Summary of Consultation responses:

Please note that the ordering of the comments reflects the order in which they appear in the consultation drafts rather than indicating the level of importance that is attributed to them.

Consultation on the proposed revisions to the National Planning Policy Framework:

The clarification regarding the status of Written Ministerial Statements is welcomed.

The statement in paragraph 9 that the sustainability objectives "are not criteria against which every decision can or should be judged" is welcomed. The emphasis is correctly on addressing sustainability through plan making.

The Society welcomes the proposed removal of the reference to the presumption in favour of sustainable development as a "golden thread running through both plan-making and decision-taking". The existing wording created confusion about the status of the presumption relative to the development plan and led to inconsistent appeal decisions.

The reference to "strategic plans" should be changed to refer to plans containing strategic policies.

The reference to meeting any needs which cannot be met within neighbouring areas is welcomed. The effect of this is to create an expectation that such needs will be met unless the conditions identified apply, and should make it more difficult for LPAs to simply resist helping meet the needs of neighbouring areas.

POS does not support the removal of the core principles - having these upfront and all together set the scene well. Officers, developers, members and PINs all knew the Governments intent clearly.

It is impractical to imply that NPs should be reviewed every 2 years to give them greater weight. 5 years would be more reasonable in line with the expectation that Local Plans are reviewed every 5 years.

The Society has welcomed the shift in Government policy towards joint strategic planning, which will be a keystone of the planning system in the future. However, it regrets that the importance of joint planning is not made sufficiently explicit.

The general objective of ensuring that strategic priorities are properly covered, is understood. However, as currently framed it requires that for each area there should be a strategic plan i.e. a single document, which addresses all the strategic priorities for the area. This could present difficulties for groups of LPAs which have responded to MHCLG encouragement to work strategically together by preparing (or proposing) high level strategies which deal only with those matters which need to be dealt with across boundaries. A strength of such high-level strategies is that they leave other matters, including strategic priorities which do not need to be addressed across boundaries, to be dealt with within the individual LPAs' own plans.

Concern is raised about the reference to a joint or individual local plan. It is appreciated that this reflects the reality that there will be some LPAs where there are no cross-boundary issues with

neighbours, or where such issues can be resolved by informal strategies or through statements of common ground. However, POS is concerned that there will be some planning authorities which will seize upon the reference to individual plans as legitimising going it alone, and not working effectively with neighbours where there are self-evident cross-boundary issues.

The reference to effective joint working being integral to the production of a positively prepared and justified strategy is welcomed.

Concerns that the proposed new statement of common ground will become just another bit of paper. They will clearly be vital bits of evidence to support the new tests of soundness which will require strategic issues to be agreed across HMAs (or other defined strategic area). The NPPF should say that they 'must' be prepared not 'should'. These must not be a new version of Duty to Cooperate statements – they need to set out a coherent strategy for managing growth across strategic areas, with a clear approach to overall housing and distribution, and to strategic infrastructure priorities. This is not explicit in the NPPF or PPG.

Concerns regarding the lack of clarity as to what policies in the local plan the recently adopted NP takes precedence over. This creates confusion for decision takers and the public. In addition, with the review of Local Plans at least every 5 years, it is inevitable that the strategic and local policies will be replaced soon after a NP is made, potentially making large parts of it superseded unless there is considerable effort made to recognise subtle differences that the NP policies have introduced. A possible solution would be to require LPAs to liaise with the NP group and produce an explicit statement to clarify which NP policies remain in force, and those which are superseded.

In general, we really welcome the clear statement that developers should be delivering what's in the plan because it has been viability tested and should therefore be deliverable. But they don't, and the historic reason is the current NPPF paragraph 173 allows them to overpay for land in the confident knowledge that they can argue viability in the DM process and Affordable Housing is the area that always takes the hit. We have therefore proposed additional text using the RICS Red Book definition of Market Value and reflecting the then Secretary of State's response to an Islington Judicial review (Autumn 2015) that his "unambiguous policy position" is that land or site value "should reflect policy requirements". This additional paragraph would really help to stop the gaming where developers overpay for the land in the knowledge that they can argue viability in the planning process, which is generally the most difficult part of the viability argument to tackle. There have been several recent appeal decisions which try to tackle this and so it would be good if the NPPF could continue the recent progress that has been made to sort out this area.

The draft PPG states that SoCG should be prepared by "neighbouring" minerals and waste planning authorities to address the need for and distribution of minerals and waste facilities. For minerals, the links between areas of demand and areas of supply are often not just between neighbouring authorities. Clarity is required as to whether SCGs on minerals and waste can and should apply to a wider geographical context than just that of neighbouring authorities.

We have provided a number of learning points from the 'Statement of Common Ground' pilots.

POS agrees that most of the time a viability assessment will be capable of being made 100% public. However it recognises that there are circumstances where they should not be, and that is a matter

of law. The Environmental Information Regulations require LPAs to balance the developers' reasonable requirement for confidentiality against the public interest of disclosure. This has to be done each time and cannot be set out in policy generically.

POS welcomes the clear statement that developers should be delivering what is in the plan because it has been viability tested and should therefore be deliverable. But they don't, and the historic reason is the current NPPF para 173 allows them to overpay for land in the confident knowledge that they can argue viability in the DM process and Affordable Housing is the area that always takes the hit. It is important that review mechanisms should be seen as a mechanism to capture market changes and not a solution for 'dodgy' viability appraisals. The problem is such mechanisms generally provide cash rather than actual affordable housing on site.

POS welcomes the support for pre-application and PPAs. However LPAs should charge appropriately for this service as it is not sustainable to provide professional opinions for no fee, especially considering that Local Authorities will be self-financing by 2020.

POS supports the proposed new Strategic Infrastructure Tariff as this provides another incentive for joint planning. However, it appears that access to this will be extremely limited. As currently proposed, SIT can only be raised by either a combined authority or a S29 joint committee. However, this poses some obstacles as MHCLG has said that S29 committees can't include both counties and UAs which is clearly perverse and, if true, groups with both county and UAs, which tend to be around cities, which is exactly where you will need joint plans in future would be ruled out. In addition, S29 committees need a small amount of legislation to set them up and, given the significant pressures on Parliamentary time this poses some major practical issues of setting any new committees up.

POS objects strongly to pre-commencement conditions having to be agreed in writing and submitted a joint objection with the British Property Federation to the original consultation. We strongly feel this will slow down the planning process and have unintended consequences.

It would be clearer to refer to "non-travelling travellers" rather than simply travellers, notwithstanding the footnote.

As a result of proposed revisions it is likely that we will see more build to rent homes. It would be useful for Government to provide national wording for Section 106 agreements or otherwise setting out how long they should remain as rental considering the 0% affordable housing requirement. In general POS supports standardised legal wording where appropriate to save resources and challenge from developers and ultimately get homes built quicker.

We have real concerns regarding the changes to assessing housing land supply. It has always been based on assessments of what can reasonably be expected to happen, and this is an inherent part of practice in preparing SHLAAs. The proposed change would mean that rather than needing to show that there is a reasonable prospect that delivery on sites can happen, LPAs would be required to demonstrate somehow that it definitely will happen. This would be beyond a LPA's control, since only landowners or developers could give the answer, and even then, in many cases they could only indicate their intention or expectation, not say that it will definitely happen. The reference should be changed to say completions are capable of beginning within five years.

POS welcomes the ability for neighbourhood plans to make revisions to Green Belts. However, given that the preparation of strategic and neighbourhood plans may not be in synchronisation, changes should not be restricted to where the need for revision has been demonstrated through a strategic plan. It is suggested that where it is not possible to provide sites to meet the requirement figure for a neighbourhood area without the release of land currently in the Green Belt, and where the LPA agrees, LPAs should be able to advise a neighbourhood planning body that they may review the Green Belt boundary of a particular settlement to enable land to be released for development. In doing so they must have regard to the purposes of the Green belt and any changes will, of course, be subject to Independent Examination and the test of a referendum.

That 20% sites allocated should be 0.5 hectares or less is considered to be arbitrary. We think we understand the intention to be to encourage small house builders with small sites which tend to have a better delivery rate. However, Imagine you are an inner-city LPA with many large complex regeneration sites. You cannot allocate them all because you can't find sufficient garage courts to get up to 20%, this would reduce the number of allocated homes and slow down delivery. POS agrees that there is a need to push for these to be recognised as developable sites, but the proposed NPPF revisions already provide the mechanisms to do this

We do not agree with the application of the presumption in favour of sustainable development where delivery is below 75% of the housing required from 2020? (See our introductory text where we object to the Housing Delivery Test).

We do not agree with the new policy on exception sites for entry-level homes. The current wording is ripe for problems of interpretation and dispute over its application. The Society is concerned that it will be exploited by certain landowners and developers claiming compliance with the policy when what they propose is essentially ordinary market housing

Given the government's current emphasis on new Garden Towns and Villages, it is surprising that they are not mentioned.

Account should be taken of the initial findings of the Oliver Letwin report, where it has been evidenced that large scale development will not necessarily lead to a lot of homes being built quickly. Housebuilders will be sure not to saturate the market.

There is a major issue of principle regarding the suggestion that where new settlements or large urban extensions are proposed, LPAs should consider whether to establish new Green Belts. We would question whether it is right to promote the creation of new Green Belts, particularly since to date their function has been to contain the growth of conurbations and major urban areas, whereas new settlements and urban extensions are likely to be proposed in a much wider range of locations, where the validity of new bits of Green Belt must be questionable.

The Society questions whether the proposal that where an LPA prepares an annual position statement there should be a 10% buffer, which can be compared with the 5% buffer which will otherwise apply where the LPA can show sufficient housing delivery over the past three years would serve a useful purpose. It would be likely to be a disincentive to LPAs to prepare annual position statements.

POS raised the issue in the previous consultations that, where joint plans are being prepared, the LPAs should be able to manage both 5-year land supply and housing delivery test on a 'plan' basis and not on a 'LPA' basis, as in the current system. The draft PPG allows this where there is no LPA apportionment through the strategic plan but there is no explicit reference in the NPPF – only with regards to HDT in PPG. This must be clearer and must be included in the NPPF or there will be significant legal fallout. This is a massive incentive for LPAs to do joint plans especially where they are relying on long term strategic solutions, so it is important to get it right.

We support the flexibility in the NPPF to accommodate sites for local business and community needs outside existing settlements. However, we would urge that existing settlements and existing buildings should be first preference.

POS is generally concerned that senior managers in LPAs are going to be held to account on meeting housing numbers, assessed through the housing delivery test and having a sound up-to-date (preferably joint) local plan. With this pressure we feel that employment sites, jobs and some infrastructure will be a much lower priority as there are no similar targets or profile given to this. We believe in mixed and balanced communities for a sustainable future and would urge the NPPF to give priority to employment uses where appropriate as well as the main priority of delivering housing.

We are concerned that, as worded, paragraph 121 could put important existing minerals and waste facilities at risk of loss to housing development. This paragraph should be consistent with national policy on safeguarding of minerals facilities and on making sufficient provision to meet the need for waste management facilities (National Planning Policy for Waste). In addition, it should be clarified that the minerals supply and waste management industries are 'key economic sectors'.

POS welcomes the approach that LPAs should refuse applications which they consider fail to make effective use of land, but this should be the case nationally and not just in areas where there is an existing or anticipated shortage of land to meet identified housing need. Land is a finite resource even in areas which can easily demonstrate a five-year supply.

Although POS supports the efficient use of land and delivering housing quickly, the quality of places is important. We do not want to create slums for the future, rather attractive, high quality and therefore sustainable places to live, as emphasised by the Secretary of State and the Planning Minister at the recent Design Conference.

We welcome the support for early discussions in relation to development proposals. However a LPA should not weigh the level or quality of engagement in favour of a proposal as this has no bearing on the quality or appropriateness of a scheme. Developers and the communities' expectations should be managed, and whether early engagement with the community takes place should not be a reason to approve or refuse a scheme. An application should be assessed on its planning merits.

The requirement to have appropriate tools and processes for assessing and improving the design of the development should not put responsibility onto LPAs to design schemes. It is the developer's responsibility to design a high quality and appropriate scheme for an area, and for the LPA to facilitate the engagement that makes that more likely to happen.

The streamlining of the NPPF has removed elements relating to quality of life. Paragraph 9 and the 12 core planning principles at paragraph 17 have been removed. This change means that the draft

feels as if it is numbers driven, and at odds with the MHCLG Design Quality Conference held on 25th April. The way it is written gives the sense that the effect on people either in existing communities or in new has been relegated even more so than in the current NPPF.

The references in paragraph 113 and elsewhere in the current NPPF to locally designated landscapes and wildlife sites do not appear in the revised draft. It is urged that this is addressed, because otherwise there is the risk that the revised NPPF has withdrawn protection from them, which is not believed to be the intention.

Wording in the current NPPF should be reinstated to make it clear that 'minerals are essential'. Its removal implies that government no longer considers minerals to be 'essential'. POS notes and welcomes that the revised NPPF retains the key elements of the Managed Aggregate Supply System (MASS). POS strongly believes the MASS to be fundamental to the continued provision of a steady and adequate supply of aggregates through the planning system and that this is essential for the delivery of the housing, infrastructure and other development that the country requires.

We agree with the 6 months grace period on Local Plans and that the new test of soundness should come in immediately. We disagree that the Statements of Common Ground should come in immediately, they need some phasing in. We are concerned about a plan examined under the transitional arrangements (and hence the old NPPF) being found out of date in the DM world as soon as it is adopted. It could be very problematic on say housing numbers examined under the old methodology for example.

It would be helpful if there was greater linkage between the NPPF and the NPPW, to make it clear that they are both part of national planning policy and that they need to be used together both in planning for waste management and in planning for development more generally.

Supporting housing delivery through developer contributions:

The Society has supported the principle of:

- simplifying the evidence to demonstrate local infrastructure need and being able to respond to changing market conditions. However we have stressed that any pragmatic approach needs to be clearly set out in guidance to avoid protracted arguments at examination;
- a more proportionate approach to consultation and engagement;
- removing unnecessary barriers in relation to the current pooling restrictions but has emphasised the need to avoid new house prices being used as a comparative measure of values as they do not necessarily indicate viability or profitability. In addition we caution against the use of standardised definitions and set percentages in relation to strategic sites. Setting criteria for lifting pooling restrictions presents many difficulties which will add complexity and not necessarily achieve the desired results. The impact of imposing such criteria on the original purpose of the restrictions (encouraging the take up of CIL) is likely to be marginal at best. Lifting the pooling restrictions completely would be a straightforward solution which would enable LPAs, both with CIL in place and without, to plan for infrastructure needs without the impositions they are currently faced with.

- Removing restrictions in Regulation 123 and the Regulation 123 list;
- The introduction of a requirement for local authorities to provide an annual Infrastructure Funding Statement – and that statements should set out CIL and S106 income and expenditure, projects in progress and completed, programmed expenditure on infrastructure for next 3 years by project, with funding where identified. Monitoring the implementation of planning obligations is important for the LPA, the community and developers to ensure that infrastructure considered necessary when granting permission is being provided. This has not always been the case in the past. To provide this transparency LPAs need the resources to properly monitor. It is appropriate that this is included as a cost to the planning obligation that created the requirement. Monitoring costs could be included in the annual statement to ensure accountability and transparency.
- That Combined Authorities and Joint Committees should be able to set Strategic Infrastructure Tariffs in accordance with the government's proposed definition and that a proportion of funding raised through SIT could be used to fund local infrastructure priorities that mitigate the impacts of strategic infrastructure. However, setting a fixed proportion would limit the flexibility available to the combined authorities, particularly if this is set as an annual figure. Combined authorities working together to meet strategic objectives should have the ability to make their own spending decisions.

The Society is clear that any indexation should be based on local authority area information. A national figure would not allow for regional and local circumstances. In addition appropriate figures should be freely available at a set date each year.

We have raised concerns regarding:

- the introduction of a 'grace period' as it would in effect just extend the deadline for submitting a commencement notice. If the government intends to introduce a more flexible regime for exempt development it should either set a new deadline for submitting a commencement notice of 2 months after actual commencement or give Charging Authorities some degree of discretion in dealing with individual cases. Exemptions have placed a disproportionate burden on Charging Authorities who are required to deal with their administration without any income to assist them. We have knowledge of authorities where 65% of CIL liable applications qualify for exemptions.
- The whole issue of exemptions should be re-examined to review whether they have achieved their objectives and the burden they place on CAs. If, for example, self-build exemptions are to be maintained they should be taken out of the CIL system which would avoid the burden on both developer and CA.

National Planning Practice Guidance and Housing Delivery Test: Draft Measurement Rule Book

Viability:

In general POS supports the approach being taken to viability in the draft.

Particular points which are welcomed are that:-

• Viability should take account of all relevant policies and standards
• Comparable data can inform but not determine value
• The approach to the use of viability appraisals in decision making (including review mechanisms) should be set out in local plans.
• Standardised inputs should be the starting point in VAs (with the necessary reservations)
• Land value should be calculated on the basis of existing use value plus Benchmark land value and should fully reflect all relevant policy requirements including planning obligations and CIL
• The price paid for land is not a relevant justification for failing to accord with relevant policies in plans
• All assumptions in VAs should be clearly set out and where these differ between plan making and decision making they should be clearly explained
• Viability Assessments should be publicly available wherever possible (although there may be legal reasons preventing LPAs disclosing VAs)

There are areas in the draft guidance where POS considers further clarification would be helpful:-

• Review mechanisms should be a requirement where a development proceeds on the basis that a viability assessment at the point of decision making has shown that full policy compliance cannot be achieved. They may be appropriate in smaller scale developments – not just 'large or multi-phased'.
• Market evidence – it is rare that market evidence offers accurate comparability. Circumstances around matters including scale, cost, location, timing, compliance with policy will differ between sites that on the surface seem comparable but such factors can make significant differences. Market evidence and comparables can inform but should always be treated with caution.
• It should also be recognised that the existence of a planning permission on a site should also be treated with caution as it does not indicate that the permission would be viable to implement. Any supposed uplift in value through an unimplemented permission should be carefully investigated.
• The draft guidance states that 'for the purpose of plan making' developers profit at 20% of GDV 'may be considered a suitable return'. This should be treated with caution as the actual profit will also be significantly influenced by other factors such as contingency, price inflation and the buffers built in to VAs. Where the buffer is substantial (and examiners views have varied on this point but it is often 50% or more) and contingency is included on top of a 20% profit margin the likely profit to the developer can be increased considerably. 20% may be a reasonable figure where the assumptions about these other factors are also reasonable, but they do need to be seen in the round and the guidance needs to make this clear.
• POS supports the proposed monitoring and reporting of both CIL and S106 contributions through infrastructure funding statements and would welcome involvement in developing templates and processes for reporting to ensure transparency without introducing undue burdens on LPAs

Housing Delivery:

The sentence "Where the plan is more than five years old and the housing figure needs revising, the starting point will be local housing need using the standard method." continues to miss the point that it would create a perverse incentive and be unfair in some circumstances. Where an authority should be contributing to meeting the needs of another, its five-year requirement would be set by just its own need, and would only increase when it adopted a plan which catered for the other

authority's needs. So the incentive for some could be to delay for as long as possible to avoid a potentially big hike in the requirement. Conversely, where an authority cannot meet its full needs because it is tightly bounded or subject to severe constraints (as per paragraph 11 of the draft revised NPPF) until its plan was in place it would have a 5-year requirement which was not achievable, and would potentially be penalised for its geography rather than any action or inaction on its part.

The Society has commented on what constitutes a deliverable site, and the Glossary definition in the draft revised NPPF saying -

"Housing land supply has always been based on assessments of what can reasonably be expected to happen, and this is an inherent part of practice in preparing SHLAAs. The proposed change would mean that rather than needing to show that there is a reasonable prospect that delivery on sites can happen, LPAs would be required to demonstrate somehow that it definitely will happen. This would be beyond an LPA's control, since only landowners or developers could give the answer, and even then in many cases they could only indicate their intention or expectation, not say that it will definitely happen. The reference should be changed to say completions are capable of beginning within five years."

Welcomes the clarification that LPAs who are preparing joint plans to be able to manage housing delivery on a joint plan basis

With regard to the introduction in the draft PPG to the Housing Delivery Test, the Society has real difficulty in following the measurement rule book and the logic behind it. Since it will be crucial that the housing delivery test is applied correctly to avoid dispute about the basis of the calculation, MHCLG is urged to re-visit the measurement rule book to ensure that it is completely unambiguous, including on how to deal with the consideration of addressing unmet need in neighbouring authority areas.

Plan-making:

POS welcomes the clarity provided on the function of the Statements of Common Ground and the guidance provided that they should address any matters of disagreement, since that will be a jointly prepared statement of the position.

Whilst the NPPF contains policy on how to consider whether Green Belt boundaries should be changed to accommodate development, there is no guidance at all on how LPAs should consider the importance or otherwise of the contribution that different areas of land make to it. MHCLG is therefore urged to include within the NPPG guidance on Green Belt assessment.

Housing Delivery Test:

POS has a fundamental and strong objection to the Delivery Test as currently proposed. Being measured on something that you do not control (we do not build the homes) seems fundamentally unjust. If the consequence of the Delivery Test was to trigger the need for an action plan only, that would be a reasonable consequence. However, the proposed result renders the LPAs 5YHLS out-of-

date and triggers the “tilted balance” by applying the NPPF to decision-making in the context of a presumption in favour of the development. This will lead to unintended consequences where developers deliberately delay implementing sustainably preferable brownfield sites to force the release of green field sites. POS’s position has always been, if we are given the tools to be proactive then measuring our delivery performance may be justified, but without the tools to be able to unlock stalled or blocked housing sites it cannot be justified as a piece of public policy as it is fundamentally unfair.

Local Housing Need Assessment:

The Society is disappointed that MHCLG has kept the method for calculating housing need unchanged from that consulted upon in “Planning for the right homes in the right places”. The Society warned of a number of undesirable consequences:

• LPAs faced by a big increase in need from the present level would have to review how they can meet the increase, so the sudden increase in needs figures could be expected to slow down the preparation of plans to meet those needs;
• In much of the Midlands and most of Northern England, where the new method would result in reduced housing needs, each LPA which felt it needed to set a higher level of need would have to make its own case, which would involve additional cost and time; and
• some areas would see very large differences between the amount of land allocated and the actual take-up. The consequence of this would be that builders would cherry pick sites. This would happen not just within LPA areas, but between one area and another. So LPAs in areas which were considered less attractive by house builders could find that they have ample land allocations but little actual house building.

The Society remains of the view that the transition to the full need countrywide should be staged to reflect progress in increasing housing delivery, with the formula reviewed upwards from time to time. This would reduce short term increases in the needs figures, and create an incentive for some LPAS to get plans in place before their needs figures rise again. In areas where there would otherwise be a reduction from current need figures, there should be an automatic uplift to provide for economic growth.