into separate policies.

We consider that the wording in this policy requires greater clarity and specification. For example, in part (i), we understand that there are conflicting views as to how the phrase “exceeding delivery timelines” is to be interpreted.

The Town and Country Planning (Scotland) Act 1997 as amended places an obligation on Scottish Ministers to include a statement in the National Planning Framework about how they consider that development will meet the outcomes listed in section 3A(3A) including the housing needs of older people and disabled people. In addition, section 3CD of the Act places a duty on Ministers to report to Parliament every two years on how the planning system is operating the meet the housing needs of older and disabled people and contains a

requirement for LDPs to address the housing needs of the population of the area and the availability of land for housing, including for older people and disabled people (section 15). We consider that there is insufficient content within the draft NPF4 as to housing needs in order for these requirements to be met.

We suggest that Policy 9 should clearly set out the needs in terms of housing, both in terms of quality and quantity, and how these needs should be met at local level. As it stands, and in conjunction with the content in Annex A, we do not consider that the contents of NPF4 are sufficient to meet the specific requirements of the Act on these matters. This also gives rise to concerns as how NPF4 and in turn, development, will contribute to the outcomes of improving health and wellbeing and improving equality.

We suggest that NPF4 should make clear the need for a sound evidence base for the content that is provided in LDPs by way of housing numbers and site allocation. We note the significant research and analysis set out in the Integrated Impact Assessment Society and Equalities Impact Assessment, and suggest that similar detailed research and analysis is undertaken to demonstrate what needs exist, and how planning authorities might address them.

32. Policy 10: Sustainable transport. Do you agree that this policy will reduce the need to travel unsustainably, decarbonise our transport system and promote active travel choices?

This uses the expression “**should** need to be” (our emphasis). Does that mean this policy must be complied with?

33. Policy 11: heat and cooling. Do you agree that this policy will help us achieve zero emissions from heating and cooling our buildings and adapt to changing temperatures?

This uses the expression “should”. Does that mean this policy must be complied with?

34. Policy 12: Blue and green infrastructure, play and sport. Do you agree that this policy will help to make our places greener, healthier, and more resilient to climate change by supporting and enhancing blue and green infrastructure and providing good quality local opportunities for play and sport?

This uses the expression “should”. Does that mean this policy must be complied with?

35. Policy 13: Sustainable flood risk and water management. Do you agree that this policy will help to ensure places are resilient to future flood risk and make efficient and sustainable use of water resources?

This uses the expression “should”. Does that mean this policy must be complied with?

We question how compliance with this policy is to be demonstrated – for example, can all aspects of the policy be assessed and addressed in a flood risk report or similar, or is something more required?

36. Policies 14 and 15 – Health, wellbeing and safety. Do you agree that this policy will ensure places support health, wellbeing and safety, and strengthen the resilience of communities?

These policies use the expression “should”. Does that mean that these policies must be complied with?

We suggest consideration is given to whether the meaning of “health impact assessment” is clear. That could be explained in the glossary.

37. Policy 16 – land and premises for business and employment. Do you agree that this policy ensures places support new and expanded businesses and investment, stimulate entrepreneurship and promote alternative ways of working in order to achieve a green recovery and build a wellbeing economy?

This uses the expression “should”. Does that mean this policy must be complied with?

Home working has been a mainstay for office work in the last 18 months. We consider the policies on home working should provide greater direction for this method of working beyond the Covid-19 pandemic.

38. Policy 17: Sustainable tourism. Do you agree that this policy will help to inspire people to visit Scotland, and support sustainable tourism which benefits local people and is consistent with our net-zero and nature commitments?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

Due to the current and ongoing uncertainty on when the use of residential properties for short-term letting (outwith short-term let control areas) becomes a material change of use, we consider that it would be very helpful and is important for the Scottish Government to provide clear policy advice around short-term letting, for example, by setting the number of days which a property could be let for without there being a material change of use. This is causing great uncertainty, particularly in areas such as Edinburgh and Glasgow, leaving planning authorities to carry out their own amenity impact assessment on a case-by-case basis and to decide as a matter of fact and degree whether a material change of use has occurred. We consider that it is essential that the NPF4 grapples with this issue and provides a policy direction for the whole of the country.

In Greater London under the Deregulation Act 2015, no subjective planning assessment is needed, and a material change in use is held to occur if the property is let for short-term letting for a total of 90 days in any calendar year.

In relation to part e) on short term holiday letting, we question if the loss of residential accommodation is valid for the whole of Scotland, rather than being a matter for LDPs to cover as appropriate to the relevant area. In addition, it is unclear how this policy addresses the net zero target.

39. Policy 18: Culture and creativity. Do you agree that this policy supports our places to reflect and facilitate enjoyment of, and investment in, our collective culture and creativity?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

40. Policy 19: Green energy. Do you agree that this policy will ensure our places support continued expansion of low carbon and net-zero energy technologies as a key contributor to net-zero emissions by 2045?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

We consider that greater clarity is required in this policy. For example, in relation to the reference to ‘unacceptable impacts’ in part d), it is not clear what those impacts might be and threshold for them being ‘unacceptable’. Clear criteria should be set out so as to create a degree of consistency and certainty for all those involved.

Under part g) some explanation as to why areas identified for windfarms should be suitable for use in perpetuity, yet consents may be time limited.

41. Policy 20: Zero waste. Do you agree that this policy will help our places to be more resource efficient, and to be supported by services and facilities that help to achieve a circular economy?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

We consider that the requirements for compliance with this policy are unclear as the policy is ambiguous and appears very flexible and would not appear to point towards achieving “zero waste” if that is the intended policy. It would be helpful if the policy contained proposals setting out how compliance is to be demonstrated, such as some form of expert report.

In particular, the criteria at part i) is that applications for energy from waste developments “should supply a decarbonisation strategy aligned with Scottish Government decarbonisation goals and be refused where the strategy is insufficient”. NPF4 does not provide guidance as to how such a strategy should be prepared, what it is to cover or the basis for a decision maker judging whether the strategy is “sufficient”. It is somewhat surprising that such detail is not provided given that the decarbonisation strategy appears to be of such importance that failure to provide a sufficient strategy would result in refusal of the application. In this regard, an application may be compliant with all other policies in the NPF but fail to meet this particular criteria and so

would have to be refused - we do not consider this proportionate, particularly given the lack of detail provided in the policy.

42. Policy 21: Aquaculture. Do you agree that this policy will support investment in aquaculture and minimise its potential impacts on the environment?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

We would question why part c) only gives protection to migratory fish on the north and east coasts of mainland Scotland?

Should the policy supporting aquaculture include a time limit for development proposals?

It is unclear if the Nature Crisis policy also applies to aquaculture.

43. Policy 22: Minerals. Do you agree that this policy will support the sustainable management of resources and minimise the impacts of extraction of minerals on communities and the environment?

We do not seek to comment on the specific question asked.

This uses the expressions “should” and “does not support”. Does that mean this policy must be complied with?

In part d) a description of “sustainable” extraction of aggregates would be merited.

Policy 23: Digital infrastructure. Do you agree that this policy ensures all of our places will be digitally connected?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

We consider that part e) on the operation of existing digital infrastructure has the potential to blight sites that have already been allocated for development in an LDP (but not yet consented) and this may therefore require careful consideration.

45. Policies 24 to 27 – Distinctive places. Do you agree that these policies will ensure Scotland’s places will support low carbon urban living?

We do not seek to comment on the specific question asked.

These policies use the expression “should”. Does that mean they must be complied with?

In terms of retail, we consider there is a policy gap in relation to online shopping which has grown significantly. Clearly this impacts on in-store shopping and the NPF does not explain how this should be managed in planning terms. Online shopping has a dependency on its delivery mechanisms and distribution centres.

46. Policy 28: Historic assets and places. Do you agree that this policy will protect and enhance our historic environment, and support the re-use of redundant or neglected historic buildings?

We do not seek to comment on the specific question asked.

This policy uses the expression “should”. Does that mean this policy must be complied with?

It is unclear from the current drafting of the policy that the distinct legal tests for Listed Buildings and Conservation Areas and Schedule Monuments have been understood in the statement. Separate legal tests require to be considered in this regard, and so this is not only a matter of development plan compliance.

In addition, we note that varying wording is used throughout the parts of the policy despite the policy presumably seeking to achieve the same aim. For example, part (h) on scheduled monuments discusses ‘exceptional circumstances’ but this is not used in most other parts of the policy. This disparity in the wording means that there is disparity in the tests to be applied. It would be clearer for those operating with the policies if greater alignment could be reached.

47. Policy 29: Urban edges and the green belt. Do you agree that this policy will increase the density of our settlements, restore nature and promote local living by limiting urban expansion and using the land around our towns and cities wisely?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

It is unclear if this policy means that a special case must be made for the use of green belts.

48. Policy 30: Vacant and derelict land. Do you agree that this policy will help to proactively enable the reuse of vacant and derelict land and buildings?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

Repurposing redundant buildings, although a laudable objective, would merit greater detail in this policy.

49. Policy 31: Rural places. Do you agree that this policy will ensure that rural places can be vibrant and sustainable?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

50. Policy 32: Natural places. Do you agree that this policy will protect and restore natural places?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

In relation to part i) concerning wild land, it is unclear how the policy to prevent development in wild land sits with policy 19 concerning windfarms.

51. Policy 33: Peat and carbon rich soils. Do you agree that this policy protects carbon rich soils and supports the preservation and restoration of peatlands?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

52. Policy 34 – Trees, woodland and forestry: Do you agree that this policy will expand woodland cover and protect existing woodland?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

While this policy addresses preservation of woodlands, we consider that it does not address the urban context of preserving and including additional trees in new development to support the move to net zero. This would appear to be inconsistent with the stated goal of the policy.

53. Policy 35: Coasts. Do you agree that this policy will help our coastal areas adapt to climate change and support the sustainable development of coastal communities?

We do not seek to comment on the specific question asked.

This uses the expression “should”. Does that mean this policy must be complied with?

We consider that point e) would merit greater clarity in relation to how it is currently framed and how it interacts with the rest of the policy. For example:

- 1) We consider that reference to applications that “may impact on the coast” is vague and we consider could result in dispute over whether Policy 35(e) applies to an application. Other parts of Policy 35 use the apparently narrower terminology of applications in a “coastal location” which seems clearer. If the intention is that policy 35(e) only applies to those same types of applications, then we suggest that consistent terminology with the rest of policy 35 should be used.

- 2) Point e) states “it should address any appropriate issues” – we consider that this is vague, ill-defined and may lead to disputes over whether this development plan policy has been met. It would be clearer if the policy included a list of matters to address, where they apply to the proposed development. Alternatively, point e) could cross refer to the rest of policy 35 in terms of the matters that are expected to be addressed.
- 3) We consider that it is unclear from NPF4 itself how it is intended that policy 35(e) be met. Is it expected to be a requirement to include some form of assessment of the coastal issues in the design statement, with the policy requirements of what will be acceptable development being addressed in the rest of policy 35? If this is the intention, then point 1) above is relevant given the requirement to address coastal issues in the design statement seems to be for a wider range of applications than is covered by the rest of policy 35. In such applications, the design statement may identify potentially unacceptable coastal issues, without them technically constituting a breach of the rest of policy 35 due to it being more narrowly framed.

Part 4 - Delivering our spatial strategy

54. Do you agree with our proposed priorities for the delivery of the spatial strategy?

No comment.

55. Do you have any other comments on the delivery of the spatial strategy?

We consider that the Spatial Strategy is a critical component of NPF4 but as it stands, lacks detail. We consider that it would be helpful to have some explanation as to how the various components of the development plan would interact with the content of the NPF. There is a potential tension as to whether planning authorities will want to adopt the policies in full or may wish to adapt them for the circumstances within their local area. The extent to which planning authorities will have freedom to adapt the policies is unclear.

It would be helpful if NPF4 more clearly set out the hierarchy of the NPF and its connections with LDPs and regional spatial strategies, including the extent to which regional spatial strategies have to align with the NPF.

Part 5 - Annexes

56. Annex A. Do you agree that the development measures identified will contribute to each of the outcomes identified in section 3A(3)(c) of the Town and Country Planning (Scotland) Act 1997?

We do not seek to directly answer this question.

We consider that it would be of assistance if the document included a single page setting out all of the duties under the Town and Country Planning (Scotland) Act 1997 as amended and demonstrating compliance with these.

In relation to point a) concerning housing needs, please see our comments above in connection with Policy 9. While we note that Policy 9 is referred to within the Outcomes Statement, that policy is vague in terms of what is required as it does not cover all housing nor specify defined housing needs, including for older people and disabled people.

57. Annex B. Do you agree with the minimum all-tenure housing land requirement (mathlr) numbers identified above?

We do not seek to comment on the numbers proposed.

We wonder if there is a possibility to keep the Minimum All-Tenure Housing Land Requirement (MATHLR) under review more frequently than at 10-year intervals. Accurately predicting the MATHLR 10 years hence appears unrealistic. In addition, there are potentially significant knock-on effects for preparing an LDP in 9 years hence, as an LDP in this situation will likely almost immediately not be providing sufficient housing by the time NPF5 is prepared.

58. Annex C. Do you agree with the definitions set out above? Are there any other terms it would be useful to include in the glossary?

We note that while the Glossary is a useful addition, it is incomplete and would merit the inclusion of other definitions. We refer to our comments above, in particular, suggesting that 'nature positive', 'community wealth building' and 'health impact assessment' be defined.

Integrated Impact Assessments

59. Environmental Report. What are your views on the accuracy and scope of the environmental baseline set out in the environmental report?

We have no comments.

60. Environmental Report. What are your views on the predicted environmental effects of the draft NPF4 as set out in the environmental report? Please give details of any additional relevant sources.

We have no comments.

61. Environmental Report. What are your views on the potential health effects of the proposed national developments as set out in the environmental report?

We have no comments.

62. Environmental Report. What are your views on the assessment of alternatives as set out in the environmental report?

We have no comments.

63. Environmental Report. What are your views on the proposals for mitigation, enhancement and monitoring of the environmental effects set out in the environmental report?

We have no comments.

64. Society and Equalities Impact Assessment. What are your views on the evidence and information to inform the society and equalities impact assessment?

We have no comments.

65. Society and Equalities Impact Assessment. Do you have any comments on the findings of the equalities impact assessment?

We have no comments.

66. Society and Equalities Impact Assessment. Do you have any comments on the findings of the children's rights and wellbeing impact assessment?

We have no comments.

67. Society and Equalities Impact Assessment. Do you have any comments on the fairer Scotland duty and the draft NPF4?

We have no comments.

68. Society and Equalities Impact Assessment. Do you have any comments on the consideration of human rights and the draft NPF4?

We have no comments.

69. Society and Equalities Impact Assessment. Do you have any comments on the islands impact assessment?

We have no comments.

70. Business and Regulatory Impact Assessment. Do you have any comments on the partial business and regulatory impact assessment?

We have no comments.

For further information, please contact:

Alison McNab

Policy Team

Law Society of Scotland

DD: 0131 476 8109

alisonmcnab@lawscot.org.uk