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## Planning and Regulatory Services Committee

Tuesday, 28 September 2021

### SUPPLEMENTARY AGENDA

The undernoted reports have been added to the Agenda for the meeting of the **Planning and Regulatory Services Committee** to be held at **Various Locations via Video-Conference**, on **Tuesday, 28 September 2021** at **09:30**.

#### BUSINESS

- |  |               |
|--|---------------|
| <b>Guidance Note</b>                         | <b>3 - 4</b>  |
| <b>5a) Planning Application 21/00384/APP</b> | <b>5 - 60</b> |
- Report by Appointed Officer
- Relocation of existing hot food takeaway and formation of a parking area/paths to be accessed via a track and access onto the B9040 Land 500M South West Of West Beach Caravan Park, Hopeman for Mr & Mrs Barry & Ruth Scott
- 11 Breach of Planning Control Encompassing Land at Duffus**
- Information relating to instructions to counsel any opinion of counsel and any advice received, information obtained or action to be taken in connection with any legal proceedings;





**GUIDANCE NOTE PRODUCED FOR PLANNING & REGULATORY SERVICES COMMITTEE  
MEETING OF 28 SEPTEMBER 2021**

**REPORT ON APPLICATION**

***“Note for guidance of the Committee where the decision of the Planning and Regulatory Services Committee is contrary to the recommendations of the Director of Environmental Services in respect to a Planning Application.”***

*Any Councillor putting forward a motion to refuse an application, contrary to recommendation, shall clearly state the reasons for refusal. These reasons should be based on policies contained in the approved Local Development Plan or some other material consideration. Time should be allowed to ensure that these reasons are carefully noted for minuting purposes.*

*Where Councillors put forward a motion to approve an application, contrary to recommendation, an indication should be given of any specific matters which should be subject of conditions along with reasons which should be based on policies in the approved Local Development Plan or some other appropriate consideration.*

***Note for guidance where the decision of the Planning and Regulatory Services Committee is to depart from the Local or Structure Plan.***

*Where a Councillor is convinced that there is reason to depart from Local Development Plan policy; then the Councillor’s reasons for making the motion should be clearly stated for minuting purposes. Any matters which should be subject to conditions drafted subsequently by the Director of Environmental Services should be indicated. If the Committee remains of a mind to approve such an application then the whole matter will be subject to statutory procedures as apply. In such cases, Councillors should be aware that the application may require to be advertised as a departure and any objections reported to the next available meeting of the Planning and Regulatory Services Committee. It also may be necessary to convene a hearing to consider the views of objectors.*

*There are three potential consequences if Committee takes a decision where the proper procedures have not been followed in whole or in part. Firstly, the person aggrieved by a decision may apply to the Supreme Courts in Scotland for an Order either compelling the Council to act according to law, quashing the decision altogether or declaring a decision to be unlawful coupled with an order to prevent the decision being implemented. A referral to the Supreme Courts in these circumstances is known as applying for Judicial Review.*

*Secondly, in addition to the application for Judicial Review when questions of alleged failure, negligence or misconduct by individuals or local authorities in the management of public funds arise and are raised either by or with the External Auditor of the Council and where an individual can be blamed the sanctions available are:-*

*Censure of a Councillor or an Officer*

*Suspension of a Councillor for up to one year*

*Disqualification of a Councillor for up to five years*

*In the case of the Council being to blame, recommendations may be made to the Scottish Ministers about rectification of the authorities accounts. Ministers can make an order giving effect to these recommendations.*

*Thirdly, whilst the Ombudsman accepts that Planning authorities have the freedom to determine planning applications as they wish procedural impropriety may be interpreted as maladministration. This can also lead to recommendations by the Ombudsman that compensation be paid.*

*Consistent implementation of departure procedures maintains public confidence in the planning system and is consistent with the time and effort invested in preparing the Local Development Plan.*



WARD 05\_17

**21/00384/APP**  
**22nd March 2021**

**Relocation of existing hot food takeaway and formation of a parking area/paths to be accessed via a track and access onto the B9040 Land 500M South West Of West Beach Caravan Park Hopeman for Mr & Mrs Barry & Ruth Scott**

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**Comments:**

- Advertised for neighbour notification purposes - notification not possible because no premises situated on land to which notification can be sent and as a departure to the development plan.
- Application is a local development but referred to Committee as the Appointed Officer considers it raises significant policy issues.
- 252 representations have been received.

**Procedure:**

None

**Recommendation      Refuse for the following reasons;-**

The proposal is contrary to the Moray Local Development Plan 2020 where it departs from policies PP1, PP2, DP7, DP8, EP3, EP6 and the Development Strategy/ Objectives for Hopeman and Cummington within each Settlement Statement.

1. By virtue of the proposed location of the fast food outlet it would be detrimental to the natural environment where it introduces development into an area designated as special landscape to be safeguarded from build development to maintain the open coastal landscape and the distinction between the two villages of Cummington and Hopeman. The proposal would also harm the distinction between the defined settlement boundaries, and the open countryside surrounding them.
2. The proposal has not provided sufficient locational need to justify its relocation outwith the village of Hopeman and nor does it constitute one of exceptions within the Special Landscape Area policy EP3 allowing development to occur within the designation. The locational need failed to be sufficiently justified in terms of an economic and tourist facility considerations.
3. The application has failed to demonstrate that the relocation of the unauthorised business outwith the settlement, would not harm the viability of

the harbour area and Harbour Street by drawing trade away from Hopeman contrary to policy DP7.

<b>LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT</b>	
<b>Reference No. Version No.</b>	<b>Title/Description</b>
020/0887/03	Elevations
020/0887/02	Layout
020/0887/04	Site layout
020/0887/01	Location plan
020/0887/01	Access plan



## PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:

21/00384/APP

7

Site Address:

Land 500M South West Of West Beach Caravan  
Park  
Hopeman

Applicant Name:

Mr & Mrs Barry & Ruth Scott

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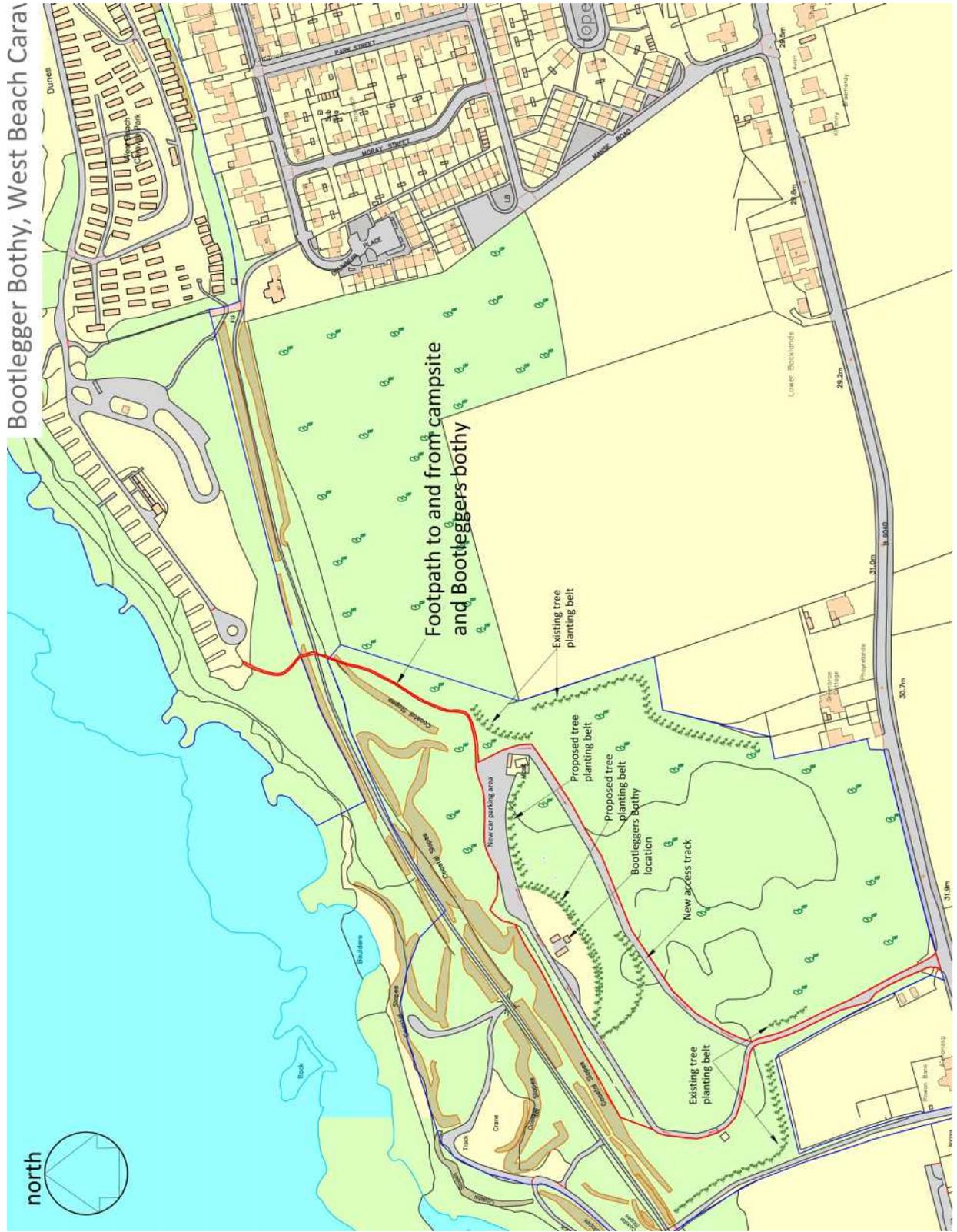
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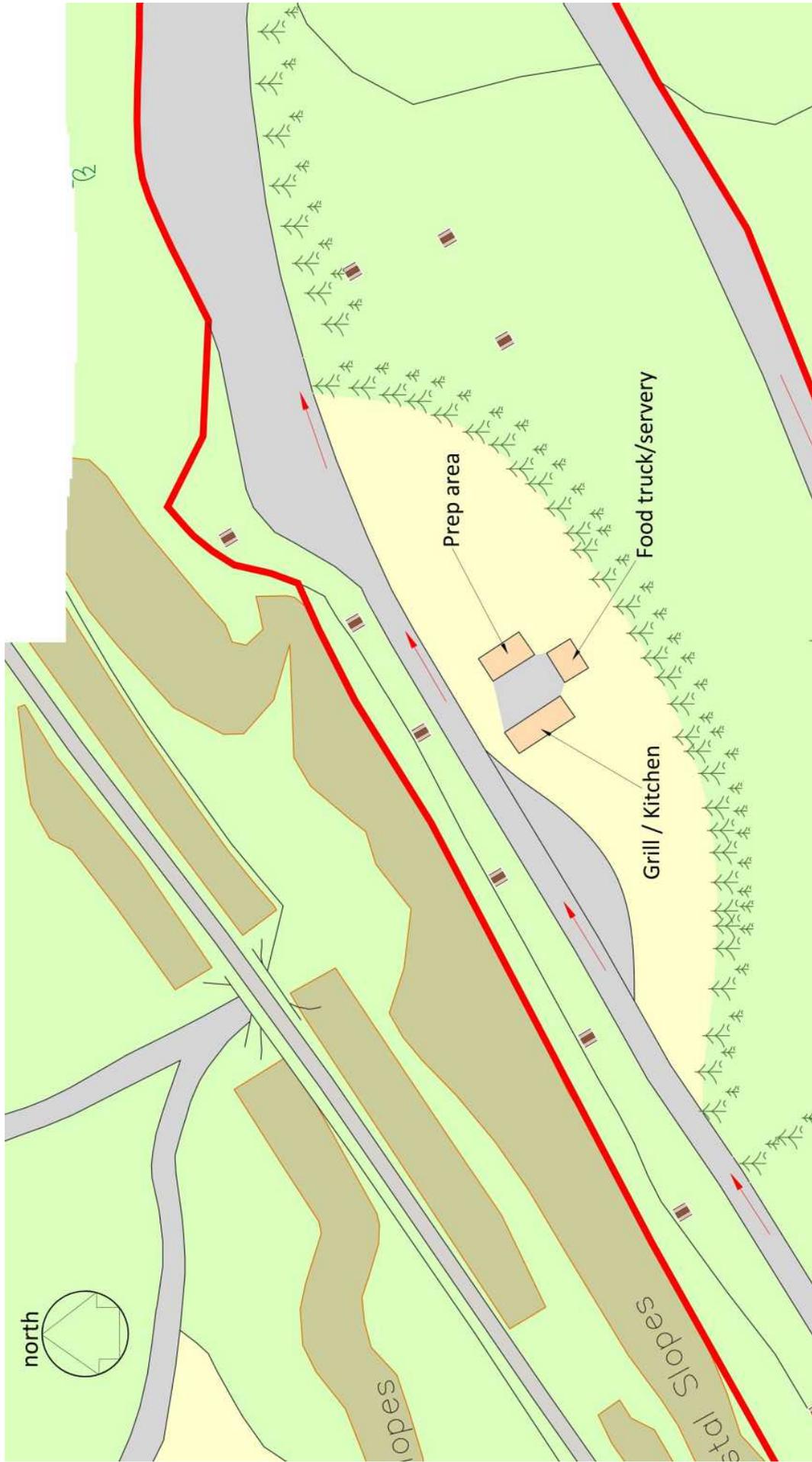
## Location Plan



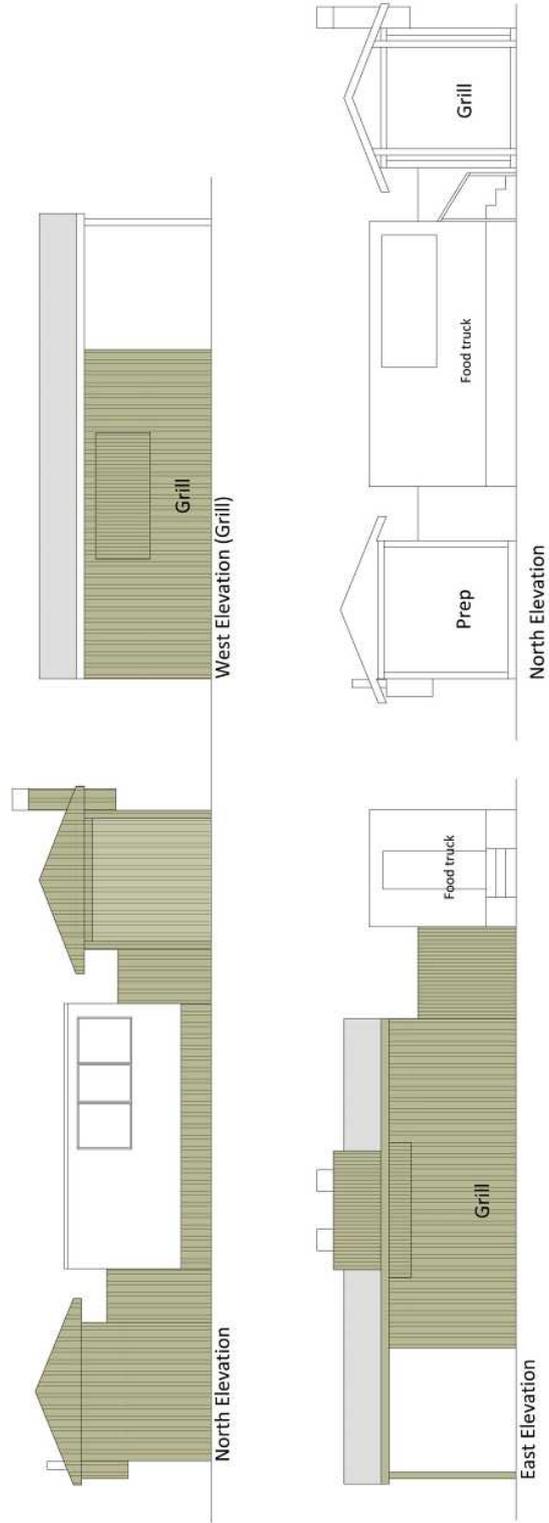
# Site Location



**Site layout**



# Elevations

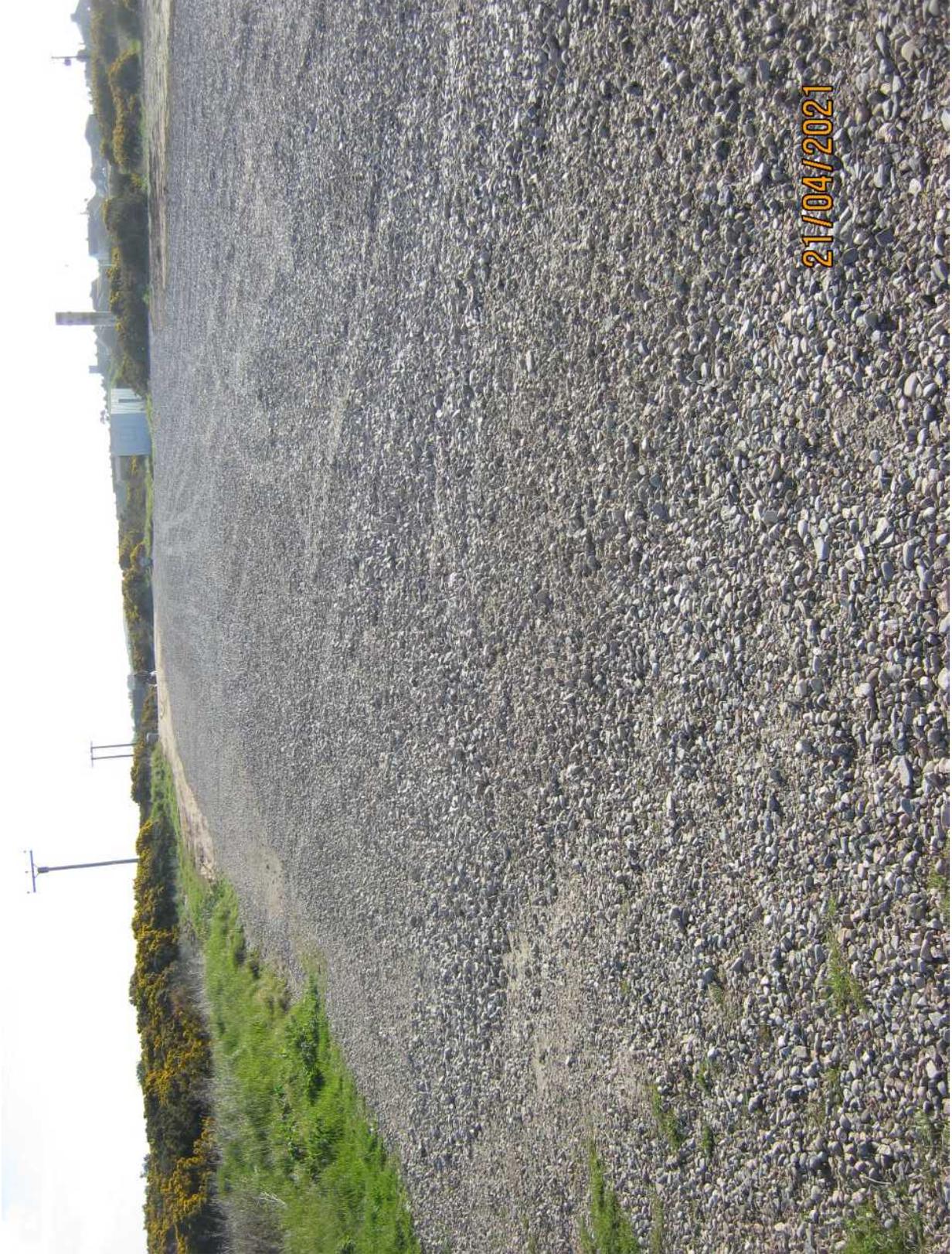


**Path crossing coastal path**





**Site carpark looking East to Hopeman**



**Site carpark looking west to Cummingsston**



**View east across site entrance**





## PLANNING APPLICATION: 21/00384/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*

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### **THE PROPOSAL**

- Partly retrospective application to position a fast food outlet, outdoor seating, carparking, bins, footpath to caravan park and occasional tented enclosures on the former Greenbrae landfill site. The carpark area and informal path to the caravan park have already been formed, and the carpark is already in use, but the fast food outlet remains located within the existing caravan park. The existing track leading into the site has been re-surfaced, but this does not form part of the development. A one way loop would be formed to allow traffic to enter the lower site in a clockwise route.
- The fast food outlet would consist of 3 cabin/trailers located at the lower, northern end of the former landfill site. Of the 3 cabins, they are described as a grill, food preparation cabin and a food truck (also for preparation). Two are clad in timber with pitched rooves.
- The proposal seeks to provide some tree planting around the periphery of the wider landfill site, and to introduce some planting within the site, closer to structures. Planting has already been undertaken at the periphery of the site, as evidenced by the planting tubes visible.
- The proposal also includes the provision of picnic benches in the vicinity of the takeaway, and may see the occasional erection of a marquee and other smaller temporary enclosures to provide shelter to patrons. It is not intended to move the double decker bus to this new location, which shall remain within T1 West Beach Caravan Park.
- It is noted that the current fast food outlet has a license to sell bottled alcohol, and it is presumed that a similar license would be sought for this site.

### **THE SITE**

- The site, which lies between Cummington and Hopeman is located upon an area of coastal heath land, which is largely covered in grass but with some areas of gorse and whin present. The site lies upon the former Greenbrae Landfill site, and its currently disused heath land. Infrastructure previously related to the venting of the landfill installed by Moray council remains on site.
- The proposal includes formation of a path north east from the former landfill site which links the Greenbrae site, to the northeast, crossing the Burghead to Hopeman coastal footpath. This path passes through an area of gorse and links to a gate on the western edge of the caravan site.
- Located within the coastal Burghead to Lossiemouth Special Landscape Area as designated within Moray Local Development Plan.
- It is evident on site that the applicant has imported soil and gravel to form or upgrade tracks within the site, but is also evident that the previous vertical gas collection wells

and other gas extraction infrastructure has been marked and enclosed on site by small bunds or stone markers.

## **HISTORY**

For the site itself:

03/02089/MC - Construct a strategic coastal cycleway between Burghead and Hopeman. Approved in April 2004.

06/00605/MC - Remediation works to include gas flare and compound gas wells associated pipe work and the construction of an access road at former Greenbrae Landfill Site, Cummington. Permitted in August 2006.

Other relevant planning history:

17/00509/APP - Amend boundaries layout and number of touring pitches to planning consent approved under reference 15/02159/APP (partly retrospective) at West Beach Caravan Park, Harbour Street, Hopeman, Elgin, Moray, IV30 5RU.

## **POLICY - SEE APPENDIX**

## **ADVERTISEMENTS**

Advertised for neighbour notification purposes, as a Schedule 3 development and as a departure from the Moray Local Development Plan.

## **CONSULTATIONS**

**Environmental Health** – No objections subject to informatives. Informatives cover food safety matters and other health and safety legislation.

**Contaminated Land** – No objection subject to an appropriate condition require ongoing monitoring and passive venting by the new landowner (and applicant) of the site would be required. Condition recommended to ensure the applicant implements the findings of the landfill gas risk assessment.

**Strategic Planning and Development** - The proposal is outwith the settlement boundary of both Cummington and Hopeman, being located in the area of land that separates the two villages. The Settlement Statements for Cummington and Hopeman both state that their development strategy/objectives are to prevent coalescence of the villages. The site is also within the Burghead to Cummington Special Landscape Area (SLA). The proposal is contrary to policy for the reasons set out below. Whilst the proposal is supporting tourism and economic development the requirements of Policy PP2 Sustainable Economic Growth have not been met. Policy PP2 requires the quality of the natural and built environment to be safeguarded, a clear locational need to be demonstrated and all potential impacts to be mitigated. The natural and built environment has not been safeguarded as the proposal goes against the recommendations of the Moray Local Landscape Designation Review which recommends a distinct separation between

settlements is retained. Preventing coalescence of Cummington and Hopeman is part of the development strategy/objectives for Hopeman and Cummington. A locational need has not been adequately demonstrated as outlined below for policy DP8. Policy EP3 Special Landscape Areas and Landscape Character does not support proposals for development in rural areas unless they are for a specific range of uses and where they do not prejudice the special qualities of the designated area as set out in the Moray Local Landscape Designation Review, adopt the highest standards of design in accordance with DP1 and other relevant policies, minimises adverse impacts on the landscape and visual qualities the area is important for. The range of uses does not include a hot food takeaway or cafe and the proposal is therefore contrary to policy. The Moray Local Landscape Designation Review recommends that development should be focused within existing settlements and that the “present distinct separation of existing settlements should be retained”. Whilst the buildings proposed are relatively small in scale the wider proposal introduces new activity into this sensitive area between Hopeman and Cummington. This will erode the distinction and separation between the two villages. There has been a pattern of development creep that over time has eroded the settlement boundary and ENV’s. This now threatens the separation of Hopeman and Cummington and risks coalescence. The T1 Hopeman Caravan Park designation was extended significantly altering the settlement boundary to allow uses such as this and to halt development creep out with the settlement boundary. The proposal threatens the separation of Hopeman and Cummington and risks coalescence. The T1 caravan park extension followed a decision by the LRB to allow an extension of the caravan park under application 15/02159/APP. A further, partly retrospective, application (17/00509/APP) sought to amend the boundaries of the consent, increase the number of pitches and create additional footpaths. Given the previous LRB decision this application was approved. Gorse was cleared and land recontoured prior to the application being submitted. The consents were therefore reflected within the LDP2020 and the T1 boundary is intended to provide the maximum extent of the caravan park and associated activities. Whilst the buildings are relatively small in scale greater clarity is needed on what is being proposed. The seating arrangements are unclear and a marquee/tent was used at the existing site to provide covered seating. The lack of clarity within the plans suggests there is potential for bigger visual impacts and wider activity than the drawings propose. The visual impact and activity that threatens the coalescence of the two villages will be highly visible from the B9040 but also from the Coastal Path. Both of these are key tourist routes and therefore care is required to minimise intrusion into the landscape and maintain the distinction between the two villages. Taking into account the wider activity associated with the proposal, including new seating at the northern boundary, the development would be visible from the Moray Coastal Path (situated to the north of the site). This would have a negative impact on the wild coastal nature of this area immediately outside the Hopeman/Cummington settlement boundary.

Policy EP6 *Settlement Boundaries* does not support development proposals immediately outwith the boundaries of settlements. The intention of the policy is to ensure that the distinction between town and countryside are not blurred. The proposal is immediately outwith the settlement boundaries of both Cummington and Hopeman and as stated above the building and activity associated with them will erode the distinction between the two villages. The Settlement Statements for Cummington and Hopeman both state that their development strategy/objectives are to prevent coalescence of the villages.

Policy DP8 *Tourism Facilities and Accommodation* requires proposals to demonstrate a locational need for a specific site. Locational need is where it is necessary for the proposed development to be located on (or in close vicinity) to the site. Necessary in this

context means more than convenience. The locational need within the Planning Statement submitted is the success of the existing Bootlegger Bothy, proximity to tourist attractions (namely the coastal trail) and road safety concerns associated with the existing site. There is no justification as to why this specific site has been selected and the locational need for it. The T1 Hopeman Caravan Park designation specifically allows for ancillary facilities including a café. The applicants have not demonstrated what options were explored within the boundary of the caravan park or elsewhere within the settlement boundary. There are opportunities within the T1 Caravan Park designation, around the harbour (HBR1) which would be in close proximity to the coastal trail and there are also opportunities within the central core of Hopeman around Harbour Street. Locating within Hopeman would support other services and businesses.

The Bootlegger Bothy has operated from the T1 designation and it is unclear why this option is no longer possible. It is noted that the T1 designation was extended significantly to allow for expanded facilities in the 2020 Local Development Plan. Given the history of development creep in this area (as outlined above) the designation is intended to be the maximum extent to which the caravan park and associated activity could expand without significantly compromising the rugged coastline and distinction between the two villages. Whilst the planning statement notes road safety concerns with the existing site it is not explained what these are or what steps were considered to resolve them. It would not be possible to ensure that all customers will use the proposed access. The other key attractions/facilities in Hopeman will remain a key draw for visitors and it is likely that they would continue to park within Hopeman and potentially walk to the proposal.

The proposal fails to meet the requirements of DP1 (which is referenced as a requirement of policy EP3 above) and is therefore contrary to LDP2020.

- Given the sensitivity of the location care needs to be taken to ensure this integrates with the landscape. The application does not include a detailed landscaping plan to address this issue. While tree belts are proposed there is no detail on the species, standard or spacing of planting and how the proposed planting relates to the coastal setting. The use of tree belts at this location appears to be out of character with this part of the coast and therefore the appropriateness of using tree belts is questioned. There is also no detail provided on the surfacing that it is proposed to use for the access track, the path to the caravan park, the area around the buildings or the car parking. The visual impacts of these elements need to be considered.
- The car parking area has not been defined and no mitigation is shown to minimise the visual impacts of parked cars on the landscape.
- There is no provision for cycle parking included within the proposal despite the location close to the Coastal Trail.
- It is acknowledged within the Planning Statement that the site was formerly a landfill site however, there doesn't appear to be any information submitted regarding potential contamination land issues. Policy DP1 (iii) f) requires proposal to address and sufficiently mitigate any contaminated land issues (see also Policy EP14 Pollution, Contamination and Hazards). We note that the R1 site on the edge of Hopeman required a landfill gas assessment to be completed.

Policy EP14 *Pollution, Contamination and Hazards* requires applicants to demonstrate that the site is in a condition suitable for the proposed development. No site investigations or risk assessments have been provided to date to demonstrate this. Whilst the application is considered to be a brownfield site this does not automatically mean it is available or suitable for development. As outlined above, despite this being a brownfield

site, the location is not considered suitable or appropriate for development given the landscape impacts and the need to maintain separation between the two villages to avoid coalescence. There are many examples of brownfield sites that have become naturalised providing biodiversity and amenity value or redeveloped for green space.

The proposed use could potentially attract a significant footfall and the proposal would therefore require to be considered under Policy DP7 *Retail/Town Centres*. Therefore, a sequential approach to site selection and consideration of the impact on the vitality and viability of the network of centres would need to be considered. The majority of existing shops in Hopeman are located on Harbour Street which, given the size of Hopeman, effectively acts as a High Street. Although there is no formal “town centre” designation, this street currently contains a number of small shops and business that cater for the convenience needs of the settlement and tourists. Harbour Street functions as the “High Street” of Hopeman given the type of units located there. The Development Strategy/Placemaking Objectives stated for Hopeman within the Settlement Statement are “to safeguard the distinctive character of the village”. It should be noted this is not a generic statement applied to all settlements and has been applied specifically to Hopeman. Drawing footfall away from Harbour Street has the potential to impact on the existing businesses and therefore the character of Hopeman i.e. if footfall was reduced and significant trade was diverted from Harbour Street this could lead to shop closures which alter the mixed use character of the street and its historic function. The proposal is disconnected from existing local facilities making combined trips to other businesses less likely. The applicant has failed to demonstrate that there will be no unacceptable adverse impacts on existing retail centres and the distinctive character and vitality of Hopeman.

The proposal is contrary to policies PP2, EP3, EP6, DP1, DP7, DP8 and the Development Strategy/Objectives for Hopeman and Cummingston as stated within the Settlement Statement and is therefore not acceptable.

**Planning and Development Obligations** – No obligations sought.

**Environmental Protection** – No objection.

**Building Standards** – No Building Warrant required.

**Transportation Manager** – No objection. If approved appropriate signage and maintenance of a minimum visibility splay of 2.4 metres by 70 metres in both directions at the access would be required. It is noted that the applicant has cut back vegetation at the access to the site to provide the necessary visibility splay.

**Moray Flood Risk Management** – No objection, following submission of the drainage assessment. A condition would be required ensuring compliance with the assessment if the application were to be approved.

**Estates** – The applicant should contact Estates Services or the Legal Services Manager regarding the intention to cross the coastal footpath proposed as part of the application. *Officer comment - the issue of any permission required to cross the coastal footpath, is a separate legal matter to the planning assessment. That the applicant may be restricted in terms of the connecting footpath between the proposed location of the food outlet and the caravan park to the north east, would not stop consideration of the proposed relocation of the business.*

**Moray Access Manager** – No objection.

**Aberdeenshire Council Archaeology Service** – No objection.

**Scottish Water** – No reply at the time of writing the report, but if approved the applicant would have to obtain Scottish Water's permission to connect to the public water supply.

## **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).

221 comments in support of the proposal, 30 opposed and 1 neutral representation have been received. All those listed below have submitted one or more representation. All representations have been considered and where material, given weight in arriving at the below recommendation.

Dr Kathleen Philip - Rowan Bank Cummingston Elgin Moray IV30 5XY  
Mr Richard Tregale - 15 St Aethans Road Burghead IV305YR  
Mr B Scott - The Woolmill Dallas Forres Moray IV36 2RZ  
Mr Paul Banks - Innisfail Cummingston Elgin Moray IV30 5XY  
Mr Matthew McKen - Ocean Keys Cummingston Elgin Moray IV30 5XY  
Mrs Bethannay Mckenzie - 28 Drainie Way Lossiemouth Moray IV31 6SZ  
Colin Alexander - 54 Cedar Street Grangemouth FK3 8NG  
Mrs Zoe Wales - 66 Macdonald Drive Lossiemouth Moray IV31 6LT  
Mr Robert Meldrum - 4 Tern Road Cove Aberdeen AB12 3UE  
Mrs Sally Murray - 20 Acacia Way Cambuslang G72 7ZY  
Mrs Suzanne Lynch-McKay - 24 West Covesea Road Elgin Moray IV30 5QF  
Mrs Sally Chewter - 14 New Street Hopeman Elgin Moray IV30 5SG  
Mr David Mair - 22 Pitgaveny Quay Lossiemouth Moray IV31 6TW  
Mrs Janice Mackenzie - 7 Torridon Burghead Elgin Moray IV30 5GB  
Mrs Linda Slater - 9 Grant Street Whitehills AB45 2NU  
Stephanie Paterson - 10 Fountain Court Burghead Elgin Moray IV30 5PZ  
Mrs Melanie House - 22 Harbour Street Hopeman Elgin Moray IV30 5RU  
Mrs Carolyn Patterson - Moray View Back Street Cummingston Elgin IV30 5XY  
Mrs Shona Lamont - Kilburn Kiltarlity Inverness IV4 7HG  
Alison Room - Guiseach Knock AB65 7LY  
Mr Douglas Ross - Woodlands Steading Dallas Forres Moray IV36 2SA  
Ms Hazel Robinson - 18 Forties Place Lossiemouth Moray IV31 6SS  
Mrs Iris Thompson-Burton - 5 Dalcroy Road Croy IV25PQ  
Mr Richard Amos - Saltwells 10 Mackenzie Drive Forres Moray IV36 2JP  
Mrs Linda Gillies - 53 Thom Street Hopeman Elgin Moray IV30 5TB  
Mrs Irene Dean - 8 Seaview Road Cummingston Near Elgin IV30 5YU IV30 5YU  
Mr Ross Lyall - Diligence Grant Street Burghead Elgin Moray IV30 5UQ  
Miss Gianna Gillies - Shackleton House Forsyth Street Hopeman Elgin Moray IV30 5SY  
Mrs Tracy Stirling - Clear View Inverugie Road Hopeman Elgin Moray IV30 5SX  
Mrs Carly Hart - 8 Spynie Brae Elgin Moray IV30 4PE  
Miss Jennifer Liddell - 1 Woodside Place Fochabers Moray IV32 7HE  
Mr Elton Foister - Brig End Rothienorman Inverurie AB518UH

Mrs Ashleigh Kinch - Over Contlaw Milltimber AB13 0ES  
Mrs Arlene Harper - 40 Westfield Road Inverurie AB51 3YR  
Miss Danielle Slater - 10 King Street Burghead Elgin Moray IV30 5XA  
Mr Mark Lang - 24 Northfield Duffus Elgin Moray IV30 5RW  
Ms Leona Wright - Bain Avenue Elgin IV30 6GB  
Mrs Gillian Sutherland - 55A Thom Street Hopeman Elgin Moray IV30 5TB  
Ms Carol Fletcher - 30 Cameron Drive Ardersier IV2 7SW  
Dr Carey Nash - 54 Harbour Street Hopeman Elgin Moray Moray  
Mrs Samantha McKen - Ocean Keys Cummington Elgin Moray IV30 5XY  
Mr Jerome Lestienne - Rowandale Cummington Elgin Moray IV30 5XY  
Miss Ashley Sutherlane - 60 Fraser Road Burghead Elgin Moray IV30 5YN  
Mrs Lucy Monteith - Mid Bank Farmhouse Roseisle Elgin Moray IV30 5YD  
Mrs Shona Cameron - 12 Put Four Court Peterhead AB42 2YG  
Mrs Sharon Pickles - 22 Quarryhill Keith Moray AB55 5AX  
Ms Nicola Murray - 4 Beech Walk Fochabers Moray IV32 7EL  
Ms Lisa Kerr - Headmasters House Gordonstoun Duffus Elgin IV30 5QZ  
Miss Morag Cantlie - 7 Sigurd Way Burghead Elgin Moray IV30 5ZG  
Mr Keith Lowson - Cumbrae 6 Inchberry Road Fochabers Moray IV32 7QA  
Lois Dubber - 19 Thom Street Hopeman Elgin Moray IV30 5SS  
Mrs Judith Cowan - 2 New Street Hopeman Elgin Moray IV30 5SG  
Mr Dave Neely - The Hill 26 St Leonards Road Forres Moray IV36 1DW  
Mrs Laura Scott - 15 Dove Court Elgin Moray IV30 6LH  
Mr David Stewart - 18 Provost Clemo Drive Inch AB52 6HT  
Mrs Kath Brown - Tinamara 62 High Street Lossiemouth Moray IV31 6AB  
Miss Lynne Towler - 3 Sunnybank Cottages Fyvie Turriff AB53 8RD  
Mr Stuart Simpkins - 32 Harbour Street Hopeman Elgin Moray IV30 5RU  
Mrs Kathryn Fiske - Esha Ness 8 Havers Place Hopeman Elgin Moray IV30 5SR  
Lauren Davidson - Little Burns Glenkindie Alford AB33 8RL  
Mrs Marlene Muir - 6 Golf Road Hopeman Elgin Moray IV30 5TE  
Mrs Julie Gray - 23 Mcpherson Street Hopeman Elgin Moray IV30 5TG  
Mr Andrew Myles - 16 Newtown Drive Macduff AB44 1SR  
Mrs Ann McLean - Ardgour Cummington Burghead Elgin Moray IV30 5XY IV30 5XY  
Mr Paul Duncan - Braehame 5 Seaview Road Cummington Elgin Moray IV30 5YU  
Miss Chloe Gilchrist - 13 Thornhill Crescent Forres Moray IV36 1LU  
Mrs Karen Clark - 25 Land Street Rothes Aberlour Moray AB38 7BA  
Mrs Judith McCulley - 24 Northfield Duffus Elgin Moray IV30 5RW  
Mrs Norma Watson - 3 Smith Drive Elgin Moray IV30 4NE  
Mrs Kathleen Ralph - 1 Brander Street Burghead Elgin Moray IV30 5UD  
Mrs Jeni Johnston - 9 Gordon Street Hopeman Elgin Moray IV30 5SF  
Ms Althea Forbes - 2 The Poplars Easter Buthill Roseisle Elgin Moray IV30 8XN  
Mr Ronald Hughes - Rosebrae Cummington Elgin Moray IV30 5XY  
Mr Isaac McLean - Ardgour Cummington Elgin Moray IV30 5XY  
Ms Vivienne Wilkins - 16 Moray Street Hopeman Elgin Moray IV30 5SA  
Mrs Elizabeth Price - 28 Headland Rise Burghead Elgin Moray IV30 5HA  
Mrs Fiona Bowdery - 57 The Warren Burgess Hill RH15 0DU  
Mrs Sharon McDonald - 26 Brodie Place Forres Moray IV36 1NH  
Adele Angerer - Inrain 308 Scharnitz 6108  
Mrs Karren MacDonald - 46 Dunbar Street Burghead Elgin Moray IV30 5XQ  
Miss Laura Mcknockiter - 8 Dunnottar Road Elgin Moray IV30 8AG  
Mrs Emma Thorpe - Level Farm Birnie Elgin Moray IV30 8SR  
Mrs Angela Connor - 68 Priestfield Crescent Edinburgh EH16 5JG  
Mr Christopher McCann - 22 Lodge View Hopeman Elgin Moray IV30 5TS

Mrs Marie Slater - Ptoroton Rise Clarkly Hill Burghead Elgin Moray IV30 5XU  
Miss Shannah Grant - 17 Woodburn Drive Grantown-on-Spey PH26 3FD  
Mr Adrian Divers - 4 Kippford Terrace Rutherglen Glasgow G73 4FL  
Anna-Mary Overing - Gardeners Cottage Fochabers Moray IV32 7QA  
Dr Angus MacEwan - Thorfinn 9 Seaview Road Cummington Elgin IV30 5YU  
Miss Marie Johnstone - Denmoss Largue Huntly AB546HT  
Ms Deborah Newcombe - 14 Hutcheon Street Hopeman IV30 5SQ  
Mrs Fiona Wilson - 1 Harbour Street Hopeman Elgin Moray IV30 5SJ  
Mrs Louise Boyd - 35 Duff Street Hopeman Elgin Moray IV30 5RZ  
Mr Tim Maddams - Stonewells Farmhouse Innes Estate Elgin Moray IV30 8NF  
Mrs Laura Bremner - 7 New Street Hopeman Elgin Moray IV30 5SG  
Mrs Carole Forrest - 38 Freelands Road Ratho EH28 8NP  
Mr Stuart Brown - 12 Lyneburn Crescent Halbeath Dunfermline KY11 8DZ  
Mrs Kerry Farquhar - Drummond Cottage Cummington Elgin Moray IV30 5XY  
Ms Michelle Foster - 6 Mason Haugh Road Burghead Elgin Moray IV30 5ZE  
Mr Andrew Walker - 43 Leslie Road Aberdeen AB24 4HU  
Mrs Paige Slater - 4 Firth View Burghead Elgin Moray IV30 5YW  
Mrs Liz Mcknockiter - 14 Kinloss Street Burghead Elgin Moray IV30 5UY  
Mrs Jilly Grant - Newton Of Ardoyne Farmhouse Inch AB52 6RN  
Mr Ian Adams - 1 Craighall Crescent Ellon AB41 9NR  
Ms Fiona McCormick - 1 Henderson Row Fort William PH33 6HT  
Miss D Sutherland - Reidhaven Street Cullen AB56 4SU  
Miss Islay Sutherland - 55A Thom Street Hopeman Elgin Moray IV30 5TB  
Mrs Moira MacDonald - Skene House Cowie Wynd Torphins AB31 4FF  
Miss Tanya Mackenzie - 24 Forteath Street Burghead Elgin Moray IV30 5XF  
Miss Emma Riach - 14 Muldearie View Keith Moray AB55 5TF  
Morag Reid - 1 Holyrood Drive Elgin Moray IV30 8TP  
Mrs Susan Pellegrom - 2 Spey Court Fochabers Moray IV32 7QT  
Kenny Stewart - 10 Seaview Road Cummington Elgin Moray IV30 5YU  
Mr William Forrest - Rowanbank Main Street Cummington IV30 5XY IV30 5XY  
Miss R Cameron - Fairway Avenue Elgin Moray IV30 6XF  
Mrs Carol Tuff - Woodside Inverugie Road Hopeman Elgin Moray IV30 5SX  
Mrs Doreen MacDougall - 37 Forteath Street Burghead Elgin Moray IV30 5XF  
Mr Simon Burns - Broomhall Tytler Street Forres Moray IV36 1EL  
Mrs Siobhan Sellers - 40 Bain Avenue Elgin Moray IV30 6GB  
Mrs Anne MacKiggan - 10 Golf Crescent Hopeman Elgin Moray IV30 5TL  
Mrs Emma Henderson MBE - Muirhead Steading Kinloss Forres Moray IV36 2UA  
Mr Scott Ewen - 6 Brick Cottages Hill Street Craigellachie Aberlour Moray AB38 9TB  
Mr Doug Simpson - 4 Alpine Place Fraserburgh AB43 9WQ  
Mr Stuart Gray - 52 Harbour Street Hopeman Elgin Moray IV30 5RU  
Mrs Isabel Morrison - 12 Hutcheon Street Hopeman Elgin Moray IV30 5SQ  
Ms Sandra West - 8 Victoria Street Buckie Moray AB56 1TA  
Marc Mcwhirter - 8 South College House Elgin Moray IV30 1HQ  
Mr Gary MacDonald - 16 Henderson Park Kintore AB51 0FT  
Mr Ed Dunbar - The Old Manse Gordonstoun Road Duffus Elgin Moray IV30 5QD  
Miss Lauren Mcintosh - 10 Mid Street Hopeman Elgin Moray IV30 5TF  
Mrs H Bloomfield - 11 Forteath Street Elgin IV30 5XF IV30 5XF  
Mrs Michele Lambie-Song - 2 Broomhill Court Aviemore PH22 1TW  
Mr Brent Johnston - Muir Of Myreside Cottage Elgin Moray IV30 5PE  
Mrs Lindsay Nicol - Coltfeld Farmhouse Alves Elgin Moray IV30 8XA  
Mrs Fiona Duncan - 13 Church Road Duffus Elgin Moray IV30 5QQ  
Mrs Suzanne Cameron - 18 Townhead Road Inverurie AB514RZ

Mrs Janice Anderson - Viewfield Inverugie Road Hopeman Elgin Moray IV30 5SX  
Stephanie Cruickshank - 1 Taylor Road Keith Moray AB55 5FW  
Mrs Kirsty Joy - 12 Kintrae Rise Elgin Moray IV30 5ND  
Ms Carol Murrie - Woodlands Steading Dallas Forres Moray IV36 2SA  
Mr Scott Grant - Marchead cottage Cummington Iv30 5xy Iv30 5xy  
Mr Norman Kebell - 2 The Poplars Easter Buthill Roseisle Elgin IV30 8XN  
Mrs Helen Bromehead - Muirlea Cummington Elgin Moray IV30 5XY  
Mr Mark Nash - Millbank 54 Harbour Street Hopeman Elgin Moray IV30 5RU  
Mrs Gillian McNeill - 30 Bain Avenue Elgin Moray IV30 6GB  
Mr Wayne Fiske - Esha Ness 8 Havers Place Hopeman Elgin Moray IV30 5SR  
Mr Ian Fraser - 27 St Peter's Road Duffus Elgin Moray IV30 5QL  
Mr Mike Duncan - 40 Duffus Crescent Elgin Moray IV30 5PY  
Mr Ryan Fiske - Rannoch Park Street Hopeman Elgin Moray IV30 5SE  
Miss Natalie Shuttleworth - 68 Beech Avenue Nairn IV12 4SY  
Ms Karen MacIver - 1 Drakies Avenue Inverness IV2 3RW  
Mrs Hazel Cowan - Morven Dunbar Street Burghead Elgin Moray IV30 5XB  
Mr Frank Donald - 2 Leapark Murton Forfar DD8 2RZ  
Mrs Cath Lyall - Ardmhuire Forsyth Street Hopeman Elgin Moray IV30 5SY  
Mr Michael Ross - 4B Strathcona Road Forres Moray IV36 1QB  
Mrs Becci Wilson - 5 Doon Park Kinloss Forres Moray IV36 3UL  
Mrs Nina Crocombe - 21 Trenchard Crescent Kinloss Forres Moray IV36 3UP  
Mr Andrew Lyall - Ardmhuire Forsyth Street Hopeman Elgin Moray IV30 5SY  
Mrs Marjorie Taylor - 37 Newlands Crescent Aberdeen AB10 6LG  
Mrs Natasha Gordon - Mai Dire Mai Kemnay Aberdenshire AB51 5LJ  
Miss Gillian Strachan - Harlaw Road Inverurie AB51 4SR  
Miss Emily Milne - 67 Scott Crescent Tayport DD6 9PN  
Miss Suina Rogers - 44 Duff Street Hopeman Elgin Moray IV30 5RZ  
Kim Linton - 44 Netherhills Avenue Aberdeen AB21 9DE  
Mrs Penny Kelly - 7 Gordon Street Elgin Moray IV30 1JQ  
Mrs Alison Gray - 8 Howieson Place Inverurie AB51 4ZX  
Miss Kirsty Reid - 23 Turnberry Drive Inverurie AB51 3WT  
Miss Isobel Main - 35 Thom Street Hopeman Elgin Moray IV30 5SS  
Mr Andrew Stepien - 75 Highfield Forres Moray IV36 1FN  
Mrs Zena Twining - 33 Spynie Brae Elgin Moray IV30 4PE  
Mrs Lisa Farley - 1 Quarrywood Elgin Moray IV30 8XU  
Mr Michael Thomson - Flat 3/1 5 Striven Gardens Glasgow G20 6DU  
Mrs Claire Jagger - 14 East Street Fochabers Moray IV32 7DS  
Mr David MacKay - 11 Mcpherson Street Hopeman Elgin Moray IV30 5TG  
Mrs Kerry More - 3 Harbour Street Hopeman Elgin Moray IV30 5SJ  
Mr Michael Cousins - Brandish Lawrence Road Old Rayne AB526RF  
Sam Barber - 15 Farquhar Street Hopeman Elgin Moray IV30 5SN  
Ms Shona Nisbet - 23B Inchbroom Avenue Lossiemouth Moray IV31 6HJ  
Mr Mike Pirie - 21 Granary Street Burghead Elgin Moray IV30 5UJ  
Lisa Ross - 74 Bogton Road Forres Moray IV36 1BJ  
Mr Paul Gray - 52 Harbour Street Hopeman Elgin Moray IV30 5RU  
Mr Gordon Kidd - 8 St Ninian Road Nairn IV12 4EQ  
Mrs Linda Reid - 12 Wards Croft Muir Of Ord IV6 7PU  
Ms Sophia Monfardini - 18 High Street Lossiemouth Moray IV31 6PH  
Mr John Elkin - 15 Dunbar Street Hopeman Elgin Moray IV30 5TD  
Mrs Fiona Denton - 1 Findrassie Court Elgin Moray IV30 4PF  
Mr James Campbell - 44 Shieldaig Road Forres Moray IV36 1FY  
Mr Len Simpson - 89 Berryden Road Peterhead AB42 2GD

Mrs Rachel Hurley - 96 Easter Road Kinloss Forres Moray IV36 3FG  
 Mrs Tracey Mair - 16 Fordyce Street Rosehearty Fraserburgh AB43 7NS  
 Mrs Helen Freedman - 6 Sey Burn Wynd Elgin Moray IV30 4PH  
 Mrs Lynette Mclennan - 48 Wittet Drive Elgin Moray IV30 1TB  
 Mrs Cheryl Stirling - 23 Burnsknowe Deans Livingston EH54 8BG  
 Justine East - 11 New Street Hopema Elgin Iv30 5sg Iv30 5sg  
 Mrs Angela Reid - 3 Duff Street Hopeman Elgin Moray IV30 5RZ  
 Mrs Hazel M Lornie - 4 Beach Terrace Hopeman Elgin Moray IV30 5RX  
 Mrs Claire More - 10 Hebenton Road Elgin Moray IV30 4EP  
 Mrs Catherine Main - 9 Kintrae Crescent Elgin Moray IV30 5NB  
 Mrs Julie Kennedy - 9 Rowan Place Nairn IV12 4TL  
 Ms Louise Henderson - Luing Lein Road Kingston Fochabers Moray IV32 7NW  
 Mrs Eileen Threapleton - 69 Granary Street Burghead Elgin Moray IV30 5UA  
 Douglas Millar - 140 Camps Rigg Carmondean Livingston EH54 8PE  
 Miss Melanie Main - 6 Golf Crescent Hopeman Elgin Moray IV30 5TL  
 Mrs Catherine Ross - Fern Cottage Dallas Forres Moray IV36 2SA  
 Mrs Janne Pirie - 21 Granary Street Burghead Elgin Moray IV30 5UJ  
 Mrs Sonia Pozzi - Colonnades Station Road Burghead Elgin Moray IV30 5UN  
 Mrs Alison Stewart - 6 Westmorland Street Fochabers Moray IV32 7DT  
 Miss Nicole Christie - 8 Bridge Of Cowie Stonehaven AB39 2AN  
 Campbell McNeill - 30 Bain Avenue Elgin Moray IV30 6GB  
 Mr Joseph Grice - 5 Park Street Hopeman Elgin Moray IV30 5SE  
 Mrs Mary McClatchey - 24 Cooper Street Hopeman Elgin Moray IV30 5SB  
 Mrs Elspeth Allen - 20 Cromar Gardens Kingswey Aberdeen AB15 8TF  
 Mr Adam Riach - 45 Castle Street Fochabers Moray IV32 7DW  
 Mrs Yashka Smith - 4 Todlaw Walk Dyce Aberdeen AB21 7NA  
 Mrs Jackie Hutchison - 5 Scotstonhill Elgin Moray IV30 8NH  
 Dr Eizabeth Coutts - 37 West High Street Elgin IV30 4DJ IV30 4DJ  
 Mrs Amanda Widdison - Lauriston Innes Road Garmouth Fochabers Moray IV32 7NL  
 Mr David McIntosh - 10 Mid Street Hopeman Elgin Moray IV30 5TF  
 Mrs Anne Duncan - 7 Seaview Road Cummington, Burghead Moray IV30 5YU IV30 5YU  
 Mr Robert Shearer - 17 Oakbank Crescent Perth PH1 1DD  
 Mr Peter Turnbull - Meadow View Mid Buthill Roseisle Elgin Moray IV30 5YQ  
 Dr Nicola Cousins - Brandish Lawrence Rd Inch AB52 6RF  
 Miss Lara Mackay - 9 Burnside Kinloss Forres Moray IV36 3XL  
 Mrs Paula Menzies-Smyth - Moorea Cummington Elgin Moray IV30 5XY  
 Mrs Hazel Lestienne - Rowandale, Cummington Burghead Cummington Burghead  
 ELGIN IV30 5XY IV30 5XY  
 Ms Clare Davies - 28 Harbour Street Hopeman Elgin Moray IV30 5RU  
 Mrs Rita Wilkins - Blair Cottage Cummington Elgin Moray IV30 5SA  
 Mrs Anne Manson - Avron Bank Cummington Elgin Moray IV30 5XY  
 Mrs Clare Cotton - Mid Mains Steading Elgin Moray IV30 5PU  
 Mr John Hunter - 19 Mains Court Westhill AB32 6QZ  
 Mrs Joan Murray - 17 Old Inn Road Findon Aberdeen AB12 3RT  
 Miss Lauralee Williamson - 67 Scott Crescent Tayport DD6 9PN  
 Mrs Adrienne Lean - 20 Bain Road Elgin Moray IV30 6GD  
 Mr Robert MacKiggan - 10 Golf Crescent Hopeman Elgin Moray IV30 5TL  
 Mrs Joyce Robertson - 60 King Street Burghead Elgin Moray IV30 5XG  
 Ms Debi Stanafield - Stable Cottage Courthill Road Rosemarkie IV10 8 UE  
 Mrs Ruth Hillman - 23 Margaret Lindsay Place Dundee DD5 4RD  
 Mrs Danielle Duncan - 24 Dunbar Street Hopeman Elgin Moray IV30 5TD  
 Miss Wendy Simpson - 16 Dennyduff Road Fraserburgh AB43 9LX

E Taylor - 5-7 Harbour Street Hopeman Elgin Moray IV30 5SJ  
Mrs Eileen Macewan - Thorfinn 9 Seaview Road Cummington Elgin IV30 5YU  
Ms Myra Orr - 5 Seaview Road Cummington, Burghead Elgin, Moray IV30 5YU IV30 5YU  
Miss Lauren Davidson - 36 Granary Street Burghead Elgin Moray IV30 5UJ  
Miss Vivienne Scott - Muir Of Myreside Cottage Elgin Moray IV30 5PE  
Mr Paul Craib - Weddershill Forsyth Street Hopeman Elgin Moray IV30 5SY  
Mrs Julie Catto - 29 High Street INSCH AB52 6JE  
Mrs Pat Bray - 10 Lodge View Hopeman IV30 5TS  
Miss Elysia Song - 2 Broomhill Court Aviemore PH2 1TW  
Mr Stuart McIntyre - Fairview Kinloss Street Burghead Elgin Moray IV30 5UY  
Dr Rhona Grant - 17 Cooper Street Hopeman Elgin Moray IV30 5SB  
Mrs Marina Munsie - 7 Lodge View Hopeman Elgin Moray IV30 5TS

Those representations opposed to the proposal have listed the below matters from the automated list of matters from the e-planning portal. Many of these headings were then expanded upon in subsequent representations as summarised below.

- Traffic
- Affecting natural environment
- Litter
- Smell
- Parking
- Permitted Development
- Road safety
- Activity at unsociable hours/behaviour
- Drainage
- Inadequate plans
- Precedent
- Contrary to the Local Development Plan
- Loss of privacy (being overlooked)
- Over-development of site
- Procedures not followed correctly

Other specific grounds of objections are summarised and commented upon as follows:

**Issue:** The proposal departs from the Moray Local Development Plan as it would sit within the Special Landscape Area, where development is to be prohibited. It therefore constitutes a clear departure from the development plan and should be refused.

**Comments (PO):** The departure issue forms the basis of the recommendation for refusal.

**Issue:** The new access would cause roads safety concerns to Cummington by adding traffic to the edge of the village near the 30mph transition. This is a fast stretch of road and there should be some degree of traffic control when the site is at its busiest.

**Comments (PO):** The Transportation Manager has not opposed the application for the access for the current parking use, and proposed increase in use would also be acceptable.

**Issue:** The entrance to the new development from this main road is also the entrance into neighbouring land, which has a small parking area for occasional cars and tractors. There is concern over the amount of traffic using the access.

**Comments (PO):** The Transportation Manager has not opposed the application for the access, and is considered appropriate for the level of traffic anticipated. The limitations on the informal parking area, would limit the use of the site.

**Issue:** The development of this site, intrusive excavations, including its current unauthorised use, a carpark will cause a risk of increase gas release, methane and CO<sub>2</sub>, from the former landfill site which will be a risk to nearby residents and visitors alike. Will monitoring still be undertaken since the flare is no longer used? Properties near the site have had to install membranes when extending alongside other measures. How can use therefore be permitted on top of a landfill site?

**Comments (PO):** The works to date, and use of carpark have been assessed as not posing a risk to human health at this time and if the application were to be approved, conditions requiring substantive mitigation remediation would be required prior to the fast food outlet relocating and other earthworks taking place. With the appropriate mitigation in place, inclusive of venting system, the proposal would not pose a risk to the health or safety of residents or visitors. See the observation section of the report, which addresses this matter. Responsibility for the site will fall to the current landowner.

**Issue:** The proposed new business would still attract too many people to the village which cannot cope.

**Comments (PO):** The congestion concern is noted, although it is clear that the proposed new access would divert some traffic away from Harbour Street.

**Issue:** The business will result in increased antisocial behaviour, gatherings of youths in their cars, littering and dog fouling to the locality and along the coastal path. Littering is already an issue associated with the existing use.

**Comments (PO):** The applicants have proposed to provide bins at the location, and it is speculative to state that litter and dog fouling will increase and would not constitute an appropriate planning grounds for refusal. From various visits to the location, officers could not see obvious evidence that the current Bootleggers Bothy business was causing a litter issue. Youths in their cars would be entitled to use the premises also, and it should not be assumed that this would be a negative issue.

**Issue:** The development of the area between Cummington and Hopeman will result in the coalescence of the two settlements and damage their separate character and identities. This is specifically contrary to the Moray Local Development plan. It would also contribute to ribbon development.

**Comments (PO):** See Observations section and reasons for refusal. The development outwith village boundaries and departure from settlement statement objectives safeguarding the land between Hopeman and Cummington form part of the recommendation for refusal.

**Issue:** A more vigorous and long term traffic strategy for the three coastal villages is required to ensure that sustainable tourism becomes an asset to the area rather than a source of frustration and dispute. Parking issues were such that the police conducted an investigation into traffic issues in Hopeman, in which the current Bootleggers Bothy was a major contributor.

**Comments (PO):** This current application must be assessed on its individual merits, and wider long term traffic strategies would be a separate matter to the determination of this application. The Transportation Manager has not opposed the application for the access for the current parking use, and the proposed increase in use is acceptable. The

relocation of the business outwith Hopeman was to alleviate some of the issues previously expressed.

**Issue:** The existing Bootleggers Bothy has a light which shines brightly all night throughout the year and is clearly visible in Cummingston. This proposal is likely to dramatically increase light pollution in an area where tourist attractions include the 'dark sky' and at times the Northern Lights.

**Comments (PO):** It is not anticipated that lighting would be so close to neighbouring residences as to warrant a nuisance. The location does not benefit from dark sky status, and there are a large number of other lights in the area. If illuminated in winter this would add to the general basis for the recommendation for refusal where development in this area is to be resisted.

**Issue:** The proposal would be detrimental to the plants and wildlife present in the Special Landscape Area and upon the coastline. The site is home to 4 deer and other wildlife.

**Comments (PO):** As the site lies primarily upon an area of heathland that was formerly a landfill site, which has seen a degree of intervention with the need to vent the former landfill site, it is not considered to have any particular environmental value. The site will provide some habitat and foraging location for wildlife, given its undeveloped nature, but has no environmental designations, unlike the coastline to the north-west or shoreline. It does however contribute to the wider open coastal area protected from further development by the Moray Local Development Plan 2020. Of note, much of the southern part of the site will remain undeveloped.

**Issue:** This proposal would threaten not enhance this important and fragile coastline, especially if further development takes place such as that already undertaken.

**Comments (PO):** Noting the retrospective element of the path formed already, the development would not see any physical intervention into the coastline, so as to harm its fragility. Precedent, whilst a concern has not been cited as a grounds for refusal as each planning application must be assessed on its individual merits.

**Issue:** Traffic to the site, will disturb tranquillity of the nearby paths, but introducing noise, lights etc.

**Comments (PO):** It is not considered that increased traffic to the Greenbrae location would constitute an excessive nuisance to walkers in the area.

**Issue:** The development would detract from the natural beauty of this coastal area.

**Comments (PO):** The impact upon the coastal Special Landscape Area is one of the grounds for recommending refusal.

**Issue:** I am concerned that the food outlet being developed will not be backed up with adequate toilet facilities, causing public fouling.

**Comments (PO):** There is no legislative requirement for a fast food outlet to provide customer toilets, and it would be speculative to presume that patrons would conduct themselves in this manner.

**Issue:** Concern that the double decker bus, currently located at the West Beach Caravan Park would be relocated to the new site at Greenbrae.

**Comments (PO):** The applicants have confirmed that due to its value, they do not intend to locate the double decker but at Greenbrae where it would not benefit from passive surveillance while the business was unattended.

**Issue:** Hours need to be limited to reduce noise, light and litter pollution.

**Comments (PO):** The proposed location is sufficiently far from nearby residences that noise and light should not be an issue. The issue of litter has already been discussed, and longer hours would not necessarily equate to more litter.

**Issue:** The existing Bootleggers Bothy business is not consistent with the T1 caravan park designation in its current location.

**Comments (PO):** The status of the current unauthorised fast food outlet is discussed in the observation section of the report. The current application seeks to authorise the business on a separate area of land and would be considered a separate planning unit from the caravan site.

**Issue:** Is the site within 5m of sea level, if so it's contrary to Moray Local Development Plan.

**Comments (PO):** From visits to the site, whilst the precise ground level is not known it's clearly sited more than 5m above sea level.

**Issue:** The development is contrary to local plan policy as it would take trade away from the takeaway and food outlets in the village.

**Comments (PO):** The applicants have failed to address this matter, and accordingly this issue is identified in the recommended grounds for refusal.

**Issue:** Reference is made to departures from policies of the previous development plan Moray Local Development Plan 2015 such as ED7, IMP1 and IMP2.

**Comments (PO):** The proposal is now assessed against Moray Local Development Plan 2020, and the Observations Section of this report considers the relevant policies.

**Issue:** Will the Council ensure that all necessary environmental, retail and transport assessment are undertaken?

**Comments (PO):** A Site Investigation & Drainage Assessment and Ground Gas and Contamination Risk Assessment were undertaken. There was no need for a Transport Assessment. A retail assessment was not provided at the time of writing this report.

**Issue:** The Scottish Government Examination into the Moray Local Development Plan 2020 in its formulation witnessed statements made by the Moray Council (then upheld and included in the plan) such as to protect the area between Cummington and Hopeman from development, keeping development within the proposed boundaries, protecting the SLA and a focus to direct new development within Hopeman settlement boundary.

**Comments (PO):** Noted.

**Issue:** Objectors make several comments regarding lack of 'corporate social responsibility' by the applicants, who they believe have not considered neighbours amenity or privacy. The applicants have little regard for the planning process or due process.

**Comments (PO):** This application and report relate to the relocation of the current unauthorised business to a location outwith the settlement and hundreds of metres from neighbouring property. Notwithstanding other planning concerns, this relocation would alleviate issues of odour, noise, parking and congestion experienced by objectors. Past failure to apply for planning permission and the retrospective nature of part of the current application would not constitute grounds for refusal.

**Issue:** An objector does not wish representations to be made public and previous confidential letters and complaints have been shared with the applicants.

**Comments (PO):** No confidential letters or enforcement complaints have ever been shared with the applicants. Planning objections on the other hand must be published and those making representations on planning applications should be aware that such communications will be made public.

**Issue:** Developing a 'rural hot food takeaway' will have a detrimental impact on the carbon footprint of the business despite the developers stated aims.

**Comments (PO):** The reduction on congestion would in itself contribute positively to a reduction in any carbon footprint, but the relocation of the business has otherwise failed to substantiate its relocation.

**Issue:** The relocation of the business would not create any additional jobs. Jobs will also have been protected in the caravan park under the furlough scheme.

**Comments (PO):** Noted.

**Issue:** When traffic are using the track into the site this will generate dust.

**Comments (PO):** The track has been recently resurfaced with gravel, and it is not considered that this issue would constitute a significant nuisance nor constitute grounds for refusal.

**Issue:** The proposed informal parking makes no provision for HGV's, cycle parking, coaches or disabled spaces. Will it be used for campervans, minibuses, and coaches?

**Comments (PO):** Bearing in mind the scale of the business for a single fast food outlet, the provision of a substantive informal parking area is sufficient.

**Issue:** HGV vehicles will increase in this making deliveries to the site, increasing wear and tear of the public road.

**Comments (PO):** The scale of the business would not result in any significant increase of HGV's on the B9040.

**Issue:** The proposal indicates there is no risk of flooding in the area. However, locals are well aware of the Cummington road in that area being flooded significantly at times of heavy rain.

**Comments (PO):** This has no bearing upon the current planning application as there are no alterations proposed to the public road.

**Issue:** Patrons of the business would drive elsewhere close by to eat their food and cause traffic and parking congestion in Cummington.

**Comments (PO):** This is a speculative representation and it cannot be assumed that patrons would not eat at Greenbrae. Nor can it be assumed that they would elect to park in any already busy location in Cummington.

**Issue:** Regarding landscaping, research has found that 1.5m of soil or soil-forming material over a mineral cap will ensure that trees can be established on landfills without posing a significant threat to cap integrity for at least 16 years. However, there is no concluding evidence assessing the full impact of tree rooting on cap integrity or the interaction between conditions within the landfill cap and tree rooting over the life time of a tree.

**Comments (PO):** If approved, part of the contaminated land remediation/mitigation strategy considers the proposed landscaping, and would consider tree species etc.

**Issue:** Loss of privacy from the overwhelming increase in parking in local residential streets has led to visitors gawping into the gardens of residents who are subjected to a constant barrage of doors being slammed shut and engines revving with the constant coming and going of customers to the take away.

**Comments (PO):** There is no loss of privacy as a result of the public parking and exiting of vehicles on a public street. The sound of vehicles being used on public roads and streets occurs in coastal villages irrespective of the development concerned.

**Issue:** This business rather than being a tourist business is diverting business away from established other burger establishments in contributing to the demise of Elgin town centre.

**Comments (PO):** There is no evidence to substantiate the claim, and nor could this business be blamed for issues in Elgin town centre where no burger outlets are located.

### Supporting comments

Those commenting in support of the application have made the following representations which are summarised and commented upon below.

**Issue:** The proposed location is a brownfield site that cannot be used for agriculture. Making use of a former landfill is a benefit to the local community, tourism offering within Moray and local employment.

**Comments (PO):** While acknowledging the site is brownfield in that it is a capped landfill site, it has been capped and allowed to grow naturally with heath grass, whins and gorse so is similar in appearance to other coastal heathland, and is indistinguishable from adjoining coastal land. The benefits of such a business are also taken into consideration, but do not outweigh other planning considerations.

**Issue:** The proposed use would be a positive use of a redundant, otherwise unusable former landfill site.

**Comments (PO):** While capable of limited uses, due to its previous use, its undeveloped open appearance contributes to the open coastal landscape outwith the settlement, and acts as a buffer between the two villages.

**Issue:** The business provides a welcomed additional tourist attraction to the village. Allowing it to relocate and avoid congested streets would allow it to thrive and would be a win-win for the village and the business.

**Comments (PO):** Noted. Having it removed from within the village may however see it lose its connection to other attractions and businesses in the village.

**Issue:** The location has direct access from the main road and provides Hopeman with more parking capacity without having to negotiate Harbour Street. This proposal would see traffic avoiding the busy Hopeman Streets and alleviate parking issues in the village and make the village safer. This should benefit residents in Hopeman, while sustaining the business.

**Comments (PO):** It is acknowledged that the relocated fast food outlet may see less traffic accessing the caravan park/harbour area via Harbour Street. The Transportation Manager has not objected to the proposals.

**Issue:** Having the business relocated next to the brownfield site with parking adjacent to it is a good idea and will alleviate parking on the narrow streets of Hopeman and the busy

harbour area. It also means suppliers to the business do not have to travel through the village.

**Comments (PO):** The benefits of diverting traffic away from the village are reflected in the comments from the Transportation Manager, who has not opposed the planning application.

**Issue:** The location is at the bottom of a hill which is hardly seen from the road and only seen from a few houses. The business would be in a discrete location.

**Comments (PO):** Whilst the topography and vegetation mean the site be limited in visibility from the B9040 to the south and the Coastal footpath to the north, it would be clearly visible from both the settlements of Hopeman and Cummington. If any temporary marquees or other enclosures were erected, this may increase visibility of the business from the public road.

**Issue:** The Moray Coastal Trail passes to the north of the area which will encourage people to walk or cycle from Hopeman or Burghead. The development has brought many people into the village of Hopeman also.

**Comments (PO):** It is speculative to presume people would automatically also use the coastal path, but the popularity of the business, particularly in the summer of 2020 was noted and did contribute to attracting visitors to Hopeman.

**Issue:** Moving the business and associated traffic out of the village would improve safety for pedestrians and road users in the village. The proposed access is safe and suitable.

**Comments (PO):** Noted, this is reflected in the response from the Transportation Manager, who does not oppose the proposal.

**Issue:** The benefits of relocating the business outweigh any downsides, and its success has been a positive aspect of an otherwise difficult period for business in the pandemic.

**Comments (PO):** A balanced assessment of the benefits of relocating the business have been weighed against the issues it would create. On balance, the proposal would be detrimental to the wider aims of the Moray Local Development Plan 2020.

**Issue:** It would be more accessible to mobility impaired visitors, families who could get right to the grill, while at present patrons have to walk the last section to the business.

**Comments (PO):** Noted and weight attached to this issue.

**Issue:** Allowing the business to relocate would show support for the post-pandemic economic recovery, support an innovative business, and boost the local recovery.

**Comments (PO):** Moray Local Development Plan 2020 does support the local economy when in the right location, and the continued presence of the Bootleggers Bothy in its current location, benefiting from Covid emergency planning legislation where planning permission would otherwise be required reflects the support provided to local business by local government.

**Issue:** There is no mess from patrons using the Bootleggers Bothy at present, so there is no reason why it cannot move.

**Comments (PO):** It is further noted that the applicants intend to provide bins on the new site.

**Issue:** The current site is adequately served by bins, toilets and well maintained.

**Comments (PO):** The current application is assessing the proposed location, rather than its current location, but the comment that the site is well maintained is noted. There is no requirement for a toilet for the proposed fast food outlet.

**Issue:** The proposal to relocate the business shows the owners are seeking to respond to community feedback and are being responsible.

**Comments (PO):** Noted.

**Issue:** The relocation of the business will remove cooking odours and noise which can be experienced in Hopeman.

**Comments (PO):** Noted.

**Issue:** Why is a permanent shipping container allowed for a similar purpose at Cullen with no planning permission and yet this business is not allowed to better itself.

**Comments (PO):** Any such business, if located permanently would require planning permission, and would be assessed separately on its individual merits.

**Issue:** The relocation of the business will not detract from or harm the other businesses in the village. The business will remain an asset to the village.

**Comments (PO):** See Observations, the applicants have not made this case that moving the business outwith the village would not take trade away from existing businesses.

**Issue:** As this is not open in the evenings, then it would not attract 'party goers' to the location, and noise would not be a problem.

**Comments (PO):** It is noted that no time limit on the business has been sought or imposed, and there is the possibility that it may have later opening, especially in the summer. No presumption is made that patrons would misbehave regardless of what time they attend, as this would be speculative.

**Issue:** Patrons would not drive irresponsibly using the new access near Cummingston.

**Comments (PO):** The Transportation Manager has not objected the proposals and the visibility splay sought is already in place.

**Issue:** The less exposed location will help reduce litter blow.

**Comments (PO):** The applicant has confirmed that bins will be provided and there is no assumption that littering would occur from the business.

**Issue:** Less disturbance to caravan park residents and local residents.

**Comments (PO):** Noted.

**Issue:** Several responders take issue with the format of the e-planning objection portal as it offers standard reasons for objection, but no similar prompt for supporters of an application.

**Comments (PO):** The format of the online objection portal is not set by Moray Council and the system operates in this format for many local authorities. The format is a reflection of the fact that the majority of representations received to the planning system are objections, the heading prompts represent the most common grounds for objection. Alternatively the grounds for supporting a proposal are less consistent and are more bespoke.

## **OBSERVATIONS**

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.

### **Background**

The Bootleggers Bothy operates a successful food takeaway business from within the West Beach Caravan Park which has been in situ since approximately 2019. The premises and associated structures being permanently located at the west end of the caravan park require planning permission in their own right and discussions on the need to regulate the use with planning took place in 2020. However advice from the Chief Planning Officer from the Scottish Government in 2020 in response to the Coronavirus pandemic advised that certain businesses hit hardest by the pandemic may be allowed to diversify in order to sustain themselves financially, and furthermore planning enforcement during this period should take recognisance of that. He states in April 2020 that Planning Enforcement should take a 'reasonable and pragmatic view' towards business affected by the pandemic, and for that reason the business, which brings income into the otherwise closed caravan park, was allowed to continue.

The takeaway food outlet grew in popularity, especially during periods in 2020 when mainstream restaurants and other attractions were closed. The applicants in their Planning Statement state that the outlet has grown in popularity and has outgrown its current location making it necessary to move into purpose built premises in a more suitable location nearby.

Notwithstanding the support and relaxation for businesses contained within the Chief Planners letters, the proposed site would constitute a new location, separate to the existing caravan park and would effectively become an entity in itself – a completely separate planning unit. This relocation and the need to regulate the unauthorised works done to date to form the informal carparking area (change of use of land), import material and form a footpath to the north east of the site, linking it to T1 Caravan Park substantiate submission of an application, which reflects the applicants plans for the business.

The application submission now includes a Planning Statement, Ground Gas Risk Assessment and Drainage Assessment.

The main issues are considered below.

### **Principle of use at Greenbrae (PP1, DP1, EP3, EP6 and Hopeman and Cummingston on settlement statements)**

The Moray Local Landscape Designation Review, which informed policy and the settlement statements for both Hopeman and Cummingston recommends a distinct separation between settlements be retained. Preventing coalescence of Cummingston and Hopeman is part of the development strategy/objectives for Hopeman and Cummingston settlement statements, and this proposal would see development occurring in the open land between them.

While the site may be classed as brownfield land, in that it was a former landfill site, it had ceased to be used and was capped many years ago and currently hosts open heathland, host to some trees and areas of gorse and whin. The presence of the cabin and infrastructure on one corner related to venting and burning of landfill gas upon the site

historically and was urgently in need at the time and pre-dates the current designations and policies affecting the land (see history section). Where this proposal could result in 3 cabin/trailers, picnic tables, bins, occasional tents/marquees and vehicular activity at the proposal, it would constitute a notable presence on site. Views of the site are generally obscured from the B9040 and from the coastal path, but the business would be seen from Cummingston and Hopeman, such that character of the open space in between would be compromised and be detrimental to this important open character.

The objective within Hopeman and Cummingston settlement statement to preserve the open space and distinction between the two settlements has also been informed by the Moray Local Landscape Designation Review. This document also informed policy EP3 Special Landscape Area (SLA) where the coastal SLA seeks to prevent the coalescence of the two settlements to preserve integrity of each settlement and protect the character of the intervening coastal landscape. Policy EP3 gives stated examples of circumstances and permissible exceptions to the embargo on development within SLA's. The proposed fast food outlet does not constitute one of the stated exceptions in the policy.

Policy EP6 Settlement boundary also seeks to limit the spread of settlements preventing ribbon development and maintaining a clear distinction between the built up area and the countryside. The settlement boundary for Hopeman was extended considerably to account for the consented expansion of the caravan park now designated T1 which would now be linked to the above site, via the footpath already formed. While the applicants have stated that the fast food outlet has outgrown its current location within the existing caravan park, its relocation to the west, and footpath link to the caravan site, create the sense that this is an existing building expanding beyond its designation into the adjoining countryside forming an entirely new distinct planning unit.

Both policies PP1 Placemaking and DP1 Development Principles seek to safeguard and enhance the environment as well as supporting economic development. DP1 (i) a) requires development to be of a scale, density and character appropriate to the surrounding area. The proposal should not compromise such objectives, and locating within the SLA would therefore fail to protect and enhance the rural landscape and would fail to maintain the rural open character sought by designations and settlement statements.

The proposal is therefore contrary to policy EP3 Special Landscape Areas and Landscape Character, EP6 Settlement Boundaries and the specific settlement statement strategy and objectives of Cummingston and Hopeman as well as DP1 (i) a).

#### **Environmental issues including ground gas (DP1, EP3 and EP14)**

Policy EP14 Pollution, Contamination and Hazards requires applicants to demonstrate that the site is in a condition suitable for the proposed development. Policy DP1 (iii) f) requires proposal to address and sufficiently mitigate any contaminated land issues.

As reflected in the planning history of the former Greenbrae landfill site, circa 2005 it became evident that whilst owned by a 3<sup>rd</sup> party, the former council landfill site began to eject and create gas, so significant in quantity that it required to be vented, and indeed a flare was in use at the site for many years to burn off escaping gas. The venting to date has removed the majority of gas from the site, such that the flare is no longer in use, but there is still the need to provide some form of passive ventilation system to address any remaining gas emanating from the site. The change in land ownership will see the Council remove the current flare equipment from the site in due course.

The import of soil and gravel to upgrade tracks and form informal parking, whilst bringing more people to the location, has not itself caused any safety concerns for the Council Environmental Health Contaminated Officer. Limited ground breaking has occurred and there remains to be no structures on the site. It is noted the applicants have ensured any vertical gas collection wells remain exposed and marked. A Ground Gas and Contamination Risk Assessment has been submitted in relation to the proposal and has been assessed. The applicants own consultant concludes that "Without any mitigation the development of the Bootlegger Takeaway on the Greenbrae Landfill in Hopeman would introduce some moderate and high potential contamination linkages associated with ground gas generation from the landfill and the potential for human health impacts from contamination in the landfill materials." They do however go on to recommend suitable mitigation including ongoing monitoring and adaptations to site infrastructure to provide a passive gas venting system moving forward. The Environmental Health Section having assessed the submitted Ground Gas and Contamination Risk Assessment are content that, subject to conditions covering the recommended mitigation, the use would be compatible with the use of the former landfill site.

The Ground Gas and Contamination Risk Assessment by EPG Consultants dated in August 2021 makes reference to future works required to the former landfill site regarding conversion of the existing active venting system to a passive system, removal of the flare and existing above ground pipework and installation of vents above the boreholes as a matter to which the Council is currently procuring. For clarity, whilst the mitigation and remediation recommended in this assessment are reasonable, the comments on the Council's procurement are inaccurate and the Council's position is that responsibility for gas management on the site lies with the current landowner. Removal of the current infrastructure is a separate matter from the current planning application. All the further mitigation measures recommended by the applicants' consultant would be subject of a condition in the event the application was approved.

Given the applicants now wish to use this land for commercial purposes and have patrons parking on the former landfill site, if permission were to be granted the extensive mitigation and monitoring recommended by the specialist consultants would need to be in place prior to the relocation of the business. This mitigation/remediation includes provision of membranes beneath the cabins/structures, 600mm of clean capping soil over areas accessed by the public, watching brief for unexpected contamination during development works and adaptations to any passive gas venting system to allow for the development including new 3m vent stacks. The public would also have to be limited in their access to other parts of the site not capped.

In terms of environmental impacts, the site's former use as landfill site means, the ecological value of the site is generally limited to flora and fauna that has established since the site was capped. The heath grassland, whin and gorse will provide some habitat, but it is acknowledged that there was already an existing access track, hardstanding and gas extraction system across the site that will have diminished its value. The extent of the works to date, and proposed provision of informal parking area, picnic benches in addition to the food cabins themselves does not pose a substantive risk to protected species as would be resisted under policy EP3 Protected Species.

Compliance with policy DP1 and EP14 could therefore be achieved, via the above measures recommended by the applicants' consultant.

### **Economic issues and retail (PP2, DP1, DP7 and DP8)**

The Bootleggers Bothy Business operating currently from Hopeman West Beach Caravan Park does appear to be a successful business and does contribute to the economy of the area, and brought visitors to the village (particularly in 2020/early 2021 when indoor food establishments were closed). The applicants and those in support of the application believe it makes a positive contribution to the local economy, helps attract visitors to the area, creates employment and in allowing it to be relocated would reduce some of the traffic issues that have arisen from its success within Hopeman. Weight is attached to the economic benefits of allowing the business to be relocated, but this has to be balanced with the site being in an appropriate location.

Moray Local Development Plan has various policies that support rural business, but these must be within the context that the business is located in the right place, and is not detrimental to the environment. The implications of allowing the business to move into the Special Landscape Area, and outwith the settlement boundaries of Cummington and Hopeman is discussed elsewhere, but there are planning issues with the proposed location that must be considered in addition to supporting a new and expanding business. Notwithstanding the Transportation issues, the option of retaining the business within the T1 Caravan Park designation, around the harbour or near central core of Hopeman around Harbour Street have not been fully examined. Retaining the business within Hopeman would also support other businesses given the footfall it has previously generated.

Policy DP7 Retail/Town Centres requires applications that will attract significant footfall to demonstrate that there is no unacceptable individual or cumulative impact on the vitality and viability of the network of town centres identified in Table 6 'Retail Centres and Roles' of policy DP7. Although Hopeman is not referred to in table 6, it is identified as a "smaller town and village" in the spatial strategy which is the same as settlements such as Rothes and Dufftown which are local centres within table 6. Hopeman does not have a town centre but Harbour Street effectively functions as the High Street of the settlement and contains a number of shops that cater for the convenience shopping needs of the community. It is therefore appropriate to consider the impacts on Harbour Street and other retail within the catchment are properly assessed as any impacts could result in a change in Hopeman's distinctive character which the Hopeman settlement statement explicitly seeks to protect. Diversion of visitors away from Hopeman could lead to loss of footfall in the harbour area/Harbour Street damaging other businesses whom collectively may draw visitors to the village at present.

This concern is borne from the success of the business, which had tangibly increased visitor activity in Hopeman when at its busiest. While this may have resulted in contributing to some traffic congestion, many of those making supporting comments have also observed that it brought more visitors into Hopeman and was good for the local economy.

Whilst sympathetic to the applicants' rationale in terms of addressing congestion, to take a successful business outwith the settlement boundary and access this via a separate access may well see a reduction in footfall within Hopeman core area of Harbour Street and harbour area.

The locational need discussion has occurred elsewhere above relating to Policy PP2 Sustainable Economic Growth, but relevant to discussion on the economic implications it is worth highlighting that the relocation need of the development outwith the settlement has not been met.

Policy DP8 Tourism Facilities and Accommodation requires proposals to demonstrate a locational need for a specific site. While the proposed location would be within close proximity to attractions such as the coastal trail, it would be located further from the harbour and other facilities in the village. The T1 caravan park designation was also significantly expanded under the adoption of the current MLDP in 2020, so to allow this business currently located within T1 to move outwith the enlarged designation and settlement boundary lacks justification in terms of the policy.

The applicants have stated in their submitted Planning Statement that national policy such as Scottish Planning Policy promotes economic development and therefore the relocation of their business which has outgrown its current location. Notwithstanding this, the removal of a business from within the settlement is considered to depart from PP2 Sustainable Economic Growth and nor have the applicants submitted the necessary supporting information to appease concerns that under policy DP7 Retail/Town Centres the proposal would not draw trade away from the village.

### **Drainage (DP1 and EP12)**

Policy EP12 Management and Enhancement of the Water Environment seeks to ensure that all development is appropriately drained, and does not cause any environmental issues, nor contribute to flooding if applicable on site. The applicants submitted a Site Investigation & Drainage Assessment which confirms that the permeability of the site is sufficient to accommodate a surface water soakaway. The soakaway would be located on the edge of the site outwith the former landfill site and would serve only rainwater from the mobile catering units. No other formal drainage would be required given the permeable nature of the gravel carpark and re-surfaced existing access road.

The proposal therefore complies with the requirements for surface water drainage infrastructure

### **Transportation, Access and Paths DP1 (DP1 and PP3)**

DP1 Development Requirements and PP3 Infrastructure and Services require any development to be accessed safely and safeguard and enhance pedestrian facilities.

The Transportation Section have not objected to the proposals, and of note the visibility splay suggested can be provided at the access point onto the B9040. Since the application was submitted the applicants have already cleared any vegetation within the visibility splay. The access is adequate to serve the development proposal and the existing signage indicates the purpose of the access to serve the existing bootleggers bothy location. In the event of refusal, consideration would need to be given to possible removal of the signs, but this matter would be dealt with separately from current consideration.

It is of note that there was a considerable number of comments in support of the application, specifically supporting the applicants intention to encourage access and provide access/parking west of the village thereby alleviating congestion and parking issues in Hopeman (particularly around Harbour Street and the harbour area). The Transportation Section have not been asked to specifically consider the wider parking issues within Hopeman, and their response is based upon the proposal before them, to utilise the existing access onto the B9040. The implications of diverting some traffic away from Harbour Street has been attached some merit as part of the overall planning

assessment. It is noted that the applicants have also permitted other users of the area to use the carpark.

The proposal also seeks consent to cross the existing Burghead to Hopeman coastal footpath to link north east to the caravan park, and whilst permission will separately be required from the landowner to cross this path (currently Moray Council Property Services) it does not appear to compromise the use of the path at present. Therefore from a planning perspective this would not constitute a grounds for refusal, but as the works are retrospective, separate consideration would need to be given to possible removal of the path in the event of refusal.

### **Conclusion**

The proposal has attracted a large amount of support, would alleviate some parking and traffic congestion within the village if relocated (much of which has been associated with the current unauthorised use), provides for a business that brings visitors to the locality and supports jobs. Weight is attached to these positive aspects of the proposal and its proposed relocation of the unauthorised business. Greater weight has however been attached to imposition of development within the Special Landscape Area, which clearly must be retained as open coastal land. Similar the need to preserve the distinction between two nearby settlements from the surrounding countryside would be compromised by the proposal by developing close to and out with their boundaries. Sufficient justification has not been provided for breaching the relevant policies nor intruding upon the Special Landscape Area. If approved a serious precedent would be set where the proposal does not constitute one of the acceptable exemptions for development within the SLA.

Refusal is recommended.

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## **APPENDIX**

### **POLICY**

#### **Adopted Moray Local Development Plan 2015**

#### **Proposed Moray Local Development Plan 2020**

##### **PP2 SUSTAINABLE ECONOMIC GROWTH**

Development proposals which support the Moray Economic Strategy to deliver sustainable economic growth will be supported where the quality of the natural and built environment is safeguarded, there is a clear locational need and all potential impacts can be satisfactorily mitigated.

##### **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 400m<sup>2</sup>, 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, paviers, 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.

**DP8 TOURISM FACILITIES AND ACCOMMODATION**

Proposals which contribute to Moray's tourism industry will be supported where they comply with relevant policies. All proposals must demonstrate a locational need for a specific site.

Development built as tourism/holiday accommodation shall be retained for this purpose and will not become permanent residences. Conditions will be applied to planning consents to control this aspect.

To integrate caravan, chalet and glamping developments into their rural setting, stances/pitches will be required to have an informal layout and be satisfactorily landscaped to ensure development is screened and discrete. Provision within sites for touring caravans/campers and tents must be included.

Proposals for hutting will be supported where it is low impact, does not adversely affect trees or woodland interests, or the habitats and species that rely upon them, the design and ancillary development (e.g. car parking and trails) reflects the wooded environment

and the proposal complies with other relevant policies. Proposals must comply with 'New Hutting Developments - Good Practice Guidance on the Planning, Development and Management of Huts and Hut Sites' published by Reforesting Scotland.

Proposals for tourism facilities and accommodation within woodlands must support the proposals and strategy set out in the Moray Woodlands and Forestry Strategy.

## **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 m<sup>2</sup> 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.

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

## **EP6 SETTLEMENT BOUNDARIES**

Settlement boundaries are drawn around each of the towns, villages and rural groupings representing the limit to which these settlements can expand during the Local Development Plan period.

Development proposals immediately outwith the boundaries of these settlements will not be acceptable, unless the proposal is a designated "LONG" term development site which is being released under the terms of Policy DP3.

## **EP7 FORESTRY, WOODLANDS AND TREES**

### **a) Moray Forestry and Woodland Strategy**

Proposals which support the economic, social and environmental objectives and projects identified in the Moray Forestry and Woodlands Strategy will be supported where they meet the requirements of other relevant Local Development Plan policies. The council will consult Scottish Forestry on proposals which are considered to adversely affect forests and woodland. Development proposals must give consideration to the relationship with existing woodland and trees including shading, leaf/needle cast, branch cast, wind blow, water table impacts and commercial forestry operations.

### **b) Tree Retention and Survey**

Proposals must retain healthy trees and incorporate them within the proposal unless it is technically unfeasible to retain these. Where trees exist on or bordering a development site, a tree survey, tree protection plan and mitigation plan must be provided with the planning application if the trees or trees bordering the site (or their roots) have the potential to be affected by development and construction activity. Proposals must identify a safeguarding distance to ensure construction works, including access and drainage arrangements, will not damage or interfere with the root systems in the short or longer term. A landscaped buffer may be required where the council considers that this is required to maintain an appropriate long term relationship between proposed development and existing trees and woodland.

Where it is technically unfeasible to retain trees, compensatory planting on a one for one basis must be provided in accordance with (e) below.

### **c) Control of Woodland Removal**

In support of the Scottish Government's Control of Woodland Removal Policy, Woodland removal within native woodlands identified as a feature of sites protected under Policy EP1 or woodland identified as Ancient Woodland will not be supported.

In all other woodlands development which involves permanent woodland removal will only be permitted where it would achieve significant and clearly defined additional public benefits (excluding housing) and where removal will not result in unacceptable adverse effects on the amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice the management of the woodland.

Where it is proposed to remove woodland, compensatory planting at least equal to the area to be felled must be provided in accordance with e) below.

**d) Tree Preservation Orders and Conservation Areas**

The council will serve Tree Preservation Orders (TPO's) on potentially vulnerable trees which are of significant amenity value to the community as whole, trees that contribute to the distinctiveness of a place or trees of significant biodiversity value.

Within Conservation Areas, the council will only agree to the felling of dead, dying, or dangerous trees. Trees felled within Conservation Areas or subject to TPO must be replaced, unless otherwise agreed by the council.

**e) Compensatory Planting**

Where trees or woodland are removed in association with development, developers must provide compensatory planting to be agreed with the planning authority either on site, or an alternative site in Moray which is in the applicant's control or through a commuted payment to the planning authority to deliver compensatory planting and recreational greenspace.

**GUIDANCE TREES AND DEVELOPMENT**

Trees are an important part of Moray's towns and villages and surrounding countryside, adding colour and interest to the townscape and a sense of nature in our built environment. They contribute to the diversity of the countryside, in terms of landscape, wildlife habitat and shelterbelts. Trees also have a key role to play in terms of climate change by helping to absorb carbon dioxide which is one of the main greenhouse gases that cause global warming.

The cumulative loss of woodlands to development can result in significant loss of woodland cover. In compliance with the Scottish Government Control of Woodland Removal policy, woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits. In appropriate cases a proposal for compensatory planting may form part of this balance. Where woodland is to be removed then the Council will require compensatory planting to be provided on site, on another site in Moray within the applicant's control or through a commuted payment to the Council towards woodland and greenspace creation and enhancement. Developers proposing compensatory planting are asked to follow the guidance for site assessment and woodland design as laid out in Scottish Forestry's "Woodland Creation, Application Guidance" and its subsequent updates, when preparing their proposal.

The Council requires a Tree Survey and Tree Protection Plan to be submitted by the applicant with any planning application for detailed permission on designated or windfall sites which have trees on them. The survey should include a schedule of trees and/or groups of trees and a plan showing their location, along with the following details;

- Reference number for each tree or group of trees.
- Scientific and common names.
- Height and canopy spread in metres (including consideration of full height and spread).
- Root protection area.
- Crown clearance in metres.
- Trunk diameters in metres (measures at 1.5m above adjacent ground level for single stem trees or immediately above the root flare for multi stemmed trees).
- Age and life expectancy.
- Condition (physiological and structural).

- Management works required.
- Category rating for all trees within the site (U, A, B or C \*). This arboricultural assessment will be used to identify which trees are suitable for retention within the proposed development.

\*BS5837 provides a cascading quality assessment process for categorisation of trees which tree surveys must follow. An appropriately scaled tree survey plan needs to accompany the schedule. The plan should be annotated with the details of the tree survey, showing the location, both within and adjacent to the site, of existing trees, shrubs and hedgerows. Each numbered tree or groups of trees should show the root protection area and its category U, A, B, C.

Based on the guidance in BS5837, only category U trees are discounted from the Tree Survey and Tree Protection Plan process. Trees in category A and B must be retained, with category C trees retained as far as practicable and appropriate. Trees proposed for removal should be replaced with appropriate planting in a landscape plan which should accompany the application. Trees to be retained will likely be set out in planning conditions, if not already covered by a Tree Preservation Order.

If a tree with habitat value is removed, then measures for habitat reinstatement must be included in the landscape plan. It is noted that in line with part b) of policy EP7 where woodland is removed compensatory planting must be provided regardless of tree categorisation."

A Tree Protection Plan (TPP) must also be submitted with planning applications, comprising a plan and schedule showing;

- Proposed design/ layout of final development, including accesses and services.
- Trees to be retained- with those requiring remedial work indicated.
- Trees to be removed.
- Location (and specification) of protective fencing around those trees to be retained based on the Root Protection Area.

The TPP should show how the tree survey information has informed the design/ layout explaining the reasoning for any removal of trees.

### **Landscape Scheme**

Where appropriate a landscape scheme must be submitted with planning applications, clearly setting out details of what species of trees, shrubs and grass are proposed, where, what standard and when planting will take place. Landscape schemes must aim to deliver multiple benefits in terms of biodiversity, amenity, drainage and recreation as set out in policy.

The scheme should also set out the maintenance plan. Applicants/ developers will be required to replace any trees, shrubs or hedges on the site which die, or are dying, severely damaged or diseased which will be specified in planning conditions.

Tree species native to Scotland are recommended for planting in new development - Alder, Aspen, Birch, Bird Cherry, Blackthorn, Crab Apple, Elm, Gean, Hawthorn, Hazel, Holly, Juniper, Sessile Oak, Rowan, Scots Pine, Whitebeam, Willow.

## **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.

## **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.

<b>Width to watercourse (top of bank)</b>	<b>Width of buffer strip (either side)</b>
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.

## **EP14 POLLUTION, CONTAMINATION & HAZARDS**

### **a) Pollution**

Development proposals which may cause significant air, water, soil, light or noise pollution or exacerbate existing issues must be accompanied by a detailed assessment report on the levels, character and transmission of the potential pollution with measures to mitigate impacts. Where significant or unacceptable impacts cannot be mitigated, proposals will be refused.

### **b) Contamination**

Development proposals on potentially contaminated land will be approved where they comply with other relevant policies and;

- i) The applicant can demonstrate through site investigations and risk assessment, that the site is in a condition suitable for the proposed development and is not causing significant pollution of the environment; and
- ii) Where necessary, effective remediation measures are agreed to ensure the site is made suitable for the new use and to ensure appropriate disposal and/ or treatment of any hazardous material.

### **c) Hazardous sites**

Development proposals must avoid and not impact upon hazardous sites or result in public safety concerns due to proximity or use in the vicinity of hazardous sites.

## **T1 Hopeman Caravan Park**

### **Suitable Uses**

- This must remain as a holiday caravan site as part of Hopeman's tourism infrastructure. Development for alternative uses will not be permitted.
- Ancillary facilities appropriate to tourist development, such as a shop, café, laundry and shower facilities will be supported within this area.

### **Site specific requirements**

- In order to protect the foreshore to the north, further expansion beyond the boundary of the caravan park will not be permitted.
- Development on land below 5m AOD must be avoided due to the risk of coastal flooding.
- Flood Risk Assessment (FRA) required.
- Drainage Impact Assessment (DIA) required.
- Development to be connected to mains water and sewerage, or otherwise to demonstrate that there will be no adverse effect on the integrity of the Moray Firth Special Area of Conservation (SAC) or the proposed Moray Firth Special Protection Area (pSPA) or cause changes in water quality affecting the habitats and prey species that SAC and pSPA qualifying interests rely on.

### **(Hopeman ENV5 Green Corridors**

Dismantled Railway Line

**Hopeman ENV6 Natural/Semi-Natural Greenspace**

East Foreshore and West Foreshore