Planning for a better future

Our planning manifesto for the government

Planning Officers Society

Manifesto Background Paper 8

Land value capture: exploring the options

The planning system is used to securing funding from the development process to mitigate the impact of development and to enable necessary supporting infrastructure to be funded. This system has been subject to several reviews and changes over recent years but these have fallen short of a comprehensive review of the wider regime of land value capture. This has entered the political arena recently and POS believes that a fresh look at the system is needed.

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Planning Officers Society

POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic and environmental aspirations of the community.

We operate in three main ways:

- As a support network for planners in the public sector
- As promoters of best practise in planning
- As a think tank and lobbying organisation for excellence in planning practice

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have set out this advice to Government so we can plan together for a better future.

POS Manifesto

This started in early 2014 when we looked ahead to the national parliamentary elections in May 2015. The main parties were drafting their manifestos, so we thought about what we could do to help them. This resulted in Planning for a better future: Our planning manifesto for the next government. The time since then has seen an unprecedented amount of change to the planning system, so our initial planning manifesto for the next government has morphed into an on-going planning manifesto for government.

These are think pieces that tackle a topical area within planning practice and sets out our recommendations for improvement. They comprise a growing series of Manifesto Background Papers that look in detail at specific issues. Those that are still current are summarised in our main Planning Manifesto paper that sets out the current ask from POS to the government.

The views expressed in these documents reflect the initial view of POS. It is a consensus position. It should not be taken as a final position; rather an informed starting point to debate the issues. It is expected that the recommendations will evolve as the debate progresses.

Other titles in the series can be viewed from our website.

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Summary

The planning system is used to securing funding from the development process to mitigate the impact of development and to enable necessary supporting infrastructure to be funded. This system has been subject to several reviews and changes over recent years but these have fallen short of a comprehensive review of the wider regime of land value capture. This has entered the political arena recently and POS believes that a fresh look at the system is needed. Our recommended changes are:

- Review the way Affordable Housing is funded through the Development Management process and move towards a regime that has a fixed percentage approach to avoid Affordable Housing being the victim in viability negotiations.
- Funding infrastructure through CIL and S106 via the Development Management process needs to recognise the greater potential for land value uplift in greenfield situations and a review of this area is needed.
- Our Land Value Capture models such as strategic CIL (eg London Mayor's Crossrail Levy), TIFF etc are cumbersome, targeted too narrowly and do not capture all the uplift from such investment. They can only target development activity, whereas such areas benefit generally from public investment in infrastructure. It is also the case that the demand for additional infrastructure is not just related to development activity. More efficient use of existing real estate is also a significant factor in high density areas like London. A different approach is needed and the taxation of property assets and especially land needs to be reconsidered.
- How public bodies use land can be a powerful force in place-making and development-delivery. Other countries have successfully used public ownership of land to leverage investment in areas to bring forward development. Despite historic successes in this area with the various new town programmes, we have lost the initiative and need to look at recent international success stories to see what we can learn so we can regain our large-scale placemaking crown.
- CPO is a powerful tool that can be used to unlock stalled or land-banked housing sites. We recommend three key changes to the CPO regime that would unlock this potential and enable LPA's to be more pro-active in this area. Current systems are too uncertain and cumbersome and need to be improved.

1 Introduction

1.1 There has been much discussion around Land Value Capture in the sector recently. Both the Letwin and the Rainsford Reviews touch on it and the Housing, Communities and Local Government Select Committee held an inquiry into the subject which reported (HC 766) on 13 September 2018. Government's response (CM 9734) the following month was effectively, "we're thinking about it".

1.2 This is a complex subject that POS considers needs to be considered in a holistic and systematic manner. The starting point is to remind ourselves why we take money from developers. The main reasons are:

- To mitigate the impact of development: eg a new junction or school
- To deliver policy: eg affordable housing
- To fund necessary supporting infrastructure: eg Crossrail

1.3 The logic behind these measures is that in planning terms the development proposed would not be acceptable without the mitigation and policy benefits that the money is intended to provide. The basis is in planning legislation: It is not intended as either a tax on development or primarily to capture land value.

1.4 These measures capture funds through the development process and address the impact of new developments only. Upgrading and improving our existing infrastructure to accommodate existing users eg facilitating increased public transport usage to achieve environmental and sustainability policy objectives is specifically excluded as justification for planning based requirements on new development.

1.5 The questions are, can and should we generate funds to deliver more and is the system we've got the right one? This report will consider the issue under the following headings.

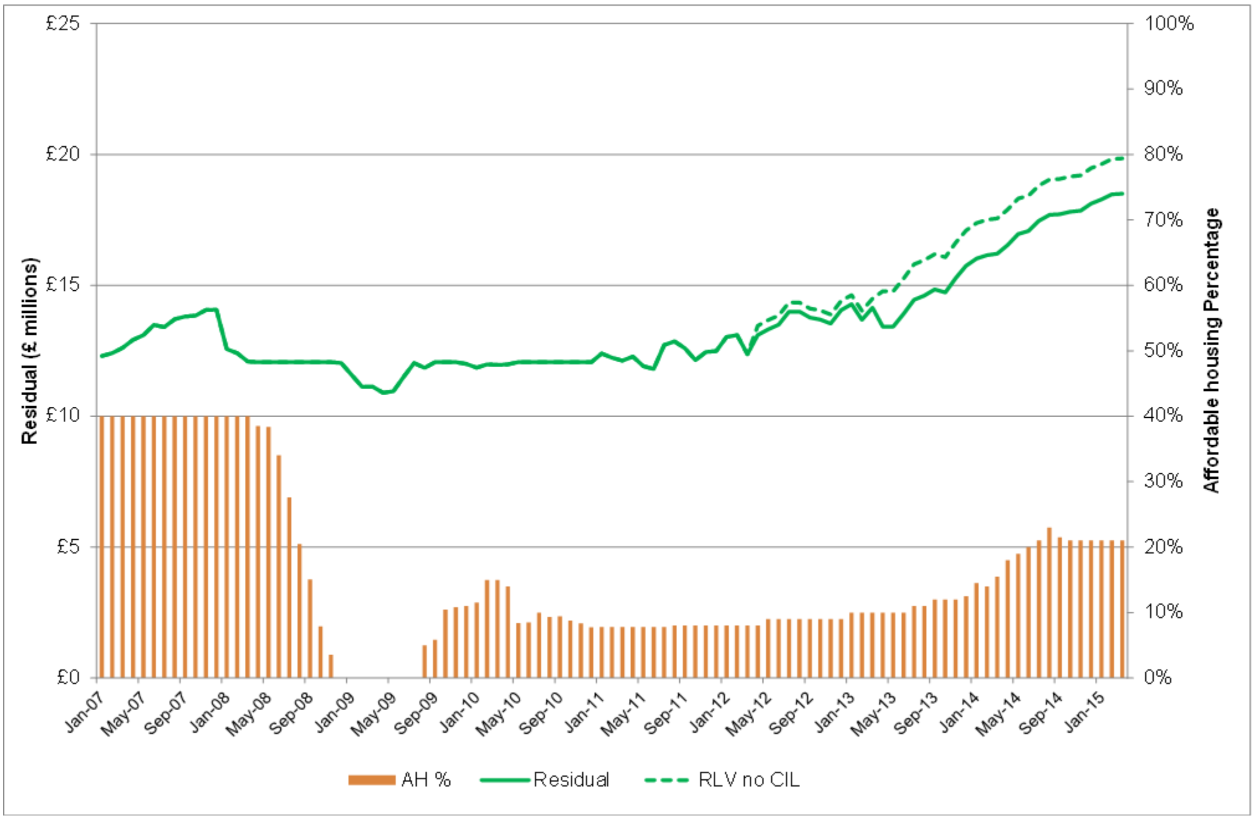
1. **Development process**: we capture value created by the development process through mechanisms such as s106 and CIL, but is it doing its job properly? Brownfield and greenfield developments are very different in this context and need to be considered more closely. Existing regulation and advice encourages a cautious approach to setting CIL charges and S106 requirements for fear of impacting on viability, so limiting the potential public benefit.
2. **Land Value Capture**: we sometimes capture the increase in land value resulting from public investment via a localized tax of some form like TIF or Mayoral CIL. We also tax land value in various sporadic ways (capital gains tax, stamp duty, inheritance tax etc). But can we do this more effectively by capturing the increase in land value generally over time?
3. **Land ownership**: owning land is used in other countries as a powerful development-delivery and place-making tool but in the UK we only do this haphazardly (eg the New Town programmes) and should we look at doing it more systematically. CPO and compensation powers and procedures could be refined to make them a more useful delivery tool.

2 Development process: brownfield

2.1 In most cases S106 & CIL come from the value created by the development process rather than the land value. It is important that land values are not encouraged to rise by including S106 and CIL as additional costs on development rather than the intended reduction in land values thereby reduce the ability of the development process to fund planning obligations, CIL etc. Unfortunately this happened as a result of para 173 in the original 2012 NPPF. It said:

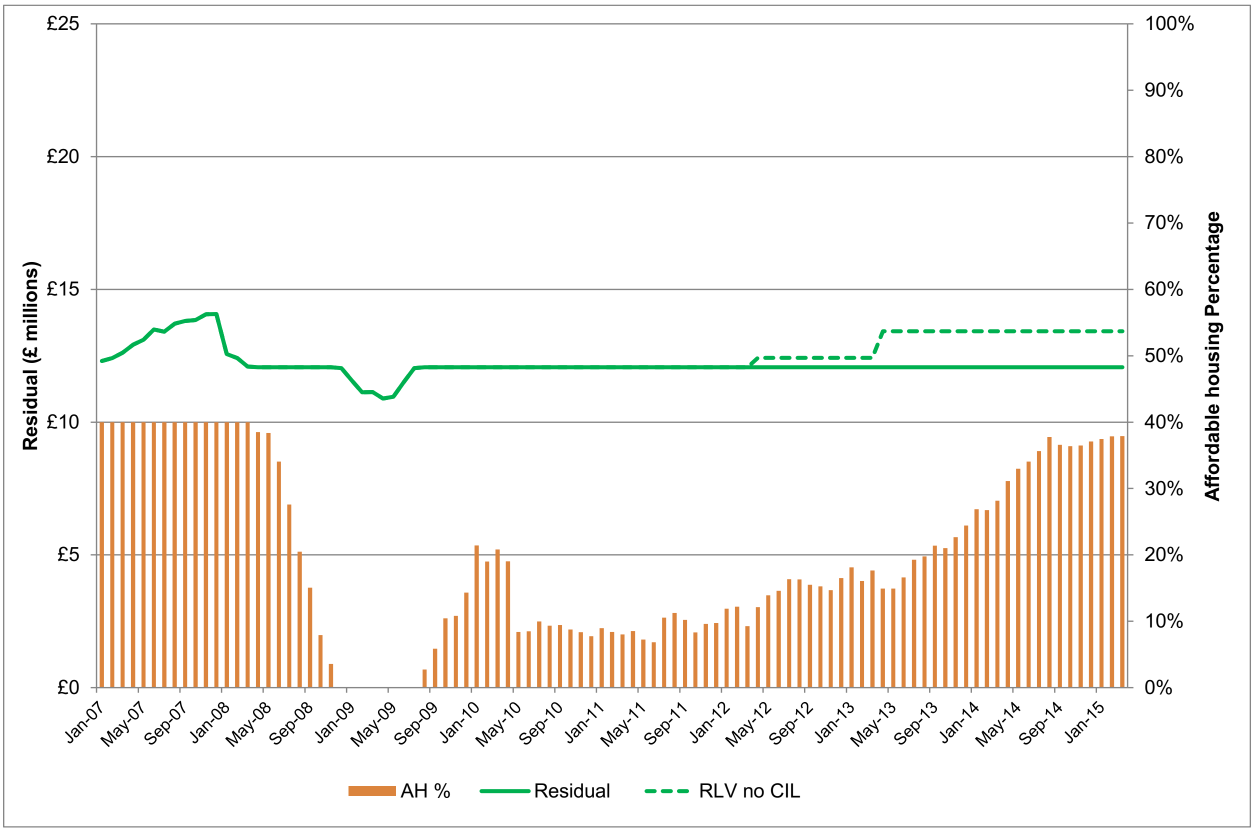
> *To ensure viability, the costs of any requirements likely to be applied to development [eg CIL & S106] when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.*

2.2 This gave developers the confidence to overpay for land, safe in the knowledge that they could argue a viability case and the planning system (usually affordable housing contributions) would subsidise this profligacy. The table below (produced by BNP Paribas) illustrates this:



2.3 It shows the % of AH provision in the orange bars (key on right hand side). The green line represents the residual land value (RLV) calculation for these developments – the dotted line indicates the RLV if CIL was not in place. The table charts the significant drop in AH provision following the recession (and changes in AH funding in 2010) and only a small dip in land values during 2009. As the market recovers, we see a surge in RLV around the time of the NPPF publication in March 2012. Recovery in AH contributions is accordingly depressed.

2.4 The table below uses the same data but freezes the land value post NPPF publication to see the effect on AH provision. Again, the dotted green line illustrates the effect of CIL.



2.5 It can be seen that if land price inflation had not been encouraged (albeit unwittingly) by the wording in the NPPF, AH provision was capable of recovering to pre-recession levels despite the significant reduction in government AH subsidy in 2010.

2.6 This has been recognised by MHCLG, particularly following the Parkhurst decision in LB Islington, and the NPPF, and its supporting guidance, have recently been amended to try to reverse this trend. The previous tendency (supported by RICS Guidance) to use market value [1], which tended to be conflated with what the land was bought for, is now being replaced by EUV+: that is the existing use value plus a premium which is sufficient to encourage the landowner to sell. The emphasis now is on recognising that land or site value should reflect planning policy requirements.

2.7 The concern that POS has is that this may not be sufficient to ensure the delivery of much needed AH through this funding mechanism. The problem is that if there is a viability issue in the context of any scheme, AH is generally the victim. The reason for this is:

- CIL is in effect a tax and therefore compulsory and unavoidable

[1] Market Value is not what you will get for land in the market – the RICS Red Book definition is:
The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

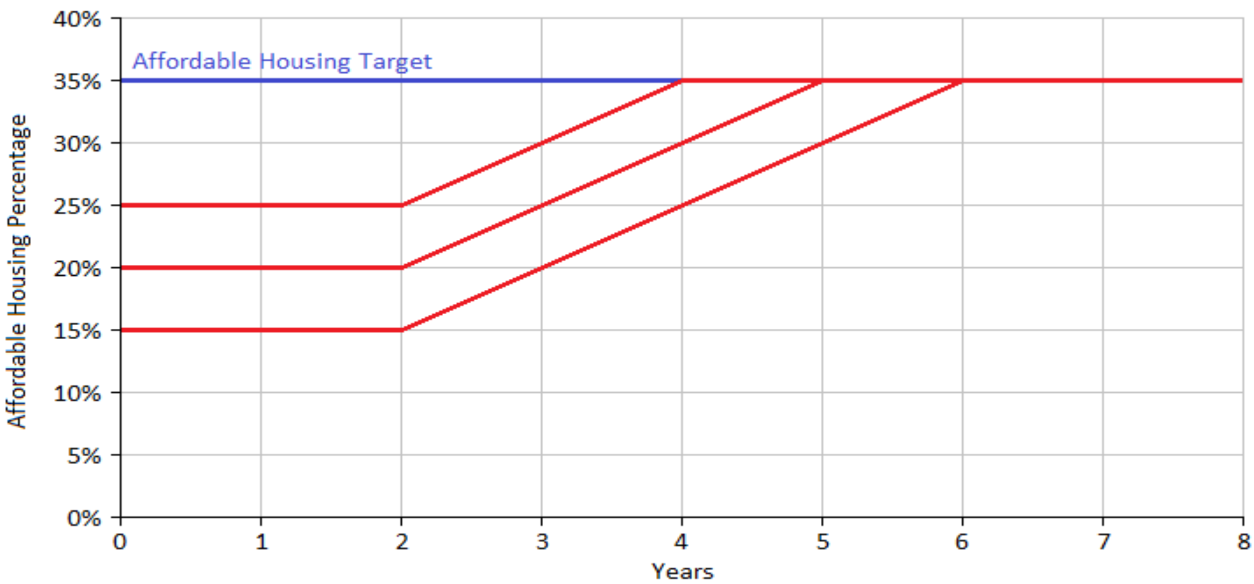
- S106 mitigation is necessary and therefore will generally result in a refusal if not secured because of the harm caused
- AH is a policy requirement and it's non-provision does not result in harm in the same way as mitigation requirements, so is where adjustments are made in a viability negotiation

2.8 In January 2016 POS produced a paper titled "Affordable housing: delivering it in a more effective way" which set out a public policy response that could effectively address the problem of affordable housing being the casualty and land price inflation the outcome where there is a viability argument.

2.9 Our suggestion was to move to a fixed AH percentage. This needs to be done in a way that the market can absorb. If there was cross-party support to genuinely deliver the optimum level of housing (including affordable) the planning system can alter the operation of the market. We did this before when we introduced Town Centre First policies in the 1990s and the London Mayor is having quite a bit of success with his 35% "fast track" offer.

2.10 In our proposed model, the necessary level of AH is set in the Local Plan as now. This policy change would set an initial compulsory rate in relation to historic provision over (say) the previous three years. This would be set for a specified area, which could be parts of a LPA area if there are materially different development markets in different parts of a borough. That rate would be fixed for two years and would thereafter rise by 5% a year until the Local Plan set level was achieved.

2.11 The chart below illustrates how it would work in three different scenarios where the historic level of AH provision was 15, 20 and 25% (red lines) and the Local Plan target was 35% (blue line).



2.12 POS has tested this with different parts of the industry (including householders) and there has been universal support for its principle of both giving certainty as well as enabling the market to adjust to the new regime. The final part of this policy change would be to make the delivery of AH in this scenario a more rigid requirement with exceptions being just that, exceptional. We did this with the Town Centre First policy and can do the same with AH.

3 Development process: greenfield

3.1 For most brownfield site developments there is little if any uplift in land value from the EUV+ benchmark land value. However, with some low value uses and especially with Greenfield sites there can be a significant uplift in land value as a result of planning permission. S106 and CIL are still deployed, but it is probably only where these sites are large and need significant infrastructure investment that there is a proportionate capturing of land value to ensure that the development pays its “fair share” towards mitigating its impacts and funding its infrastructure needs. The isolated house on a greenfield site almost certainly does not do so and such sites sell for many hundred times, if not thousand times, more than their actual EUV; far more than Letwin’s proposed 10x model. This is an area that needs to be examined further. The recent changes to the CIL Regulations that allows a differential CIL rate between greenfield and brownfield development scenarios is an attempt to address it, however POS considers that the changes suggested in the next section may provide a better solution.

4 Land Value Capture

4.1 Where we invest in a big piece of infrastructure (eg Crossrail) we have used mechanisms like the London Mayor’s CIL to contribute to its funding. It is proposed to change CIL to enable such strategic approaches to infrastructure funding to be more widely available to combined authorities and Metropolitan Mayors (Strategic Infrastructure Tariff). Whilst these have proved useful, they are cumbersome, targeted too narrowly and do not capture all the uplift from such investment. As areas like London & the South East succeed economically, places become denser and there is a need to invest in upgrading and supplementing existing infrastructure networks more generally. This increase in demand for infrastructure is not directly associated with property developments, but also related to infrastructure redundancy and the need for replacement/upgrading but also our approach to utilising floorspace more efficiently through new ways of working in offices and the deployment of robotic and other technologies in industry. The pressures for funding these infrastructure demands can be very difficult to deliver using existing tools.

4.2 Taxing property and especially land should be considered. Assets were taxed long before income and most economists agree that as a form of progressive taxation it’s a good one. Past problems of valuation complexity could well be resolved with Big Data and Artificial Intelligence – Zoopla probably sets local property prices more efficiently and more accurately than the estate agency industry does! Concerns from people who are asset rich but income poor can be addressed by designing the payment regime to suit people’s circumstances. The tax can be paid annually, upon a property transaction event or as part of the estate’s probate process.

4.3 This tax regime will provide a larger and more constant flow compared to existing measures. It will not only optimise land value capture in all its forms, but have a beneficial stabilising effect on land values and help to improve markets such as housing. The cost of building a house is broadly similar in Hackney as it is in Hull. The huge difference in the price is clearly down to the value of the land. That increase in asset value has not been taxed and has accordingly been seen by the market as something to invest in. Other changes to mortgage regulations since the 1970s have fuelled the phenomenal growth in the price of housing (its land in particular) in many areas of the UK due to the speculation that has occurred by banks and other such institutions in exploiting an asset that is free of many of the taxes that other assets are subject to. Countries, such as Germany, who have not gone down the same road as the UK and USA, have seen a very different performing housing markets, which most economists agree is better in the long term.

4.4 The introduction of a universal land asset tax should replace many of the taxes that in a piecemeal way try to tax such assets now: capital gains tax on non-domestic property transactions, stamp duty, some forms of inheritance tax etc. An important benefit would be the removal of the incentive for banks and other lending institutions to disproportionately invest in funding the purchase of residential property which is the main cause of house price inflation: too much (generally mortgage) money chasing a limited supply of homes.

5 Owning land

5.1 How public bodies use land can be a powerful force in place-making and development-delivery. The various iterations of New Towns in the UK, from the Victorian Garden City innovators (Letchworth and Welwyn); through the “out-of-county” overspill estates by London, Manchester and Glasgow councils in the 1920s and 30s; to the three waves of New Towns developed between 1946 and 1970, saw a very successful provision of many thousands of homes that were generally predicated on state ownership of land at rates that enabled full investment in supporting infrastructure to produce (in most cases) mixed and balanced communities. These were very successful, generating significant surpluses to the Exchequer until the Development Corporations were mostly wound up in the early 1990s to be replaced by the Commission for the New Towns and later English Partnerships. This generally broke the link between ownership of land and management of place.

5.2 Other countries have successfully taken this model of public ownership of land to leverage investment in areas to bring forward development. As a model it has fallen out of favour in the UK, but there are tentative signs of its re-emergence. However it is not at the scale nor level of ambition that we trail-blazed in the last century. POS believes that we need to look carefully at this model again and learn the international lessons of its successful deployment as a more recent place making tool. The world leader at new, large-scale placemaking needs to regain its crown.

6 Compulsory Purchase

6.1 It is common ground in the sector that the CPO regime is complex and in need of reform. In February 2017 POS produced a paper titled "Compulsory purchase: three essential improvements" which set out how the CPO regime could be improved as a tool to enable local planning authorities to be more proactive in unlocking sites with housing potential to support the delivery of sustainable development and how to capture an appropriate amount of land value to ensure necessary supporting infrastructure is delivered.

6.2 In the context of a tougher regime in the NPPF around viability and encouragement to LPAs to give shorter planning permissions where there is evidence of non-delivery by developers, we must guard against owners downing tools and waiting for policy changes. LPAs need to be given the tools to be proactive, particularly given the Housing Delivery Test, and the ability to CPO land in such circumstances needs to be specifically legislated for. The current set of powers would not guarantee success in such circumstances.

6.3 Our three key recommended changes are:

1. CPO as a tool to tackle land banking or unlock stalled housing sites:

- A new CPO enabling power for local planning authorities to use where a site is a "housing site" and that development has not come forward after a "specified period"
- A "housing site" would include the following:
    - A site with a valid Planning Permission
    - A site with an appropriate Permission in Principle: LPAs should be able to issue a PiP unilaterally for any size or type of development if a site does not have planning permission or cannot be allocated in a plan because the owner is uncooperative – the landowner would have a right of appeal
    - A specific site allocation in a Development Plan Document (including a Neighbourhood Plan)
- Once the principle of developing a site for housing is established the owner/developer has a "specified period" within which to commence the development and to continue to do so
- This "specified period" could be three years, to match the life of a planning permission
- If a housing site is not being built out, then we should be able to CPO them with this specific new power and, subject to the other CPO tests, meeting these two requirements would be sufficient justification to win a CPO

2. A simpler alternative to CPO:

- Generally, for funding purposes, LPAs often have to enter back-to-back arrangements for CPO
- The time taken to procure the right partner and to negotiate the various agreements can be as long as, or even longer than, the CPO process itself
- POS believes that a Compulsory Selling Order could be the solution as the LPA could do this on their own with much lower levels of funding and therefore it would be much quicker and cheaper

- The process would be like a current CPO, but the outcome would be an Order to sell the land with a specified minimum sales price, which would be the existing use value – this would be set as part of the CSO process
- Any hope value is for the market to realise when the land is sold
- POS recommends ways in which this could be achieved in its CPO Manifesto
- Scotland is looking at something similar: Compulsory Sales Order [2]

3. Modernising the compensation regime:

- Land value capture is a challenge and not paying some (realistic) hope value would not be human rights compliant (Article 1, Protection of Property under the First Protocol of the Human Rights Act 1998)
- However, the regime that has built up to deal with hope value is cumbersome and can have unintended consequences – its fundamental provisions also predate the 1947 planning system and, given how land and property rights are now treated, its philosophical basis should therefore be revisited
- Alternative uses, which the land owner has never pursued, suddenly in a CPO scenario are viable and incredibly valuable; much more valuable than the current use, yet hitherto never pursued by the landowner
- POS believes that in scenarios where the CPO scheme is one with a clear market value, that there should only be two compensation options available to CPO land/property owners: existing use value or (if the owner considers that there is a higher hope value) a residual land value appraisal based on delivering the CPO scheme
- This would be the total value of the CPO scheme, minus the cost of providing the CPO scheme (including supportive infrastructure) and a sensible contingency
- The second approach would leave the CPO scheme-world land value, with all (realistic) hope value properly accounted for

6.4 POS believes that if these changes were implemented the CPO regime would represent a much more accessible and useful tool for local planning authorities. It would enable us to act in a more pro-active way to deliver sustainable development that meets the needs of our communities, but also strikes the right balance between giving the landowner the right level of compensation within the context of a development scheme that is in the wider public interest to bring forward. In reality the introduction of the first two suggestions should have the effect of changing the nature of the market and would probably never have to be used; the threat of their use being sufficient in most situations.

7 Conclusions

7.1 It is vital that new and existing development has the infrastructure it needs to function well. It is increasingly one of the main reasons why communities resist new development; it puts unacceptable strain on already stretched infrastructure. This paper sets out a range of measures and approaches that can leverage more funds into this important area without damage to the development process. However, if these more general measures are introduced to capture land value, the money raised needs to be hypothecated to infrastructure to overcome fears that government will merely take them into general taxation.

[2] https://landcommission.gov.scot/wp-content/uploads/2018/08/CSO-Proposal-final.pdf