

22/01544/APP
27th October 2022

Change of use from agricultural use to temporary outdoor nursery to be used March to October 2023 during the refurbishment and extension of the nursery at Aberlour Primary School at New Cemetery Aberlour Cemetery High Street Aberlour for Moray Council

Comments:

- Advertised as a departure from Moray Local Development Plan 2020.
- A site visit will have been carried out.
- The application is being made by the Planning Authority and relates to Council land.
- This application seeks consent for a temporary outdoor nursery to be sited on Council owned land in the village of Aberlour. It is required whilst the existing nursery at Aberlour Primary School is refurbished which is due to commence in 2023.
- The application is being considered by Committee as it raises matters of wider community interest.

Procedure:

- None required.

Recommendation

Grant Planning Permission - subject to the following:

Conditions/Reasons

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted.

Reason: The time limit condition is imposed in order to comply with the requirements of section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. No development shall commence on site until a Construction Traffic Management Plan has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. The Construction Traffic

Management Plan shall include the following information:

- a) Construction programme;
- b) Details for the removal of any excavated materials from site including the estimated volume and destination(s) for disposal.
- c) Full details of any temporary construction access or the construction traffic route between the site and the A95;
- d) Traffic management measures to be put in place during works including any specific instructions to drivers; and
- e) Details of any temporary construction compounds or parking provision.
- f) The Plan shall also cover the construction phase when the structures are removed and the ground reinstated.

Thereafter, the development shall be implemented in accordance with the approved details.

Reason: To ensure an acceptable form of development in terms of the arrangements to manage traffic during construction works at the site.

- 3. The development hereby approved shall not be brought into operation until the 1.8m high close boarded fence has been erected in accordance with the approved plans. The fence shall be retained thereafter in accordance with the approved plans throughout the lifetime of the development.

Reason: To ensure that there is no adverse impact upon the privacy and amenity of neighbouring properties/uses.

- 4. The development hereby approved shall not be brought into operation until the emergency pedestrian access gate on the east side of the site has been provided in accordance with the approved plans. The gate shall be retained thereafter in accordance with the approved plans throughout the lifetime of the development. For the avoidance of doubt, the fence shall be kept unlocked at all times when the nursery is in operation.

Reason: To ensure that there is adequate access/egress provision for pedestrians in any flood events.

- 5. The development hereby approved shall be operated in accordance with the approved Operational Plan and Statement on Mitigation unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure that there is no adverse impact upon the privacy and amenity of neighbouring properties/uses.

- 6. The development hereby approved shall be constructed and finished in accordance with the approved plans and drawings unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure the development is appropriate to the surrounding area and integrated into the landscape.

7. The development hereby approved shall be used for a temporary period only between 1 March 2023 and 31 October 2023 unless otherwise agreed in writing with the Council as Planning Authority. All structures, fencing, hardstanding/parking area and all other development as shown on the approved plans shall thereafter be removed within 3 months of the expiry of this consent (i.e. by 31 January 2024) or within 3 months of the cessation of the operations whichever is the sooner and the land restored to grassland.

Reason: As the development has been assessed in relation to a temporary use of the site in terms of amenity, visual and flooding land use planning considerations.

Reason(s) for Decision

The Council's reason(s) for making this decision are:-

The proposal accords with the relevant provisions of the Moray Development Plan 2020 and there are no material considerations that indicate otherwise.

List of Informatives:

THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER has commented that:-

Please contact the Building Standards Duty Officer in order to ascertain whether a Building Warrant will be required for these proposals between 2pm and 4pm or telephone on 03001234561. No appointment is necessary. Alternatively e-mail buildingstandards@moray.gov.uk

The developer should note that Scottish Water have advised that they have live infrastructure (combined sewers, and water mains) in proximity of development area so developer must identify any potential conflicts with them – more detail in their consultation response.

The SCOTTISH ENVIRONMENT PROTECTION AGENCY has commented that:-

In the event that any application is lodged seeking to extend the period of use of the nursery hereby approved, such an application must incorporate a detailed Flood Risk Assessment.

As the permission sought is temporary and reversible in nature, it would not warrant a recognised increase in land use vulnerability on a permanent basis and any future development proposed for the site must be treated as a potential increase in flood risk. The principle of development as a 'Most Vulnerable' land use has not therefore been established at the site.

| LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT | |
|--|-------------|
| Reference No. | Version No. |
| 61680_SK-102 | |
| 61680 TON SK 001 | |
| 61680-SK-100 | B |



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:
22/01544/APP

Site Address:
New Cemetery Aberlour Cemetery
High Street Aberlour

Applicant Name:
Moray Council

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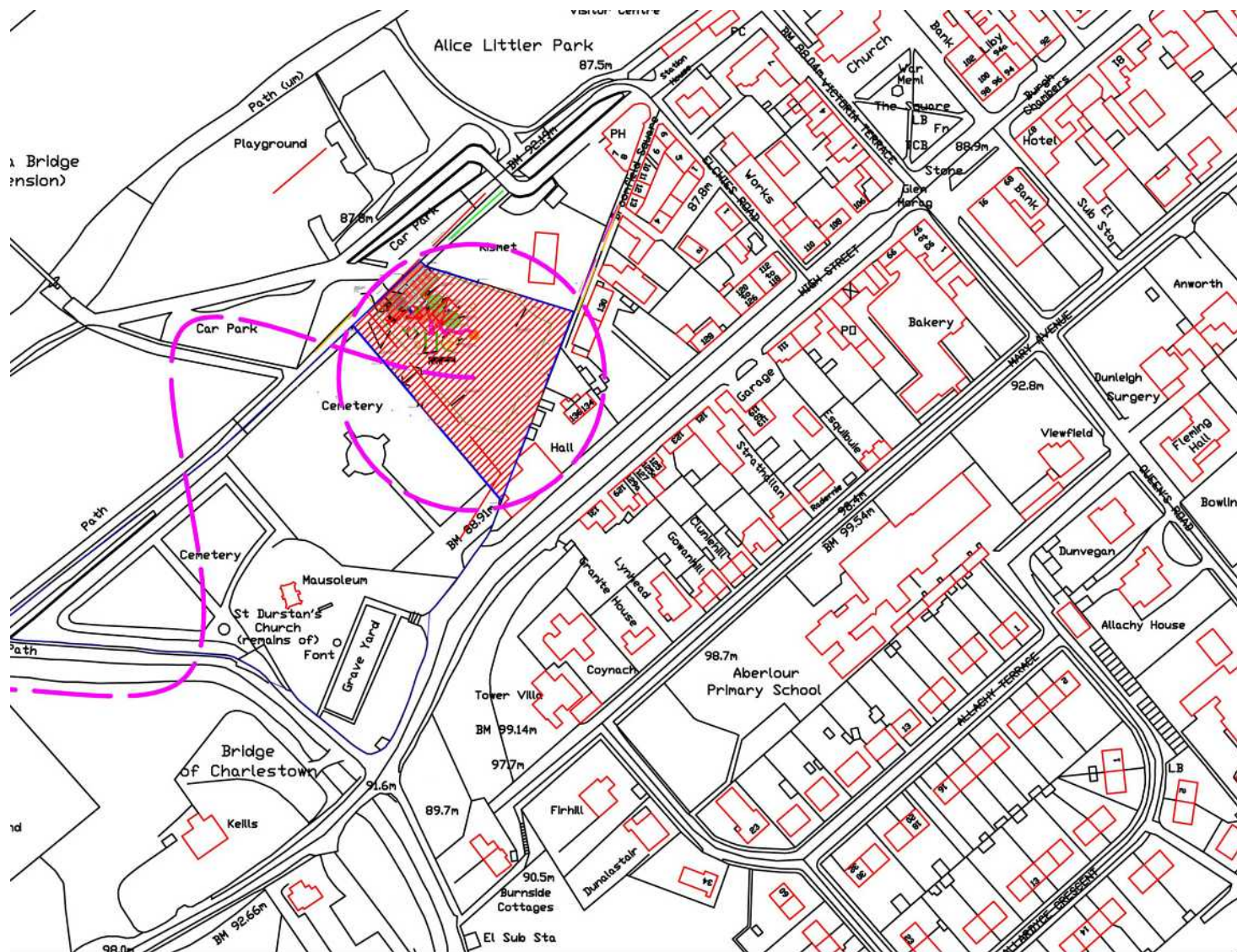
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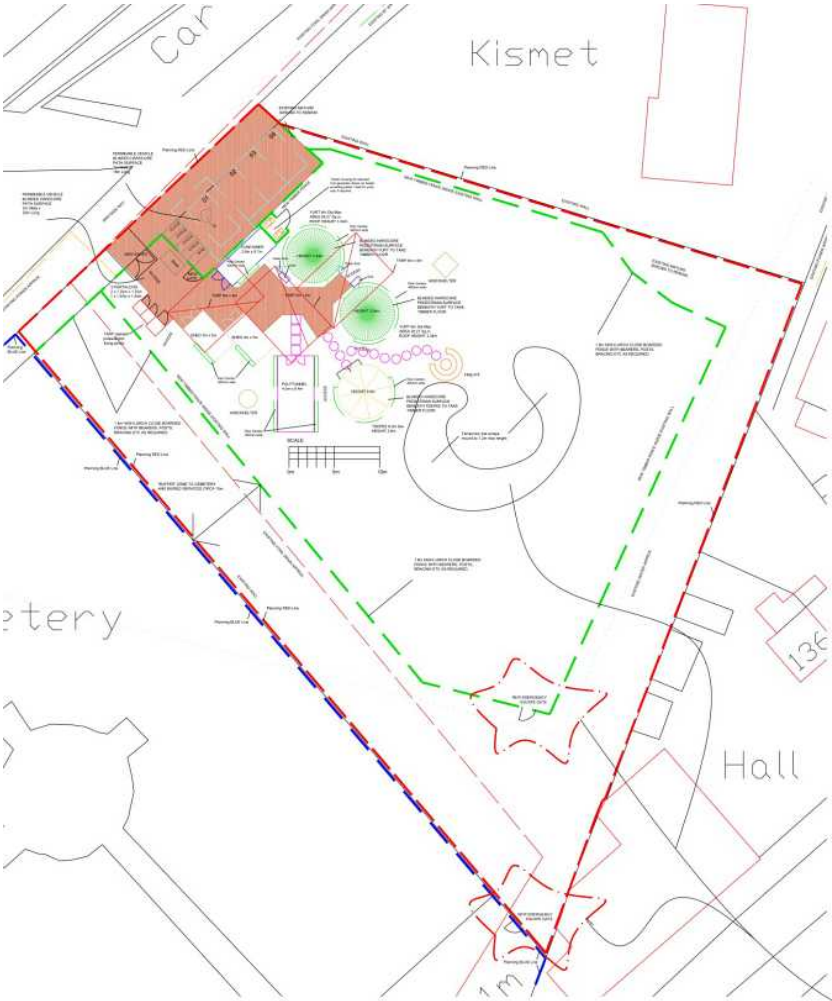
Location Plan



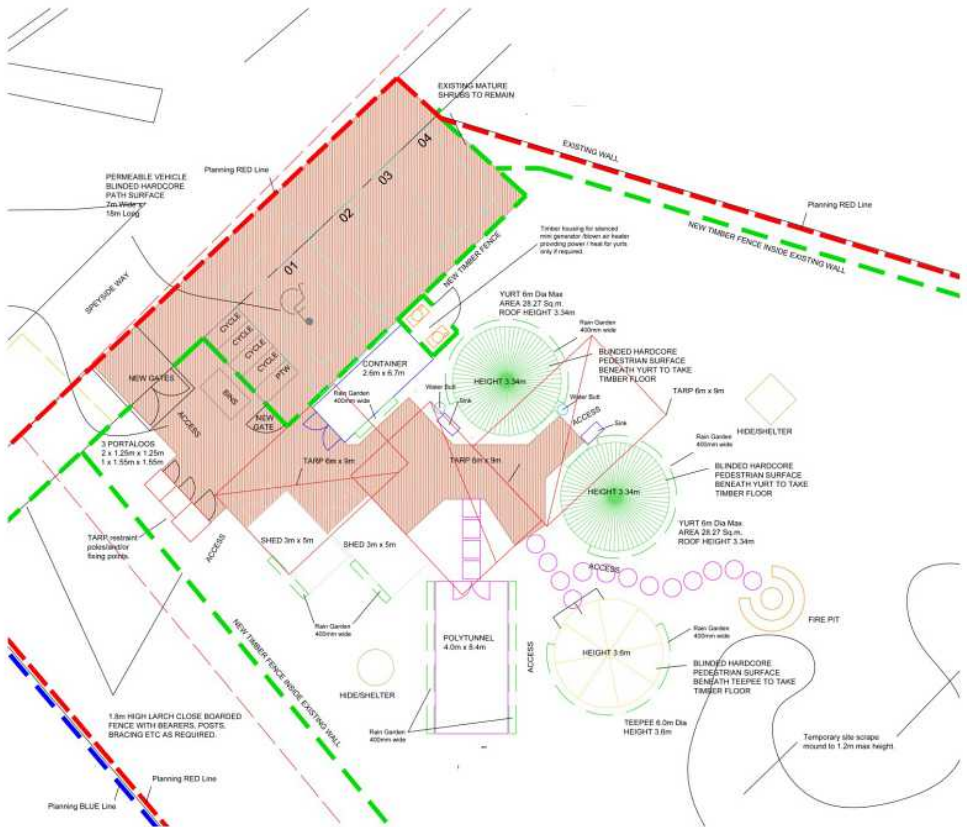
Site Location



Site and layout plan

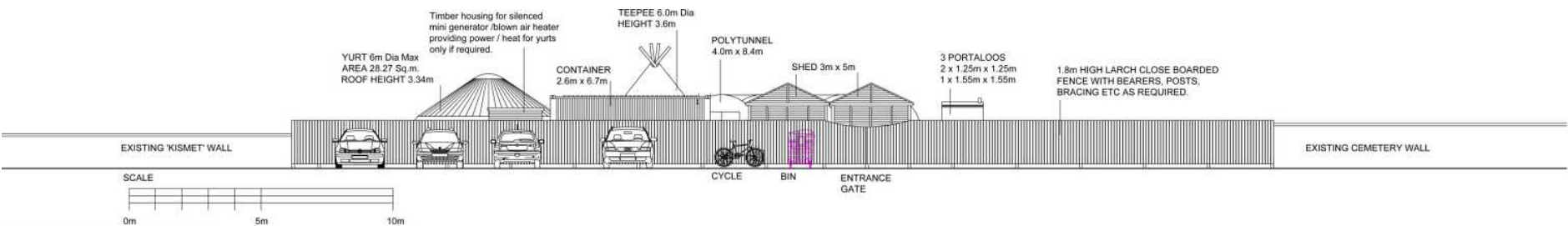


SITE PLAN
SCALE 1:250

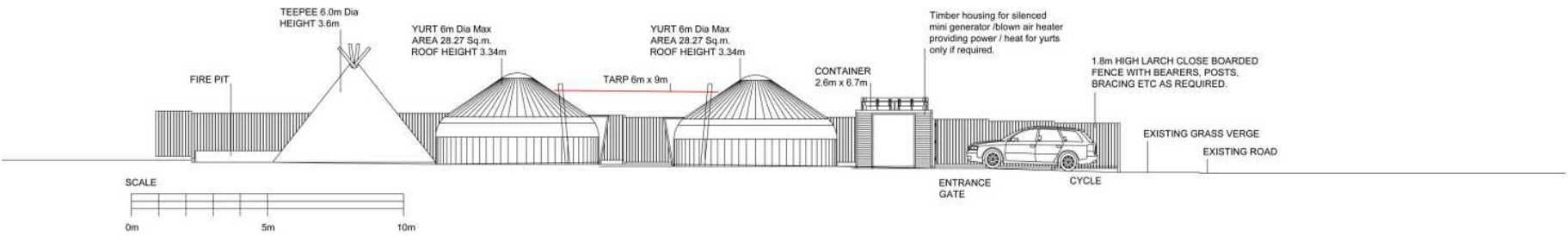


LAYOUT PLAN
SCALE 1:125

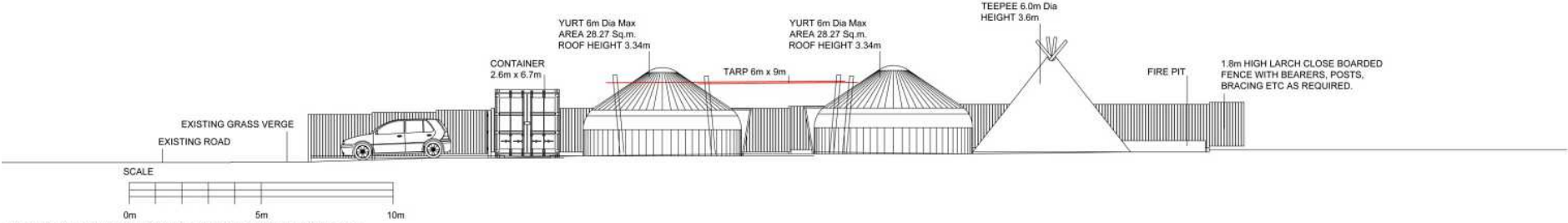
Site sectional elevations



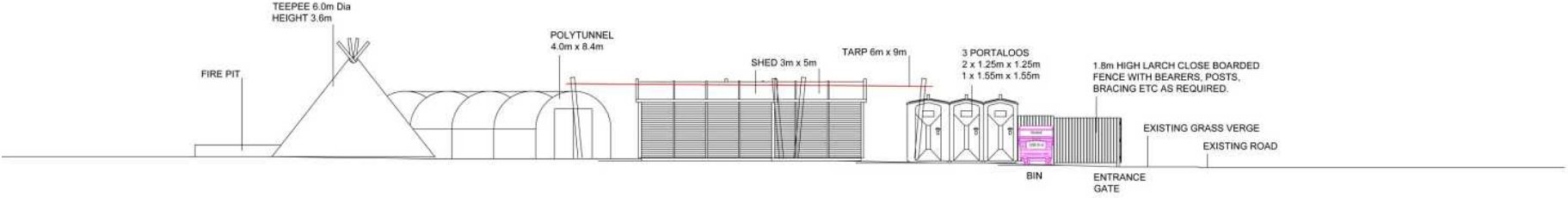
ELEVATION FROM STREET SCALE 1:75



SECTIONAL ELEVATION LOOKING TOWARDS CEMETERY SCALE 1:75



SECTIONAL ELEVATION LOOKING TOWARDS 'KISMET' SCALE 1:75



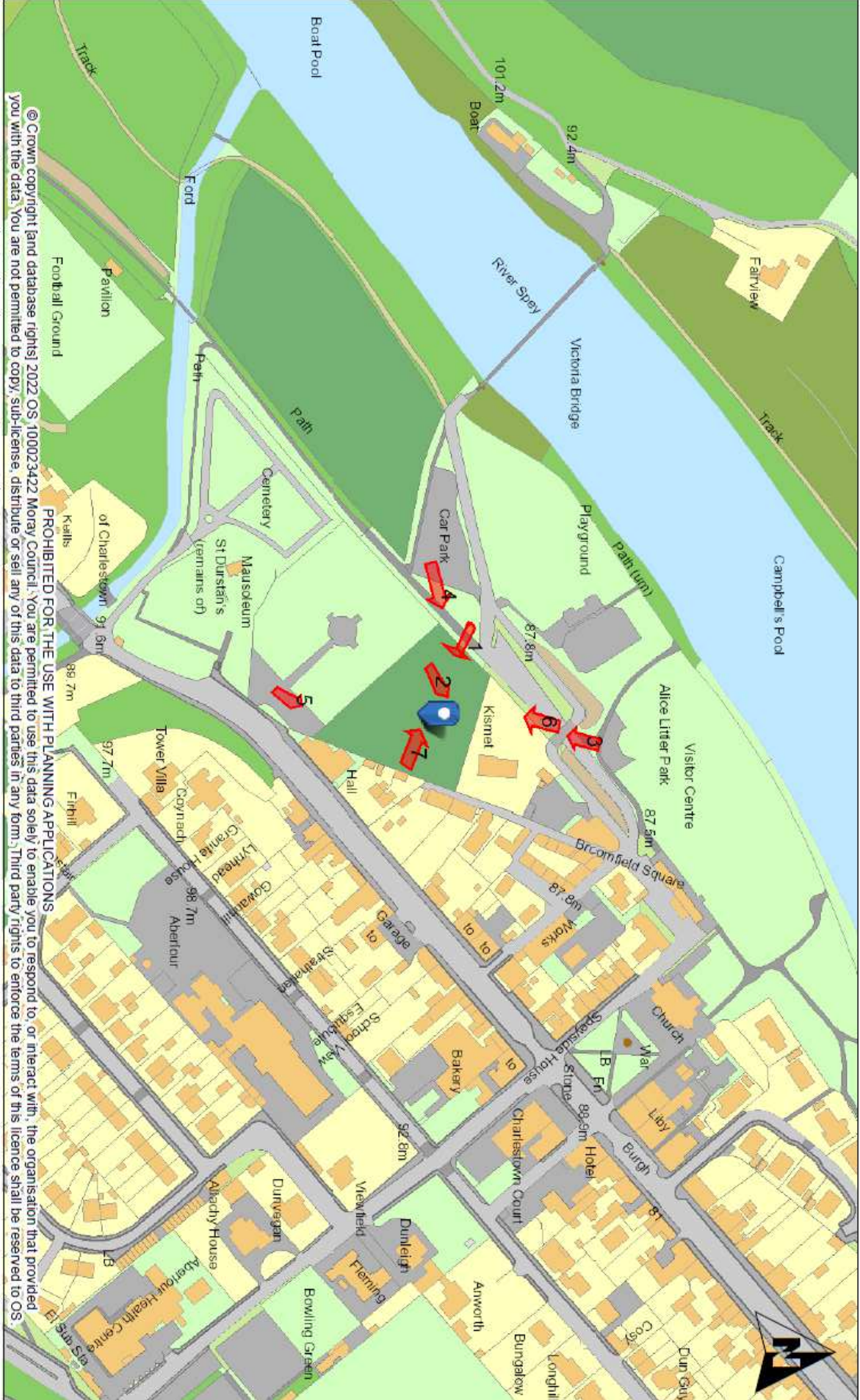


Photo 1 looking to High Street



Photo 2 looking to Kismet



Photo 3 looking over site from bridge



Photo 4 looking to High Street & from by Speyside Way



Photo 5 looking to site from cemetery car park



Photo 6 looking to site from access road



Photo 7 from houses



PLANNING APPLICATION: 22/01544/APP

In the event that a recommendation on this planning application is overturned the Committee is reminded of the advice contained on the front page of the agenda for Reports on Applications

1. **THE PROPOSAL**

This application seeks full planning permission for the change of use of a small field to form a temporary outdoor nursery during the refurbishment and extension of the existing nursery at Aberlour Primary School. The temporary nursery will be required from March to October 2023 with use of the facilities only taking place during term times.

The key features of the proposals are as follows:

- Parking area with permeable finish to be formed adjacent to road leading to Alice Littler car parking area with access to site for children taken through access point in fencing to be erected.
- 4 parking spaces plus cycle and powered two wheeler provision to be made.
- A 1.8 metre high close boarded larch fence is proposed around the site, along the entire site frontage to the road (set back behind the parking area) and then set some 10 metres northwards into the site from the cemetery to the south and around 8 metres at points from the housing to the east to create a “buffer zone”.
- Siting of temporary structures including two yurts (roof height 3.34 metres), wigwam/teepee, polytunnel, container, two small pitched roof wooden sheds and tarpaulin covered areas supported on struts/poles. Two hide/shelters are proposed along with rain gardens, fire pit and paths.
- The closest of these structures to the housing to the east will be around 30 metres from the mutual site boundary with the facilities to be located in the western part of the site.
- Silenced mini generator or blown air heater will be used for heating - these will be enclosed in timber housing.
- All ground excavated to create the areas for the facilities will be stored on site in bunding of maximum height 1.2 metres and reused in site reinstatement. Minimal excavation of around 150 mm is anticipated.
- It is not proposed to connect to public water or drainage services, but rather to have an off-grid facility with no new buried servicing. Siting of three portaloos is proposed, bottled water for hand washing serviced by the nearby station tea room with facilities for handwashing provided in the messy play sinks in the tarpaulin covered area and in the polytunnel similar to other outdoor nurseries. This polytunnel will have a hard surface floor.
- Washing of equipment and utensils is to be dealt with by the existing catering assistant at Aberlour Primary school, with back up provision being an agreement to access facilities within the former railway station building.

- Following discussion with SEPA an emergency pedestrian access gate is proposed in the south east corner of the site leading into the adjacent cemetery area with access then onto the High Street.
- Opening hours anticipated to be term time only from 8:50 am to 2:50pm.

As noted above these new facilities are required in order to accommodate the children attending the existing Council operated nursery at the primary school whilst the nursery is being refurbished to meet current standards and to ensure continued nursery provision within Aberlour. It is understood this involves around 20 children. The applicants considered a range of alternative sites in the area with the application site chosen for reasons of availability/ownership, proximity to school so avoiding additional transport issues for parents, central location in village and access to nearby facilities for staff breaks and hot running water.

Supporting information has been provided including:

- Operational statement outlining the measures to be taken to minimise disturbance during funeral services including engaging with churches, funeral parlours etc. regarding services and making plans to either take the children inside the yurt at such times for quiet activities or in good weather to take them to a suitable outdoor venue such as the adjacent Alice Littler park. A buffer zone is also proposed around the site with fence erected to separate the activities from the cemetery.
- Statement of mitigation measures including timber fence set into site to create buffer zone from sensitive users in terms of privacy and noise reduction, use of permeable surfaces on areas which are exposed to rainfall, with storm water run-off to be collected in water butts and reused. Additional traffic will be generated as this is a temporary relocation of an existing facility with most users/workers able to continue their existing pattern of travel due to the proximity to the existing nursery.

2.

THE SITE

- Small field within the settlement of Aberlour, directly adjacent to Aberlour cemetery.
- Currently grassland of around 0.37 hectares with a 35 metre site frontage.
- Fronts road leading to Alice Littler Park with Speyside Way running westward along the south western part of the site frontage.
- The site sits within the ENV9 designation 'Cemeteries and proposed extensions' within the Aberlour Settlement Statement.
- To north west of the site is the car park serving the Alice Littler Park and recycling centre with the park beyond this leading to the River Spey.
- A detached residential property at Kismet lies to the north in its own gardens with block wall and vegetation along this boundary.
- Residential properties lie to the rear (east) of the site at 132 A High Street with stone boundary wall along this boundary. Further south east along this rear boundary lies the rear gardens of 134 -136 High Street with the former hall (now dental practice) further south east again along this boundary.
- Aberlour Cemetery lies to the south with a stone wall along this boundary.

3. **HISTORY**

There is no history on the site itself.

Relevant planning history is:

20/01374/APP - Alter and extend accommodation provide temporary classroom accommodation and upgrade the nursery garden at Aberlour Primary School Nursery - consent granted for this and accompanying Listed Building application. This site lies on Mary Avenue to the south.

4. **POLICY - SEE APPENDIX**

5. **ADVERTISEMENTS**

- 5.1 The proposal has been advertised in the local press as a potential departure from the Development Plan and for neighbour notification purposes.

6. **CONSULTATIONS**

Transportation Manager: No objections subject to condition requiring a Construction Traffic Management Plan being agreed. The Transportation Manager is satisfied with the access arrangements to the location, subject to conditions recommended.

Environmental Health: On receipt of further information on toilet and hand washing facilities have now confirmed they are satisfied with the proposed arrangements.

Flood Risk Management: No objections.

Estates: No objections.

Access Manager: No objections.

Archaeology Service: No objections.

Contaminated Land: No objections.

SEPA: Initially advised that information submitted was insufficient to determine the flooding impacts given the location of the site within an area at risk of flooding from the River Spey. Further information was required on alternative sites considered, emergency flood access/egress for pedestrians and consideration of siting of infrastructure to avoid flood risk. On receipt and consideration of this further information SEPA has now advised that given the temporary nature of the proposal, it would be acceptable and would not constitute a 'most vulnerable' use. If it were to become more permanent, then a detailed Flood Risk Assessment would be required.

Scottish Water: No objections. Note that they have live infrastructure (combined sewers, and water mains) in proximity to the development area so developer must identify any potential conflicts with these services.

7. **OBJECTIONS-REPRESENTATIONS**

NOTE: Following the determination of this application, name and address details will be/have been removed (i.e. redacted) in accordance with the General Data Protection Regulations (paragraph 3 of Minute, Planning & Regulatory Services Committee 16 September 2014).

A representation has been received from the local Community Council who have noted that whilst they support the creation of outdoor learning nurseries they object to the proposed development which they consider to be on an unsuitable site for the following reasons, even for a 6 month period.

Issue: Access to and from the site is unsuitable. Footpath past the old Packhorse Bridge onto the Speyside Way is not suitable for buggies, no footpath along Elchies Road, no footpath from the Church, tea rooms and Mash Tun. Generation of additional traffic in a busy location where roads serve the park and recycling centre. Roads are narrow in places with no separation of pedestrians and vehicles, and no safe walking route for people with young children.

Comment (PO): The relevant consultee (Transportation Manager) has no objections to the proposals. In relation to the points raised by the objector the Transportation Manager has highlighted that the site is accessed from the existing network which is in constant use by pedestrians, cyclists and vehicles accessing, amongst other things, the Alice Littler Park, recycling facilities, Speyside Way, Old Station and Mash Tun. The park area and square are notably busy with school children during breaks and after school. The activity and layout of the access route to the carpark encourage a change in driver behaviour which promotes reduced driving speeds and urges a more cautionary driving style.

Vehicle drivers already expect to see non-vehicular activity sharing access in the area and an increased presence of non-vehicular activity would further diminish any sense of vehicular dominance and reinforce positive behaviours. Children travelling to the nursery would be expected to be accompanied by an adult at all times which reduces the risks compared with an unaccompanied minor. Whilst it is accepted that there is likely to be an increase in traffic volume associated with the nursery, the use is identified as temporary and the nursery could take proactive steps to promote walking and cycling to the site which would be supported.

Issue: Site is too close to fast flowing River Spey with the Alice Littler Park and Speyside Way being flooded in 2009, 2014 and 2017 between March and October.

Comment (PO): The site lies partially within an area identified by SEPA's flood maps as being at risk of flooding. Relevant technical consultees were therefore consulted. The Flood Risk Management Team has no objections to the

proposals. Following submission of further information as noted in the consultation section of this report SEPA has advised given the temporary nature of the site, the proposed pedestrian gate leading east away from the site, SEPA raises no objection to the application. The wider locality, susceptible to flooding is already used for recreation/play.

Issue: Concerns regarding large numbers of people passing the site – queries whether CCTV will be installed.

Comment (PO): The site will be enclosed by a 1.8 metre high fence which will safeguard the privacy of the users of the facility. The installation of CCTV is a matter for the applicants to consider and not a land use planning consideration. There is no policy requirement for surveillance.

Issue: Environmental health concerns relating to lack of running water for children to wash their hands, no changing or washing facilities for children who use nappies/incontinence pads with toilets at Tea Room not suitable for this as well as leaving the nursery understaffed if staff need to take children there.

Comment (PO): The Environmental Health Section has been consulted and sought further information on washing arrangements as set out in the consultations section. The section have confirmed that they are satisfied about the use of bottled water, and other arrangements for hygiene.

The proposed temporary development will be operating “off grid” which is not unusual with outdoor nurseries. It is understood that the Care Inspectorate have been involved with the development of this facility and are supportive of the outdoor decant plan which has been planned in accordance with Care Inspectorate and Scottish Government guidance on outdoor play. In any event the development will be regulated by the Care Inspectorate and this will cover staffing and welfare issues which are not the remit of the Planning Authority.

Issue: Concern regarding conflict with adjacent cemetery use. Note the intention to consult with the Church regarding funeral times – highlight the Church does not carry out all funeral/burials in the cemetery and other bodies will need to be consulted. Also highlight that people visit graves other than at funerals and this needs to be considered noting it is difficult to keep a large group of children quiet.

Comment (PO): This point has discussed with the Open Space Manager who has provided advice on how best to liaise with relevant funeral providers. This has been included in an operational plan submitted by the applicants. The Open Space Manager has further commented that points of contact should be established with the Registration Service who manage funeral bookings and the Open Space Cemetery Team Leader who manages and oversees funerals at the cemetery. Users of the site would however be mindful not just of funerals but also of bereaved families/visitors who routinely visit this well-attended cemetery.

This plan explains how the applicants will liaise with relevant bodies and ensure that the children are either taken off site for outdoor play or have a quiet time in the yurts at times of funeral services. Cognisance will also be taken of how to ensure there is no significant conflicts with bereaved persons visiting the cemetery with the buffer zone of around 10 metres to be provided from the cemetery boundary with the facilities set behind a screen fence to reduce

impacts. Furthermore the proposed nursery use will have limited opening hours and will not involve weekends whereby potential conflicts may be minimised.

It is also noted that there is a recreational park and the Speyside Way already close by the cemetery whereby there is a degree of recreational use and associated disturbance in the area at present. Cemeteries within settlements are typically subject to background noise/activity even when interments are under way.

Issue: Related to the above point of taking children off site at times of funerals, concern is raised regarding ratio of staff to pupils for taking such young children off the site in a location so close to the fastest flowing river in Scotland.

Comment (PO): The level of staffing of a nursery is not a land use planning consideration. It will however be considered by the relevant authority (Care Inspectorate) who will ensure that children's' safety and welfare is fully taken into account. The site is proposed to be enclosed such that children would not be able to walk toward the river. A public park and play areas are already within proximity of the River Spey, where no segregation exists.

8. **OBSERVATIONS**

8.1 Following consideration of the revised draft National Planning Framework 4 which was laid before parliament on 8 November 2022, the draft (yet to be formally adopted) is to be given no weight in the consideration of planning applications. Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan i.e. the adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise. The main planning issues are considered below.

8.2 **Background**

As noted previously this application is for a temporary outdoor nursery to be sited on Council owned land in the village of Aberlour, required whilst the existing nursery at Aberlour Primary School is refurbished. These works are due to commence in 2023.

8.3 **Principle (Policy EP5)**

The application site is part of an area designated in the Local Development Plan as *"ENV 9 - Cemeteries and proposed extensions at Aberlour Cemetery"*. The supporting text explains that open space that contributes to the environmental amenity of Aberlour will be safeguarded from development that is not related to their current use as set out in the table which explains the uses. The Moray Council Open Space Strategy Supplementary Guidance provides more detail on the description of such spaces and describes the application site as amenity ground of poor quality as it lacks any clear function and is not readily accessible. However it notes that it is reserved for a cemetery extension with stringent requirements in place by SEPA which may compromise this aspiration. Development potential is noted as being for cemetery extension or a short term temporary use.

8.3.1 In such ENV designations Policy EP5: Open Space applies. This explains that development which would result in a change of use of a site identified as an

ENV designation in a settlement statement to anything other than open space will be refused, the only exceptions being where the proposal is for essential community infrastructure required to deliver the key objectives of the Council and its community planning partners (excluding housing) or for a site specific opportunity identified within the settlement statement.

- 8.3.2 If such an exception applies then the development requires to:
- Be sited and designed to minimise adverse impacts on the principal function of the space and the key qualities and features identified in the Moray Open Space Strategy Supplementary Guidance.
 - Demonstrate that there is a clear excess of the type of ENV and the loss of the open space will not negatively impact upon the quality, accessibility and quantity of open space provision and does not fragment green networks (with reference to the Moray Open Space Strategy Supplementary Guidance, green network mapping and for ENV4 Sports Area in consultation with SportScotland) or replacement open space provision of equivalent function, quality and accessibility is made.
- 8.3.3 The temporary use of unused or underused land as green infrastructure is encouraged, this will not prevent any future development potential which has been identified from being realised.
- 8.3.4 The justification for Policy EP5 explains that open space is important for many reasons including supporting healthy and active lifestyles as well as providing spaces to relax and unwind supporting mental health. The Open Space Strategy Supplementary Guidance explains that the designation of sites as ENV seeks to protect open space from inappropriate development
- 8.3.5 In this particular case the site is not used as open space, and as noted in the Open Space Strategy Supplementary Guidance lacks any clear function, with potential for short term temporary use. The application site is reserved for a cemetery extension which is the main purpose of its designation rather than as public open space. Indeed there is ample and attractive public open space in close proximity at the popular Alice Littler Park. The proposed development is for a temporary use which is in line with the description of the site in the Open Space Strategy Supplementary Guidance.
- 8.3.6 Aside from these factors, in terms of the policy background of Policy EP5 Open Space which presumes against the change of use of land covered by ENV designations, the proposed development is considered to fall into the exception category because it is for a temporary nursery required to educate children whilst the existing nursery is being refurbished. This is considered to be essential community infrastructure required to deliver the key objectives of the Council and its community planning partners given that a priority of the Corporate Plan is to provide a sustainable education service aiming for excellence.
- 8.3.7 Policy EP5 also requires such exceptions to be sited to and designed to minimise any adverse impacts on the principle function of the space and to demonstrate that there is a clear excess of this type of ENV and that it does not impact upon the quality of open space provision

- 8.3.8 The detail of the design and siting will be considered later in this report but in more general terms, as noted in the Open Space Strategy Supplementary Guidance, the application site lacks any clear function. In essence it is designated as ENV in order to reserve it for the cemetery expansion with ample open space provision in the immediate area. The temporary use proposed does not prejudice its future use for the cemetery extension, nor does it impact upon the quality of open space provision in Aberlour.
- 8.3.9 In these overall circumstances the proposed development is considered in principle to comply with Policy EP5.
- 8.4 **Siting, Amenity and Design (PP1, EP3 and DP1)**
Policy PP1 Placemaking seeks to ensure that new development is designed to create successful healthy places that improve people's wellbeing, safeguard the environment and support economic development, promote character and identity and biodiversity. Policy DP1: Development Principles sets out the need for the scale, density and character of new development to be appropriate to the surrounding area, integrated into the surrounding landscape with no adverse impacts upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity
- 8.4.1 In this regard in general terms the development is well located within the designated settlement of Aberlour, close to key community amenities such as the Speyside Way, Alice Littler Park, recycling centre and cafes. It is located within ready walking distance of the original nursery location with proximity to the Alice Littler park and Speyside Way meaning that the users of the nursery will be able to benefit from the potential outdoor education opportunities nearby, with no conflicts of use arising.
- 8.4.2 The application site is effectively a gap site whereby development here has the potential to fit into the wider streetscape. Existing townscape features such as stone boundary walls will remain unchanged and given the short term nature of the proposed development there will be no particular landscape or townscape impacts arising.
- 8.4.3 This proposed temporary development involves a collection of structures which are visually tied together by the use of timber on sheds, tarpaulin supports etc. and is considered to be appropriate for the children's educational use proposed here, helping to create a visually interesting environment. The proposed development will be screened by a screen fence which will afford privacy and security to the users, with its timber design being appropriate here. This will also help protect the privacy and amenity of adjacent residential properties together with the proposed buffer zone.
- 8.4.4 In terms of amenity issues and neighbours, the proposed site is also directly adjacent to a cemetery which is still used for burials and is well attended in terms of visits by the bereaved to gravesides. This is therefore a sensitive land use in terms of the holding of funeral services and also in terms of visitors to the cemetery, when a peaceful setting is important. As outlined earlier in the representations section the applicants have provided an operational plan to explain how any potential conflicts may be handled. This explains how the applicants will liaise with relevant bodies and ensure that the children are either

taken off site for outdoor play or have a quiet time in the yurts at times of funeral services. Cognisance will also be taken of how to ensure there is no significant conflicts with bereaved persons visiting the cemetery. The buffer zone of around 10 metres to be provided at the boundary with the cemetery, with the facilities set behind the proposed screen fence, should help to reduce impacts. Furthermore the proposed nursery use will have limited opening hours and will not involve weekends whereby potential conflicts may be minimised over the 6 month period of the development. For clarity the operational plan is sought in this instance to ensure the site generally operates as described and to ensure mitigation for neighbouring amenity is secured, but the detailed operational requirements and on-site safety considerations are overseen by the Care Inspectorate and under other legislation.

8.4.5 In these overall circumstances the development is considered to comply with policy with no significant adverse impacts on the surrounding environment and neighbouring uses.

8.4.6 Finally in terms of design and siting issues, the site is also located within the Spey Valley Special Landscape Area where Policy EP3 on Special Landscape Areas and Landscape Character applies. This policy seeks to ensure that development does not prejudice the special qualities, adopts the highest standards of design and within designated settlements conforms to relevant policies and reflects the traditional settlement character in terms of siting and design. The proposed development for a temporary outdoor nursery for 6 months is not considered to conflict with this policy.

8.5 **Environmental Impacts (DP1 and EP2)**

Policy DP1: Development Principles also sets out that development should conserve and enhance the natural environment as does Policy EP2 Biodiversity which aims to deliver biodiversity enhancements

8.5.1 There is no loss of any particular habitats arising from this development which involves rough grazing land. During the operation of the proposals there is some opportunity to deliver some habitat enhancements through the proposed rain gardens and other educational activities which may be delivered here. The proposal is therefore considered to comply with policy.

8.6 **Access and Servicing (DP1, PP3, EP12 and EP13)**

Policy PP3 Infrastructure and Services sets out how new development should be coordinated with infrastructure to ensure that places function properly and are adequately serviced. Policy DP1 Development Principles also sets out the need for appropriate servicing and access.

8.6.1 Proposed access, vehicular and pedestrian, will be off the existing network servicing the Alice Littler park and adjacent facilities with some parking (including cycle provision) provided on site. As noted in representations section earlier this existing network is in constant use by pedestrians, cyclists and vehicles accessing amongst other things, the Alice Little Park, recycling facilities, Speyside Way, Old Station and Mash Tun. The park area and square are notably busy with school children during breaks and after school. The activity and layout of the access route to the carpark encourage a change in driver behaviour which promotes reduced driving speeds and urges a more

cautionary driving style. Vehicle drivers already expect to see non-vehicular activity sharing access in the area and an increased presence of non-vehicular activity would further diminish any sense of vehicular dominance and reinforce positive behaviours. Children travelling to nursery would be expected to be accompanied by an adult at all times which reduces the risks compared with an unaccompanied minor. Whilst it is accepted that there is likely to be an increase in traffic volume associated with the nursery, the use is identified as temporary and the nursery could take proactive steps to promote walking and cycling to the site which would be supported.

8.6.2 In these circumstances the technical consultee (Transportation Team) has no objections subject to appropriate planning conditions being attached with regard to agreement on a Construction Traffic Management Plan to ensure no conflicts with other users as the construction stage.

8.6.3 Policy DP1 also requires that acceptable water and drainage provision is made including the use of sustainable urban drainage systems (SuDS) for the disposal of surface water. This is expanded upon in Policy EP12 Management and Enhancement of the Water Environment and Policy EP13 Foul Drainage. In this case water and drainage is off grid and the technical consultee (Flood Risk Management Team) has no objection to the proposed development nor has Scottish Water who have highlighted that the applicant will require to contact them regarding any assets they may have in the vicinity.

8.6.4 In these circumstances the development is capable of being satisfactorily serviced and is considered to comply with policy.

8.7 **Flooding (EP12)**

Policy EP12 Management and Enhancement of the Water Environment sets out that development will not be supported if at significant risk of flooding from any source or would materially increase the likelihood of flooding elsewhere. In this case part of the application site lies within an area identified as being at risk of flooding from the River Spey on SEPA's flood maps with SEPA holding records of flooding in the area from the Spey including the existing car park and Speyside Way at the front of the site. Nurseries are classified as a most vulnerable use in terms of SEPA's Land Use Vulnerability Guidance. Accordingly SEPA required further information on alternative sites considered, emergency flood access/egress for pedestrians and consideration of siting of infrastructure to avoid flood risk in order to fully consider flood risk here. SEPA also advised that provided that this is justifiably the only suitable site and that there is a provision of safe access and egress away from the flood plain and development within the area thought to be at risk of flooding has been minimised as much as possible, they may be able to remove their objection (subject to conditions) on flood risk grounds. As this is a temporary development, the risk of exposure to flooding is lower than it would be over a longer period of time and the level of flood risk assessment requested is only appropriate for a temporary development. SEPA do not consider the long-term risk of flooding to the site to have been adequately assessed and any application for permanent development must be supported by a more detailed flood risk assessment and clearly avoid areas at risk of flooding.

8.7.1 However, given the temporary nature of the use, and with the presence of pedestrian routes away from the source of flooding via a gate to the east side of the site, they do not consider that the temporary use is unacceptable. Moray Council's own Flood Risk Management Team also raise no objection to the proposed temporary use. Specifically in relation to policy EP12, given the temporary, reversible nature of the use proposed and the fact it would not contribute to flooding itself it is not considered to conflict with policy.

8.8 **Cultural issues (EP8)**

Policy EP8 Historic Environments seeks to ensure that there is no adverse effect on sites of local archaeological importance or the integrity of their settings. The application site is part of a wider area identified on the Historic Environment Record as the standing structure of Charlestown of Aberlour founded in 1812 by Charles Grant, Laird of Elchies, although an earlier settlement existed in this location. The Archaeology Service was therefore consulted and has no objection to the proposals.

8.8.1 To the west beyond the newer part of the cemetery is the category B listed Aberlour Burial ground, remains of the former parish church of St Drostan and the Macpherson Grant mausoleum. These historic assets are not impacted upon by the proposed development.

8.8.2 The development is therefore considered to comply with policy.

Conclusion

The proposed development for a temporary outdoor nursery required to facilitate the refurbishment of the existing nursery at Aberlour Primary School is considered to comply with Local Development Plan policies subject to appropriate planning conditions being attached relating to time periods, reinstatement, construction traffic management, operational matters and emergency egress/access in order to ensure that any impacts on the surrounding area are minimised and that satisfactory provision is made in the event of flood events.

Approval is therefore recommended on this basis.

REASON(S) FOR DECISION

The Council's reason(s) for making this decision are: -

The proposal accords with the relevant provisions of the Moray Development Plan 2020 and there are no material considerations that indicate otherwise.

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APPENDIX

POLICY

Adopted Moray Local Development Plan 2020

ENV9 Cemeteries and proposed extensions

Aberlour Cemetery and Aberlour Cemetery Extension (AB/OS/015)

PP1 PLACEMAKING

- a) Development must be designed to create successful, healthy places that support good physical and mental health, help reduce health inequalities, improve people's wellbeing, safeguard the environment and support economic development.
- b) A Placemaking Statement is required for residential developments of 10 units and above to be submitted with the planning application to articulate how the development proposal addresses the requirements of policy PP1 Placemaking and other relevant LDP policies and guidance. The Placemaking Statement must include sufficient information for the council to carry out a Quality Audit. Where considered appropriate by the council, taking account of the nature and scale of the proposed development and of the site circumstances, this shall include a landscaping plan, a topographical survey, slope analysis, site sections, 3D visualisations, a Street Engineering Review and a Biodiversity Plan. The Placemaking Statement must demonstrate how the development promotes opportunities for healthy living and working. The landscape plan must set out details of species type, size, timescales for planting and maintenance.
- c) To create successful, healthy places residential developments of 10 units and above must comply with Scottish Government policy Creating Places and Designing Streets and must incorporate the following fundamental principles:
 - (i) **Character and Identity**
 - Create places that are distinctive to prevent homogenous 'anywhere' development;
 - Provide a number of character areas reflecting site characteristics that have their own distinctive identity and are clearly distinguishable;
 - Provide distinctiveness between and in each character area through a combination of measures including variation in urban form, street structure/network, architecture and masonry, accent features (such as porches), surrounds and detailing, materials (buildings and surfaces), colour, boundary treatments, hard/soft landscaping and a variety of approaches to tree species and planting that emphasises the hierarchy of open spaces and streets within a cohesive design strategy for the whole development;
 - Distinctiveness must be reinforced along main thoroughfares, open spaces and places where people may congregate such as shopping/service centres;
 - Retain, incorporate and/or respond to relevant elements of the landscape such as topography and planted features, natural and historic environment, and propose street naming (in residential developments of

20 units and above, where proposed names are to be submitted with the planning application) to retain and enhance local associations;

(ii) Healthier, Safer Environments

- Designed to prevent crime, fear of crime and anti-social behaviour with good levels of natural surveillance and security using treatments such as low boundary walls, dual frontages (principal rooms) and well-lit routes to encourage social interaction. Unbroken high boundary treatments such as wooden fencing and blank gables onto routes, open spaces and communal areas will not be acceptable.
- Designed to encourage physical exercise for people of all abilities.
- Create a distinctive urban form with landmarks, key buildings, vistas, gateways and public art to provide good orientation and navigation through the development.
- Provide a mix of compatible uses, where indicated within settlement statements, integrated into the fabric of buildings within the street.
- Prioritise pedestrians and cyclists by providing a permeable movement framework that incorporates desire lines (including connecting to and upgrading existing desire lines) and is fully integrated with the surrounding network to create walkable neighbourhoods and encourage physical activity.
- Integrate multi- functional active travel routes, green and open space into layout and design, to create well connected places that encourage physical activity, provide attractive spaces for people to interact and to connect with nature.
- Create safe streets that influence driver behaviour to reduce vehicle speeds that are appropriate to the local context such as through shorter streets, reduced visibility and varying the building line.
- Provide seating opportunities within streets, paths and open spaces for all generations and mobility's to interact, participate in activity, and rest and reflect.
- Provide for people with mobility problems or a disability to access buildings, places and open spaces.
- Create development with public fronts and private backs.
- Maximise environmental benefits through the orientation of buildings, streets and open space to maximise the health benefits associated with solar gain and wind shelter.

(iii) Housing Mix

- Provide a wide range of well integrated tenures, including a range of house types and plot sizes for different household sizes, incomes and generations and meet the affordable and accessible requirements of policy DP2 Housing.
- All tenures of housing should have equal access to amenities, greenspace and active travel routes.

(iv) Open Spaces/Landscaping

- Provide accessible, multi-functional open space within a clearly defined hierarchy integrated into the development and connected via an active travel network of green/blue corridors that are fully incorporated into the development and to the surrounding area, and meet the requirements of policy EP5 Open Space and the Open Space Strategy Supplementary

Guidance and Policy EP12 Managing the Water Environment and Drainage Impact Assessment for New Developments Supplementary Guidance.

- Landscaped areas must provide seasonal variation, (mix of planting and colour) including native planting for pollination and food production.
- Landscaping areas that because of their size, shape or location would not form any useable space or that will not positively contribute to the character of an area will not contribute to the open space requirements of Policy EP4 Open Space.
- Semi-mature tree planting and shrubs must be provided along all routes with the variety of approaches reflecting and accentuating the street hierarchy.
- Public and private space must be clearly defined.
- Play areas (where identified) must be inclusive, providing equipment so the facility is for every child/young person regardless of ability and provided upon completion of 50% of the character area.
- Proposals must provide advance landscaping identified in site designations and meet the quality requirements of policy EP5 Open Space.
- Structural landscaping must incorporate countryside style paths (such as bound or compacted gravel) with waymarkers.
- Maintenance arrangements for all paths, trees, hedging, shrubs, play/sports areas, roundabouts and other open/ green spaces and blue/green corridors must be provided.

v) Biodiversity

- Create a variety of high quality multi- functional green/blue spaces and networks that connect people and nature, that include trees, hedges and planting to enhance biodiversity and support habitats/wildlife and comply with policy EP2 Biodiversity and Geodiversity and EP5 Open Space.
- A plan detailing how different elements of the development will contribute to supporting biodiversity must be included in the design statement submitted with the planning application.
- Integrate green and blue infrastructure such as swales, permeable paving, SUDS ponds, green roofs and walls and grass/wildflower verges into streets, parking areas and plots to sustainably address drainage and flooding issues and enhance biodiversity from the outset of the development.
- Developments must safeguard and where physically possible extend or enhance wildlife corridors and green/blue networks and prevent fragmentation of existing habitats.

(vi) Parking

- Car parking must not dominate the streetscape to the front or rear of properties. On all streets a minimum of 50% of car parking must be provided to the side or rear and behind the building line with a maximum of 50% car parking within the front curtilage or on street, subject to the visual impact being mitigated by hedging, low stone boundary walls or other acceptable treatments that enhance the streetscape.
- Provide semi-mature trees and planting within communal private and public/visitor parking areas and on-street parking at a maximum interval of 4 car parking spaces.

- Secure and covered cycle parking and storage, car sharing spaces and electric car charging points must be provided in accordance with policy DP1 Development Principles.
- Parking areas must use a variation in materials to reduce the visual impact on the streetscene.

(vii) Street Layout and Detail

- Provide a clear hierarchy of streets reinforced through street width, building density and street and building design, materials, hard/soft landscaping and a variety of approaches to tree planting and shrubs.
- Streets and connecting routes should encourage walking and cycling over use of the private car by providing well connected, safe and appealing routes.
- Design junctions to prioritise pedestrians, accommodate active travel and public transport and service/emergency vehicles to reflect the context and urban form and ensure that the street pattern is not standardised.
- Dead-end streets/cul-de-sacs will only be selectively permitted such as on rural edges or where topography, site size, shape or relationship to adjacent developments prevent an alternative more permeable layout. These must be short, serving no more than 10 units and provide walking and cycling through routes to maximise connectivity to the surrounding area.
- Where a roundabout forms a gateway into, or a landmark within, a town and/or a development, it must be designed to create a gateway feature or to contribute positively to the character of the area.
- Design principles for street layouts must be informed by a Street Engineering Review (SER) and align with Roads Construction Consent (RCC) to provide certainty that the development will be delivered as per the planning consent.

- (d) Future masterplans will be prepared through collaborative working and in partnership between the developer and the council for Lochyhill (Forres), Barhill Road (Buckie), Elgin Town Centre/Cooper Park, Elgin North East, Clarkly Hill, Burghead and West Mosstodloch. Masterplans that are not prepared collaboratively and in partnership with the council will not be supported. Masterplans that are approved will be Supplementary Guidance to the Plan.
- (e) Proposals for sites must reflect the key design principles and safeguard or enhance the green networks set out in the Proposals Maps and Settlement Statements. Alternative design solutions may be proposed where justification is provided to the planning authority's satisfaction to merit this.

PP3 INFRASTRUCTURE & SERVICES

Development must be planned and co-ordinated with infrastructure to ensure that places function properly and proposals are adequately served by infrastructure and services.

- a) In relation to infrastructure and services developments will be required to provide the following as may be considered appropriate by the planning authority, unless these requirements are considered not to be necessary:

- i) Education, Health, Transport, Sports and Recreation and Access facilities in accord with Supplementary Guidance on Developer Obligations and Open Space.
- ii) Green infrastructure and network requirements specified in policy EP5 Open Space, Town and Village Maps and, contained within Supplementary Guidance on the Open Space Strategy, Masterplans and Development Briefs.
- iii) Mitigation/modification to the existing transport network (including road and rail) to address the impact of the proposed development in terms of safety and efficiency. This may include but not be limited to passing places, road widening, junction enhancement, bus stop infrastructure, and drainage infrastructure. A number of potential road and transport improvements are identified and shown on the Town and Village Maps as Transport Proposals (TSP's) including the interventions in the Elgin Transport Strategy. These requirements are not exhaustive and do not pre-empt any measures which may result from the Transport Assessment process.
- iv) Electric car charging points must be provided at all commercial and community parking facilities. Access to charging points must also be provided for residential properties, where in-curtilage facilities cannot be provided to any individual residential property then access to communal charging facilities should be made available. Access to other nearby charging facilities will be taken into consideration when identifying the need for communal electric charging points.
- v) Active Travel and Core Path requirements specified in the Council's Active Travel Strategy and Core Path Plan.
- vi) Safe transport and access routes linking to existing networks and mitigating the impacts of development off-site.
- vii) Information Communication Technology (ICT) and fibre optic broadband connections for all premises unless justification is provided to substantiate it is technically unfeasible.
- viii) Foul and surface water drainage, including Sustainable Urban Drainage Systems (SUDS), including construction phase SUDS.
- ix) Measures that implement the waste management hierarchy as defined in the Zero Waste Plan for Scotland including the provision of local waste storage and recycling facilities designed into the development in accord with policy PP1 Placemaking. For major applications a site waste management plan may be required to ensure that waste minimisation is achieved during the construction phase.
- x) Infrastructure required to improve or increase capacity at Water Treatment Works and Waste Water Treatment Works will be supported subject to compliance with policy DP1.
- xi) A utilities plan setting out how existing and new utility (including gas, water, electricity pipelines and pylons) provision has been incorporated into the layout

and design of the proposal. This requirement may be exempted in relation to developments where the council considers it might not be appropriate, such as domestic or very small scale built developments and some changes of use.

b) Development proposals will not be supported where they:

- i) Create new accesses onto trunk roads and other main/key routes (A941 & A98) unless significant economic benefits are demonstrated or such access is required to facilitate development that supports the provisions of the development plan.
- ii) Adversely impact on active travel routes, core paths, rights of way, long distance and other access routes and cannot be adequately mitigated by an equivalent or better alternative provision in a location convenient for users.
- iii) Adversely impact on blue/green infrastructure, including green networks important for wildlife unless an equivalent or better alternative provision will be provided.
- iv) Are incompatible with key waste sites at Dallachy, Gollanfield, Moycroft and Waterford and would prejudice their operation.
- v) Adversely impact on community and recreational sites, buildings or infrastructure including CF designations and cannot be adequately mitigated.
- vi) Adversely impact on flood alleviation and mitigation infrastructure.
- vii) Compromise the economic viability of bus or rail facilities.

c) Harbours

Development within and diversification of harbours to support their sustainable operation will be supported subject to compliance with other policies and settlement statements.

d) Developer Obligations

Developer obligations will be sought to mitigate any measurable adverse impact of a development proposal on local infrastructure, including education, healthcare, transport (including rail), sports and recreational facilities and access routes. Obligations will be sought to reduce, eliminate or compensate for this impact. Developer obligations may also be sought to mitigate any adverse impacts of a development, alone or cumulatively with other developments in the area, on the natural environment.

Where necessary obligations that can be secured satisfactorily by means of a planning condition attached to planning permission will be done this way. Where this cannot be achieved, the required obligation will be secured through a planning agreement in accordance with Circular 3/2012 on Planning Obligations.

Developer obligations will be sought in accordance with the Council's Supplementary Guidance on Developer Obligations. This sets out the anticipated infrastructure requirements, including methodology and rates.

Where a developer considers that the application of developer obligations renders a development commercially unviable a viability assessment and 'open-book accounting' must be provided by the developer which Moray Council, via the District Valuer, will verify, at the developer's expense. Should this be deemed accurate then the Council will enter into negotiation with the developer to determine a viable level of developer obligations.

The Council's Developer Obligations Supplementary Guidance provides further detail to support this policy.

DP1 DEVELOPMENT PRINCIPLES

This policy applies to all development, including extensions and conversions and will be applied reasonably taking into account the nature and scale of a proposal and individual circumstances.

The Council will require applicants to provide impact assessments in order to determine the impact of a proposal. Applicants may be asked to determine the impacts upon the environment, transport network, town centres, noise, air quality, landscape, trees, flood risk, protected habitats and species, contaminated land, built heritage and archaeology and provide mitigation to address these impacts.

Development proposals will be supported if they conform to the relevant Local Development Plan policies, proposals and additional guidance, meet the following criteria and address their individual and cumulative impacts:

(i) Design

- a) The scale, density and character must be appropriate to the surrounding area and create a sense of place (see Policy PP1) and support the principles of a walkable neighbourhood.
- b) The development must be integrated into the surrounding landscape which will include safeguarding existing trees and undertaking replacement planting to include native trees for any existing trees that are felled, and safeguarding any notable topographical features (e.g. distinctive knolls), stone walls and existing water features by avoiding channel modifications and culverting. A tree survey and tree protection plan must be provided with planning applications for all proposals where mature trees are present on site or that may impact on trees outwith the site. The strategy for new tree provision should follow the principles of the "Right Tree in the Right Place".
- c) Make provision for new open space and connect to existing open space under the requirements of Policy EP5 and provide details of the future maintenance of these spaces. A detailed landscape plan must be submitted with planning applications and include information about green/blue infrastructure, tree species, planting, ground/soil conditions, and natural and man-made features (e.g. grass areas, wildflower verges, fencing, walls, paths, etc.).
- d) Demonstrate how the development will conserve and enhance the natural and built environment and cultural heritage resources, retain original land contours and integrate into the landscape.

- e) Proposals must not adversely impact upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity.
- f) Proposals do not result in backland development or plots that are subdivided by more than 50% of the original plot. Sub-divided plots must be a minimum of 400m², excluding access and the built-up area of the application site will not exceed one-third of the total area of the plot and the resultant plot density and layout reflects the character of the surrounding area.
- g) Pitched roofs will be preferred to flat roofs and box dormers are not acceptable.
- h) Existing stone walls on buildings and boundaries must be retained. Alterations and extensions must be compatible with the character of the existing building in terms of design, form, choice of materials and positioning and meet all other relevant criteria of this policy.
- i) Proposals must orientate and design buildings to maximise opportunities for solar gain.
- j) All developments must be designed so as to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use (calculated on the basis of the approved design and plans for the specific development) through the installation and operation of low and zero-carbon generating technologies.

(ii) Transportation

- a) Proposals must provide safe entry and exit from the development, including the appropriate number and type of junctions, maximise connections and routes for pedestrians and cyclists, including links to active travel and core path routes, reduce travel demands and ensure appropriate visibility for all road users at junctions and bends. Road, cycling, footpath and public transport connections and infrastructure must be provided at a level appropriate to the development and connect people to education, employment, recreation, health, community and retail facilities.
- b) Car parking must not dominate the street scene and must be provided to the side or rear and behind the building line. Maximum (50%) parking to the front of buildings and on street may be permitted provided that the visual impact of the parked cars is mitigated by hedging or low stone boundary walls. Roadways with a single carriageway must provide sufficient off road parking to avoid access routes being blocked to larger service vehicles and prevent parking on pavements.
- c) Provide safe access to and from the road network, address any impacts on road safety and the local road, rail and public transport network. Any impacts identified through Transport Assessments/ Statements must be identified and mitigated. This may include but would not be limited to, passing places, road widening, junction improvements, bus stop infrastructure and drainage infrastructure. A number of potential mitigation measures have been identified in association with the development of sites and the most significant are shown on the Proposals Map as TSP's.

- d) Provide covered and secure facilities for cycle parking at all flats/apartments, retail, community, education, health and employment centres.
- e) Garages and parking provision must be designed to comply with Moray Council parking specifications see Appendix 2.
- f) The road layout must be designed to allow for the efficient mechanical sweeping of all roadways and channels, pavements, turning areas and junctions. The road layout must also be designed to enable safe working practices, minimising reversing of service vehicles, with hammerheads minimised in preference to turning areas such as road stubs or hatchets, and to provide adequate space for the collection of waste and movement of waste collection vehicles.
- g) The road and house layout in urban development should allow for communal refuse collection points where the design does not allow for individual storage within the curtilage and / or collections at kerbside. Communal collection points may either be for the temporary storage of containers taken by the individual householder or for the permanent storage of larger containers. The requirements for a communal storage area are stated within the Council's Kerbside Collection Policy, which will be a material consideration.
- h) Road signs should be minimised designed and placed at the back of footpaths to reduce street clutter, avoid obstructing pedestrian movements and safeguarding sightlines;
- i) Within communal parking areas there will be a requirement for electric car charging points. Parking spaces for car sharing must be provided where a need is identified by the Transportation Manager.

(iii) Water environment, pollution, contamination

- a) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water including temporary/ construction phase SUDS (see Policy EP12).
- b) New development should not be located in areas at flood risk or increase vulnerability to flooding (see Policy EP12). Exceptions to this would only be considered in specific circumstances, e.g. extension to an existing building or change of use to an equal or less vulnerable use. Where this exception is applied the proposed development must include resilience measures such as raised floor levels and electrical sockets.
- c) Proposals must avoid major hazard sites and address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.
- d) Proposals must protect and wherever practicable enhance water features through for example naturalisation of watercourses by introducing a more natural planform and removing redundant or unnecessary structures.
- e) Proposals must address and sufficiently mitigate any contaminated land issues.

- f) Make acceptable arrangements for waste collection and management and encourage recycling.
- g) Avoid sterilising significant workable reserves of minerals, prime agricultural land or productive forestry.
- h) Proposals must avoid areas at risk of coastal erosion and coastal change.

EP2 BIODIVERSITY

All development proposals must, where possible, retain, protect and enhance features of biological interest and provide for their appropriate management. Development must safeguard and where physically possible extend or enhance wildlife corridors and green/blue networks and prevent fragmentation of existing habitats.

Development should integrate measures to enhance biodiversity as part of multi-functional spaces/ routes.

Proposals for 4 or more housing units or 1000 m² or more of commercial floorspace must create new or, where appropriate, enhance natural habitats of ecological and amenity value.

Developers must demonstrate, through a Placemaking Statement where required by Policy PP1 which incorporates a Biodiversity Plan, that they have included biodiversity features in the design of the development. Habitat creation can be achieved by providing links into existing green and blue networks, wildlife friendly features such as wildflower verges and meadows, bird and bat boxes, amphibian friendly kerbing, wildlife crossing points such as hedgehog highways and planting to encourage pollination, wildlife friendly climbing plants, use of hedges rather than fences, incorporating biodiversity measures into SUDS and retaining some standing or lying dead wood, allotments, orchards and woodlands.

Where development would result in loss of natural habitats of ecological amenity value, compensatory habitat creation will be required where deemed appropriate.

EP3 SPECIAL LANDSCAPE AREAS AND LANDSCAPE CHARACTER

i) Special Landscape Areas (SLA's)

Development proposals within SLA's will only be permitted where they do not prejudice the special qualities of the designated area set out in the Moray Local Landscape Designation Review, adopt the highest standards of design in accordance with Policy DP1 and other relevant policies, minimises adverse impacts on the landscape and visual qualities the area is important for, and are for one of the following uses;

- a) In rural areas (outwith defined settlement and rural grouping boundaries);
 - i) Where the proposal involves an appropriate extension or change of use to existing buildings, or
 - ii) For uses directly related to distilling, agriculture, forestry and fishing which have a clear locational need and demonstrate that there is no alternative location, or
 - iii) For nationally significant infrastructure developments identified in the National Planning Framework,

- b) In urban areas (within defined settlement, rural grouping boundaries and LONG designations);
 - i) Where proposals conform with the requirements of the settlement statements, Policies PP1, DP1 and DP3 as appropriate and all other policy requirements, and
 - ii) Proposals reflect the traditional settlement character in terms of siting and design.
- c) The Coastal (Culbin to Burghead, Burghead to Lossiemouth, Lossiemouth to Portgordon, Portgordon to Cullen Coast), Cluny Hill, Spynie, Quarrywood and Pluscarden SLA's are classed as "sensitive" in terms of Policy DP4 and no new housing in the open countryside will be permitted within these SLA's.

Proposals for new housing within other SLA's not specified in the preceding para will be considered against the criteria set out above and the criteria of Policy DP4.

- d) Where a proposal is covered by both a SLA and CAT or ENV policy/designation, the CAT policy or ENV policy/designation will take precedence.

b ii) Landscape Character

New developments must be designed to reflect the landscape characteristics identified in the Landscape Character Assessment of the area in which they are proposed.

Proposals for new roads and hill tracks associated with rural development must ensure that their alignment and use minimises visual impact, avoids sensitive natural heritage and historic environment features, including areas protected for nature conservation, carbon rich soils and protected species, avoids adverse impacts upon the local hydrology and takes account of recreational use of the track and links to the wider network.

EP5 OPEN SPACE

a) Existing Open Space (ENV's and Amenity Land)

Development which would result in a change of use of a site identified under the ENV designation in settlement statements or amenity land designations in rural groupings to anything other than open space use will be refused. Proposals that would result in a change of use of an ENV4 Sports Area to any other use (including other ENV categories) will be refused. The only exceptions are where the proposal is for essential community infrastructure required to deliver the key objectives of the Council and its Community Planning Partners, excluding housing, or for a site specific opportunity identified within the settlement statement. Where one of these exceptions applies, proposals must:

- Be sited and designed to minimise adverse impacts on the principal function of the space and the key qualities and features identified in the Moray Open Space Strategy Supplementary Guidance.
- Demonstrate that there is a clear excess of the type of ENV and the loss of the open space will not negatively impact upon the quality, accessibility and quantity of open space provision and does not fragment green networks (with

reference to the Moray Open Space Strategy Supplementary Guidance, green network mapping and for ENV4 Sports Area in consultation with SportScotland) or replacement open space provision of equivalent function, quality and accessibility is made.

The temporary use of unused or underused land as green infrastructure is encouraged, this will not prevent any future development potential which has been identified from being realised. Proposals that would result in a change of use of an ENV4 Sports Area to any other use (including other ENV categories) will be refused.

Proposals for allotments or community growing on existing open space will be supported where they do not adversely affect the primary function of the space or the key qualities and features identified in the Moray Open Space Strategy Supplementary Guidance and a locational requirement has been identified in the Council's Food Growing Strategy. Consideration will include related aspects such as access, layout, design and car parking requirements.

Any new/proposed extension to existing cemetery sites requiring an intrusive ground investigation must be undertaken in accordance with SEPA's guidance on assessing the impacts of cemeteries on groundwater before any development occurs at the site.

Areas identified in Settlement Statements as ENV are categorised based on their primary function as set out below. These are defined in the Open Space Strategy Supplementary Guidance.

- ENV 1** Public Parks and Gardens
- ENV 2** Amenity Greenspace
- ENV 3** Playspace for children and teenagers
- ENV 4** Sports Areas
- ENV 5** Green Corridors
- ENV 6** Natural/Semi-Natural Greenspace
- ENV 7** Civic Space
- ENV 8** Allotments
- ENV 9** Cemeteries and proposed extensions
- ENV 10** Private Gardens and Grounds
- ENV 11** Other Functional Greenspace

b) Green Infrastructure and Open Space in New Development

New development must incorporate accessible multifunctional open space of appropriate quantity and quality to meet the needs of development and must provide green infrastructure to connect to wider green/blue networks. In Elgin, Buckie and Forres green infrastructure must be provided as required in the green network mapping. Blue drainage infrastructure will require to be incorporated within green open space. The blue-green context of the site will require to be considered from the very outset of the design phase to reduce fragmentation and maximize the multi-benefits arising from this infrastructure.

Open space provision in new developments must meet the accessibility, quality and quantity standards set out below and meet the requirements of policy PP1 Placemaking, EP2 Biodiversity, other relevant policies and any site specific requirements within the Settlement Statements. Developers must demonstrate

through a Placemaking Statement that they have considered these standards in the design of the open space, this must include submission of a wider analysis plan that details existing open space outwith the site, key community facilities in the area and wider path networks.

i) Accessibility Standard

Everyone will live within a five minute walk of a publicly usable space of at least 0.2ha.

ii) Quality Standard

All new development proposals will be assessed and must achieve a very good quality score of no less than 75%. Quality will be assessed by planning officers at the planning application stage against the five criteria below using the bullet point prompts. Each criterion will be scored on a scale of 0 (poor) to 5 (very good) with an overall score for the whole development expressed as a percentage.

Accessible and well connected

- Allows movement in and between places, consideration to be given to reflecting desire lines, permeable boundaries, and multiple access points
- Accessible entrances in the right places.
- Accessible for all generations and mobility's, including consideration of gradient and path surfaces.
- Provide appropriately surfaced, inclusive, high quality paths.
- Connects with paths, active travel routes and other transport modes including bus routes.
- Offers connecting path network with legible waymarking and signage.

Attractive and Appealing Places

- Attractive with positive image created through character and quality elements.
- Attractive setting for urban areas.
- Quality materials, equipment and furniture.
- Attractive plants and landscape elements that support character, including providing seasonal and sensory variation and food production.
- Welcoming boundaries and entrance areas.
- Adequate bin provision.
- Long term maintenance measures in place. ▸

Biodiverse supporting ecological networks (see Policy EP2 Biodiversity)

- Contribute positively to biodiversity through the creation of new natural habitats for ecological and amenity value.
- Large enough to sustain wildlife populations, including green/blue networks and landscaping.
- Offers a diversity of habitats.
- Landscaping and open space form part of wider landscape structure and setting.
- Connects with wider blue/green networks Provide connections to existing green/blue networks and avoids fragmentation of existing habitats.
- Ensure a balance between areas managed positively for biodiversity and areas managed primarily for other activities e.g. play, sport.

- Resource efficient, including ensuring open space has a clear function and is not "left over".

Promotes activity, health and well being

- Provides multifunctional open space for a range of outdoor physical activities reflecting user needs and location.
- Provides diverse play, sport, and recreational facilities for a range of ages and user groups.
- Providing places for social interaction, including supporting furniture to provide seating and resting opportunities.
- Appropriate high quality facilities meeting needs and reflecting the site location and site.
- Carefully sited facilities for a range of ages with consideration to be given to existing facilities, overlooking, and ease of access for users.
- Open space is flexible to accommodate changing needs.

Safe, Welcoming and contributing to Character and Identity

- Safe and welcoming.
- Good levels of natural surveillance.
- Discourage anti-social behaviour.
- Appropriate lighting levels.
- Sense of local identity and place.
- Good routes to wider community facilities e.g connecting to schools, shops, or transport nodes.
- Distinctive and memorable places that support local culture and identity.
- Catering for a range of functions and activities providing a multi-functional space meeting needs.
- Community involvement in management.

b iii) Quantity Standard

Unless otherwise stated in site designations, the following quantity standards will apply.

- Residential sites less than 10 units - landscaping to be determined under the terms of Policy DP1 Development Principles to integrate the new development.
- Residential sites 10-50 units and new industrial sites- minimum 15% open space
- Residential sites 51-200 units- minimum 20% open space
- Residential sites 201 units and above and Business Parks- minimum 30% open space which must include allotments, formal parks and playspaces within residential sites.

In meeting the quantity requirements, only spaces which have a clear multi benefit function will be counted. Structure and boundary landscaping areas must make provision for public access and link into adjacent green corridors. The quantity standard must be met within the designation boundaries. For windfall sites the quantity standard must be new open space provision within the application boundaries.

Open Spaces approved in new developments will be classed as ENV spaces upon granting of consent.

Proposals must also comply with the Council's Open Space Strategy Supplementary Guidance.

EP12 MANAGEMENT AND ENHANCEMENT OF THE WATER ENVIRONMENT

a) Flooding

New development will not be supported if it would be at significant risk of flooding from any source or would materially increase the possibility of flooding elsewhere. For development at or near coastal locations, this includes consideration of future flooding that may be caused by sea level rise and/or coastal change eroding existing natural defences in the medium and long term.

Proposals for development in areas considered to be at risk from flooding will only be permitted where a flood risk assessment to comply with the recommendations of Scottish Planning Policy and to the satisfaction of Scottish Environment Protection Agency and the Council is provided by the applicant.

There are different levels of flood risk assessment dependent on the nature of the flood risk. The level of assessment should be discussed with the Council prior to submitting a planning application.

Level 1 - a flood statement with basic information with regard to flood risk.

Level 2 - full flood risk assessment providing details of flood risk from all sources, results of hydrological and hydraulic studies and any appropriate proposed mitigation.

Assessments must demonstrate that the development is not at risk of flooding and would not increase the probability of flooding elsewhere. Level 2 flood risk assessments must be signed off by a competent professional. The Flood Risk Assessment and Drainage Impact Assessment for New Development Supplementary Guidance provides further detail on the information required.

Due to continuing changes in climatic patterns, the precautionary principle will apply when reviewing any application for an area at risk from inundation by floodwater. Proposed development in coastal areas must consider the impact of tidal events and wave action when assessing potential flood risk.

The following limitations on development will also be applied to take account of the degree of flooding as defined in Scottish Planning Policy;

- a) In areas of little to no risk (less than 0.1%), there will be no general constraint to development.
- b) Areas of low to medium risk (0.1% to 0.5%) will be considered suitable for most development. A flood risk assessment may be required at the upper end of the probability range i.e. (close to 0.5%) and for essential civil infrastructure and the most vulnerable uses. Water resistant materials and construction may be required. Areas within this risk category will generally not be suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is being substantially extended, it should be designed to be capable of remaining operational and accessible during flooding events.
- c) Areas of medium to high risk (0.5% or above) may be suitable for:
 - Residential, institutional, commercial and industrial development within built up areas provided that flood protection measures to the appropriate

standard already exist and are maintained, are under construction, or are a planned measure in a current flood management plan.

- Essential infrastructure within built up areas, designed and constructed to remain operational during floods and not impede water flow.
- Some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place, and
- Employment related accommodation e.g. caretakers or operational staff.

Areas within these risk categories will generally not be suitable for the following uses and where an alternative/lower risk location is not available;

- Civil infrastructure and most vulnerable uses.
- Additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons e.g. for navigation and water based recreation, agriculture, transport or utilities infrastructure (which should be designed to be operational during floods and not impede water flows).
- New caravan and camping sites

Where development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome. Water resistant materials and construction must be used where appropriate. Land raising and elevated buildings on structures such as stilts are unlikely to be acceptable.

b) Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS)

Surface water from development must be dealt with in a sustainable manner that has a neutral effect on flooding or which reduces the risk of flooding. The method of dealing with surface water must also avoid pollution and promote habitat enhancement and amenity. All sites must be drained by a sustainable drainage system (SUDS) designed in line with current CIRIA guidance. Drainage systems must contribute to enhancing existing "blue" and "green" networks while contributing to place-making, biodiversity, recreational, flood risk and climate change objectives.

When considering the appropriate SUDS design for the development the most sustainable methods, such as rainwater harvesting, green roofs, bio retention systems, soakaways, and permeable pavements must be considered first. If it is necessary to include surface water attenuation as part of the drainage system, only above ground attenuation solutions will be considered, unless this is not possible due to site constraints.

If below ground attenuation is proposed the developer must provide a robust justification for this proposal. Over development of a site or a justification on economic grounds will not be acceptable. When investigating appropriate SUDS solutions developers must integrate the SUDS with allocated green space, green networks and active travel routes to maximise amenity and biodiversity benefits.

Specific arrangements must be made to avoid the issue of permanent SUDS features becoming silted-up with run-off. Care must be taken to avoid the spreading and/or introduction of invasive non-native species during the construction of all SUDS features. On completion of SUDS construction the developer must submit a comprehensive Operation and Maintenance Manual. The ongoing maintenance of

SUDS for all new development will be undertaken through a factoring agreement, the details of which must be supplied to the Planning Authority.

All developments of less than 3 houses or a non-householder extension under 100 square metres must provide a Drainage Statement. A Drainage Assessment will be required for all developments other than those identified above.

c) Water Environment

Proposals, including associated construction works, must be designed to avoid adverse impacts upon the water environment including Ground Water Dependent Terrestrial Ecosystems and should seek opportunities for restoration and/or enhancement, if appropriate. The Council will only approve proposals impacting on water features where the applicant provides a report to the satisfaction of the Council that demonstrates that any impact (including cumulative) on water quality, water quantity, physical form (morphology), river hydrology, sediment transport and erosion, coastal processes (where relevant) nature conservation (including protected species), fisheries, recreational, landscape, amenity and economic and social impact can be adequately mitigated.

The report must consider existing and potential impacts up and downstream of the development particularly in respect of potential flooding. The Council operates a presumption against the culverting of watercourses and any unnecessary engineering works in the water environment.

A buffer strip of at least 6 metres between any new development and all water features is required and should be proportional to the bank width and functional river corridor (see table on page 96). This must achieve the minimum width within the specified range as a standard, however, the actual required width within the range should be calculated on a case by case basis by an appropriately qualified individual. These must be designed to link with blue and green networks, including appropriate native riparian vegetation and can contribute to open space requirements.

Developers may be required to make improvements to the water environment as part of the development. Where a Water Framework Directive (WFD) water body specific objective is within the development boundary, or in proximity, developers will need to address this within the planning submission through assessment of potential measures to address the objective and implementation, unless adequate justification is provided. Where there is no WFD objective the applicant should still investigate the potential for watercourse restoration along straightened sections or removal of redundant structures and implement these measures where viable.

| Width to watercourse (top of bank) | Width of buffer strip (either side) |
|---|--|
| Less than 1m | 6m |
| 1-5m | 6-12m |
| 5-15m | 12-20m |
| 15m+ | 20m+ |

The Flood Risk Assessment and Drainage Impact Assessment for New Development Supplementary Guidance provides further detail on the information required to support proposals.

EP13 FOUL DRAINAGE

All development within or close to settlements (as defined in the Local Development Plan) of more than 2,000 population must connect to the public sewerage system unless connection is not permitted due to lack of capacity. In such circumstances, temporary provision of private sewerage systems may be allowed provided Scottish Water has confirmed investment to address this constraint has been allocated within its investment Programme and the following requirements have been met;

- Systems must not have an adverse effect on the water environment
- Systems must be designed and built to a standard which will allow adoption by Scottish Water
- Systems must be designed such that they can be easily connected to a public sewer in the future. Typically this will mean providing a drainage line up to a likely point of connection.

All development within or close to settlements (as above) of less than 2,000 population will require to connect to public sewerage except where a compelling case is made otherwise. Factors to be considered in such a case will include size of the proposed development, whether the development would jeopardise delivery of public sewerage infrastructure and existing drainage problems within the area.

Where a compelling case is made, a private system may be acceptable provided it does not pose or add a risk of detrimental effects, including cumulative, to the natural and built environment, surrounding uses or amenity of the general area.

Where a private system is deemed to be acceptable, within settlements as above or small scale development in the countryside, a discharge to land, either full soakaway or raised mound soakaway, compatible with Technical Handbooks (which sets out guidance on how proposals may meet the Building Regulations) must be explored prior to considering a discharge to surface waters.

EP8 HISTORIC ENVIRONMENT

a) Scheduled Monuments and Unscheduled Archaeological Sites of Potential National Importance.

Where a proposed development potentially has a direct impact on a Scheduled Monument, Scheduled Monument Consent (SMC) is required, in addition to any other necessary consents. Historic Environment Scotland manage these consents.

Development proposals will be refused where they adversely affect the integrity of the setting of Scheduled Monuments and unscheduled archaeological sites of potential national importance unless the developer proves that any significant adverse effects are clearly outweighed by exceptional circumstances, including social or economic benefits of national importance.

b) Local Designations

Development proposals which adversely affect sites of local archaeological importance or the integrity of their settings will be refused unless;

- Local public benefits clearly outweigh the archaeological value of the site, and
- Consideration has been given to alternative sites for the development and preservation in situ is not possible.

- Where possible any adverse effects can be satisfactorily mitigated at the developer's expense.

The Council will consult Historic Environment Scotland and the Regional Archaeologist on development proposals which may affect Scheduled Monuments, nationally important archaeological sites and locally important archaeological sites.