



REPORT TO: MORAY COUNCIL EMERGENCY CABINET ON 3 JUNE 2020

SUBJECT: MORAY LOCAL DEVELOPMENT PLAN 2020 EXAMINATION REPORT

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 This report summarises the conclusions of the Examination Report for the Proposed Moray Local Development Plan (LDP) 2020, which was published on 19 May 2020. The report asks the Emergency Cabinet to note and agree the modifications arising from the Examination Report and to agree the proposal to publish the "Notice of Intention to Adopt the Plan in mid- June 2020 with the aim of adopting the Plan on or before the 30 July 2020.
- 1.2 This report is submitted to the Emergency Cabinet following a decision of Moray Council on 25 March 2020 to temporarily suspend all delegations to committees as a result of the Covid-19 pandemic (para 2 of the minute refers).

2. RECOMMENDATION

2.1 It is recommended that the Cabinet:-

- (i) note the recommended modifications to the Proposed Moray Local Development Plan 2020 as a result of the Examination of the Plan;**
- (ii) note that the majority of modifications are those put forward by the Council to address objections received to the Proposed Moray Local Development Plan 2020;**
- (iii) agree that the modifications are made to the Moray Local Development Plan 2020 and that the Council publish the Notice of Intention to Adopt the Plan with a view to adopting the Plan on or before 30 July 2020; and**
- (iv) agree that all parts of the Moray Local Development Plan 2020 as modified will be a material planning consideration for development management purposes as of 15 June 2020 and will then replace the Moray Local Development Plan 2015 when adopted on or before 30 July 2020.**

3. BACKGROUND

- 3.1 At a special meeting of the Planning and Regulatory Services (P&RS) Committee on 18 December 2018 (para 5 of minute refers) it was agreed that the content of the Proposed Moray LDP represents “the “settled view” of the Council and that it be issued for consultation. The Proposed Plan was published for a 10 week period for objections on the 7 January 2019 with a closing date of 15 March 2019.
- 3.2 A total of 366 responses, which split into 630 objections, were received on the Plan with additional comments received on the Strategic Environmental Assessment and Habitats Regulation Assessment. These “unresolved” representations were grouped into a series of 14 common issues in “Schedule 4’s”, grouped by area or topic, summarised and responses prepared. The Schedule 4’s were approved at a special meeting of the P&RS Committee on 25 June 2019 (para 4 of minute refers).
- 3.3 The Proposed Plan, Schedule 4’s, unresolved objections and other background papers were sent to the Scottish Government in late June 2019 with a formal request for Examination of the Proposed Plan.

4. PROPOSALS

Examination

- 4.1 The Examination represents the fourth of five key stages of preparing a Local Development Plan as shown on the diagram below. As the Examination Report has now been received the Council are now in the fifth and final stage of the process, aiming to move quickly towards adopting the new Plan by the end of July 2020.



- 4.2 Two Scottish Government Reporters were appointed to carry out the Examination, during which the Council received a number of Further Information Requests (FIR) on a variety of topics. FIRs vary in complexity from detailed scrutiny of housing and employment land requirements to more straightforward matters. All FIRs were prioritised and replied to by officers well within the deadlines in an effort to conclude the Examination as timeously as possible.
- 4.3 However, the Examination process has taken longer than forecast due to a number of issues;
- A number of FIRs on housing land requirements, despite having agreed annual housing land audits and no objection to this issue from Homes for Scotland. This resulted in considerable additional work for officers and was

primarily required to demonstrate beyond doubt that the Council has planned for enough land for housing and that there was no justification for other proposals put forward through objections such as significant additional residential development at Hopeman.

- A number of FIR's on employment land requirements as the shortage has been well documented through annual employment land audits and through a Topic Paper which provides the evidence base for the Plan. Again this caused considerable additional work for officers.
- A number of FIRs regarding the Renewable Energy policy and latterly the Examination process was delayed further as the Reporters were lobbied strongly by representatives of wind energy companies who provided additional unsolicited representations to the Reporter, which the Reporter agreed to accept, which procedurally, the Council objected to.
- Late representations (12 months late) were also received from Transport Scotland and forwarded to the Reporter by the Scottish Government which the Council also objected to being included within the Examination process. These were addressed through non-notifiable modifications outwith the Examination process and through ongoing discussion to progress additional traffic modelling to assess cumulative impacts on the road network.

4.4 The Examination Report was published on 19 May 2020 and has been made available on the Council and Directorate of Planning and Environmental Appeals (DPEA) websites. All objectors have been notified of the publication of the report by the DPEA. The table of recommendations is included in **Appendix 1**, however it should be noted that many of these are the modifications agreed by the P&RS Committee on 25 June 2019 with minimal further modifications made by the Reporter. A copy of the full Report has been provided to all elected members.

4.5 The Reporter largely supports vision, spatial strategy and land requirements set out in the Plan and the primary policy approach. Points to highlight include;

- Support for the Council's proposed Spatial Strategy and housing land requirements and support for the Council's opposition to large scale expansion to the south of Hopeman.
- Support for the Council's employment land requirements and proposed new employment land sites in Mosstodloch, Elgin, Forres and Keith. However, site I5 Greens of Rothes is recommended to be deleted from the Plan which is not a modification the Council proposed.
- Support for the Council's Primary policies, particularly the aspirations set out in policy PP1 for Placemaking and biodiversity.

4.6 The reporter has recommended some modifications which are contrary to the Council's position reported on 25 June 2019 including;

- Some minor wording changes in policies, which could dilute their intent through introduction of wording such as "where necessary", which officers consider to weaken the policies which have been worded as "must".

- Rural Housing policy DP4- the wording regarding the requirement that “there must be existing landform, mature trees, established woodland or buildings of a sufficient scale to provide 75% enclosure, containment and backdrop for the proposed new house” is recommended to change to “...acceptable enclosure, containment.....”.. Officers may need to provide additional guidance to address this modification.
- Wording regarding Climate change is recommended for inclusion in DP1;
“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.”

Officers have contacted the Reporter for further information on this recommendation, while fully supporting its intention, officers have questioned how it is to be implemented. It is likely that further guidance will be required to clarify this requirement and how this will be assessed in planning applications. The Council had previously resisted such a requirement due to lack of expertise and blurring of lines between planning policy and Building Standards.

- Recommendations to delete small housing sites proposed at R14 Lesmurdie and designating it as ENV3 Elgin; deleting R10 Station Road, Portessie and designating it as ENV5 and deleting R2 Hopeman Golf Club.
- Rural Groupings- a number of changes, including removing some development sites and adding safeguarding text.
- Removal of the detailed wind energy policy guidance mapping, leaving the Plan with a largely meaningless spatial framework showing half of Moray as an area of search for wind farms of all scales above 35 metres. While this is not surprising, it has been a long running issue and officers will continue to lobby for this to change in the new National Planning Framework 4(NPF4) to provide certainty for all parties, especially communities.
- Accessible Housing- the Reporter has recommended that the requirement that “*Housing proposals of 10 or more units will be required to provide 10% of the private sector units to wheelchair accessible standard, with all of the accessible units to be in single storey form*” be modified to remove the requirement for accessible housing to be provided in single storey format. This is considered to be a regressive step in terms of providing a range of options in the supply of accessible housing in the private sector. Again, officers will seek for this to be addressed through the new NPF4.

4.7 At the outset of the process the Reporters carry out an Examination of Conformity with the Participation Statement, which checks that the Council has done what it said would be done in terms of engaging throughout the Plan process. One objection to how the Council had engaged was received. The Reporter concluded that;

“Having considered the report on conformity, I find that the Council has consulted on the Proposed Plan and involved the public in the way it said it would in its participation statement, in accordance with section 19(4) of the Act.”

In terms of the objection received on how the Council engaged, the Reporter concluded that;

“I am satisfied that the Council’s engagement on this matter accords with and exceeds the standards set out in the Communications Plan.”

- 4.8 The recommendations made by the Reporter are largely binding on the Council. Regulation 2 of the Town and Country Planning (Grounds for declining to follow recommendations) (Scotland) Regulations 2009 and Section 19(11) of the Town and Country Planning (Scotland) Act 1997 set out the circumstances where planning authorities can depart from recommendations. These are where the recommendation(s);
- a) would have the effect of making the LDP inconsistent with the National Planning Framework, or with any Strategic Development Plan or national park plan for the same area;
 - b) is incompatible with Part IVA of the Conservation (Natural Habitats etc) Regulations 1994;
 - c) would not be acceptable having regard to an environmental assessment carried out by the planning authority on the plan following modification in response to recommendations;
 - d) are based on conclusions that could not reasonably have been reached based on the evidence considered at Examination.
- 4.9 Planning Circular 6/2013: Development Planning, describes the development planning system in Scotland and explains the legislative provisions that apply. It notes in paragraph 94 that the “Criterion (d) above addresses the possibility of clear errors (including factual errors) having been made by the reporter. It does not relate to circumstances where the planning authority disagrees with the planning judgement reached by the reporter.
- 4.10 The majority of changes identified in the Examination Report are straightforward and were suggested or agreed by the Council through the Schedule 4 process. While officers do not agree with all of the recommendations and find the recommendations regarding the changes to the Accessible Housing and Rural Housing policies and deletion of site I5 Rothes to be disappointing, officers do not consider there to be grounds for not accepting them. Some minor wording changes have been made to the Plan as a consequence of the modifications.

Status of the Plan

- 4.11 It is proposed to begin operating all of the Moray LDP 2020, as modified, as a material consideration in determining planning applications as of 15 June 2020 until it is formally adopted at the end of July 2020, at which point it will replace the Moray LDP 2015. At the moment policies and sites which were subject to unresolved objections have not been given as much weight as those with no unresolved objections.

Next steps

- 4.12 The process is now in the final stage and within 3 months of receipt of the Examination Report the Council must send copies of the modifications, the modified LDP, supporting assessments and copy of advertisement of Notice of Intention to Adopt the Plan to Scottish Ministers. Despite the challenges of technology (broadband, access to equipment, software and servers), officers aim to submit the Plan around the 19 June 2020, approximately 1 month after receiving the Examination Report. The Scottish Ministers then have 28 days in which they could direct changes or other actions to be undertaken before the Plan can be formally adopted. Officers are currently making all the changes and the necessary arrangements to submit the Plan and other paperwork with the aim of adopting the Local Development Plan on or before the 30 July 2020, which, for the first time, will meet the key performance indicator of replacing the current LDP within 5 years of adoption (31/7/2015) and ensuring Moray has an up to date Plan to guide future growth and determine planning applications.
- 4.13 The Council also has to publish the documents, advise those who made representations that the Council proposes to adopt the Plan and raise awareness of the new Plan and its policy requirements. There is also a considerable administrative and systems workload to support the introduction of the new Plan.
- 4.14 Additional Guidance to clarify some policy aspects will be considered by the Council in August/ September, along with the Delivery Programme which will be a key monitoring and co-ordination tool to implement the Plan. The Delivery Programme will include a range of land use and infrastructure proposals to support the Covid-19 recovery process.
- 4.15 Adoption of the new Plan is only achieved through a significant amount of input and support from other services including, transportation, housing and consultancy.

5. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

The LDP is a vital aspect of supporting and facilitating the Council's priority for economic growth as well as playing an important role in prevention planning and infrastructure co-ordination and funding. In addition to the designations for housing and employment land, the Plan sets out policies and will be supported by a Delivery Programme which will be implemented through positive engagement with partner organisations, developers and consultees. The plan also aims to deliver other key aspects of the 10 Year Plan including the delivery of affordable housing and the conservation and enhancement of Moray's high quality environment. The LDP will be monitored annually through the Delivery Programme.

The LDP has an important part to play in both prevention planning and as part of the economic recovery response to Covid-19. The Delivery Plan will explore this further and set out a series of proposals to support the construction industry and speed up delivery of affordable housing such as Masterplan Consent Areas, town centre regeneration and infrastructure co-ordination to support quicker delivery of development on the ground and other actions such as innovative ways of delivering and monitoring healthcare. The LDP also provides a supportive land use framework for aspects of the Moray Growth Deal such as the Cultural Quarter project and other projects which are not yet in the public domain.

The Planning (Scotland) Act 2019 introduces a requirement to prepare a Regional Spatial Strategy (RSS) which will be incorporated into the new NPF4. The RSS for Moray will also be an important part of the Covid-19 economic recovery process, setting out a regional level land use and infrastructure strategy to co-ordinate future economic growth and to attract and direct investment

The preparation of the LDP is a key priority in the Service Plan for the Planning and Development section.

(b) Policy and Legal

Preparation of the LDP is a statutory responsibility of the Council as planning authority.

(c) Financial implications

A budget of £60,000 was provided for the costs associated with Examination (Reporter and DPEA administration). The average cost of Examinations carried out to date in Scotland is £83,000. The initial estimate from DPEA for this Examination was £50,000 and despite officers doing everything possible to move the process on timeously, the Examination extended to 10.5 months and has so far cost approx. £58,000 excluding VAT with a final invoice awaited. The process including the inability to speak to a Reporter inevitably delays proceedings and officers have been particularly disappointed with the approach taken to debate housing land issues and to accept unsolicited late representations from a wind energy company. These matters will be raised with the Chief Reporter.

The additional cost will be absorbed by the Service's budget but will have a knock on impact on what can be delivered this financial year.

(d) Risk Implications

The risk of not proceeding to adopt the new Plan as quickly as possible is failing to meet national performance indicators which aim to ensure that LDP are renewed within 5 years of adoption. Progress of the LDP is a key indicator in the Planning Performance Framework.

More importantly, there is also a risk of failing to deliver an effective supply of housing and employment land which would have an adverse effect upon the local economy and support aspects of the economic recovery process and of determining planning applications against an out of date Plan.

(e) Staffing Implications

Preparing the LDP is a core activity for the Strategic Planning and Development section and the Examination has represented a significant workload which has been prioritised and balanced with other commitments.

As noted above, preparation of the Plan has required significant staff time from other services, notably Transportation, Housing and Consultancy.

Levels of performance on determining planning applications will be impacted upon as the new Plan is introduced.

(f) Property

Some of the recommendations from the Examination Report impact upon Council property such as deleting the proposed housing site at Lesmurdie, Elgin.

(g) Equalities

The Equalities Officer advised at Proposed Plan stage that an Equalities Impact Assessment is not required.

(h) Consultations

Aileen Scott (Legal Services Manager), Lissa Rowan (Committee Services Officer), Diane Anderson (Senior Engineer Transportation), Paul Connor (Principal Accountant), Don Toonen (Equalities Officer), Graeme Davidson (Housing Strategy and Development Manager) and Beverly Smith (Development Management and Building Standards Manager) have been consulted and comments received have been incorporated into the report.

6. CONCLUSION

6.1 The Examination Report for the Proposed Moray LDP 2020 was published on 19 May 2020. Many of the modifications recommended are those put forward by the Council to address unresolved objections.

6.2 It is proposed to note the recommendations and to operate all the new Plan as a material consideration with significant weight as of 15 June

**and for the LDP2020 to replace the LDP2015 upon adoption on or before
30 July 2020.**

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Background Papers: Appendix 1- Summary Recommendations from
Examination Report