

FINALISED –

“OFT - Market Study into House Building”

Homes for Scotland Response, November 2007

**To be sent to:-
Housebuilding Market Study – Floor 2N/013
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX**

Homes for Scotland is the representative body for the private home building industry in Scotland. Homes for Scotland represents the interests of over one hundred and fifteen core homebuilder and developer organizations, as well as over eighty additional associated service and supply companies.

Together our membership provides approx. 95 of every 100 new homes built for sale in Scotland each year. Homes for sale currently account for 80% of all new homes constructed in Scotland and residential development is the largest source of private investment in our country.

We have a rapidly expanding membership of professional and other service businesses engaged in our industry, which contributes £5bn annually to the economy and employs more than 110,000 people directly and indirectly.

Homes for Scotland has been established to represent and speak for the home building industry. We aim to improve the quality of living in Scotland by providing this and future generations with modern homes, in the places people want to live. We are a modern influencing body, challenging where necessary on behalf of members' rights and interests, whilst engaging constructively with decision-makers and influencers.

Satisfying the diverse needs and expectations of its members is the key driver for Homes for Scotland, in addition to growing respect and trust for the organisation and for the industry by being knowledgeable, influential and proactive in promoting and protecting home builders' interests.

Homes for Scotland publicises, stimulates and encourages excellence in all the industry does in Scotland.

It is important to note therefore that Homes for Scotland is not a regulatory body, industry policeman or public policy enforcer. Our members join the organisation on a voluntary basis, working with us and supporting our activities in a wide variety of ways.

Much of this activity, together with broader information on our members and individual secretariat team, is available via our website, at :- www.homesforscotland.com

In relation to current housing development activities, our views in this field are clearly influenced by the concerns, needs, desires and aspirations of our membership.

However, on a wider basis we are delighted to be working with the Scottish Government within its Housing Supply Task Force, and look forward to continuing to contribute to its ongoing programme of work in the months ahead.

The following submission should be read within that context. In making this response we are not responding on behalf of our members or as a proxy for any direct contact the OFT may wish to have with them, but rather, simply directly on Homes for Scotland's own behalf.

Therefore, we attach our formal response to the OFT Market study into the house building sector. This response addresses the set of specific questions set out under the proposed topics for comment. You will see that we have responded in some detail to certain topic questions where it is clear that they have a UK wide application. In the case of other topics, where these may or may not have a Scottish application, we have simply provided a commentary on the issues to inform OFT views and assist you in understanding any subtle or important differences that occur here.

Summary of communication with OFT to date:

Communication	Date
Letter received from OFT informing Homes for Scotland of the launch of the market study into house building	26 June 2007
Email from Homes for Scotland suggesting a meeting with OFT for a briefing on the structure and role of Homes for Scotland	13 July 2007
Letter from OFT confirming their willingness to meet with Homes for Scotland	25 July 2007
Email received from OFT seeking views on the topics OFT should consider to inform the study by 7 September 2007	3 August 2007
Submission made by Homes for Scotland on the proposed topics to inform the OFT study	6 September 2007
Meeting between Homes for Scotland and OFT in Edinburgh	24 September 2007
Letter from Homes for Scotland to OFT enclosing a copy of our Code of Conduct and explanation of the model charter	25 September 2007
Email from Homes for Scotland to OFT enclosing a copy of our submission in response to the consultation on the draft Bill by Helen Eadie MSP	25 September 2007
Email to OFT confirming that a response to the topics would be made by Homes for Scotland	15 October 2007

Structure of our submission

Section A – Warranties matters, see page 3.

Section B – Consumer matters, see page 6.

Section C – Building regulation matters, see page 8.

Section D – Planning and competition matters, see page 9.

As we understand that the OFT will not examine the Scottish Planning System in detail, we do not intend to respond directly to each of these topic headings. However we have provided some general informative observations on the current Scottish Planning System.

Section E – Issues raised by the Scottish Consumer Council, see page 10.

Homes for Scotland has had the opportunity to consider the submission made in relation to the House Building Market Study by the Scottish Consumer Council (SCC) As a result of which, and to provide balance to the debate, we felt it necessary to respond to inaccuracies and factual errors contained in the SCC submission

Appendix A,

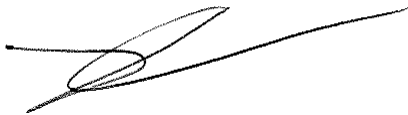
Homes for Scotland Commentary on Planning and Competition Matters, see page 12.

Appendix B,

Homes for Scotland – Builders Missives Policy, see page 18.

We hope that you accept this submission as the beginning of a co-operative relationship with Homes for Scotland throughout the duration of your Market Study. If any of the points raised within this paper require clarification or further information to be submitted we will be more than happy to assist. Please direct any future queries or correspondence to myself at the address below.

Yours sincerely



Jonathan Fair

Chief Executive

A. Warranties Matters

- 1) How significant a consideration are warranties when homebuyers are purchasing a newly built home?**
 - a) We would suggest that the overall standard of specification, useable living space, local community amenities and the location of a newly built home, rather than existence or extent of warranty provision are the primary significant considerations of new home buyers.
 - b) However, especially in contrast to existing or second hand properties where no warranty is usually provided, then it is likely also to be just one amongst a range of factors within the decision making process of a homebuyer.

- 2) The depth of understanding that homebuyers have about the extent of protection offered by warranties.**
 - a) The majority of our members go to extensive lengths to ensure that new home warranty information is available to homebuyers at the earliest possible opportunity. In addition this is invariably provided in advance of, or directly at the time of purchase completion. Detailed information in the form of schedules, terms, certificates and in many cases full operating logbooks are prepared as part of the home buyers pack made available at that time.
 - b) However, presenting such information to home buyers even in a readily digestible format does not mean that they will take the time to either read or understand it.

- 3) The minimum standards homebuilders are required to meet in order to obtain warranty cover from providers. The influence that mortgage providers which require such cover have in determining these standards.**
 - a) All warranty providers, including organisations such as NHBC, Zurich and Premier Guarantee set individual specific and detailed rules & conditions against which a homebuilder must conform to maintain his registration and cover entitlement.
 - b) This is in addition to, and entirely separate from, the minimum functional characteristics and performance standards set by the Scottish Building Standards Agency (SBSA) which are then enforced by the directly appointed Local Authority Building Control Verifiers network within each of the 32 No. Local Authorities in Scotland.
 - c) We understand that mortgage lenders, represented by organisations such as the Council of Mortgage Lenders in Scotland also have a direct route to influence these standards through input to the individual warranty provider's steering committee's and consultation structures.
 - d) In addition, mortgage lenders will require legal confirmation that such standards have been achieved by the homebuilder prior to releasing funds for purchase to the buyer. This position was reinforced by the introduction of an amendment to the Scottish CML Hand Book on 1 April 2004.

- 4) The impact of the fact that it is homebuilders who actually obtain warranties, rather than homebuyers themselves selecting warranty providers, has on the quality level of new homes. The relationship (if any) between this practise and levels of homebuyer satisfaction with the quality of new homes.**

- a) We are not aware of any evidence of adverse impacts on quality that may arise from the practise of home builders obtaining warranties for the properties they are constructing on behalf of their clients; as opposed to the home buyer making that choice for themselves.
 - b) We are not aware of any evidence to suggest that home buyers satisfaction with the quality of their home is in anyway influenced by their inability to select the warranty provider in relation to their individual purchase.
 - c) Of particular note in this context, especially bearing in mind the points raised in the Topic 3) responses noted above, is the fact that the vast majority of new home construction commences well before any individual homebuyer has been identified. This is a fundamental characteristic of all property development, especially home building, that is driven by market forces, financial constraints and good business practice. Therefore unlike other goods and services transactions no appropriate and timely opportunity to make such choices exists.
 - d) Furthermore complex construction factors, such as the high proportion of housing development on contaminated Brownfield sites and the high level of multi-storeys, necessitates the involvement of warranty providers at an even earlier stage in the development process, often before plans are finalised.
 - e) It must be recognised that the home builder, the warranty provider and the customer are very likely to have the same long term interests i.e. a quality built home, therefore even if it was viable for the customer to choose their own warranty provider, the decision making process is likely to be the same.
 - f) It should also be borne in mind that the purchaser of the new build home may not necessarily retain ownership of the property for the full 10 years. The second or even third purchaser would not have an opportunity to influence the choice of warranty provider in that circumstance either.
- 5) The factors affecting the nature, extent and development of competition in terms of the cost of and cover afforded by warranties.**
- a) It is not appropriate for Homes for Scotland to respond to this topic as this point should be directed to warranty providers.
- 6) The factors affecting the nature, extent and development of competition between warranty providers and the overall quality level of new homes.**
- a) It is not appropriate for Homes for Scotland to respond to this topic as this point should be directed to warranty providers.
- 7) The extent to which warranty providers package their warranty and building control functions together. The impact (if any) this has on the price and quality of warranties and/or building control.**
- a) We would advise that such a system does not operate in Scotland. Only Local Authority Building Control Verifiers directly appointed by the SBSA are entitled to offer building control functions in Scotland, therefore this topic is not relevant in a Scottish context.
- 8) The formula warranty providers use to set the premia for individual homebuilders and whether this favours certain housebuilders over others.**
- a) It is not appropriate for Homes for Scotland to respond to this topic as this point should be directed to warranty providers.

9) From the homebuyers perspective, how effectively claims and disputes under warranties are handled by warranty providers.

- a) It is not appropriate for Homes for Scotland to respond to this topic as this point should be directed to warranty providers.

B. Consumer Matters

10) Consumers experience of buying a new home and their satisfaction with the process and the quality of the home itself.

- a) Homes for Scotland doesn't currently gather evidence in relation to Consumer Satisfaction on behalf of the industry, therefore we are not able to comment on overall consumers experience, satisfaction with the process or quality of homes themselves.
- b) Individual companies do however survey their own client base, at times of their choosing, and will therefore be aware of their own performance - taking any actions they deem necessary in the light of that information.

11) The level of consumer/legal protection that exist for homebuyers purchasing new homes.

- a) Considerable legal protection exists for homebuyers when purchasing new homes, not least characterised by the normal practise of both homebuyer and homebuilder being independently represented and advised by their own dedicated legal adviser / appointee's
- b) The transaction is covered by a specifically designed and, in some cases bespoke, crafted legal contract which plainly states the responsibilities and obligations of each party; a document that both parties enter into in the light of the independent advice that they receive from their legal representatives, doing so freely and without compunction.
- c) The transaction and the home concerned are subject to independent professional review and valuation during at least one stage of the process and certainly in advance of any purchase price being paid. The customer is, even at this stage, entitled to resile from the bargain.
- d) The entire transaction is subject to third party review through the due diligence procedures of any lending institution involved with the transaction, who will not release any funds until they are completely satisfied with the nature and extent of the transaction concerned.
- e) Further legally binding conditions must be met before the home purchase may proceed. These include issues to do with Title, Access, Insurability, Warranty, Planning Conditions, Utility supply and Building Standards all of which are over and above any internal homebuilder's quality control procedures.
- f) A homebuyers purchase is already governed by, or conducted within the bounds of the full weight of the Scottish Legal system together with property based case law.
- g) In addition, it must comply with relevant sections of the Companies Act, the Health & Safety at Work Act, the Construction (Design and Management) Regulations, the Planning Act, The Building Standards (Scotland) Act, the Trade Descriptions Act, the Property Misdescriptions Act, the Unfair Terms in Consumer Contracts Regulations and any other legally binding registration standards set out by any warranty provider.

- h) The above list names but a few of the legal instruments that homebuilders must already comply with in protecting the interests of the homebuyer, it is not exhaustive.
- i) In which context, we would argue that homebuyers **are adequately protected** in the course of a new home purchase transaction.

12) The level of consumer /legal protection that exists for homebuyers purchasing new homes in the light of the nature of the transaction, the level of protection in other sectors and/or international comparisons.

- a) Given the comments outlined in the response to Topic 11) above, the level of consumer/legal protection afforded new homebuyers is appropriate to the nature of the transaction and considerably better than that afforded in other purchasing processes.
- b) We are not aware of any relevant other sector or international comparisons in this context.

13) The extent to which homebuyers are aware of the level of consumer/legal protection available to them when purchasing a new home.

- a) Almost without exception, and from the very earliest stage of the buying process, our members will ask the homebuyer to consider, select and then identify their own appointed legal advisor who will act and advise on their behalf, as part of the transaction.
- b) Those professionals have a specific implicit “duty of care” to inform and look after the interests of their clients. If they are found deficient in that connection then they are in contravention of The Law Society of Scotland professional standards and fall subject to their disciplinary processes.
- c) As both parties to the transaction therefore have their own individual legal representation, homebuyers clearly have full open access to information and guidance on consumer and legal protection available to them.
- d) These are the same universally accepted protections afforded to the far greater number of buyers of existing properties.
- e) However, full open access does not guarantee awareness as consumers may choose to ignore or not respond to that legal information and advice.

14) The extent to which model house purchase terms agreed between the OFT and the Home Builders Federation are used and the reasons for and against use.

- a) Model House purchase terms agreed between OFT and HBF do not apply in Scotland. This is because firstly, HBF have no active role in Scotland and secondly, the Scottish legal system is entirely separate from that operated south of the border and as such the model house purchase terms are not appropriate for use here.
- b) However, Homes for Scotland has previously voluntarily engaged in lengthy dialogue with the Scottish Consumer Council, The Law Society for Scotland together with other relevant interest groups, to examine the issues surrounding so called common or model “builder’s missives”. A more detailed review of the outcomes of these discussions together with our current position on the issue is noted later in this response. (See Appendix B)

15) Other features which impact on a homebuyers bargaining position when purchasing a new home from a homebuilder.

- a) Homebuyers have absolute power in relation to the purchase of a new home from a homebuilder; this is because no one is compelled to buy any home, far less a new one. Therefore the homebuyer is able to make the ultimate decision on whether to enter or proceed with a purchase at any stage in the process.
- b) There is completely open and balanced competition between the new home and second-hand home selling market, as evidenced by the relatively small market share of new home transactions in comparison to all home purchases, which run on average at only about 10% of the total market.
- c) In that context, homebuyers have free and unrestricted choice within the market place.
- d) The new homebuilder must recognise and respond to that market when crafting their investments and the current market dynamics are an active part of any such decision making process.
- e) Open market forces exert strong influence over the behaviour and approach of our industry. This is demonstrated by the great lengths to which our member companies go to identify, attract and retain potential homebuyers in the pursuit of their custom.

C. Building Regulations Matters

16) Whether the minimum performance standards set out in building regulations ensure quality for customers.

- a) In a Scottish context we operate under a system of Building Standards rather than regulations. These standards describe minimum functional and performance characteristics for all buildings, as opposed to prescriptive regulations. The precise methods of compliance with these principles, together with providing evidence in support of those solutions, are left to the building warrant applicant.
- b) Building standards are not specifically designed to ensure quality (this being a subjectively valued term) for customers, but rather they do ensure the health, safety and wellbeing of any building occupant in general. Minimum standards are therefore set in the context of combined industry wide good practice, approved European standards and the Scottish Legislative framework.

17) The efficacy with which compliance with, and enforcement of, building regulations is ensured.

- a) A key additional customer protecting characteristic of the building control system in Scotland, as opposed to other parts of the UK, is the complete prohibition on commencement of any form of construction prior to the granting of a formal building warrant in line with these standards. This principle is rigorously enforced by SBSA and the Verifier network.
- b) It is the building warrant applicant's responsibility to ensure compliance with Scottish building standards, this simply being verified by the Local Authority building control staff.
- c) We are not aware of any evidence of poor standards in the enforcement of building standards, however, we are aware of some concerns about the frequency of site visits, general levels of staffing resource and overall quantity of Verifiers given the volume of projects required to be covered by them.

18) The factors affecting the nature, extent and development of competition to provide building control.

- a) As stated in the Topic 7) response above, such a system does not operate in Scotland. Only Local Authority Building Control Verifiers directly appointed by the SBSA are entitled to offer building control functions in Scotland, therefore this topic is not relevant in a Scottish context.

19) The relationships and interactions between the planning process and building regulations.

- a) Scotland has an entirely separate and differently focussed Planning Process and Building Standards system to the rest of the UK. These differences are further reinforced by our Legal systems, Laws and Governmental structures.
- b) In Scotland the two processes are completely separate, usually sequential systems. More often than not, these development control processes are being delivered by different Departments within Local Authorities. In addition, they are certainly being developed by different government departments and policy makers within the Scottish Government. This is an institutional and departmental structure issue beyond the control of the industry.
- c) Whilst interactions do exist, we have observed a trend whereby what have been traditionally seen as areas to be dealt with by Building Standards are being eroded via the preparation and enactment of different Supplementary Planning Guidance notes. These are being introduced piecemeal across Scotland by each individual Local Authority rather than at a national level as part of a co-ordinated common policy framework.
- d) We have serious concerns about the appropriateness of implementing Building Standards through the planning system, not least because of the lack of technical knowledge in Planning Authorities to police such policies.
- e) This will present severe technical, cost and quality related difficulties for homebuilder companies that operate across Scotland. This is especially the case if they become forced into adapting and flexing approaches to suit very different operating environments. This could occur potentially in each of the 34No different planning authority areas within Scotland and is an example of where uncoordinated relationships or interactions between both systems act in an unproductive way. For this reason Home for Scotland vigorously lobbies for the use and operation of a single national system to ensure consistency across Scotland.

D. Planning and Competition Matters

As we understand that the OFT Study will not examine the Scottish Planning System in detail, we do not intend to respond directly to the topic headings 20 – 42.

However we take the view that the study could benefit from some general observations on the current Scottish Planning System and we attach these for you in Appendix A.

E. Issues raised by the Scottish Consumer Council (SCC)

Homes for Scotland has had the opportunity to consider the submission (dated 14 August 2007) in relation to the House Building Market Study made by the Scottish Consumer Council (SCC). Since the basis of the SCC submission relied on assumptions and contained gaps in knowledge in relation to the work of Homes for Scotland, together with its member companies, we felt it necessary to respond to the inaccuracies and factual errors of the submission made by SCC. Using the headings provided by SCC we have noted the following in order to bring some balance to the OFT perspective and wider debate.

- a) In spite of the impression given by the SCC in their submission, during recent years Homes for Scotland has given considerable attention to the form and content of builder's missives, including lengthy dialogue with SCC and its staff during this process. Our member companies are, as would be expected, fully sensitive to the position and interests of their customers and take customer care and customer service very seriously. Indeed there are commercial imperatives to do so.
- b) Homeowners now move house more frequently than in the past – new homes are generally not now bought as long term family homes as was at one time commonly the case – and this makes it more important than ever to develop and maintain customer satisfaction and customer loyalty. There is no logical argument for not doing so.
- c) It is important to note however that Homes for Scotland is not a regulatory body, industry policeman or public policy enforcer. Our members join the organisation on a voluntary basis, working with us and supporting our activities in a wide variety of ways.
- d) As such we are not obliged to consult with third parties on the content and application of policies for our member companies. The following should be read with that in mind.

“The introduction of statutory protection for buyers, similar to that which applies to moveable goods under the Sale of Goods Act 1979”

- e) SCC make a case for statutory protection for buyers on the basis that, as new-build homes are exempt from the protection provided by the Sale of Goods Act 1979, customers have fewer rights than they have when buying goods on the high street. It is wholly inappropriate to compare the purchase of a home with the purchase of a kettle. The relationship between the house builder and the customer is different and both parties need protection from risk given the large amount of investment involved.
- f) The SCC claim that because purchases of property are governed by the law of private property, rather than the common law, that “new-build homebuyers are significantly disadvantaged from the outset”. This statement is fundamentally flawed.
- g) In addition, purchasers of new build properties are given much more protection than is available to those looking to buy in the existing second hand market, for example, through the provision of additional benefits such as a lengthy Structural warranty together with protection from Customer Care Charters/Policies.
- h) Furthermore, given that customer protection is a matter reserved to Westminster under the Scotland Act 1998, while the law of property is devolved to the Scottish Parliament, it could be argued that self regulation of the industry offers a less complex, more efficient and responsive route to improve the service offered to customers.

“The need for a standard builders’ missive, which is fairer to buyers than at present”

- i) Homes for Scotland is aware of the attention given in many quarters in recent years to the form and content of builders missives, but believe that much of this has been misinformed or ill-judged.
- j) The Housing Improvement Task Force which was set up by the Scottish Executive in 2003, for instance, did not see fit to consult with or even have dialogue with the industry before making recommendations in its report. The Law Society of Scotland, for its part, had pursued the concept of a standard form of missive without apparently testing either the concept or the detail with its own membership, and we understand this is the fundamental basis for the issue stumbling.
- k) In consequence, Homes for Scotland has looked at the matter separately. A working group drawn from the membership has advised the Homes for Scotland Board on this issue and concluded that the wider aim should be to have a fair and common approach within the industry to completion and entry dates, with appropriate redress to the purchaser. Our subsequent work has focussed on strengthening customer service in response.
- l) The policy position, as submitted to OFT on 25 September and attached in Appendix B, has the full support of the industry in Scotland as the position that Homes for Scotland should articulate. We recommended this core policy position to our member companies in August 2007 for consideration and adoption.
- m) We believe that this is a strong and coherent policy position, which reflects the industry’s determination to have in place arrangements for completion and entry dates which are seen to be achievable and fair to both the developer and the customer.
- n) With regard to “snagging”, the SCC claims that it is no longer the norm for house builders to include a twelve month ‘snagging period’ in their missives. By SCC’s own admission this claim, along with several others within their letter, is unsubstantiated.
- o) In contrast, it is worth noting that it is the norm for the warranties provided by NHBC and the like to require snagging items identified and intimated within the first two years of ownership to be put right fully at the builders expense. As a result, this continuing requirement of a home builder’s registration with the warranty provider offers even better protection for customers. Most home builders now offer their own specific Customer Charter which describes in detail precisely how and when Customer Care is delivered.

“Self Regulation by the building industry”

- p) In March 2004, the Barker Review of Housing Supply, commissioned by HM Treasury and the OPDM, recommended that *“The House Builders Federation should develop a code of conduct by the end of 2004 for new house sales in full compliance with the framework provided by the Office of Fair Trading Consumer Codes Approval Scheme. This code of conduct should require fair contracts complying with the Unfair Terms in Consumer Contracts Regulations 1999.”*

- q) Following on from the recommendations made specifically to the HBF in England only, Homes for Scotland voluntarily adopted a new code of conduct with its own members in September 2006. To ensure the code was acceptable to member companies also working across the border, the code was based on the model produced by NHBC and adopted by HBF. Homes for Scotland also acted as observers on HBF Working Group who developed their Code of Conduct to ensure consistency and effectiveness here in Scotland.
- r) Each home building member company has a copy of the Code of Conduct and associated model charter. The model charter has been published on-line and may be accessed by customers through the Homes for Scotland website.
- s) The Homes for Scotland Board strongly recommends the code and model charter as a minimum standard of customer service.
- t) A recent specific review of Homes for Scotland member companies found that the vast majority of members:
 - 1. have adopted the Homes for Scotland Code of Conduct and Customer Charter or already have their own which **exceeds** these standards, or secondly,
 - 2. endorse the principles of the Code and Charter and plan to put appropriate arrangements in place in the very near future.
- u) Homes for Scotland is pleased with the voluntary progress made to date and continues to keep under review the possibility of making the use of such a charter mandatory for member companies.

Appendix A

Homes for Scotland Commentary on Planning and Competition Matters

- a) To submit a planning application for a housing development in the 1970s a developer would have to lodge an application form, a site plan, floor layouts and elevations all heavily annotated to ensure that development control officers could identify proposed materials and finishes. Sample products, such as facing bricks or roof tiles, might accompany the application.
- b) Thirty years on, if one of Homes for Scotland's member companies was promoting a development of say 20/30 houses, the drawings would form only a very small part of the application. Most likely the developer would have to reconfigure a road system; design recreation areas in or adjacent to the site; meet an affordable housing requirement and address local school capacity issues.
- c) Today, developers can be required to produce, inter alia
 - A supporting planning statement
 - A design statement
 - A flood risk assessment
 - A drainage impact assessment
 - A sustainability appraisal
 - An energy statement
 - A noise impact assessment
 - An air quality assessment
 - An access statement
 - A transport assessment
 - A draft travel plan
 - An open space plan
 - An affordable housing proposal, and
 - The heads of terms for a Section 75 Agreement
- d) While developers can find such requirements onerous these requirements are also placing enormous strains on local authority planning departments which are under-resourced, under-skilled and consequently not wholly confident in dealing with either developers or their communities. **Indeed such are these pressures, it could be argued that Scotland now has a Planning System which operates on a presumption against development.** In other words a complete shift has occurred from the immediate post war planning legislation which was predicated on a presumption in favour of development. Homes for Scotland is so concerned about this matter that it has set up a Task Group to consider how best to promote development opportunities through the planning system.
- e) This lack of confidence has been a major factor in creating a planning system that is adversarial and confrontational and more attuned to frustrating and regulating than to facilitating.

- f) The Home Building Industry in Scotland invests some £5 billion a year and some 110,000 people depend on the industry for their jobs.
- g) The industry is the largest single source of private investment in Scotland. It is a vital component of the Scottish economy and it should be able to rely upon an efficient, effective planning system to facilitate and maximise its investment.
- h) Despite that level of investment, current levels of house building are insufficient to meet either new demand or to adequately replace stock, which has outlived its useful life. Much of our existing housing is in the wrong place or is sub-standard.
- i) The gap between requirement and provision is widening, not just with demand anticipated by demographics and the backlog of affordable social housing, but also with sustained aspirational demand from home-owners responding to their own changing circumstances and from inward migration.
- j) Scotland's planning system should take account of all the drivers that influence housing demand. Currently, development plans consider demographics and little more. They do not even fully address this element, let alone the other factors.
- k) Scotland's planning system should make assumptions about and seek to accommodate the impact of families extending their homes or moving to larger properties as family circumstances dictate, or to smaller homes, as children leave or home-owners prepare for retirement. In short, the planning system should recognise the aspirational demand that largely determines the number, type and quality of homes we need and where we need them.
- l) Having underestimated demand, our planning system currently compounds the problem in terms of supply side responses. The present system, which tries to match the underestimate of demand with an exact supply side land release, is discredited.
- m) Scotland requires a planning system that neither under-estimates demand nor encourage monopolies on land supply. **(Information from Housing Land Audits confirms that as a result of planning and infrastructure constraints, some 30% of all land in development plans cannot be built on during the lifetime of the plans).**
- n) The consequence is a shortage of housing land and, subsequently, higher house prices in Scotland in relation to normalised trends.
- o) As an industry, effectively we do not compete for customers, we compete for land. Land can now account for between 30 – 40% of the predicted selling price of a new house. Fifteen years ago that figure was more likely to have been between 10% - 15%.
- p) If the cost of building a house is broken down, land is the only element that has risen by over 350% in fifteen years.
- q) In Scotland, we build some 25,000 houses a year, 19,000 of those without recourse to public subsidy. This is replenishing the country's housing stock at around 1% a year and is hardly sustainable, particularly when most houses have been built with a design life of sixty years and much public sector stock built in the sixties and seventies lasted barely thirty years.

- r) If Scotland is to replenish its stock in a sustainable way the rate of replenishment has to move closer to 2%. If that is accepted and an attempt is made to factor in the Barker Model of using increased production to impact on house price inflation, then it will be necessary to move procurement closer to 50,000 units per annum. **(The Scottish Government recent publication “Firm Foundations: The Future of Housing in Scotland” (November 2007) proposes a minimum target of 35,000 units per annum and acknowledges that the current 25,000 per annum is “significantly less than has been required to moderate growth in house prices”).**
- s) Increased production can be achieved, but to do so, our planning system must move from an ideology that stifles investment to one that encourages growth and introduces certainty so that both the private sector and RSLs, can have the confidence to invest in new procurement methods, new sustainable products and innovative methods of construction. In this context it is important to stress that the reference to the planning system does not just encompass planning officers. It is also a reference to politicians who sit on planning committees and politicians who by their rhetoric seek to condition the policy environment in which the planning systems operates.
- t) Sufficient new homes cannot be built without addressing the major deficits in social and community infrastructure that exist right across Scotland.
- u) If those deficits are to be addressed using private investment then local authorities need to develop a better understanding of the scale of development required to unlock value and release investment.
- v) Viable development initiatives must not be spurned by restricting land releases and in the process stifling the uplift in capital values that can support investment in community facilities.
- w) There is a growing expectation on the part of Government at all levels that the expansion of both our physical and community infrastructure should be funded by capturing part of the uplift in development value through Section 75 agreements.
- x) In opposing the proposed Planning Gain Supplement, Homes for Scotland did not resist the notion that part of the uplift in land values created by planning consent should fund supporting infrastructure.
- y) Yet, across Scotland, many development plans rely on land with high existing-use values rather than enabling planned releases of land with low existing use values and, therefore, greater potential for uplift. In housing terms much of our land supply is focused on sites of 20/30 units again making it difficult to generate the values need to sustain investment in supporting infrastructure. This approach to identifying land for development has at its heart a failure to fully appreciate the way in which value is created by a development opportunity.
- z) If progress is to be made it will be necessary to address three important issues.
 - Attitudes within the planning system
 - Development and investment processes and
 - Master planning

Attitudes within the Planning System.

- aa) In planning, confrontation rather than co-operation has been the order of the day. There is little mutual respect and there is entrenchment, misunderstanding, suspicion and territorial behaviour, all of which limit progress and thwart ambition.
- bb) The Industry in Scotland is concerned with all Government's obsession with "short-termism". The Industry cannot focus on the next election. It needs stability and it needs certainty so that long-term investment decisions can be taken with confidence.
- cc) While it is appreciated that there are many competing factors in determining planning policies and practices, measures must be taken to ensure that investment is not stifled by constant change and inconsistency, or a system that continues to churn out a plethora of supplementary planning guidance.
- dd) While there should always be a place for local variations in concept and approach, there is an urgent need for standard processes and procedures and common interpretations. When the Scottish Government says that the main thrust of investment should come from the private sector, then that must also be the platform for supportive attitudes and actions in the public sector.
- ee) For example, there is little sense in national agencies such as the Scottish Environment Protection Agency, Scottish Natural Heritage or Historic Scotland saying they will not hamper economic progress, while, at the point of implementation, they can demonstrate on occasions an almost ideological antipathy to solutions that involve private investment.

Development and investment processes.

- ff) The Scottish Government is aware of the demands on local authorities to meet the requirements of the new Scottish Planning Act and that most local authorities will flounder with the new workloads.
- gg) Homes for Scotland is particularly concerned that many key people in local government lack a basic understanding of how development companies operate. There is limited appreciation of the principles of investment and very little understanding of the importance of timing in investment decisions.
- hh) The economic forces which drive a development opportunity are too complex to be explained by the myth that no matter what is asked for, somehow, the landowner will simply have to "take the hit".
- ii) The use of Section 75 agreements to provide the most fundamental pieces of physical and community infrastructure is a deeply flawed approach and needs to be reconsidered. The public sector and private sector alike should be concerned about the existing reliance on developers to provide major infrastructure when the local housing market drives demand. A far more strategic approach to locating key community assets is required.

- jj) Ways must be found to fund infrastructure “up-front”. Leading figures in our industry are looking at how developments might be mortgaged on future income streams and the debate on planning charges and/or tariffs following the UK Government’s decision to abandon the Planning Gain Supplement must be accelerated.

The importance of master planning – linked to design and place making

- kk) In Scotland there is little evidence of real vision in strategic planning.
- ll) The Industry is ready to work with local authorities and local communities to see how, together, sights can be raised when it comes to shaping and creating sustainable communities of the future.
- mm) Scotland requires a system that is not obsessed with numbers. It is necessary to move from demands for specific numbers of houses in a specific community, just because that is what statistical analysis suggests.
- nn) Far greater emphasis needs to be placed on design-led master plans covering wide areas. These master plans must move beyond the identification of development platforms. An approach should be developed that will, with full public consultation, enable planning authorities to establish how and where development can take place and how it can be achieved in a measured progressive way, rather than the cherry picking the current planning system encourages.
- oo) With master planning, investment decisions can be prioritised and phased, giving both the public and private sectors a clear understanding of the required sequence of development.
- pp) Local authorities should locate schools and other public amenities where and when the community needs them and not be beholden to the local housing market.
- qq) The provision of major infrastructure is a strategic community issue and master planning would enable public and private sector delivery to be timely, appropriate and properly shared.

Appendix B

Homes for Scotland – Builders Missives Policy

The following policy position is recommended for new build properties.

The builder's missive should contain clauses to apply unless a fixed completion date is prescribed within the contract:-

- (a) providing that unless a fixed completion date is prescribed within the contract, the Buyer will be provided with a minimum of 14 days notice to complete the sale (“the notice to complete”)
- (b) providing that the builder will specify in the contract indicative dates or an indicative period within which it expects the completion of the property to take place. Such dates or periods will be clearly noted as being indicative and not contractual commitments.
- (c) providing also that an absolute end date will be specified in the contract and should completion not have occurred on or before this date then the purchaser will have the right to resile from the contract, with a refund of all monies paid to the builder but with no additional compensation.

Notes

1. The 14 days notice to complete the sale is a minimum; longer periods can be stipulated at the builder's discretion.
2. It is suggested that for standard new build housing, up to three storeys, the indicative period for completion could be either two months or three months.
3. The absolute end date will have to be within a reasonable period beyond the indicative completion dates. For example it may be reasonable to state a date which is 6 months or thereby beyond the indicative dates for standard new build housing or 12 months or thereby for bespoke apartments. The date will be determined by the nature and complexity of the build but will have to meet the test of reasonableness. For instance a date two years beyond the indicative completion dates would not be acceptable.
4. It may be appropriate to include in the contract a statement acknowledging the need for regular communication with customers on build progress. This might, for instance, take the form of a reference to the Homes for Scotland Home Builder Code of Conduct.