

17/00120/PPP  
30th January 2017

**Proposed mixed use development comprising family restaurant with licensed premises and housing with associated access infrastructure and landscaping works at Elgin Auction Mart New Elgin Road Elgin Moray for Aberdeen And Northern (Estates) Ltd**

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**Comments:**

- A SITE VISIT has been carried out
- Application submitted for planning permission in principle – no detailed design and site layout arrangements included
- Application is a major development as defined under the Hierarchy Regulations 2009 wherein, as a mixed-use development, the site area exceeds 2ha and more than 50 dwellings are proposed
- Advertised as a departure from the development plan
- Advertised as a development under Schedule 3 of the Development Management Regulations 2013 (in regard to proposed licenced restaurant/bar premises)
- 25 representations received
- Development located on opportunity site, Elgin OPP5 as designated in the Moray Local Development Plan 2015

**Procedure:**

- If minded to approve
  - hearing recommended
  - developer obligations to be finalised and agreed with applicant, and thereafter completion of legal agreement required prior to issue of any formal grant of planning permission in principle in regard to developer obligation requirements towards secondary education, healthcare and transportation infrastructure

**Recommendation      REFUSE planning permission in principle for the following reason(s)**

Notwithstanding the 'in principle' status of the application, the development is contrary to the provisions of the Moray Local Development Plan 2015 and Scottish Planning Policy whereby

- although required, a detailed Flood Risk Assessment has not been provided (Elgin OPP5 designation refers) and insufficient information is provided about the arrangements to manage and mitigate the risk of flooding, in terms of details about the extent of all proposed/required mitigation measures (which may include land raising and/or any other measures) to address all identified sources of flood risk associated with the site and demonstration that the effects of such mitigation measures as required/proposed will not exacerbate the risk of flooding whether to

the development itself and to elsewhere, including property adjoining the site (Policy H1, IMP1 and Scottish Planning Policy refers).

At the time of determination and in terms of Policy IMP3, a measured impact of the development upon existing infrastructure, community facilities and/or amenity has been identified however a finalised package of developer obligations has yet to be agreed and insufficient information is available to determine whether the identified impact will be mitigated.

<b>LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT</b>	
<b>Reference No. Version No.</b>	<b>Title/Description</b>
10270-L(00)002	Location plan
10270-P(00)01	Site layout plan



## PLANNING APPLICATION COMMITTEE SITE PLAN

**Planning Application Ref Number:**  
**17/00120/PPP**

**Site Address:**  
**Elgin Auction Mart**  
**New Elgin Road**

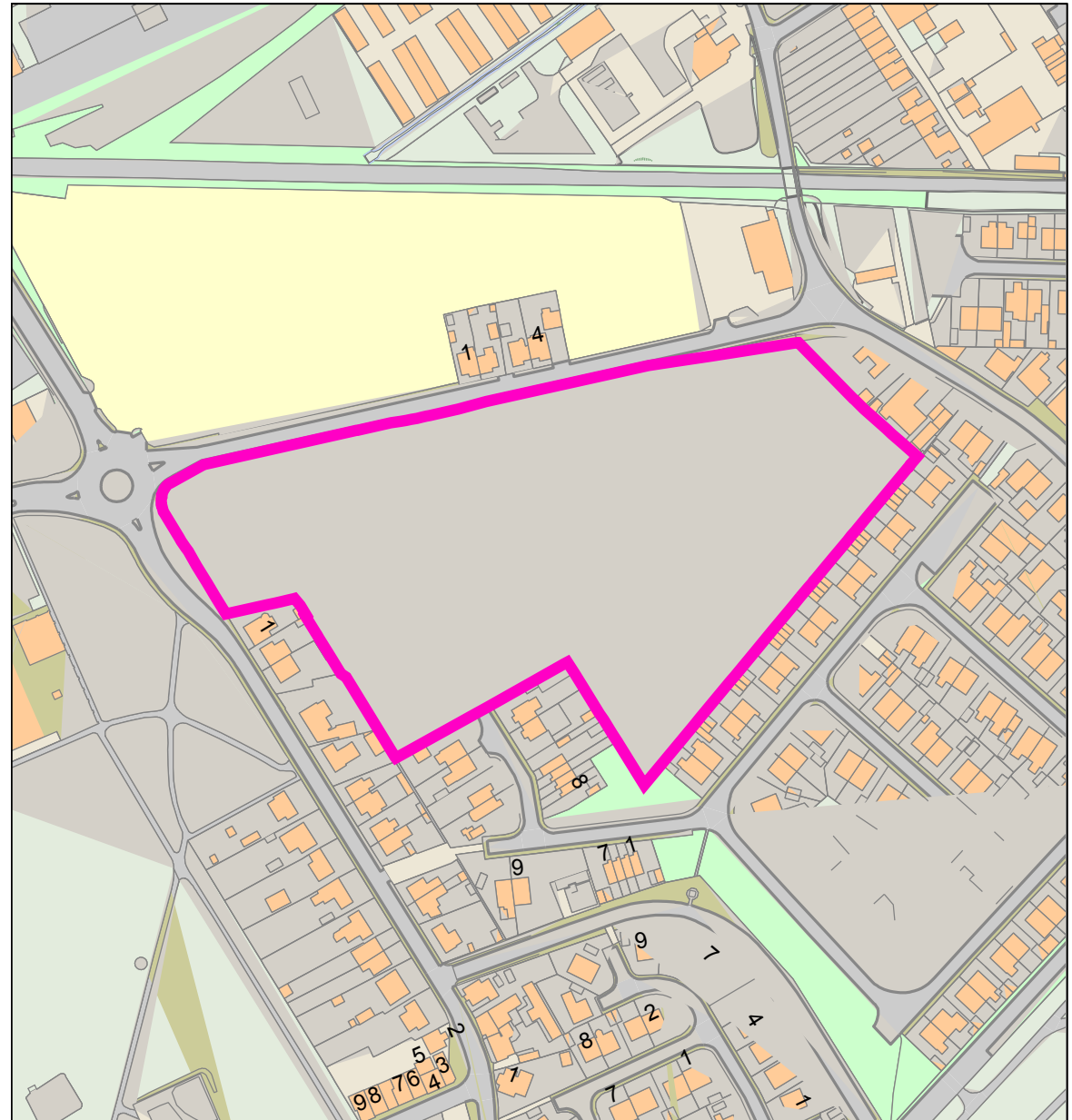
**Applicant Name:**  
**Aberdeen and Northern (Estates) Limited**

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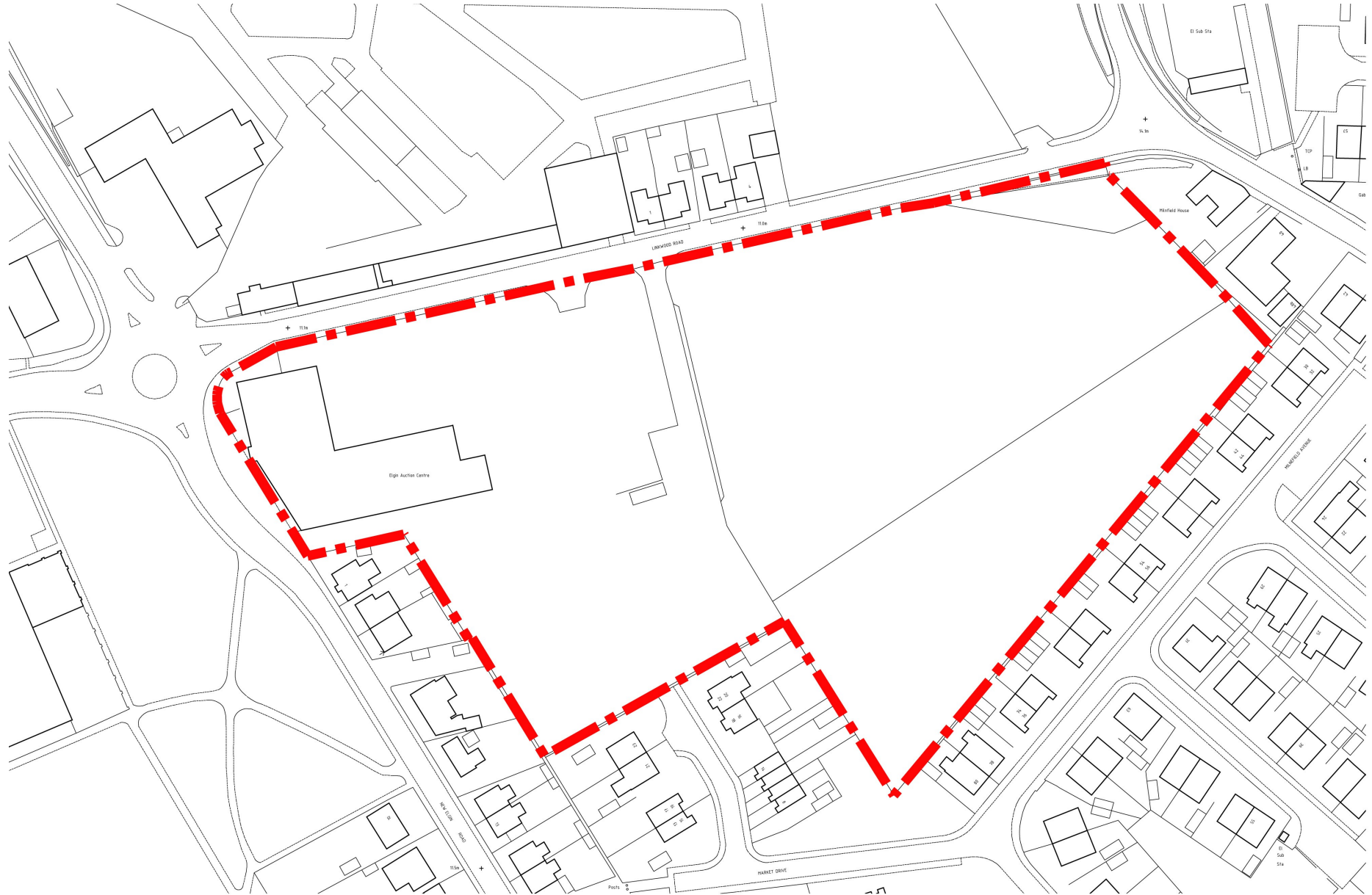
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## Location Plan



# Site Location



# Site layout



From NE corner



Mid way along northern (Linkwood Road) boundary



Western part of site from existing access onto Linkwood Road





## PLANNING APPLICATION: 17/00120/PPP

*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*

### **THE PROPOSAL**

- Application for planning permission in principle (PPP) for a mixed-use development comprising a family restaurant with licenced bar and housing together with associated access infrastructure and landscaping works at Elgin Auction Mart.
- No detailed design and site layout arrangements are provided except for an “indicative site layout plan” (drawing 10270 P(00)01 refers).
- The restaurant/bar will be sited towards the north west corner of the site and located over the existing Auction Mart premises (to be demolished).
- The restaurant/bar premises is approx. square-shaped with an approx. gross floor area of 692sq m. It will be located within an area, approx. 0.4ha, along with car parking (50 spaces), a servicing area and an outdoor seating and children’s play area (although the latter is not identified on the indicative site layout plan).
- The remainder of the site will be developed for housing with a proposed mix of residential properties, both houses and flats.
- From the supporting information, 101 units of accommodation are proposed with 67 houses (16 x 2-bed and 51 x 3-bed in semi-detached and/or (short) terrace forms) and 34 flats (18 x 1-bed and 16 x 2-bed) within a mix of building types, styles and scales (1, 2 and 3-storey) including provision for affordable housing within the flatted properties.
- Two vehicle access points are proposed off Linkwood Road, one towards the north eastern corner of the site and one towards the north western corner of the site. The latter provides access to the residential development area and the restaurant/bar including its car parking and servicing areas.
- The two access points connected internally within the site together with a grid-like road pattern including three ‘squares’ located at some of the internal road intersections. Along the southern boundary, a “lane” will link two internal roads and a foot and cycle path connection onto Market Drive is proposed.
- Foot and cycle path arrangements are included within the internal road layout and along the Linkwood Road frontage, where bus infrastructure will be retained/provided.
- In the eastern half of the site, an area of ‘open space for residential development’ is proposed, to be enclosed by housing and the road/street pattern within the development. (On other supporting drawings, a SUDs basin is shown located within this open space area and provision for SUDS is indicated within another area of trees within the site towards the north-eastern corner of the site).
- The indicative layout plan indicates provision for new landscape planting within the site (but no planting specifications are included). Existing trees within the site will be removed to accommodate the development whilst trees around the perimeter of the site will be retained/protected.
- Public water supply and public foul drainage connections are proposed. Existing private drains within the Mart site will be removed/abandoned and new foul drainage will be installed discharging via new gravity drains into new foul sewers connecting into the existing combined sewer located in Linkwood Road.

- Existing surface water sewers running through the site, from approx. south to north and under the 'open space' area, will be retained. In terms of surface water arrangements, the proposed development will incorporate SUDs with surface water run-off from building roof areas, parking bays, driveways and road areas discharging to drains, filter trenches, swales and road gullies discharging via new surface water sewers into a SUDs basin located in the eastern half of the 'open space' area prior to discharge at an attenuated rate to an existing surface water sewer.
- Application accompanied by supporting documents including a Pre-application Consultation Report, Design & Access Statement, Supporting Statement, Transport Assessment (revised April 2018), Drainage Assessment, Flood Risk Assessment (revised October 2017), Sustainability Statement, Bat Survey (confidential), Tree Survey Report, Geo-environmental Desk Study, Contamination Report, and Construction Environmental Management Plan (incorporating a site waste management plan), etc.

## **THE SITE**

- Approx. 3.5ha (8.6 acre) site located to the south-east of the existing A941 New Elgin Road/Linkwood Road/Edgar Road roundabout junction.
- Formerly a livestock auction mart, Elgin Auction Centre is now used for furniture/antiques, Saturday market and car boot sales.
- The Auction Centre building has stone and render walls and pitched roofs of slate and other materials. To the north east of the buildings is a large concrete hard surfaced area (formerly covered livestock pens, now removed). There is a larger, hardcore-surfaced, parking area to the south and east of the Centre accessed from Linkwood Road. Pedestrian access to the Mart site can also be gained from New Elgin Road.
- The Centre buildings and parking areas occupy the western part of the proposed site whilst the eastern half of site is a gently undulating grassed paddock/field area, previously used for livestock attending the Mart but latterly used for horse grazing, overspill parking and other special (circus and big truck) events.
- A fence line and intermittent line of trees divide the eastern and western parts of the site.
- To the north, on the opposite side of Linkwood Road, are Linkwood Cottages, two pairs of semi-detached, 1½-storey traditional stone/slate properties.
- Land to the west and behind the Cottages has been cleared, formerly the Flemings Sawmill/Morayshire Tractors site but now advertised as a 6 acre development site.
- To east, south and west, the site is adjoined by existing housing development on Linkwood Road, Milnefield Avenue, Market Drive and New Elgin Road, a mix of 1, 1½ and 2-storey dwellings and flatted properties of both traditional and/or more modern styles of construction. There is intermittent growth of trees and shrubs together with fencing and walls around the site boundaries.
- To the west, beyond New Elgin Road, is Doocot Park, B&Q, ASDA, Springfield Retail Park and other commercial/industrial premises located along Edgar Road.
- The site is designated as an opportunity site, Elgin OPP5 in adopted Moray Local Development Plan (MLDP) 2015.

## **HISTORY**

**14 March 2017** - Screening Opinion adopted under the (then current) Environmental Impact Assessment Regulations 2011 (EIA) for this proposed mixed-use development where, after taking account of the characteristics and location of the development and the

characteristics of the potential impact associated with this development, the proposal, as a 'Schedule 2 development' would not be likely to result in significant environmental effects, hence the proposal is not an EIA development and formal EIA procedures are not required.

**16/01121/PE** - Proposed mixed-use development comprising family restaurant with licensed premises and housing with associated access infrastructure and landscaping works at Elgin Auction Mart - following a pre-application meeting, response (9 November 2016) provides initial feedback on the proposal, including comments from consultees, information requirements expected to accompany any formal application for planning permission and recommendations for further pre-application consultation with consultees.

**16/01120/PAN** - Proposal of Application Notice (PAN) for proposed mixed use development comprising public house/restaurant, care home and housing with associated access infrastructure and landscaping works at Elgin Auction Mart – response (28 July 2016) confirms the requirements for consultation with the local community.

Thereafter, following consideration of the PAN and in terms of matter(s) that should be drawn to the applicant's attention and taken into account in the development of the application, the Council's Planning & Regulatory Services Committee (on 15 September 2016) advised that consideration should be given to improving the connectivity between the two proposed entrances and the provision of an improved cycle/pedestrian access to the site from Milnefield Avenue/Market Drive.

**10/02024/APP** - Erection of supermarket (Class 1) petrol filling station access car parking landscaping and associated works at Elgin Auction Mart – application withdrawn prior to determination.

**03/00324/FUL** – Outline application to redevelop existing auction mart to form non-food retail warehousing and relocated auction rooms, including market stalls and car boot sales with associated access, car parking, servicing and landscaping at Elgin Auction Mart. Following a Public Local Inquiry against the non-determination of this application, appeal dismissed by formal decision letter dated 18 May 2005.

**99/00299/FUL** – Renewal of temporary consent for additional use of site for market stalls and car boot sales, Elgin Auction Mart – approved 26 May 1999 subject to conditions regarding use as a Saturday only indoor market/car boot sales use/indoor market not to exceed 100 stalls including 25 craft stalls and car boot sales not to exceed 101 pitches.

**96/01979/FUL** – Additional use for market stalls and car boot sales, Elgin Auction Mart – approved 5 March 1997 with temporary permission expiring 31 March 1999 and subject to conditions similar to application 99/00299/FUL.

## **POLICY - SEE APPENDIX 1**

## **ADVERTISEMENTS**

- Advertised as a departure from the development plan Elgin
- Advertised as a “Schedule 3” development (in relation to proposed licensed premises)

## **CONSULTATIONS**

**Building Standards** - Building Warrant required.

**Planning & Development** - The Auction Mart site is identified as Elgin OPP5 and considered suitable for business uses with any retail uses subject to Policy R2. From Policy ED5, any uses identified for the opportunity site should be viewed as illustrative only, and not a definitive list of acceptable activities. Any new proposal should be compatible with surrounding uses. Neighbouring uses to the south are primarily residential and uses to the north and west are retail and commercial based. The restaurant and residential use as proposed are compatible with neighbouring uses.

Policy R2 applies to the restaurant/bar element of the proposal due to the anticipated footfall that would be generated. Based upon the submitted sequential assessment, and after consideration of additional information, the proposal has met the sequential approach required by Policy R2. The additional information confirms that potential town centre, edge of town centre and other commercial centre sites are either not available or too small, and do not meet the minimum requirements for the proposal. The difficulties identified over site assembly, development constraints (which limit the developable area and site layout of site), site availability and surrounding uses mean that other Elgin opportunity sites can also be dismissed.

It is not appropriate to seek a formal impact assessment for the proposed restaurant/bar with the proposed floor area, 692sq m being less than one-third of the threshold identified for undertaking such an assessment within Scottish Planning Policy (SPP). A significant proportion of trade is anticipated from those living and working in the area and given the family-orientated nature of the proposal, it is more likely to draw trade from similar offers located outwith the town centre. The restaurants, cafes and bars in Elgin town centre are not comparable to the use being proposed nor directly marketed as a family destination. Limited information is available about the turnover of restaurants that the proposal would compete with and it would be unusual to undertake a retail impact-type analysis for this type of proposal.

In comparison to earlier layouts, the road layout has been improved by creating a through road between the two access junctions but there are fundamental aspects of the indicative layout that would not meet the requirements of Policy PP3, and likely to be “red” in ‘quality audit’ terms taking into account:

- parking, which is primarily at the front of properties and visually dominates the development, and blocks of spaces should be broken up with landscaping, including parking for the restaurant;
- open space (in terms of quantity and quality) where although the main area is well-overlooked and accessible to most of the housing, it’s function together with the definition between public and private space is unclear;
- provision for pedestrian and cycle access, to be provided to the western edge of the site adjacent to the restaurant to reflect the desire lines from the Edgar Road retail area and the paths through Doocot Park;
- property must be orientated to face onto Linkwood Road and/or have double frontages, and buildings on key corners must be designed to “turn a corner”;
- along the Linkwood Road, avenue planting must be provided to add character to the development and include pedestrian access to/from bus stops; and
- in terms of character and identity, reference to the historic use of the site as a Mart within the design of the restaurant and introduction of public art within the open space.

The proposal must also comply with Policy H1, H8, H9, PP2, EP7, EP11 and E5.

**Developer Obligations** – Developer obligations (revised 27 July 2018) are required to mitigate the impact of the proposed development upon secondary education, healthcare (towards extension of Elgin Community Surgery and 5 additional dental chairs) and transportation (towards identified Elgin Transport Strategy (ETS) interventions at specified locations to mitigate the cumulative impact of the development on the transport network).

For residential development, a maximum cap of £6,500 per residential unit is applied (Supplementary Guidance: Developer Obligations, adopted March 2018 refers). As the development consists of residential and commercial units, traffic has been aggregated to determine the impact and split, proportionately, based on the PM peak traffic rates for residential (with cap applied) and commercial units (with cap not applied). The District Valuer will determine the value of the land required for junction improvements, to be deducted from the total Transportation contribution.

**Environmental Health** – No objection subject to a condition requiring a noise impact assessment detailing all significant noise sources associated with the construction and operational phases of the development. Informatives are also recommended requiring information on the control of cooking odours from the proposed kitchen ventilation system, the extent of any artificial lighting, and suitable dust mitigation measures to prevent nuisance arising to the existing adjacent amenity during the construction phase. Early discussion is also recommended regarding internal and external layout plans to ensure compliance with Food Hygiene (Scotland) Regulations 2006, the Health and Safety at Work etc Act 1974 and associated regulations.

**Environmental Health Contaminated Land** – No objection subject to condition requiring an assessment of the suitability of the site for the proposed use in respect of possible land contamination, to include details of the assessment methodology, reporting on investigation works once completed, and details for remediation (including mitigation measures) and validation to ensure suitability of site, where required.

**Environmental Protection/Moray Access Manager** - No objection. The inclusion of a 3m wide cycle path provided along the Linkwood Road site frontage is commended. A suitable crossing over New Elgin Road should be included to link with cycle paths in Dovecot Park and Core Path EG09. The current crossing at the roundabout may require to be upgraded or a new crossing provided (i.e. Toucan crossing), to be determined by the Transportation Manager.

**Transportation Manager** - No objections subject to informatives and conditions as recommended including a detailed site layout plan showing all roads, footways, cycle paths, road verges and car parking inclusive of all internal junction visibility splays and forward visibility requirements; area to be safeguarded for future road improvements to Linkwood Road (as identified) together with 3m wide cycle path along the Linkwood Road and New Elgin Road site frontages and provision for a replacement bus stop and new bus shelter on Linkwood Road; internal roads and provision of foot and cycle path to be constructed up to the site boundary at Market Drive, capable of future connection to Market Drive; provision of paths onto New Elgin Road, Linkwood Road and through open space area within the site (as identified); detailed design of access junctions onto Linkwood Road including visibility splays, walls and landscaping set back to accommodate the visibility splays, etc.; swept path analysis of the access junctions and internal road

network (to accommodate refuse collection and delivery vehicles; submission of updated Transport Assessment (TA) or Transport Assessment Addendum to reflect the detailed development proposals and to an agreed scope; submission of Construction Traffic Management Plan to include information (as specified) and details of any temporary construction access; specifications regarding permitted height of boundary fences, hedges, walls or any other obstruction relative to public roads and visibility splay including forward visibility splays within the development; for all elements of the development, parking to be provided in accordance with Council parking standards and include provision for secure cycle parking and facilities for electric vehicle charging and retention; and improvement (bus flag and shelter) of the existing bus stop on Linkwood Road.

The indicative site layout plan (10270 P(00)01) differs from the site layout plan (10270 P(00)01\_B) submitted as part of the TA (revised) which indicates a pedestrian link to New Elgin Road to the west of the site and the internal road and footpath either built up or connected to the boundary of the site with Market Drive. According to the applicant, an area of land beyond the end of Market Drive may be third party land but Market Drive is an adopted public road and the very narrow area beyond the carriageway (less than 2m at this location) is public road verge. The road as constructed is immediately abutted by a boundary fence for the Auction Mart site.

The indicative site layout plan shows a lane connecting to a square connecting to the site boundary at Market Drive. As the lane and square potentially connect to public areas, they should be designed to be suitable for future adoption by the Council, as Roads Authority, requiring an additional footway and revised road geometry to accommodate passing and turning vehicles along with suitable road widths and corner radii.

Notwithstanding the TA details, the pub/restaurant trip generation rates are not agreed for use within any subsequent application but are sufficient for planning permission in principle purposes. The detailed assessment of weekday PM peak trips for the pub/restaurant should be based on the 'peak' values from 1600 – 1800hrs not 'average' values for 1600-1700 and 1700-1800 time-periods as included within the TA. The revised trip generation rates and predicted levels of traffic as estimated by Moray Council Transportation should be used in any subsequent assessment including calculation of developer obligations.

The Elgin Transport Strategy (ETS) was approved by the Moray Council on 9<sup>th</sup> August 2017 and includes proposals in the immediate vicinity of the site including a new road link from Ashgrove Road to Maisondieu Road with traffic signal-controlled junctions, A941/Edgar Road junction improvements and Linkwood Road cycle facilities. To accommodate the improvements, which may include widening to facilitate the provision of lanes for turning traffic, pedestrian islands and additional lanes at the proposed junction improvements, land along the A941 New Elgin Road and Linkwood Road frontages of the site is required. The value of the land identified as being required to assist in the provision of the improvements will be determined through the District Valuer (awaited) and included in the assessment of developer obligations for off-site transportation measures.

In terms of off-site transportation mitigation measures (developer obligations), the TA demonstrates and acknowledges that the development will have an impact on off-site junctions with Elgin and confirms a willingness to address the impacts including the provision of developer obligations associated with the cumulative impact of the development.

**Housing Strategy & Development Manager** – No objections subject to conditions as recommended regarding affordable and accessible housing to be provided within the development. Policy H8 requires that 25% of units are provided for affordable housing (and from the Supplementary Guidance: Affordable Housing, the number of affordable housing units is to be rounded up). The applicant must agree the housing mix and arrangements for delivery of the affordable housing with the Head of Housing and Property prior to starting any housing units on the site. Policy H9 requires that 10% of private sector units are built to wheelchair accessible standards. The Supplementary Guidance: Accessible Housing requires that no less than half of the private sector wheelchair accessible units are built as single storey units. To meet Policy H9, the proposals to provide accessible housing must include a Compliance Statement and detailed plans

**Health & Safety Executive (HSE)** – Does not advise against the granting of planning permission subject to a condition requiring a total of no more than 30 dwelling units, at a housing density of no more than 40 dwelling units per hectare, located wholly or partly within the middle zone boundary of the HSE consultation distance of the Gleaner Oils Limited site. Of those dwellings, not more than 2 may be located wholly or partly within the inner zone.

**Comment (PO):** In response to approaches from the applicant direct, in September 2016 and February 2017, HSE advised against the granting of planning permission. However, for the latter, HSE advised that they would not advise against the granting of planning permission if changes were made to the layout i.e. if significant housing were prevented from being built in the inner consultation zone and only a limited number of houses, at a low density, were built in the middle consultation zone around the hazardous installation, Gleaner Oils. In May 2017, and based on a (revised) indicative site layout (10270 P(00) 01\_A), HSE advised that, to maintain the separation of incompatible development from the major hazard, a total of 30 dwellings at a density no greater than 40 dwellings per hectare within the middle zone (including 2 units within the inner zone) and all remaining dwellings located within or outwith the outer zone would be taken as the limit at which HSE would not advise against the granting of planning permission for housing at the site.

**Scottish Natural Heritage** – No comments on the proposal. The applicant's supporting statement refers to a bat survey having been completed with no signs of bats found.

**Aberdeenshire Archaeology Services** – No objection subject to a condition requiring a photographic survey of the Auction Mart building which dates, in part, from the 19<sup>th</sup> and 20<sup>th</sup> century to ensure a historic record of the building.

**SEPA** – Objection maintained after review of additional information provided (including the Flood Risk Assessment (FRA) (revised) on the grounds of lack of information and that it may place buildings and persons at flood risk contrary to SPP. In summary, insufficient information has been provided to address previous concerns and demonstrate that any proposed mitigation measures will not increase flood risk elsewhere. Further information is required to demonstrate that the proposed mitigation measures at the site, for all sources of flooding, will not increase flood risk elsewhere.

From hydrological modelling in the Tyock Burn (Moray Council, April 2017) the flood extents show that the site is outwith the modelled flood extent for the 200-year event, and no flow path is predicted from upstream flooding to the site. However, in the 200 year plus climate change event, floodwater is predicted to flow from Linkwood Road into the site. The FRA highlights that the modelled flood extents, when compared with anecdotal

evidence, were smaller than the 2002 and 2014 floods, thought to be due to a reduction in flood risk from backwater effects in the River Lossie following the completion of the Elgin Flood Alleviation Scheme (FAS). However, the study does not consider flood risk from pluvial sources, which was thought to be a contributing factor in previous events.

The site appears to be outwith the modelled 200-year fluvial flood extent. The FRA proposes to mitigate against residual fluvial risk and mitigate against surface water flooding by land raising but it has not been assessed in the FRA, hence insufficient information had been provided to address SEPA's concerns and demonstrate that any proposed mitigation measures will not increase flood risk elsewhere.

As part of the Council's Surface Water Management Plan (SWMP) there may be options to address surface water flooding in Elgin. The Council highlights that any surface water schemes developed through the SWMP are to manage existing surface water issues and not to make land more developable. SEPA support Moray Council's position and agree that appropriate assessments and mitigation measures are required by the developers of this site to ensure that flood risk to the site is appropriately managed, and flood risk elsewhere is not increased as a result.

The application site lies within the medium likelihood (0.5% annual probability or 1 in 200 year) flood extent as shown on SEPA Flood Maps and may therefore be at medium to high risk of surface water flooding. From SPP (paragraph 255), built development should not take place on the functional floodplain. The FRA intentions to mitigate flood risk at the site through land raising has the potential to increase flood risk to adjacent areas, contrary to SPP principles. No information has been provided regarding compensatory storage, or how the potential increased risk elsewhere will be mitigated. Further information is required to demonstrate that the proposed mitigation measures at the site, such as land raising, will not increase flood risk elsewhere.

The site is within the area of benefit for the completed and operational Elgin FAS and will be afforded protection by that scheme up to the estimated 1 in 200-year event from fluvial flooding from the River Lossie and associated flooding from the Tyock Burn. Moray Flood Risk Management (MFRM) highlight that there is still an existing fluvial flood risk at the site from the Tyock Burn. The FRA highlights that the site may also be at risk from exceedance events or blockage of the Tyock Burn culvert, and surface water flooding at the site may also be due to interaction with fluvial sources. Further information is required regarding surface water flooding at the site and its interaction with fluvial sources.

Notwithstanding the objection, planning conditions are recommended requiring detailed surface water drainage proposals and a construction environmental management plan (CEMP) (and if conditions not attached then treat response as an objection).

The Drainage Assessment (DA) confirms that the SUDS proposals are designed in accordance with the Simple Index Approach set out in CIRIA SUDS Manual C753. However, SUDS features do not appear on the indicative site layout provided, in particular the SUDs pond area is labelled as 'open space for residential development', and this requires clarification. In addition, the drainage drawing appears to show most roads draining via the filter drains not the swale, which only appears to serve an adjacent section of road, and this requires clarification.

The CEMP should be developed to prevent potential pollution of the environment and to ensure the effective management of water and materials including soil and waste on the



site as well as addressing any site preparation, demolition and any agreed land raising.

**Comment (PO):** The response also provides regulatory advice for the applicant including potential authorisation requirement for any proposed engineering works within the water environment, exemption from licensing for management of surplus peat or soils, permits for any proposed crushing or screening, and other environmental licences may be required for any installations or processes. Details of regulatory requirements and good practice advice is available on SEPA's website or by contacting the local SEPA office.

**Moray Flood Risk Management** – Objection maintained as the FRA (revised) does not answer the points raised in earlier consultation response i.e. as submitted. The FRA is not based on hydrology and hydraulic modelling, as is common practice, and it does not follow SEPA's guidance for FRA's. It concludes that the proposed land raising would mitigate the existing surface water (and other) flood risk to the development site. This may increase flood risk to neighbouring properties and constitute land raising within the functional floodplain with no allowance made for compensatory storage. In addition, there are no proposals to mitigate any increase in flood risk associated with the development elsewhere including the existing fluvial flood risk from the Tyock Burn, or to mitigate the increase in flood risk from surface water that the land raising would cause.

The submitted DIA provides an outline of a proposed drainage solution. Further details are required to demonstrate that the SUDs has been designed appropriately and are suitable for the site, including the sizing of the swale, filter trenches and ponds.

At the pre-application stage, it was made clear that the details of the proposed mitigation(s) would be required at the PPP stage, but the required level of detailed information has not been provided.

**Comment (PO):** During consideration of the application, the applicant/agent was advised of the Council's SWMP, as agreed by the Council's Economic Development and Infrastructure Committee in January 2018, includes proposals for detailed optioneering and appraisal of viability for several options including "Elgin: New Elgin Road/Linkwood Road". This will be pursued from 2018, for implementation in the next Flood Risk Management Strategy cycle for 2022 – 2028, but it is dependent on funding, which is not guaranteed. In addition, advice was given that any surface water schemes which the Council put in place will be to tackle surface water flooding, not to make land more developable. Accordingly, any developer was advised that they would still need to go through the planning application process and submit appropriate FRAs and DAs for approval and put in place appropriate mitigation measures for their development.

Furthermore, the applicant's consultant engineer was advised that surface water modelling undertaken for the SWMP was 'high level', to prioritise further investigations. It did not consider fluvial flooding or interaction with the Tyock Burn and River Lossie, or Scottish Water infrastructure. Any proposed development in the Linkwood area would therefore require modelling to consider all sources of flooding and use of flood data taken from the high-level surface water modelling intended for the SWMP would not be fit for purpose for use for the proposed development at the Mart.

In terms of the Council's responsibility for providing flood protection, MFRM advise that the Council does have powers to provide protection if it is feasible to do so and, where it does develop a scheme, this would be to provide protection to existing property, not to facilitate new development.

**Scottish Water** - No objection but this does not confirm that the proposed development can currently be serviced. There is currently insufficient capacity in the Glenlatterach Water Treatment Works and sufficient capacity in the Moray West Waste Water Treatment works to service the development. As Scottish Water are unable to reserve capacity at the treatment works, the applicant is advised to complete a Pre-Development Enquiry (PDE) Form and submit it directly to Scottish Water and once a formal connection application is submitted to Scottish Water, after full planning permission has been granted, Scottish Water will review the availability of capacity at that time and advise accordingly.

According to records, Scottish Water advise that the development may impact on existing Scottish Water assets i.e. surface water sewers running through the site and a rising sewer main in close proximity to the site boundary.

For reasons of sustainability and to protect customers from potential future sewer flooding, Scottish Water advise that they do not normally accept any surface water connections into a combined sewer system other than in limited exceptional circumstances, for example for brownfield sites but only after significant justification. To avoid costs and delays where a surface water discharge to a combined sewer system is anticipated, early contact with Scottish Water is advised with evidence to support the intended drainage plan prior to making any formal connection request.

**Comment (PO):** The consultation response also sets out various “next steps” for the applicant. Along with their response, Scottish Water has advised that as part of the drainage design surface water should utilise SUDS and attenuation onsite, and that no surface water will be permitted to enter the combined system. They also advise that due to the flooding issues, a Drainage Impact Assessment (DIA) is required before further comment can be made, and that the developer should contact Scottish Water when ready to proceed. Scottish Water has recently advised that they cannot approve surface water drainage to the public system and no DIA has been received for the site.

Scottish Water has also provided a copy of their PDE response issued to the applicant in February 2016. This advises that no build over the existing sewer infrastructure will be permitted; a DIA is required to assess the impact of the proposed development on the surrounding network and known flooding issues in the immediate vicinity of New Elgin Road, Edgar Road and Linkwood Road; and surface water should discharge to SUDs on site and if a SUDS outlet is necessary then, it should be at an attenuated discharge of 44l/s to the existing surface water sewer at an agreed connection point, and foul and surface water should be separated within the development.

**Elgin Community Council** – No response at time of report.

## **OBJECTIONS-REPRESENTATIONS**

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

A total of 25 representations have been received from

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

The main points of the representations include:

- affecting natural environment
- dust
- height of proposed development
- litter
- over-development of site
- poor design

**Comment (PO):** When submitting a representation online, contributors can select comments from a pre-defined list. Some representations may include additional remarks about the selected comment (as included below) but within other online representations, further comment may not be provided, meaning it is not always possible to give fullest consideration of the selected comment.

### **FLOODING including land raising**

- other than the obvious increase in fluvial flooding, raising levels within the site would surely cause damage to neighbouring residential and business properties, leave homes on New Elgin Rd, Market Drive, Milnefield Avenue and Linkwood Road at greater risk of flooding and cause issues to neighbouring properties not previously affected.
- raising ground/site levels within the Mart site may stop the new development from flooding but in doing so, it would place the surrounding area at even greater risk of flooding, which is totally unacceptable.
- the roundabout and Linkwood Road flood badly in heavy rain and houses have been affected. If the developer builds up the site then surely, and yet again, the area is more at risk of flooding.
- irrespective of 'estimated' 1 in 100, or 1 in 200 year 'events', existing residents have been flooded out of their homes three times within the last 20 – 23 years, as a direct result of the Tyock Burn and it's 'culvert'. The Tyock Burn was not justified on economic grounds and taken out of the final Elgin FAS.

- despite the culvert being twice cleared out by the Council after a 2007 flood and a sediment trap built up-stream, residential and business property were flooded on 11 August 2014.
- the documentation makes numerous mentions of land raising to combat flood risks to new property. This will undoubtedly impact on existing properties, placing them in a valley between the new development and the raised B&Q premises.
- whilst the Elgin FAS reduces the impact of flooding from the River Lossie and Tyock culvert, it does not address the issue of surface water flooding which causes risk to property and caused property to flood in 2014.
- although flood risk might be addressed in 2028, that is 11 years away and no compensation for events that might happen between now and then.
- the proposal would make any flood event substantially worse. Options to mitigate the risk to the development site, which involve pumping surface water into the Tyock Burn and/or raising the site levels, are wholly unsatisfactory and will greatly add to the devastation caused by flooding.
- at the very minimum, the requirements should be to complete the unfinished Tyock Burn element of the Elgin FAS, remove and securely seal the manhole access point on the culvert, and improve site surface water management to an already struggling and problematic combined waste/surface water drainage system.
- raising site levels leaves homes on New Elgin Road, Market Drive and Linkwood Road at a far greater risk of flooding as the area already struggles with the management and capacity of a combined waste/surface water drainage system.
- the raised ground level of the development area would increase the risk of flooding for low-lying areas at the bottom of New Elgin Road and Linkwood Road. Any construction must ensure that it in no way increases the risk of flooding for the adjacent area and, as it stands, the current plan has not considered this.
- the mart site is low lying, with a high-water table. With heavy rain, the water in the ground rises, the surface water drains cannot cope with the sheer volume of water, New Elgin Road runs like a river, pedestrians end up soaked from head to toe with the traffic not slowing down and the site and the surrounding areas become flooded including Linkwood Road, New Elgin Road and Market Drive, etc.
- raising the ground will surely just send excess water downwards towards property on Linkwood Road and as the B&Q drainage area is notorious for reaching capacity it too would no doubt affect Linkwood Road properties, all of which is unacceptable without stringent water drainage measures being put in place.
- the Elgin Flood Relief Scheme (sic) may have addressed the problem of the River Lossie overflowing, and of surface water drainage, but there remains the problem of underground water because the bed of an ancient loch lies a few metres below the ground surface (refer to available maps for details).
- during times of heavy rainfall (as in 2002), underground water flows into the Tyock Burn and if congested, the water rises up flooding Edgar Road and into property, including those on Market Drive which lie below the level of Mart.
- any building work restricting the natural flow of underground water towards the Tyock Burn has a greater risk of excess water rising up into property during the heavy rainfall.
- the existing drains are unable to cope with the demand placed on them at times of excessive rainfall including the drain at the bottom of Market Drive where water backs up and gushes out towards property.
- the existing drainage system is inadequate in terms of capacity, is unable to cope with the existing demands placed upon it and has failed during previous flood incidents.

- in 2014 properties on Market Drive and Linkwood Road were flooded, whether caused by interference of the underground streams during demolition and site clearance or poorly maintained street drains is uncertain, but the risk of flooding remains.
- the greatest risk is proposed by flooding both over ground and a rise in the water table, 2m below the ground or much less in some parts of Market Drive. During short duration heavy rainfall this may cause a shift in the water table.
- the Elgin FAS does not address the fact that the Mart site is low lying and at times of heavy rain ground water rises and surface drains are inadequate.
- there is no evidence that the Elgin FAS works and development on this, one of the lowest areas of Elgin, is extremely likely to flood.
- object to the development without major remedial work being done by Scottish Water to up-grade their drainage system in the surrounding area.
- development should not take place as it would increase the possibility of flood risk at New Elgin Road, a recognised surface water “hotspot”.
- before any new developments are approved, priority should be given to ensuring that existing properties are protected from future flood risks and not put in further danger.
- whilst those creating the new building have a choice of taking a risk, existing residents have no choice about being exposed to an exacerbated risk of flooding.
- object unless further plans can offer actual relief from flooding issues. Please confirm that drainage and potential flooding risks have been alleviated and provide supporting evidence. Without a guarantee that flooding will not be a future problem, erecting new homes is not the answer.

**Comment (PO):** The representations on flooding (and drainage) include comments and opinions about sources and impacts of flooding including those from contributors who have either witnessed or experienced flooding on the site or at property located on Linkwood Road, Market Drive and New Elgin Road, etc. Whereas the Elgin FAS has mitigated the risk of flooding to the site from the River Lossie, for events up to but not exceeding the Elgin FAS design standard, the representations highlight other flood sources including the Tyock Burn and culvert, ground water and the capacity of existing surface water drainage infrastructure being unable to cope during short-term, heavy rainfall periods. Most representations consider that the proposal to raise site levels as part of the development will displace flood water (irrespective of its source) thus increasing the risk of flooding to the surrounding area including neighbouring property. The representations consider that before any new development is allowed, sufficient protection should first be afforded to existing properties.

Whilst acknowledging that it may increase flood risk to neighbouring property, the FRA proposes land raising within the site to address most sources of flooding including residual fluvial flooding (for events greater than the Elgin FAS design standard) and other minor potential flood sources which are specifically defined in the FRA although it does identify flood sources/risks associated with infrastructure failure, ground water, surface overland flows and from sewers. The FRA outlines a strategy to address flood risk and lacks sufficient information to demonstrate, for the purposes of compliance with Policy EP7 and SSP, the extent and effect of land raising both on and off the site, and whether or not this measure, on its own or in conjunction with any other required/proposed mitigation, will exacerbate the risk of flooding to the development and the surrounding area.

The FRA also refers to the Council’s forthcoming SWMP investigations, as agreed by the Economic Development & Infrastructure Committee, January 2018 refer. This includes an option to investigate the identified ‘hotspot’ i.e. “Elgin: New Elgin Road/Linkwood Road” however finance and delivery of the option (once measures are identified/agreed) are not guaranteed. The purpose of the Plan is to address surface water flooding to existing

property rather than promote new development. Although aware of the current lack of information within the FRA and the time-scale for the Council's proposed investigations, no further submissions have been presented by the applicant to address the objections from consultees or identified in the representations or to mitigate the risk and impact from all sources of flooding arising both and from their development.

## **COMPENSATION**

- If despite being aware of the facts, risks and form of flooding are considered worth taking, adequate compensation must be guaranteed for those who suffer adverse consequences in the future from developments that disrupt the local hydrology.
- raising ground levels to mitigate flood risk would displace flood water into the surrounding houses putting them at jeopardy. This is totally ridiculous and non-compliant with SPP7. The proposal constitutes a piecemeal development on functional flood plain, it impacts on storage capacity and land-raising would negatively impact on surrounding properties. A financial guarantee from the developer, site owner and the Council is required to indemnify individuals against this risk.

**Comment (PO):** SPP7 (Planning and Flooding) has been replaced by SPP (2014). Issues regarding compensation, and requirements for financial guarantees and personal indemnification are not material planning considerations. In planning terms and to be acceptable, development located in an area at risk of flooding is required to demonstrate that it will not exacerbate the risk of flooding both to the development itself and the surrounding area (Policy EP7 and SPP refers). Notwithstanding the FRA as submitted and mitigation involving raising land levels, the FRA lacks information to demonstrate that these requirements have been met (as also acknowledged by SEPA and MFRM).

Following completion and operation of the Elgin FAS, the site is outwith the functional floodplain for a 1 in 200-year fluvial flood event, and where development is so located, the FRA notes that land raising would not displace fluvial floodwater nor conflict with SPP. However, the FRA proposes land raising to address residual fluvial flood events exceeding the 1 in 200 year and Elgin FAS design standard and other flood sources. As advised by MFRM and SEPA, this has the potential to increase flood risk to adjacent areas, contrary to SPP principles. The FRA is not supported by sufficient information to address the extent and effects of the proposed land raising operations and demonstrate that it does conflict with local and national flood policy including Policy EP7 and SPP.

## **TRAFFIC AND ACCESS**

- the two proposed road accesses to the development will add to an already very busy traffic congested Linkwood Road.
- additional housing will result in even more traffic using Linkwood Road especially at the roundabout which already sees a high volume of traffic, making it a horrendous place to cross at the best of times. New Elgin Road is a nightmare at peak times and the situation will only be aggravated by even more traffic at the roundabout. With the new development, increased traffic flow will descend on the roundabout. What is going to be put in place to make the roundabout safer for pedestrians and road users?
- with existing traffic levels on Linkwood Road, trying to park in the driveways of property is already an absolute nightmare owing to inconsiderate/impatient road users. With increased traffic flows, including HGVs and on-road parking on a narrow road, will the road be widened or upgraded?
- in terms of road access and road safety, Linkwood Road is one of the busiest roads within Elgin leading to the new houses on Reiket Lane and new development proposed beyond Linkwood Distillery including a new village, primary school and sports centre.

- 67 houses, 34 flats and a licenced restaurant will inevitably lead to a great increase in traffic along Linkwood Road, which is congested, used as a rat run during rush hour periods and has a history of accidents including damage to property and injury to pedestrians. Any increase in traffic will increase the level of danger on this road, which is unacceptable.
- if the development is allowed, greater consideration must be given to pedestrian and public safety along Linkwood Road and at the roundabout. A speed limit appropriate to a residential area along Linkwood Road and a pedestrian crossing at the roundabout should be the bare minimum to make this development acceptable.
- the ASDA roundabout is an extremely busy roundabout. This proposal will add to traffic using this junction, which will also be subject to further development, including 2500 homes to the south of Elgin. High vehicle usage would endanger pedestrians from this proposed development at the roundabout intersection. Will this be mitigated?
- there appears to be no plan to increase capacity to address the high vehicle impact. Granting permission for this development with its extra cars during and following the construction of buildings would only exacerbate this problem.
- in terms of road infrastructure, development should not take place as it would increase the volume of traffic onto an already congested road network.

**Comment (PO):** The existing Mart takes vehicle access from Linkwood Road and reflecting the requirements of the Elgin OPP5 designation, the development will be accessed from Linkwood Road by two access junctions. Pedestrian and cycle access links between the site and Market Drive and New Elgin Road are also proposed/required. In terms of road safety or traffic generation and after consideration of the TA, which acknowledges that the development will have an impact of off-site road junctions including the A941 New Elgin Road/Edgar Road/Linkwood Road roundabout (Elgin TSP31), and subject to conditions and obligations as recommended, the Transportation Manager has not objected to the development in terms of the proposed access arrangements and/or the impact of the development upon the surrounding road network.

As approved in August 2017, the Elgin Transport Strategy (ETS) identifies proposals (interventions) in the vicinity of the site, including improvement of Linkwood Road and the identified Elgin TSP31 roundabout junction, and provision of cycling facilities. The improvements include provision for a cycle path; maintaining/up grading public transport infrastructure; widening of the road to provide lanes for turning traffic; pedestrian islands; and additional lanes at the identified junction as well as it's up grading to a signal-controlled junction. To achieve these improvements, land along New Elgin Road and Linkwood Road frontages of the site will be safeguarded as part of the overall development of the site. Development obligations have been identified to mitigate (cumulative) transport impacts of the development on the wider road network, including the identified junction.

#### **FOOTPATH ACCESS TO/FROM MARKET DRIVE**

- proposed footpath is unnecessary, and it would disrupt a quiet residential cul-de-sac area with increased footfall especially from customers going to/from the restaurant.
- there would be a danger to life due to limited vision of pedestrians from driveways and vehicles entering/exiting property in Market Drive.
- this route is not needed as there is already adequate pedestrian access to the development via the cutting from Market Drive or the existing access from Main Street.
- assurance sought that there would be absolutely no vehicular or pedestrian access to/from the development and Market Drive and Milnefield Avenue, both of which are narrow and congested on refuse collection days.

**Comment (PO):** No assurance can be given because the Elgin OPP5 designation and the

applicant's indicative layout plans (including that within the TA) provide for a pedestrian link between the Market Drive cul-de-sac and the site. This provision also reflects the views of the Planning & Regulatory Services Committee during their pre-application consideration of the proposal (16/01120/PAN refers). The Transportation Manager has not objected to the inclusion of such a link in terms of road and pedestrian safety. To reflect details included in the TA, the internal road layout requires to be taken to the boundary of the site so that it is capable of becoming a road link in the future.

## **FENCING**

- fencing along edge of property and across Market Drive was placed by original developers and is the joint responsibility of adjoining residents including its maintenance who do not want this fence to be damaged or removed. It is there for privacy and security and it is important that the fence remains intact to prevent access into Market Drive from the Mart.

**Comment (PO):** Irrespective of evidence to confirm the support from “adjoining residents” to support the contributors remarks, matters about responsibilities for fencing require separate consideration matter from planning considerations. The Elgin OPP5 designation requires provision for a pedestrian link to be provided between the site and Market Drive and this is included on the indicative site layout drawing. It's provision will enhance place making considerations regarding connectivity and permeability to/from the site and the wider area.

## **NEED FOR MORE HOUSING**

- does Elgin really need more housing and the loss of another green field area?

**Comment (PO):** The green field/paddock forming part of the site is not specifically designated as open space within the MLDP2015. As identified, the field is part of an opportunity designation, Elgin OPP5 which does not preclude the loss of this green space during the redevelopment of the site, although from Policy E5 as applied to residential development, open space provision is required. The indicative layout plan suggests that some but not all of the existing paddock area will be used for open space.

In terms of the supply of housing land, the site is not specifically designated for housing. As an opportunity site, the Elgin OPP5 designation indicates the site to be suitable for business use but other uses can be considered and here, housing would be compatible with the surrounding residential use to the east, south and west of the site. As a “windfall site” (Policy H1 refers), the Housing Land Audit 2018 advises that such sites can make a significant contribution to housing land supply and although a 5-year effective land supply (minimum) can be demonstrated, to satisfy SPP requirements, neither SPP nor the Audit preclude the supply and provision of additional housing sites such as at the Auction Mart.

## **PROXIMITY TO NOTIFIABLE HAZARDOUS SUBSTANCE INSTALLATION**

- Gleaner Oils is a blast zone. As there are already too many homes within this area, would it not be better to keep this site as a green field?
- HSE consider that the development is within the consultation distance of a major hazard site. They advise against granting planning permission on safety grounds. It would be negligent for the Council to grant permission in light of this advice and it would render their public indemnity void.

**Comment (PO):** Based on the quantity of LPG storage, the site of Gleaner Oils Ltd is identified, in HSE terms, as a notifiable hazardous substance installation. Proximity to such an installation does not preclude development although for public safety reasons, the presence of the installation may inform the location and amount of new development that can be accommodated. Matters about public indemnity are not a material consideration



upon which to determine an application.

The contributor's comments that HSE advise against granting permission on safety grounds is based upon an initial appraisal of the development. However, this is not HSE's final comments, as later advised to the Council, as Planning Authority wherein they no longer advise against the granting of permission in public safety terms. This is subject to certain changes being made within any finalised layout for the development to limit the density and number of new houses located within the inner and middle consultation zones which surround the installation. This (revised) position follows from discussion between the HSE and the applicant direct, including an indicative layout wherein the density and number of units within the middle and inner consultation zones are to an acceptable level such that HSE does not advise against the development.

### **IMPACT ON PROPERTY**

- property would look directly onto existing property, which would be unacceptable in terms of privacy, security and general noise. A lot of others that stay within the Milnefield area would agree also.

**Comment (PO):** Irrespective of evidence to confirm the support given by "others" to the contributor's remarks, the application seeks planning permission in principle. The application is without details about the detailed or actual design and site layout information to characterise the development and inform whether the perceived impacts on amenity as described are unacceptable. The proposed residential use would be compatible with the surrounding residential use in the Milnefield area. Further details about the design and site layout arrangements require to be the subject of matters to be specified in conditions for approval within and further application(s) for the site.

In terms of the relationship between existing and proposed housing, the acceptability of any details would require consideration about the detailed design and disposition of buildings within the site; the nature and use of the accommodation and location and orientation of openings including windows; existing and finished ground and floor levels; intervening landform, vegetation and boundary treatments (including proposals to alter or supplement these features); and distance between property. Without prejudice and subject to suitable details, it is feasible that in principle a proposal could be developed so as not to result in unacceptable or adverse amenity impacts both within the development and between the development and existing property, and vice versa.

### **IMPACT OF RESTAURANT**

- building of a bar restaurant will undoubtedly lead to unsociable behaviour and increased volume traffic/noise in and around vicinity of development.

**Comment (PO):** The restaurant/bar facility will be located over the site of the existing Mart building (to be demolished) in the north western corner of the site. It will be separated from the existing and proposed development by parking and servicing areas, roads and pedestrian/cycle links including the nearest property to the south. Other than its likely size or footprint, no other details about the restaurant/bar are available at this stage to suggest, let alone confirm or conclude that unsociable behaviour from patrons will occur. In any event, public behaviour cannot be regulated by the planning process.

Following consultation, neither the Transportation Manager or the Environmental Health Manager has objected to the restaurant/bar in terms of traffic generation and traffic emissions and noise associated with the facility although as part of any further application(s), a noise impact assessment is required to identify all noise sources and all measures to mitigate noise. This would include assessment of the provision and

performance of all plant and machinery for example, odour extraction, refrigeration and ventilation equipment) and servicing arrangements, etc. to ensure the proposal does not adversely impact on the amenity of the surrounding area.

### **IMPACT ON WILDLIFE**

- adverse effect on wildlife given the number of declining species such as hedgehogs and bats. Any building on the site would destroy habitats.

**Comment (PO):** The site is considered to be low or limited but not significant in terms of its ecological value. It is not subject to any site-specific nature conservation designation and SNH has not objected to the development in terms of ecological interests. After assessment, no protected species (bats) were found present within the Mart buildings. Trees within the site are to be removed (owing to their condition and to accommodate the development) whilst trees around the perimeter of the site are to be retained/protected, therefore maintaining their habitat and bio-diversity potential. Relative to their populations and resources available within the wider area, any specific loss of species and habitat from the site would be minimal not significant.

### **EFFECT ON SERVICES**

- please confirm the effect on local services – police, fire, schools, welfare and social (medical (GP, NHS, Dentistry)), refuse collection, traffic (including road surfaces with increased construction traffic during building phase and subsequent traffic thereafter), local sanitation, recreation, etc. Does the Council have enough resilience to cope with the increase and additional demands placed by this development?
- will there be any interruption to services during construction phase i.e. electricity, gas and water? If so, what is the contingency?
- the development seems designed to accommodate young families and falls within the New Elgin Primary School catchment area yet there is insufficient primary school capacity to accommodate any new development within that catchment. It is unlikely that the proposed Linkwood Primary School will help to address this under capacity as it is intended to serve a community where 2500 homes are proposed.

**Comment (PO):** In terms of extra recreational facilities, an area of open space is proposed within the site although its function including whether it will include play equipment is uncertain at this PPP stage. The detailed (road) layout of the development would also be expected to take account of the Council's refuse collection arrangements. Any required/proposed interruptions to services, including requirements for contingencies is a matter outwith the scope of the planning process although it would be expected that any service operator disruption and disturbance impacts upon existing customers would be kept to a minimum. Scottish Water do not object to the development in terms of available water and waste water treatment capacity, but this matter is to be reviewed.

The impact of the development upon services, in particular the local transport network, education (primary and secondary), healthcare, sports and recreation, etc. have been assessed as part of developer obligations process associated with the application. A (draft) 'package' of obligations, proportionate in size and nature to the development, have been identified, in this case toward secondary education, healthcare (community surgery and dentistry) and transportation (ETS-related interventions). A finalised package of obligations has yet to be agreed with the applicant.

### **NOTIFICATION**

- never received notification of this development and not aware/missed the meeting in August.

**Comment (PO):** The notification issue is understood to refer to the arrangements for pre-

application consultation with the local community, in particular a public exhibition event arranged by the applicant/agent and held at the Auction Mart towards the end of August 2016. There was no requirement for the applicant to notify neighbours of that event in the same manner that the Council undertakes upon receipt of a formal planning application however, there is a requirement that before the public event, the applicant must place a public advertisement in a local newspaper at least 7 days in advance of the event. The report on pre-application consultation as undertaken and submitted by the applicant's agent confirms that an advertisement was placed in the Press & Journal before the event date and, in addition, posters announcing the event were displayed locally.

This contributor (and at least one other) is located more than 20m from the application site and therefore, there is no requirement for the Council, as Planning Authority to notify the contributor of the planning application using formal neighbour notification procedures. The application was the subject of a formal public advertisement affording the opportunity for the wider community to comment on the proposal. All representations, whether received through notification and advertisement procedures, have been taken into account.

## **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 Plan 2015 (MLDP) unless material considerations indicate otherwise. The main issues are considered below.

### **Application for planning permission in principle (PPP)**

This PPP application seeks to establish whether the principle of this proposed mixed-use development as described, is acceptable on the Auction Mart site without having to develop detailed proposals.

With PPP applications, there is no requirements for detailed plans and drawings to be submitted however, a description of the development along with a location plan to identify the site and details about the location of the access point(s) to the development are included. The site layout plan as provided (drawing 10270 P(00) 01) is described as "indicative" in terms of it's form and status.

When granting PPP, it may be subject to a condition (in addition to any other conditions which may be applied) that the development in question will not begin until certain matters have been approved by the Council, as Planning Authority. The specification of those matters within conditions refer to matters about design, siting, access and landscaping, etc. and require further details including plans, drawings and other supporting information to fully describe the character and detail of the development proposed within the PPP application.

Following any grant of PPP, all such conditions require to be the subject of one or more formal applications for approval, consent or agreement of matters attached to (or specified in) conditions on the granting of planning permission in principle (AMC). There is no (statutory) limit on the number of conditions in any one AMC application or on the number of AMC applications that can be submitted to address the identified matters.

With an AMC application, which is not an application for planning permission, pre-application consultation and design and access statement requirements do not apply but neighbour notification and advertisement procedures still require to be undertaken as

appropriate. Notwithstanding the progression from PPP to AMC submissions, a prospective developer/applicant can lodge an application for planning permission (APP) wherein matters about the principle and detail for a development are considered together.

### **Pre-application considerations**

From Planning History (above), the proposal was subject to pre-application discussion and feedback (16/01120/PE refers). At that time, the proposed mixed-use development comprised a public house/restaurant, housing (104 units within 64 two-storey houses and 40 three-storey flats) and a care home (45-beds). The latter is no longer part of the development and has been replaced with housing. At the time of that enquiry, no end-user/operator/developer was identified for each individual use, all details were regarded as “illustrative” and “indicative”, and after PPP was obtained, detailed design and site layout information would be provided.

The Council’s response provided advice on the proposed content of any application and identified various issues associated with the development including its relationship to planning policy; amenity; transport and access; pollution (including noise, odour and contamination); cultural and natural heritage; public health and safety relative to a notifiable hazardous installation; developer obligations; and water, drainage (foul and surface water) and flooding. Further pre-application consultation with relevant consultees was recommended over their interests in the development.

Given the history of flooding at the site, the applicant/agent was advised of the need to address all sources of flooding and associated risks and although informed of the Council’s future intentions towards drainage and flooding issues in the surrounding area, it was noted that the time scale for consideration and development of proposals to address those issues would be unlikely to match the applicant’s intentions for submitting their proposals to develop the site. At the time of enquiry, the applicant/agent was advised that within any development proposal, robust proposals to address and manage drainage and flooding issues would be required i.e. any scheme design would need to show that the drainage and flooding arrangements therein will be achieved without having any adverse and unacceptable effect upon the development itself and the surrounding area.

### **Pre-application consultation (PAC) with the local community**

For this major application, the PAC report describes the extent of pre-application consultation with the local community including a public event and it reflects the requirements of the Proposal of Application Notice (16/01120/PAN) as served upon Moray Council and Elgin Community Council. The PAC advises that local Ward Councillors of Moray Council were invited to attend the public event, and it considers the involvement of the local community as an important step in shaping the proposal.

At the time of issue, the PAN included reference to a care home but the PAC confirms that this use was removed due to constraints imposed by a nearby hazardous notifiable installation (Gleaner Oils) and flood risk issues, the latter owing to the sensitivity of the care home use which would require a scheme design to accommodate a 1 in 1000 year flood event (SPP refers).

According to the PAC, 39 people attended the public consultation event, including the preview held for Ward and Community Councillors, with a total of 10 representations returned during and after the event. The PAC regards the feedback as mostly positive, with some attendees happy with the proposal (so they did not complete the feedback forms) but where comments were provided, these were generally related to traffic and

flooding matters. The PAC considers these matters as main issues whilst other matters raised are regarded as minor comments.

According to the PAC, most issues will be resolved through the application process, whether as AMC and/or APP applications, but changes were made to the indicative layout, for example to improve connectivity. In responding to comments about the restaurant (regarding hours, noise, viability and demand for use), the PAC notes that interest has already been shown by a restaurant operator keen to expand in Elgin and the restaurant proposal is different from, and will not undermine, other establishments. Noise is not perceived as an issue and the proposal is sufficiently distant from housing although transportation and environmental mitigations can be applied if required.

The PAC notes comments about the layout being 'very nice' and of the need to enhance the site. In responding to comments that the site will be remote from open space, the PAC advises that the existing site is not high quality usable green space, the requirement for 20% open space will be retained within the site, and whilst the site designation accepts the loss of the green field area, the proposal will not affect the ability of locals to access the proposed open space.

In reply to comments about the need for proper (pedestrian) crossings on Linkwood Road, egress being shared between two roads, and traffic generation impacts, etc., the PAC notes that such matters are subject to discussion with the Council's Transportation Service and the impact on the surrounding road network will be addressed through a TA, with mitigation measures provided as required along with the Council's proposals for improvements to the traffic system including Linkwood Road and pedestrian crossings. In terms of the footpath from Market Drive, the PAC notes this is a MLDP 2015 requirement and whilst the location as shown is indicative, it's provision is important in connecting the site with the wider area.

The PAC addresses comments asking about the capacity of local schools and medical facilities by reference to the need to agree any developer obligation requirements, in accordance with MLDP 2015 Policy IMP3.

According to the PAC, several comments question the capacity of the existing surface water and sewerage networks, the need for further information on any strategy to alleviate and manage flooding on, and off, the site; and the need to fix the flooding problem in the area. In response, the PAC advises that the FRA will be undertaken to consider the issues in detail and provide agreed mitigation measures to ensure that the risk of flooding is not increased in the area. The PAC notes that discussions are on going with Scottish Water, SEPA and Moray Council.

In reference to the Planning & Regulatory Services Committee's views given on the PAN about connectivity, the PAC notes that changes have been made to allow full access by vehicles rather than emergency access only and a cycle path between the two access points is included. A connection has also been included to improve cycle/pedestrian access between the site and Milnefield Avenue/Market Drive although the PAC notes that an attendee of the public event was 'not happy' about the provision of this pathway.

### **Design and Access Statement (DAS)**

Although not required for a major PPP application, a DAS has been provided. In providing an overview of the site, it reviews planning policy and supplementary guidance, design principles and the indicative site layout approach to the application. It notes also that the

surrounding area is characterised by a mix of commercial, retail and residential uses, the latter mainly to the east and south including single and two storey flats and dwellings.

According to the DAS, the site presents an opportunity to improve and complement the existing surrounding uses as well as increase permeability and connectivity to and from the site whilst retaining accessible and usable open space. Constraints, including local network junctions, flooding, sewers, proximity to a notifiable hazardous installation and trees have also been considered throughout the design process.

The DAS regards the indicative site layout as responding to its existing and natural setting, it continues the existing pattern of development and access roads, the concept design principles employed observe place making principles, and landscaping will be provided to enhance the character of the site which is easily accessed by vehicular traffic and pedestrians, and well serviced by services.

The DAS also identifies several key considerations are addressed i.e. a strong street frontage to Linkwood Road will be provided by the restaurant; the massing and scale of buildings will be in keeping with surrounding area using a mix of building types and scales; the provision of pedestrian paths will increase connectivity and permeability in/out of the site; attractive and usable open space will be provided to enhance and create site identity; some existing trees will be retained, with no building frontages located within identified tree root protection areas; and working with relevant organisations, a strategy will be developed to address flooding issues. According to the DAS, the proposal will create an attractive mixed-use development through the creation of well designed safe and accessible spaces and regeneration of the site, with a variety of new uses (dwellings and restaurant/public house), will benefit the wider community.

### **Supporting Statement (SS)**

The SS indicates that the site is designated in the MLDP 2015 as an opportunity site, Elgin OPP5. After review of the national and local policy context, it considers that the principle of development is acceptable and the proposal will comply with SPP (2014) and MLDP 2015 in regard to issues relating to location, siting and design (wherein the site layout can be designed to accord with place making), landscaping, transport and accessibility, affordable housing, developer contributions including local services (schools), water drainage and flooding, protected species and sustainability.

The SS regards the proposal as being compatible with the surrounding area, and based upon the indicative layout, the site can be developed in conformity with relevant policy to a high standard, in terms of design, open space, affordable housing, access and parking standards. According to the SS and other accompanying documents including the TA and FRA demonstrate the acceptability of the proposal and that mitigation measures can be provided to resolve any identified impacts of the development. The SS respectfully requests that the proposal be supported.

### **Tree Survey**

The survey records 20 substantial trees or groups of trees within or directly adjacent to the site boundaries together with the locations of shrubs and very small trees. To accommodate the development and owing to their poor condition, the survey recommends removal of the row of cypress and birch trees between the Mart parking and paddock areas. In the north-eastern corner, some trees may be removed if the area is used for SUDS and housing. According to the survey, trees and groups of trees around the site perimeter can be retained provided root protection areas are identified and tree barriers

are erected. New planting around and within the site is proposed to mitigate existing tree loss and provide new generation quality plants with long-term potential and high amenity value.

### **Sustainability Statement (SuS)**

According to the SuS, the proposal responds to sustainable principles, in terms of planning and building standards requirements, and it will be served by several decentralised energy centres serving a distribution heat network along with various energy technologies yet to be considered and investigated for their feasibility. Other passive design measures, energy efficient initiatives and low and zero carbon generating technologies will form part of an energy strategy to deliver the required energy and carbon savings and meet, and improve upon, Building Standards targets.

The SuS proposes exploration of solar photovoltaics, combined heat and power, and heat pumps to reduce carbon emissions and complement other design measures and, if suitable, they will be incorporated into the design. In addition, the SuS identify several key aspects that would make the development an example of “good practice” in terms of sustainable development, including a high quality residential and employment opportunity scheme, reduced reliance on the car due to proximity to public transport and local amenities, creation of social spaces and a community environment, ecological enhancement, provision of recycling facilities and energy efficient buildings, etc.

The SuS identifies a range of potential measures for consideration and investigation. It does not identify actual sustainable measures that will be included in the development.

### **Development on the Auction Mart opportunity site (Elgin OPP5, ED5, H1, IMP1)**

This application seeks to establish the principle of development upon land at Elgin Auction Mart without reference to detailed design and site layout information to describe the character of the proposed development. The proposal is located on the Elgin OPP5 designation, an opportunity site as defined in the MLDP 2015 which is subject to site-specific and developer requirements (Elgin OPP5 and Policy IMP1 refer, see Appendix 1).

From Elgin OPP5, the site is available for business use, with any retail use thereon subject to retail planning policy considerations. Unlike more recent applications for the site, the current proposal is not for a Class 1 retail use but rather for a mixed-use development with both business/commercial use (restaurant/bar) and non-business (residential) uses.

Within Elgin OPP5, residential use is not specifically confirmed as a suitable use for this opportunity site. However, from Policy ED5 and in the context of the proposed redevelopment of a brownfield site (in part), appropriate alternative uses can be considered because any uses mentioned in the designation are illustrative and not a definitive list of acceptable uses. Any new proposed use(s) should be compatible with the surrounding uses.

Here, subject to acceptable design and site layout details, with existing housing adjoining the site to the east, south and west, and four houses on the northern side of the Linkwood Road, a residential use as proposed would, as a compatible use, be acceptable. The SS regards the restaurant/bar use as being in keeping with other business/commercial facilities in the wider area including business/commercial interests located within the commercial centre on Edgar Road to the west. The proposed mixed-use development as defined therefore accords with, rather than departs from, the Elgin OPP5 designation.

The Elgin OPP5 designation requirement for a landscaping area is achieved wherein the indicative layout plan incorporates an area of open space for residential development enclosed by the proposed housing and road/street layout in the eastern part of the site. This area will be accessible to all of the development. An open area is indicated in the north east corner of the site if used for open space the quality and quantity of, and accessibility to, that space may be constrained by the retention of some trees and any use of the space for SUDs drainage. Elsewhere, new landscape planting is indicated within the development and existing trees/shrubs around the site perimeter are to be retained/protected.

The Elgin OPP5 designation requires provision for public access for pedestrians and cyclists both adjacent and within the southern and eastern boundaries of the site. The indicative layout plan indicates pedestrian and cycle access within the development and along the southern boundary a link to be provided between the site and Market Drive. No similar access arrangement is proposed adjacent to the eastern boundary: this could not be achieved without taking access through the grounds of existing property located between the site and Linkwood Road.

As required by Elgin OPP5, vehicle access to the site is not taken from the A941 New Elgin Road/Edgar Road/Linkwood Road roundabout junction. Instead, access will be taken from two priority junctions located on Linkwood Road. As part of the designation requirements, a TA has considered the impact of the development upon the surrounding road network with the off-site impact of the development considered solely upon the Elgin TSP31 but not TSP32 junction. Developer obligations are being sought to address the impact of the development upon the wider transport network and in principle the proposal is acceptable in terms of the transport-related Elgin OPP5 designation requirements.

A detailed FRA is required for the site (Elgin OPP5 refers). A FRA has been submitted but whilst setting out a strategy to address flooding from identified sources, the FRA lacks information about the mitigation measures being proposed, including the extent and effects of land raising (which is intended to address various flood sources). The FRA does not demonstrate that with all required/proposed mitigation measures in place the risk of flooding to the site itself and to elsewhere is not exacerbated. As the need for a detailed (and robust) FRA to address flood risk from all sources, even at this PPP stage, has not been addressed, the proposal does not accord with the Elgin OPP5 requirements to address flooding.

In not being specifically designated for housing, such development on a “windfall site” would only be acceptable if certain criteria are satisfied including whether the site is designated for an alternative use (Policy H1 refers). The latter does not apply here because, as an opportunity site, it is not designated for any use although it is considered suitable for business use. Policy ED5 clarifies that the range of uses mentioned within an opportunity designation are only illustrative of any actual use(s) that might be developed on the site. The designation does not preclude the proposed restaurant/bar and residential nature of this development, uses which are acceptable and compatible with the surrounding area.

In principle, and subject to acceptable details regarding design and site layout arrangements being achieved, the proposal would satisfy other Policy H1 criteria although in the absence of detailed mitigation measures, it does not demonstrate that no adverse flood effects occur to the development itself or to the surrounding area (see below).



In terms of developer requirements Policy IMP1 requires inter alia that any development be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. This policy may also be informed by other policy considerations (see Appendix). Notwithstanding the current PPP status of the application but subject to suitable and acceptable design and site layout details being provided pursuant to any matters specified in conditions attached to any grant of PPP, including conditions or matters recommended by consultees or required by planning policy, it is considered that in principle the proposed development would be acceptable and not have any unacceptable or significant adverse effects on the character, appearance and amenity of the proposed development and upon the surrounding area including neighbouring property. However, the proposal would not satisfy Policy IMP1 in that insufficient information is provided demonstrate that no adverse flood effects occur to the development itself or to the surrounding area (see below).

**Placemaking, design and site layout (Elgin OPP5, PP1, PP2, PP3, H1, H8, H9, E4, E5, EP2, EP11, IMP1, IMP2)**

The site is not the subject of any masterplan, design brief or similar which may inform the delivery of development on the site. As noted, this proposal seeks only to establish the principle of development without detailed design and site layout information. If granted PPP, the proposal would be subject to conditions which would inform the character of development and identify the detailed design and site layout matters which require approval within any further application(s) for the site.

The written comments within the SS and DAS indicate that the proposal could be designed according to Policy PP3 placemaking principles. As a matter requiring further approval and to be specified in conditions, any future application (AMC or APP) would be expected to address and demonstrate how placemaking principles have been considered and informed the proposal. In addition to detailed rather than indicative drawings, this would include submission of a "Design Checklist" for both residential and commercial elements of the development in order to satisfy Policy PP3 and the associated Supplementary Guidance: Urban Design, which reflect national and local commitments to raise higher urban design standards and identify key place-making principles to be integrated into the design and site layout of the development, to help create it's identity, character and sense of place.

Given the PPP status and indicative layout plan, no "Checklist" has been provided and no "Quality Audit" has been undertaken to assess the proposal's conformity with place-making principles. After pre-application discussions and apart from an identified improvement in road and path connections, there appears to be limited change made to the indicative site layout arrangements and both then, and now, the indicative layout details are unlikely to comply with Policy PP3. Without prejudice, the design and site layout details will require revision and be informed by, for example, the extent of on-site land raising and/or other measures to mitigate against flood risk, detailed surface water drainage arrangements and accommodation of land required for transportation improvements, etc. as well as the requirements of consultees and planning policy.

In design placemaking terms, detailed design information is required to define the character and identify of the development. For the restaurant/bar, the SS reference to the size or footprint area of the building does not express or inform it's likely external appearance, form and massing, material finishes and scale (or height) for a building which will be prominently sited and adjoin the Elgin TSP31 junction. This siting presents opportunities for a dual aspect design, but it remains to be determined whether the

building will take reference in its design to the historic use of the site, as an Auction Mart, with a design bespoke to the site and it's surroundings rather than one based upon operator's requirements alone.

From the SS and DAS, character and identity will be informed by the actual proposed housing mix of 1, 2 and 3-bedroom houses and/or flats. However, this is not reflected in the indicative site layout which exhibits a large degree of uniformity in plot size and size (footprint) of property. Also, reference is made to 1, 2 and 3 storey development yet no information about the actual design, external appearance, material finishes, and scale or height of property is indicated. 3-storey development is not an existing characteristic of property within the surrounding area and it would conflict with the 1 and 2-storey character described in the DAS.

At the pre-application stage, flats would be accommodated within the 3-storey buildings including two along Linkwood Road and although requested to do so, neither the SS and DAS address the appropriateness of 3-storey buildings within the development relative to the scale of the existing surrounding buildings and their resultant impact upon the character, appearance and amenity of the area including neighbouring property. To remain in keeping with the surrounding development, a condition should be included to restrict the proposed development to not exceed 2-storey in scale.

In housing mix terms, further variety and interest will be required, not just houses and flats as proposed but also to include provision for private, affordable and accessible housing. These matters would require to be specified in conditions for approval within any further application(s) for the site and impinge upon the proposed design and site layout arrangements for the site and necessitate revision of the current indicative layout details.

From Policy H8 and associated Supplementary Guidance, 25% of all housing will require to be delivered as affordable housing. Relative to the identified total of 101 units, 26 affordable units of accommodation will be required, with details of the number, mix and house type designs for the required accommodation and the arrangements for the long-term delivery and management of affordable accommodation to be agreed in consultation with the Council's Housing Strategy & Development Manager. The appropriateness of using predominantly the flatted development for affordable housing, as indicated in the SS, may require to be reviewed in terms of the delivery of affordable accommodation related to local housing needs.

From Policy H9 and associated Supplementary Guidance, 10% of all private housing will require to be built to wheelchair accessible standards of which 50% require to be single-storey. Relative to the identified 101 units, 8 accessible including 4 single-storey accessible dwellings will be required to be provided on site and a Compliance Statement submitted to demonstrate that the accommodation is accessible.

In terms of movement placemaking principles the site, in terms of it's location, is well-placed in terms of access to facilities and amenities, including access to surrounding road, rail, foot and cycle path and public transport networks, and after improvement of Linkwood Road (see below), the existing bus infrastructure will be retained and enhanced.

Internally, the restaurant/bar with it's parking and servicing areas are connected to a new access off Linkwood Road which in turn is now connected through the proposed development to another (new) site access off Linkwood Road. In addition, the internal roads, lane and squares arrangements are intended to maximise permeability and

connectivity within the site. External connections are proposed onto Linkwood Road, but the internal site road/lane should be taken onto the boundary with Market Drive so as to be capable of providing a (road) connection in the future. As well as connections within the site, foot and cycle connections are also proposed onto New Elgin Road and Market Drive (the latter as required by Elgin OPP5).

The extent to which the street pattern will meet legibility/street hierarchy principles including key character buildings and use of different surface materials and variable road widths to reduce vehicle speeds, maximise pedestrian and cycle safety and promote a safe environment will remain to be determined as a matter to be specified in conditions for approval within any future application(s).

As advised at the pre-application stage, the car parking arrangements as shown on the indicative site layout would not be compliant with the Policy PP3 car parking criterion given the predominance of parking located across the frontage of properties or in blocks of parking, an arrangement which is unacceptable in terms of its physical appearance and visual dominance. The indicative mitigation of a tree or grass strip between plots and/or pairs of spaces, etc will have limited effect in reducing the dominance of car parking with the surrounding streetscape. The required relocation of parking to the side and rear of property, as occurs within Milnefield Avenue to the south, will impact on the overall site layout and number of units to be accommodated within the site.

In terms of open space principles, the open space area as identified will be overlooked by property and accessible to the whole development. The quality of that space including the extent of its availability and accessibility will however be reduced where that area is used for SUDs, a detail not shown on the indicative drawing submitted for planning purposes but included on the concept drainage drawing included in the Drainage Assessment (DA).

As a matter to be specified in conditions for approval, any future application will require to demonstrate that the requirements of Policy E5 are met, both in terms of quality (including function and accessibility etc to the surrounding development) and quantity (including the requirements for 20% (minimum) of total site area to be open space). The SS indicates that 20% site coverage is achieved but the finalised site layout will determine the extent of compliance with the identified policy.

From the indicative site layout and tree survey, provision for new and replacement planting within the site is proposed. No detailed landscape scheme with full planting specifications is included, a matter to be specified as a condition for approval within any further application. In turn, the scheme will inform consideration about whether bio-diversity is enhanced. Reflecting the requirements of Policy E4, the tree survey identifies removal of existing trees within the site due to their condition and to accommodate the development. According to the SS and tree survey, the trees around the site perimeter are to be maintained (retained/protected) as a natural feature.

In light of the above comments, and although in principle the development may be acceptable, further information on a number of matters will be required before the development could be considered to comply with all relevant planning policy relating to design, site layout and place-making considerations.

### **Impact of notifiable hazardous installation, Gleaner Oils (EP11)**

Whilst not a place-making criterion, the site layout, in particular the nature and disposition of buildings within the Mart site, will be informed by their proximity to this installation which

is located to the north of Linkwood Road.

Following consultation and based on further information provided to HSE i.e. the indicative site layout drawing over-marked with consultation zone radii, the proposal would have 2 dwellings located within the inner consultation zone and 28 dwellings located within the middle consultation zone. All remaining housing and the restaurant/bar will be located either within or outside the outer consultation zone. Based upon this level of provision, HSE do not object or advise against the development on the grounds of public safety, and therefore, in principle the proposal would be acceptable in terms of Policy EP11. The requirements of HSE about the siting of property should be a matter to be specified as a condition for approval within any further application(s).

### **Sustainability (PP2)**

The proposal complies with Policy PP2 in so far as the requirement to provide a Sustainability Statement (SuS). In terms of sustainability credentials, the SuS highlights that the siting of the proposal is enhanced by being located close to road, rail, public transport and foot and cycle networks, and accessible to local amenities and Elgin town centre, thereby making efficient use of land and available infrastructure. However, the proposed sustainability measures as identified in the document are somewhat “generic” in nature and require further investigation prior to inclusion within the development.

Thus, although the SS might consider the SuS to demonstrate compliance with Policy PP2, it lacks sufficient detail to identify and confirm the actual and specific measures that will be incorporated, and despite being advised to do so, at the pre-application stage, it does not readily follow the “Sustainability Checklist” format for considering sustainability issues as recommended by Policy PP2 and the associated Supplementary Guidance: Climate Change. As a matter to be specified for approval in any subsequent application and to demonstrate adherence to sustainability principles and compliance with Policy PP2, the required Checklist should be provided to confirm all sustainability measures incorporated into the development.

### **Sequential approach (R2)**

Although not a Class 1 retail use, the SS acknowledges that as a use likely to generate significant footfall, the restaurant/bar should be subject to the sequential approach. As advocated and required by SSP and Policy R2, the sequential approach requires an ordered consideration of locations for new development, firstly within town centre and thereafter progressing to edge of centre, commercial centres, and out of centre sites. After considering several sites and submission of additional information thereon, the requirements of the sequential approach have been met.

In summary, the assessment considers the Mart site will be a well-designed building sympathetic to its setting; it offers an attractive frontage onto Linkwood Road and New Elgin Road; and it is located in a high-profile location accessible to a choice of transport modes. Moreover, it is sequentially and ideally suitable for the proposed restaurant/bar because there are no suitable, viable or available sites either within or on the edge of the town centre and additionally, it sits adjacent to the commercial centre on Edgar Road to the west where there are also no suitable opportunities capable of accommodating the development. The agent’s assessment concludes that the site should be favoured because it involves development on vacant land, although the SS confirms that the site is occupied as an Auction Centre, and, as an out of centre site, it fits sequentially within the locations identified in Policy R2.

In terms of the remaining requirements of Policy R2, no retail impact assessment has been sought/required because the size and nature of the restaurant/bar is considered unlikely to have a significant impact on the vitality and viability of town centres including Elgin, and the intended family-orientated nature of the proposal differs from the current offer of town centre restaurant/leisure premises. The SS considers that the proposal will have a positive contribution upon the built environment and transport and drainage service connections and infrastructure can, or will, be provided and/or made available.

### **Noise (EP8, IMP1)**

The SS does not address the potential for pollution associated with construction and operation of the development. In some matters, pollution impacts during both phases of development may be addressed through separate non-planning (environmental) legislation however, Policy EP8 advises that where significant pollution may be caused by a development, assessment and appropriate mitigation is required.

Here, noise associated with the restaurant/bar is identified as most likely to impact on the character and amenity of the area, with the nearest neighbouring property located to the north east and south. Following consultation and to accord with policy, the Environmental Health Manager has recommended that a noise impact assessment be submitted to identify, manage and mitigate all noise sources associated with the construction and operation of the restaurant/bar. This would include, but not be limited to, consideration of the location, character and performance of all plant and machinery (including ventilation/extraction and odour control systems), whether surface mounted or affixed to the building) etc. The required assessment should be a matter specified for approval in a condition to be addressed within any future application. Subject to compliance with this requirement, the proposal would in principle be acceptable in policy terms.

### **Pollution prevention (EP8, IMP1)**

Policy IMP1 requires any application to address potential risks of pollution in accordance with recognised pollution prevention and environmental measures. In part recognising that the potential risks of pollution cannot be fully characterised at this PPP stage and/or because construction methods and technologies are currently unknown and notwithstanding the construction management programme as submitted (which is not approved), SEPA recommend the preparation and implementation of a (detailed) site-specific construction environmental management plan (CEMP).

As advised at the pre-application stage, and following consultation with SEPA, the CEMP would be expected to systematically identify and address all pollution prevention risks and aspects of the site/the development that might adversely impact on the environment and identify all required/proposed measures to be adopted and implemented to mitigate all identified pollution prevention risks, including account of contractor and construction working practices and 'best practice' to manage and mitigate the impact on water, materials including soils and waste as well as site preparation, demolition and land raising where proposed. It is recommended that the CEMP be a matter specified for approval within any future application and subject to compliance with this requirement, the proposal would, in principle, be acceptable in policy terms.

### **Contamination (EP9, IMP1)**

Policy EP9 requires investigation of contaminated land. Although recommended to do so at the pre-application stage, no assessment has been undertaken to determine that ground conditions will not cause significant pollution in terms of contaminated land. As such and as a matter to be specified as a condition for approval within any further

application(s) for the site, the Environmental Health Contaminated Land Service has recommended that a contamination assessment be carried out in accordance with an agreed methodology along with on-site physical investigation and identification of all remediation measures to be carried out, where appropriate, etc. Subject to compliance with this requirement, the proposal would, in principle, be acceptable in policy terms.

### **Cultural heritage (BE1, IMP1)**

The Auction Mart premises is not included on the statutory list of buildings of special architectural or historic interest, nor located within any Conservation Area. The proposal is also considered unlikely to impact, directly or indirectly, upon the setting of any nearby cultural heritage assets. However, to achieve a historic record of the Auction Mart Building, a photographic survey is recommended, as advised by Aberdeenshire Archaeology Services. Where so incorporated as a matter to be specified in conditions for approval of any further application, the proposal would, in principle, not be considered to conflict with cultural heritage policies as identified.

### **Natural heritage (E1, E2, E3, E4, IMP1)**

The Auction Mart site, including the field/paddock area, is not the subject of any site-specific nature conservation designation and the trees/shrubs located within or around the site perimeter are not subject to any Tree Preservation Order. Trees around the site boundary are to be retained/protected during construction but those within the site will be removed to accommodate the development and owing to their existing condition. These will be replaced within the development along with additional new plantings, to enhance both the character and appearance of the proposed development and biodiversity.

The current ecological value of the site would be regarded as low given the nature and use of the grassed area, and a bat survey has been undertaken which confirms that no protected bat species are present or occupy the Mart premises. SNH has not objected to the development on the basis that it would adversely impact on natural heritage interests. In principle, the proposal would not conflict with natural heritage policies as identified.

### **Transport and access (T1, T2, T5, T6, T7, IMP1, IMP2 IMP3)**

As required by Elgin OPP5, a TA has been submitted and, as revised, it includes an indicative layout drawing (10270 P(00) 01B) which differs from the indicative (planning) drawing, for example, in terms of the extension of the internal road/lane being taken on the boundary with Market Drive and introduction of a pedestrian link onto New Elgin Road to the south of the restaurant/pub.

Reflecting SPP principles which promote development utilising existing infrastructure, reducing the need to travel and providing safe and convenient opportunities for multi-modal transport including walking and cycling, the TA regards the proposed development as complying with national, regional (HITRANS) and local transport policy wherein the site is considered to be well-placed in terms of access to road and sustainable (rail, public transport, foot and cycle) transport modes and it is within easy walking distance of many facilities including employment, retail, leisure, education and Elgin town centre.

**Site access, internal road layout and parking:** In accordance with Elgin OPP5, the two site priority junctions both take access onto Linkwood Road. The TA confirms that full details and specifications for the site accesses, visibility splays, swept path analysis for the site access and internal junctions, and definition of the street structure/hierarchy for all roads, lanes and squares, foot and cycle paths, etc. will be provided. Whilst not objecting to the development on road safety grounds, the Transportation Manager recommends that

such matters to be specified in conditions to be addressed within any further application(s) to develop the site.

In addition, the Transportation Manager recommends inclusion of the extended road detail being taken onto the boundary of Market Road, so that a road link is capable of provision in the future, along with pedestrian and cycle link connections to/from Market Drive, New Elgin Road and elsewhere within the site (as identified) and the safeguarding of land along Linkwood Road/New Elgin Road (as defined) for future transportation improvements. Subject to the identified requirements and acceptance of transport details thereafter, the proposal would satisfy transport-related Policies T2, T7 and the Elgin OPP5 designation.

Although required by Elgin OPP5, pedestrian/cycle access onto the eastern boundary is neither proposed nor required, the latter following consultation on the application. To achieve this would require access through property located between the site and Linkwood Road. On this basis, a departure from the Elgin OPP5 designation can be supported.

From the TA, full details of parking provision including the location, number and design of spaces etc for cars, cycles and motorcycles will be provided in accordance with the Council's adopted parking standards. Again, whilst not objecting to the development on parking grounds, the Transportation Manager recommends that parking be a matter to be specified as a condition to be addressed within any further application(s) to develop the site. The Transportation Manager also requires provision for secure cycle parking and electric charging to be included into the development and that all parking to be in accordance with parking standards applicable at the time of any further application.

Whilst addressing the physical provision of parking spaces, the impact of such provision will also require to be considered to ensure compliance with Policy PP3 place-making considerations, as noted earlier. This may impact upon the current indicative layout and inform the layout and number of units of residential accommodation proposed on the site.

**Impact on the surrounding road network:** The TA acknowledges that the development will impact on the surrounding road network, however the TA analysis is limited to impact on Linkwood Road and the Elgin TSP31 junction as defined after considering the number of vehicle trips likely to be generated by the development and their distribution over the wider road network. The TA considers that the development can be accommodated, without significant effect, on the road network as examined (see below).

The TA does not assess the impact on other parts of the network including TSP32 as identified/required in Elgin OPP5, except by noting that several Elgin Transport Strategy (ETS) interventions are planned and will be addressed through developer obligations.

The Transportation Manager does not agree with the trip generation rates used in the TA for the restaurant/pub trip. Instead, higher estimates of trip generation rates and predicted levels of traffic (including 44 (by Transportation Manager) rather than 35 (by TA) two-way PM peak restaurant/pub vehicle trip rates) have been used to inform the Transportation Manager's consideration of the proposal, including developer obligations. Although the proposal is acceptable, in principle, the Transportation Manager recommends, as a matter to be specified in conditions, that further (up-dated) TA(s) be submitted for the actual details of the development in accordance with an agreed scope of the further TA(s) using the revised (higher) trip rates.

According to the TA, the two priority-controlled site access junctions onto Linkwood Road would accommodate the development with no queuing and minimal delay on the road. The detailed design and layout of the accesses will be a matter specified by condition to be addressed within any further application(s) for the site.

Although not assessed in detail, the TA acknowledges that improvement to the TSP31 junction is proposed as part of the ETS which also identifies a range of proposed interventions, covering all modes of transport intended to benefit Elgin's transport network. The ETS identifies the up-grade of the Elgin TSP31 roundabout junction to include a signal-controlled junction incorporating pedestrian and cycle infrastructure. Reflecting the ETS approach, the TA proposes that the development obligations be used to address the impact of this development (and others) upon the Elgin TSP31 junction.

Following consultation, the Transportation Manager has identified that the development will impact on other junctions identified with the ETS. To address the cumulative impact of this development, developer obligations have been identified towards ETS interventions, details of which have been made available to the applicant (see below).

The ETS-based proposal for improvement of cycle facilities on Linkwood Road is also identified in the TA, and by the Transportation Manager. To achieve this, widening of Linkwood Road is required to facilitate provision of additional lanes at junctions and for turning traffic and pedestrian islands, etc. As a matter to be specified by condition, the Transportation Manager has identified a land area along the Linkwood Road and New Elgin Road frontages which requires to be safeguarded to accommodate the required improvements as well as provision of a 3m cycle path and provide for replacement and enhanced bus infrastructure. This will inform, and impact upon, the site area available for development within the site.

A value for the land required for the improvement is awaited and will inform the final amount of transport-related developer obligations required to mitigate the impact of the proposal upon existing transport infrastructure.

### **Water and Foul Drainage (EP10, IMP1, IMP2)**

**Water:** The development will connect to a public water supply. Whilst Scottish Water advise that sufficient capacity may be available, a connection cannot be guaranteed. This matter will be subject to further review by Scottish Water once full planning permission is granted.

**Foul drainage:** The development will connect to a public foul drainage network, an arrangement which, in principle, is acceptable in terms of Policy EP10. Whilst Scottish Water advise that sufficient capacity may be available, a connection cannot be guaranteed. This matter will be subject to further review by Scottish Water once full planning permission is granted.

According to the submitted DA, foul drainage from each residential plot and the restaurant/bar will discharge to new gravity drains which discharge via disconnection chambers to new foul sewers within the site prior to their connection into an existing combined (foul and surface water) sewer located in Linkwood Road.

### **Surface Water Drainage (EP5, IMP1, IMP2)**

In accordance with Policy EP5, the DA as submitted assumes any existing private sewers serving the Mart will be removed/abandoned and the two existing surface water sewers



crossing the site (as identified by Scottish Water) and located under the proposed open space area will be retained in situ. The DA considers that the arrangements will cope with the surface water generated on the site and thus, in principle, the site is or can be serviced in terms of drainage infrastructure.

Within the DA, the conceptual drainage layout drawing (113579/2001) differs from the indicative drawing (10270 P(00) 01) submitted with the planning application by including a SUDs basin in the north eastern corner of the open space area and a grass swale around the south eastern edge of the open space area. The tree survey drawing also mentions SUDs in the northeast corner of the site beyond the identified open space area, but no SUDs details are shown on the conceptual drainage drawings.

To manage surface water during construction, the DA proposes a strategy of measures to control surface water, to be prepared by the site contractor once site working practices are developed. The DA identifies somewhat “generic” examples of measures required to control, intercept and prevent run-off and sediment impacts upon the water environment as opposed to exact details of the actual measures that will be employed/adopted. To address the management and disposal of surface water during site construction, it is recommended that this matter to be specified as a condition for approval within any future application to develop the site.

For the operation of the development, the DA indicates that surface water run-off from building roof areas, parking bays and driveways and road areas will discharge to gravity drains and sewers via downpipes, or from porous paving with stone-filled trenches beneath or to road gullies and swales etc into new surface water sewers discharging at a controlled (attenuated) rate via an outlet control manhole into one of the existing surface water sewers which cross through the site.

Following consultation and whilst not objecting to the development in surface water drainage terms, MFRM note the conceptual nature of the operational and construction phase drainage strategy and the need for further information to demonstrate that the SUDs arrangements are appropriately designed and sized. Similarly, whilst noting that the SUDs basin and other details are not included on the indicative planning drawing, SEPA does not object to the principle of the development but they recommend that further details of the operational (and construction) SUDs be provided.

To address consultee requirements, it is recommended that the detailed arrangements to address the management and disposal of surface water during operation of the development be a matter to be specified as a condition for approval within any further application(s).

Agreement from Scottish Water is required to connect into their existing infrastructure. The proposed attenuated rate of discharge level (44l/s) into their existing surface water sewer, identified in the DA as having been agreed with Scottish Water, reflects information in a response given by Scottish Water in 2016 (see Consultations).

Scottish Water’s response is clear that surface water discharge into their combined sewer (in Linkwood Road) will not be allowed except in exceptional circumstances. The consultee has advised that no Drainage Impact Assessment (for Scottish Water purposes) has been submitted to assess the impact of the development on the surrounding drainage network.

That said, the proposed connection here is not to the existing combined sewer but to an existing surface water sewer located within the site. In principle, the arrangements reflect Scottish Water's advice within separate foul and surface water service connections and for surface water discharging to SUDs within the site, and thereafter discharging to an existing surface water sewer at an agreed attenuation rate. However, in relation to the advice given earlier by Scottish Water, the DA lacks information to indicate whether any alternative proposals to manage and dispose of surface water solely within the site (attenuated or otherwise) have been considered but cannot be achieved, to explain why the proposed connection to the existing surface water is necessary.

### **Flooding (EP7, IMP1, IMP2)**

Mindful of the sensitivity and incidence of flooding on this site in previous years, including an event in 2014, the applicant/agent was advised, at the pre-application stage, of the need for a detailed (and robust) FRA to satisfy the requirements of Elgin OPP5 and Policy EP7 and SPP, identifying all flood risk sources and details of all required/proposed measures to mitigate and not exacerbate the risk(s) of flooding onto, on and off the site.

As submitted, the FRA discounts coastal flooding as a flood risk source and with the Elgin FAS having addressed the risk of flooding from the River Lossie, it regards the site as now being outwith the functional floodplain and not at risk of fluvial flooding. However, in more severe events, beyond the 1 in 200-year return event period/design standard for the Elgin FAS, the FRA acknowledges the residual flood risk from exceedance of capacity of the Tyock Burn and culvert and back-up on the River Lossie. According to the FRA, infrastructure failure (of Tyock Burn culvert or blockage) is not a risk in a 50% blockage scenario and whilst elevated ground water levels may have been a contributory factor, this source would not by itself cause flooding of the scale experienced in 2014. Relative to a 1 in 200-year return event period, the FRA acknowledges the site as being at risk from overland surface water flows entering the site and that the public sewers network is unlikely to have capacity or ability to deal with water from other sources.

The FRA proposes raise surface levels within the site to mitigate against the residual fluvial flood risk, infrastructure failure and other minor potential flood sources although the term "minor" is not defined but presumed to refer to other FRA-identified flood risk sources. Whilst land raising would not displace fluvial water being displaced at the 1 in 200-year return event standard, the FRA confirms that displacement of surface water may result in increased flood risk to adjacent receptors in a 1 in 200-year return event period. As mitigation to address surface water overland flows and sewer flooding, the FRA concludes both sources need to be addressed as part of a local surface water drainage strategy and it awaits the outcome of the Council's proposed SWMP to determine whether land raising will increase the risk to adjacent property and assist in developing further mitigation.

The FRA identifies flood risk sources but thereafter it is not sufficiently detailed, as required by Elgin OPP5 etc. owing to the lack of detail to demonstrate the nature and extent of all required/proposed mitigation measures and the effect of such measures to manage and address the risk of flooding from all sources, including demonstration that it will not exacerbate the risk of flooding to the development itself and to elsewhere.

Indeed, following consultation, SEPA and MFRM object to the development based upon the lack of information provided to address flooding. The latter adds that, as presented, the FRA is not based upon, nor includes, hydrology and hydraulic modelling (and does not follow SEPA's recommended guidance). Although in agreement that the site benefits from

the completion and operation of the Elgin FAS, both consultees and the FRA highlight the residual fluvial flood risk beyond the Elgin FAS design standard and that that risk and risks arising from other acknowledged flood sources are not addressed or detailed in the FRA.

For example, in mitigation, land raising is proposed but no details including the extent or area(s) involved and depth(s) or height(s) of the proposed/required up-fill are included, including reference to existing and finished ground and floor levels. It is also unclear whether compensatory storage, if any, will be provided (including the location, extent or area and depth and volume of storage, etc.). Furthermore, despite being acknowledged as having the potential to affect the risk of flooding, there is no demonstration (including modelling outcomes) that mitigation involving land raising (either alone or in interaction with other mitigation measures) does not exacerbate the risk of flooding to the development and elsewhere, for example, to the Tyock Burn and surrounding properties adjoining the site. Representations received against the proposal also express concern about the effect of land raising on property adjoining the site.

Consultees, and those who have submitted representations, also highlight insufficient information about other proposals to mitigate fluvial flood risk associated with the Tyock Burn, the effects of land raising upon groundwater or in addressing surface water flows entering the site, and the effects of displacement of flood water to the surrounding area. These matters are not addressed in the FRA including information to demonstrate both the extent and the effect, including any exacerbation, of flood risk is mitigated.

To address surface water and public sewer flood sources, the FRA places an element of dependence upon the Council's SWMP arrangements. At this time, the applicant's agent and consultant engineer are aware of the nature, purpose and time-scale of the SWMP as agreed by the Economic Development & Infrastructure Committee (Minute, 23 January 2018 refers) a Plan that is under investigation with outcomes yet to be identified/agreed, including those for an "Elgin: New Elgin Road/Linkwood Road" option.

Despite being advised (by MFRM), before and during consideration of this application, not to rely upon the SWMP and to bring forward their own proposals to address and manage flood risk (an approach also endorsed within SEPA's consultation response), no further detailed proposals to mitigate the extent and effects of flooding have been submitted and the FRA has not been revised further to address the representations and consultation responses about the lack of sufficient information to demonstrate that the proposal does not exacerbate the extent and effects of flooding.

Therefore, notwithstanding the PPP status of the application and in the absence of sufficient information, the FRA as presented is not a detailed FRA as required by Elgin OPP5 and in principle, the proposal is contrary to Policy EP7, H1 and IMP1 in that it does not demonstrate that the risk of flooding is not exacerbated and does not have an adverse impact on the surrounding area. Contrary to the SS, the FRA does not demonstrate that the proposals are, or would be, acceptable in flood terms and/or that the mitigation measures as identified resolve flood impacts.

More recently, the applicant's consultant engineer has summarised flood issues. The summary confirms that the site can cope with and address surface water generated on the site (DA refers), and that the site is not at risk of fluvial flooding (at 1 in 200-year event level). In the absence of information but based on a predicted flood water level of around 11.2mAOD, the summary estimates that about 75% of the site at current levels is predicted to flood as a result of surface water from off-site sources. It regards this as a

significant issue and without mitigation/land raising the site is prevented from being developed, and even with further detailed modelling, the summary predicts the majority of the site will still flood without off-site flood measures and land raising.

The estimate about the extent of site being predicted to be at risk of flooding is not supported by detailed calculations including modelling, and if the predicted level is being inferred from information provided earlier by MFRM, the summary does not acknowledge the limitations and qualifications placed upon that information which is not sufficiently robust for planning application purposes and that it did not take account of fluvial flooding or interactions with the Tyock Burn, River Lossie and Scottish Water infrastructure.

The summary assumes that all surface water infrastructure is a Council responsibility, which is not the case and it's suggestion that the Council engage in reviewing and progressing an off-site solution for surface water does not acknowledge the Council's already agreed SWMP investigations or, where owing to the proposed time-scale and or purpose of those investigations the advice that the applicant should bring forward their own proposals to address and manage flooding, noting also that if the Council does develop a scheme then it would be to provide protection to existing property and not to facilitate new development. The summary does not acknowledge that insufficient information has been provided to demonstrate that the risk of flooding has been addressed without exacerbating the risk of flooding from all identified sources of flooding both to and from the development site, it does not add any further information to address the flooding issue and the comment that flooding issues blighting the site require to be addressed by the Council rather than through this application appear to be misplaced and are not accepted.

### **Developer Obligations (IMP3)**

Policy IMP3 and the associated Supplementary Guidance: Developer Obligations (March 2018) seeks obligations (contributions) where development has a measured adverse or negative impact upon existing infrastructure, community facilities or amenity.

Following consideration, and as revised in July 2018, a draft 'package' of developer obligations for this proposed mixed-use development has been identified in relation to education (secondary), healthcare (health centre/surgery and dental) and transportation interests. The education and healthcare obligations are based upon the residential element of the development whilst the transport obligations are based on an assessment of the total impact of the development and then split, proportionally, between, both residential and commercial (restaurant/bar) elements of the development (and based upon the revised (higher) trip rates). The transport obligations, for commercial development, are not subject to the maximum 'cap' of £6,500, which applies to the residential element of this development only (Supplementary Guidance: Developer Obligations (March 2018) refers). The transport obligations will be revised once a land value for the land to be safeguarded along Linkwood Road/New Elgin Road is established.

At present, the draft package of obligations as identified/required to mitigate the impact of the development represents approx. 75% of the total identified developer obligations although the total obligation package has yet to be finalised. In accordance with the obligations process, the draft assessment has been forwarded to the applicant's agent and although asked to do so, there has been no written confirmation from the applicant regarding their willingness and/or agreement to mitigate the identified impact of their development including the level of obligation (contributions) as identified.

As noted, the obligations have yet to be finalised and a land value has yet to be obtained. It is also understood that there is an outstanding issue about the need to reduce the transport obligations further: according to the agent, the assessment does not take account of the number of vehicle trips that are 'linked' (i.e. already on the network) as opposed to new trips, an issue not addressed in the TA and the Transportation Manager is awaiting a robust justification from the applicant's transport consultant being considering this matter further, including any revised (reduced) level of obligation.

At the time of this report and as described above the matter about whether the proposal complies with Policy IMP3 therefore remains outstanding, including a finalised and agreed package of obligations to mitigate the impact of the development upon the surrounding area. Once finalised, it is likely that the obligations would be subject of a legal agreement to be completed prior to issue of any formal grant of planning permission in principle.

### **Conclusion and Recommendation**

As an application seeking planning permission in principle, no detailed design and site layout information is included to characterise the development. The proposal is for a mixed-use development – restaurant/bar and residential – to be located on an opportunity site, Elgin OPP5 as defined within the Moray Local Development Plan 2015.

In principle, the proposed restaurant/bar and residential uses are considered acceptable and compatible with uses found within the surrounding area. Subject to matters being specified in conditions for approval within any further application(s) and thereafter the submission and approval of suitable and appropriate details for the development, the proposal is or can be acceptable in regard to matters regarding the design, siting and servicing of the development, and accord within relevant or related planning policy.

However, notwithstanding the PPP status of this application the proposal is, and remains, contrary to development plan Policies EP7, H1, IMP1 and the Elgin OPP5 designation, and Scottish Planning Policy regarding matters about the impact of flooding upon the development and the surrounding area. In particular, and although required, a detailed Flood Risk Assessment has not been provided (Elgin OPP5 designation refers) and insufficient information is provided about the arrangements to manage and mitigate the risk of flooding, in terms of details about the extent of all proposed/required mitigation measures (which may include land raising and/or any other measures) to address all identified sources of flood risk associated with the site and demonstration that the effects of such mitigation measures as required/proposed will not exacerbate the risk of flooding whether to the development itself and to elsewhere, including property adjoining the site (Policy H1, IMP1 and Scottish Planning Policy refers).

At the time of determination and in terms of Policy IMP3, a measured impact of the development upon existing infrastructure, community facilities and/or amenity has been identified however a finalised package of developer obligations has yet to be agreed and insufficient information is available to determine whether the identified impact will be mitigated.

REFUSAL is recommended.

## **APPENDIX**

### **POLICY**

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

##### **OPP5: Auction Mart, Linkwood Road**

This site is considered suitable for business use, which may include a range of compatible industrial, business, office and distribution uses. Consent for retail uses will be subject to Policy R2 and R3. Consent for any development will also be dependent on, the provision by the developers of a landscaped area in association with the development, incorporating public access for pedestrians and cyclists, adjoining and within the Southern and Eastern boundaries of the site. Access should not be taken off the roundabout but off Linkwood Road. Transport Assessment required to consider the impact of the development on the road network and mitigation required to address this. In particular the development impact on the A941/Edgar Road roundabout (TSP31) and Laichmoray Roundabout (TSP 32) needs to be addressed. A detailed Flood Risk Assessment will be required for any planning application that is submitted for this site.

##### **TSP31: Edgar Road/New Elgin Road**

Appraisal of this junction based on the development that has been given consent already shows insufficient traffic capacity at this junction. It should be noted that scope for additional capacity improvement at this location is limited due to land constraints adjacent to the junction. Junction improvement will be essential for designated sites in the immediate vicinity of the junction (OPP1 and OPP5). Junction improvement will also be required for any other sites being developed in Elgin (north and south of the railway line) which would impact on this junction. The process for identifying the impact and the level of mitigation is through the submission and approval of a Transport Assessment acceptable to the Council. Developers are urged to contact Transportation at the earliest opportunity to clarify the scoping matters for a Transport Assessment.

##### **TSP32: Moss Street/Station Road**

Appraisal of this junction based on the development that has been given consent already shows insufficient traffic capacity at this junction. It should be noted that scope for additional capacity improvement at this location is limited due to land constraints adjacent to the junction. Junction improvement will be required for any sites being developed in Elgin (north and south of the railway line) which would impact on this junction. The process for identifying the impact and the level of mitigation is through the submission and approval of a Transport Assessment acceptable to the Council. Developers are urged to contact Transportation at the earliest opportunity to clarify the scoping matters for a Transport Assessment

##### **Primary Policy PP1: Sustainable Economic Growth**

The Local Development Plan identifies employment land designations to support requirements identified in the Moray Economic Strategy. Development proposals which support the Strategy and will contribute towards the delivery of sustainable economic growth and the transition of Moray towards a low carbon economy will be supported where

the quality of the natural and built environment is safeguarded and the relevant policies and site requirements are met.

### **Primary Policy PP2: Climate Change**

In order to contribute to reducing greenhouse gas emissions, developments of 10 or more houses and buildings in excess of 500 sq m should address the following:

- Be in sustainable locations that make efficient use of land and infrastructure
- Optimise accessibility to active travel options and public transport
- Create quality open spaces, landscaped areas and green wedges that are well connected
- Utilise sustainable construction techniques and materials and encourage energy efficiency through the orientation and design of buildings
- Where practical, install low and zero carbon generating technologies
- Prevent further development that would be at risk of flooding or coastal erosion
- Where practical, meet heat and energy requirements through decentralised and local renewable or low carbon sources of heat and power
- Minimise disturbance to carbon rich soils and, in cases where it is agreed that trees can be felled, to incorporate compensatory tree planting.

Proposals must be supported by a Sustainability Statement that sets out how the above objectives have been addressed within the development. This policy is supported by supplementary guidance on climate change.

### **Primary Policy PP3: Placemaking**

All residential and commercial (business, industrial and retail) developments must incorporate the key principles of Designing Streets, Creating Places and the Council's supplementary guidance on Urban Design.

Developments should;

- create places with character, identity and a sense of arrival
- create safe and pleasant places, which have been designed to reduce the fear of crime and anti social behaviour
- be well connected, walkable neighbourhoods which are easy to move around and designed to encourage social interaction and healthier lifestyles
- include buildings and open spaces of high standards of design which incorporate sustainable design and construction principles

- have streets which are designed to consider pedestrians first and motor vehicles last and minimise the visual impact of parked cars on the street scene.
- ensure buildings front onto streets with public fronts and private backs and have clearly defined public and private space
- maintain and enhance the natural landscape features and distinctive character of the area and provide new green spaces which connect to green and blue networks and promote biodiversity
- The Council will work with developers and local communities to prepare masterplans, key design principles and other site specific planning guidance as indicated in the settlement designations.

### **Policy ED5: Opportunity Sites**

The town and village statements will identify "opportunity sites" which present the opportunity for appropriate alternative uses in the event of a proposal to re-develop. These are often vacant or derelict sites that are no longer required for their original or previous uses. These "brownfield" sites are an alternative to utilising undeveloped, "greenfield" land. Any new proposal should be compatible with surrounding uses.

The historical uses of "opportunity sites" could require contaminated land assessments to be carried out, with remediation prior to re- development.

Any uses that are given should be viewed as illustrative examples only, and not taken as a definitive list of acceptable activities.

### **Policy H1: Housing Land**

#### **Designated sites**

Land has been designated to meet the strategic housing land requirements 2013-2025 in the settlement statements as set out in Table 1. Proposals for development on all designated housing sites must include or be supported by information regarding the comprehensive layout and development of the whole site. This allows consideration of all servicing, infrastructure and landscaping provision to be taken into account at the outset. It will also allow an assessment of any contribution or affordable housing needs to be made. Proposals must comply with the site development requirements within the settlement plans and policies and the Council's policy on Place- making and Supplementary Guidance, "People and Places".

#### **Windfall sites within settlements**

New housing on land not designated for residential development within settlement boundaries will be acceptable if;

- a) The proposal does not adversely impact upon the surrounding environment, and
- b) Adequate servicing and infrastructure is available, or can be made available
- c) The site is not designated for an alternative use



d) The requirements of policies PP2,PP3 and IMP1 are met.

### **Housing Density**

Capacity figures indicated within site designations are indicative and proposed capacities will be considered against the characteristics of the site, conformity with policies PP3, H8 and IMP1.

### **Policy H8: Affordable Housing**

Proposals for new housing developments of 4 or more units (including conversions) must provide 25% of the total units as affordable housing.

A higher percentage contribution may be appropriate subject to funding availability as informed by the Local Housing Strategy. A lesser contribution or alternative in the form of off-site provision or a commuted payment will only be considered where exceptional site development costs or other project viability issues are demonstrated.

Supplementary or other guidance will provide further details of this policy including the proportion of provision, the specification of wheelchair accessible housing and the exceptions that may apply.

### **Policy H9: Housing Mix/Accessible Housing**

Proposals for multiple houses must meet the needs of smaller households, older people and other needs (e.g. extra care housing) identified in the Council's Housing Need and Demand Assessment.

All new residential developments must provide a range of housing of different types and sizes which should reflect the requirements of the Local Housing Strategy. Different house types should be well integrated, ensuring that the siting and design is appropriate to the location and does not conflict with the character of the local area.

Housing proposals of 10 or more units will be required to provide a proportion of wheelchair accessible housing. Flexibility may apply on less accessible sites and/or where an alternative acceptable housing mix is proposed.

Off site provision may be acceptable where sites do not have good access to local services and facilities and are not considered appropriate for housing for older people.

Supplementary or other guidance will provide further details of this policy including the proportion of provision, the specification of wheelchair accessible housing and the exceptions that may apply.

### **Policy E1: Natura 2000 Sites and National Nature Conservation Sites**

#### **Natura 2000 designations**

Development likely to have a significant effect on a Natura 2000 site which is not directly connected with or necessary to its conservation management must be subject to an appropriate assessment of the implications for its conservation objectives. Proposals will

only be approved where the appropriate assessment has ascertained that there will be no adverse effect on the integrity of the site.

In exceptional circumstances, proposals that could affect the integrity of a Natura site may be approved where;

- a) there are no alternative solutions; and
- b) there are imperative reasons of over-riding public interest including those of a social or economic nature, and
- c) if compensatory measures are provided to ensure that the overall coherence of the Natura network is protected.

For Natura 2000 sites hosting a priority habitat or species (as defined in Article 1 of the Habitats Directive), prior consultation with the European Commission via Scottish Ministers is required unless either the imperative reasons of overriding public interest relate to human health, public safety or beneficial consequences of primary importance to the environment.

### **National designations**

Development proposals which will affect a National Park, Site of Special Scientific Interest (SSSI) or National Nature Reserves will only be permitted where:

- a) the objectives of designation and the overall integrity of the area will not be compromised; or
- b) any significant adverse effects on the qualities for which the site has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

### **Policy E2: Local Nature Conservation Sites and Biodiversity**

Development likely to have a significant adverse effect on Local Nature Reserves, native woodlands identified in the Native Woodland Survey of Scotland, raised peat bog, wetlands, protected species, wildlife sites or other valuable local habitat or conflict with the objectives of Local Biodiversity Action Plans will be refused unless it can be demonstrated that;

- a) local public benefits clearly outweigh the nature conservation value of the site, and
- b) there is a specific locational requirement for the development

Where there is evidence to suggest that a habitat or species of importance exists on the site, the developer will be required at his own expense to undertake a survey of the site's natural environment.

Where development is permitted which could adversely affect any of the above habitats or species the developer must put in place acceptable mitigation measures to conserve and enhance the site's residual conservation interest.

Development proposals should protect and where appropriate, create natural and semi natural habitats for their ecological, recreational and natural habitat values. Developers will be required to demonstrate that they have considered potential improvements in habitat in the design of the development and sought to include links with green and blue networks wherever possible.

### **Policy E3: Protected Species**

Proposals which would have an adverse effect on a European protected species will not be approved unless;

- there is no satisfactory alternative; and
- the development is required to preserve public health or public safety, or for other reasons of overriding public interest, including those of a social or economic nature, and beneficial consequences of primary importance for the environment; and the development will not be detrimental to the maintenance of the population of species concerned at a favourable conservation status of the species concerned.

Proposals which would have an adverse effect on a nationally protected species of bird will not be approved unless;

- There is no other satisfactory solution
- The development is necessary to preserve public health or public safety
- The development will not be detrimental to the conservation status of the species concerned.

Proposals which would have an adverse effect on badgers or their setts must be accompanied by a Badger Protection Plan to avoid, minimise or compensate for impacts. A licence from Scottish Natural Heritage may be required as well as planning permission. Where a protected species may be affected a species survey should be prepared to accompany the application to demonstrate how any offence under the relevant legislation will be avoided.

### **Policy E4: Trees and Development**

The Council will serve Tree Preservation Orders (TPO's) on potentially vulnerable trees which are of significant amenity value to the community as a whole, 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 protection should be replaced, unless otherwise agreed with the Council.

Woodland removal will only be permitted where it would achieve significant and clearly defined additional public benefits. Where woodland is removed in association with development, developers will generally be expected to provide compensatory planting. The Council may attach conditions on planning consents ensuring that existing trees and hedges are retained or replaced.

Development proposals will be required to meet the requirements set out in the Council's Trees and Development Supplementary Guidance. This includes carrying out a tree survey to identify trees on site and those to be protected. A safeguarding distance should be retained between mature trees and proposed developments.

When imposing planting or landscaping conditions, native species should be used and the Council will seek to promote green corridors.

Proposals affecting woodland will be considered against Policy ER2.

## **Policy E5: Open Spaces**

### **Safeguarding Open Spaces**

Development which would cause the loss of, or adversely impact on, areas identified under the ENV designation in settlement statements and the amenity land designation in rural groupings will be refused unless;

- The proposal is for a public use that clearly outweighs the value of the open space or the proposed development is ancillary to the principal use and will enhance use of the site for sport and recreation; and
- The development is sited and designed to minimise adverse impacts on the recreational, amenity and biodiversity value of the site; and
- There is a clear excess of the type of ENV designation within easy access in the wider area and loss of the open space will not negatively impact upon the overall quality and quantity of open space provision, or
- Alternative provision of equal or greater benefit will be made available and is easily accessible for users of the developed space.

### **Provision of new Open Spaces**

#### **Quantity**

New green spaces should be provided to the following standards;

- Residential sites less than 10 units - landscaping to be determined under the terms of policies PP3 and IMP1 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 including allotments, formal parks and playspaces within residential sites.

#### **Quality**

New green spaces should be;

- Overlooked by buildings with active frontages
- Well positioned, multi functional and easily accessible
- Well connected to adjacent green and blue corridors, public transport and neighbourhood facilities
- Safe, inclusive and welcoming
- Well maintained and performing an identified function
- Support the principles of Placemaking policy PP3.

## **Allotments**

Proposals for allotments on existing open spaces will be supported where they do not adversely affect the primary function of the space or undermine the amenity value of the area and where a specific locational requirement has been identified by the Council. Consideration will include related aspects such as access and car parking and not just the allotment area itself.

## **Policy BE1: Scheduled Monuments and National Designations**

### **National Designations**

Development Proposals will be refused where they will adversely affect Scheduled Monuments and nationally important archaeological sites or their settings unless the developer proves that any significant adverse effect on the qualities for which the site has been designated are clearly outweighed by social or economic benefits of national importance.

### **Local Designations**

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

- a) Local public benefits clearly outweigh the archaeological value of the site, and
- b) There is no suitable alternative site for the development, and
- c) Any adverse effects can be satisfactorily mitigated at the developers expense

Where in exceptional circumstances, the primary aim of preservation of archaeological features in situ does not prove feasible, the Council shall require the excavation and researching of a site at the developers expense.

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

## **Policy EP2: Recycling Facilities**

Proposals for new development must ensure the provision of adequate space within layouts for well designed waste storage, recycling and collection systems to maximise waste reduction and the separation of materials at source. The scheme should be designed in consultation with the Council's Waste Manager.

For major applications a site waste management plan may be required to ensure that waste minimisation is achieved during the construction phase.

## **Policy EP5: Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS)**

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

Specific arrangements should be made to avoid the issue of permanent SUD features becoming silted-up with construction phase runoff. Care must be taken to avoid the introduction of invasive non-native species during the construction of all SUD features.

Applicants must agree provisions for long term maintenance of the SUDS scheme to the satisfaction of the Council in consultation with SEPA and Scottish Water as appropriate.

A Drainage Assessment (DA) will be required for developments of 10 houses or more, industrial uses, and non-residential proposals of 500 sq metres and above.

The Council's Flood Team will prepare Supplementary Guidance on surface water drainage and flooding.

## **Policy EP6: Waterbodies**

Proposals must be designed to avoid adverse impacts upon water environment and should seek opportunities for restoration. The Council will only approve proposals impacting on water features where the applicant provides a satisfactory report that demonstrates that any impact (including cumulative) on water quality, water quantity, physical form (morphology), river hydrology, sediment transport and erosion, nature conservation, fisheries, recreational, landscape, amenity, and economic and social impact can be adequately mitigated.

The report should 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 6m between any new development and all water features is required. These should be designed to link with blue and green networks and can contribute to open space requirements. Developers may be required to make improvements to the water environment as part of the development.

## Policy EP7: Control of Development in Flood Risk Areas

New development should not take place if it would be at significant risk of flooding from any source or would materially increase the possibility of flooding elsewhere. 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 National Guidance and to the satisfaction of both the Scottish Environment Protection Agency and the Council is provided by the applicant. This assessment must demonstrate that any risk from flooding can be satisfactorily mitigated without increasing flood risk elsewhere. 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.

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 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 extreme 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 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
  - Job related accommodation e.g. for caretakers or operational staff.

Areas within these risk categories will generally not be suitable:

- 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 flow), and

- An alternative, lower risk location is not available and
- 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 should be used where appropriate. Elevated buildings on structures such as stilts are unlikely to be acceptable.

### **Policy EP8: Pollution**

Planning applications for developments that may cause significant pollution in terms of noise (including RAF aircraft noise), air, water and light emissions will only be approved where a detailed assessment report on the levels, character and transmission of the potential pollution is provided by the applicant. The assessment should also demonstrate how the pollution can be appropriately mitigated. Where the Council applies conditions to the consent to deal with pollution matters these may include subsequent independent monitoring of pollution levels.

### **Policy EP9: Contaminated Land**

Development proposals on potentially contaminated land will be approved provided that:

- a) 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
- b) 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.

The Council recommends early contact with the Environmental Health Section, which can advise what level of information will need to be supplied.

### **Policy EP10: Foul Drainage**

All development within or close to settlements (as defined in the Local Development Plan) of more than 2,000 population equivalent will require to connect to the public sewerage system unless connection to the public sewer 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 specifically allocated within its current Quality Standards Investment Programme and the following requirements apply:

- Systems shall not have an adverse impact 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 identified in the Local Development Plan) of less than 2000 population equivalent will require to connect to public sewerage system 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 risk of detrimental effect, including cumulative, to the natural and built environment, surrounding uses or amenity of the general area. Consultation with Scottish Environment Protection Agency will be undertaken in these cases.

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 (Scotland) Regulations 2004) should be explored prior to considering a discharge to surface waters.

### **Policy EP11: Hazardous Sites**

The Council will have regard to the presence of major hazard sites, and apply the PADHI (Planning Advice for Development near Hazardous Installations) methodology for planning applications within the consultation distances around these sites. Formal consultations with the Health and Safety Executive and also the Scottish Environment Protection Agency (SEPA) will take place as appropriate.

### **Policy T1: Transport Infrastructure Improvements**

The Council will promote the improvement of road, rail, air and sea routes in Moray and priority will be given to:

- a) dualling the A96 Aberdeen to Inverness route with early delivery of bypasses for settlements prioritised.
- b) improving the A95 (Keith to Grantown) route.
- c) Improving A941 (Lossiemouth to Elgin to Craigellachie) and A98 (Fochabers to Cullen) routes. Proposals must avoid or address any adverse effect on the integrity of Loch Spynie SPA or the River Spey SAC including hydrological and water quality impacts on habitat or disturbance to species.
- d) improving the Aberdeen to Inverness railway for passengers and freight by providing route and service enhancement.
- e) improving harbour facilities for freight and leisure including the diversification of the commercial harbour at Buckie for offshore renewables. Harbour improvement works must avoid or address any adverse effect on the integrity of the Moray Firth Special Area of Conservation through noise or vibration disturbance to bottlenose dolphins, cumulative increase in vessel movements, or through dredging and disposal operations.

- f) improving access to air facilities, at Aberdeen and Inverness, in particular through public transport, and the establishment of a railway station at Dalcross.
- g) improving the transport network within Elgin where there is evidence of positive economic benefits including release of sites designated in the local development plan.

Proposals that compromise the implementation of these priorities will not be acceptable.

### **Policy T2: Provision of Access**

The Council will require that new development proposals are designed to provide the highest level of access for end users including residents, visitors, and deliveries appropriate to the type of development and location. Development must meet the following criteria:

- Proposals must maximise connections and routes for pedestrian and cyclists, including links to active travel and core path routes, to reduce travel demands and provide a safe and realistic choice of access.
- Provide access to public transport services and bus stop infrastructure where appropriate.
- Provide appropriate vehicle connections to the development, including appropriate number and type of junctions.
- Provide safe entry and exit from the development for all road users including ensuring appropriate visibility for vehicles at junctions and bends.
- Provide appropriate mitigation/modification to existing transport networks where required to address the impacts of new development on the safety and efficiency of the transport network. This may include but would not be limited to, the following measures, passing places, road widening, junction enhancement, bus stop infrastructure and drainage infrastructure. A number of potential road improvements have been identified in association with the development of sites the most significant of these have been shown on the Settlement Map as TSPs.
- Proposals must avoid or mitigate against any unacceptable adverse landscape or environmental impacts.

Developers should give consideration to aspirational core paths (under Policy 2 of the Core Paths Plan) and active travel audits when preparing proposals.

New development proposals should enhance permeability and connectivity, and ensure that opportunities for sustainable and active travel are protected and improved.

The practicality of use of public transport in more remote rural areas will be taken into account however applicants should consider innovative solutions for access to public transport.

When considered appropriate by the planning authority developers will be asked to submit a Transport Assessment and Travel Plan.

Significant travel generating proposals will only be supported where:

- Direct links to walking and cycling networks are available;
- Access to public transport networks would involve walking no more than 400m;
- It would not have a detrimental effect on the capacity of the strategic road and/or rail network; and
- A Transport Assessment identifies satisfactory mechanisms for meeting sustainable transport requirements and no detrimental impact to the performance of the overall network.

Access proposals that have a significant adverse impact on the surrounding landscape and environment that cannot be mitigated will be refused.

### **Policy T5: Parking Standards**

Proposals for development must conform with the Council's current policy on parking standards.

### **Policy T6: Traffic Management**

There is a presumption against new accesses onto a trunk road, and Transport Scotland will consider the case for such junctions where nationally significant economic growth or regeneration benefits can be demonstrated.

There will also be a presumption against new direct access onto other main/key routes (the A941 and A98) except where required to support the provisions of the development plan. Moray Council will consider the case for such junctions where significant regional economic growth benefits can be demonstrated. Consideration will be given to the traffic impact, appropriate road design and traffic management requirements.

### **Policy T7: Safeguarding & Promotion of Walking, Cycling, & Equestrian Networks**

The Council will promote the improvement of the walking, cycling, and equestrian networks within Moray. Priority will be given to the paths network including Core Paths and the wider Moray Paths Network. There are several long distance routes that cross Moray including the Speyside Way, Dava Way, Moray Coastal Trail and Aberdeen to Inverness National Cycle Route.

Development proposals that would have an unacceptable impact on access rights, core paths, rights of way, long distance routes and other access routes that cannot be adequately mitigated will not be permitted. Where a proposal will affect any of these, proposals must:

- incorporate the route within the site layout and the routes amenity value must be maintained or enhanced; or
- provide alternative access that is no less attractive and is safe and convenient for the public to use.

## **Policy R2: Out of Centre Development of Retail, Commercial and Leisure Proposals**

Outwith town centres retail development proposals (including extensions) and other uses generating significant footfall such as leisure or public buildings, must:

- a) comply with the sequential approach which requires that locations for new development be considered in the following order of preference:
  - Principal and Other Town Centre Sites;
  - Edge of Town Centre Sites;
  - Other Commercial Centres identified within the Table 1 "Retail Centres and Roles";
  - Derelict or vacant land in out of centre locations that are or can be made easily accessible by pedestrians and a choice of modes of transport;
  - Out of centre sites in locations which are, or can be made, easily accessible by pedestrians and a choice of modes of transport;
- b) demonstrate that there is no unacceptable individual or cumulative impact on the vitality and viability of the identified network of town centres, this being demonstrated where appropriate, by a Retail Impact Assessment,
- c) meet any requirements for linking development to existing infrastructure including roads access, parking, as demonstrated by a Transport Assessment, sewerage, water run-off and Sustainable Urban Drainage Systems (SUDS),
- d) provide specific opportunities for access by public transport, pedestrians, cyclists and the disabled, and
- e) contribute positively to the built environment of the area by having a high standard of design.

Proposals outwith settlement boundaries will not be acceptable, with the exception of specialist retailing associated with tourism which should be considered against Policy R3 and roadside facilities which should be considered against Policy T3. Small shops intended to meet the convenience needs of a local neighbourhood should be considered against Policy R3.

## **Policy IMP1: Developer Requirements**

New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It should comply with the following criteria

- a) The scale, density and character must be appropriate to the surrounding area.
- b) The development must be integrated into the surrounding landscape

- c) Road, cycling, footpath and public transport must be provided at a level appropriate to the development. Core paths; long distance footpaths; national cycle routes must not be adversely affected.
- d) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water.
- e) Where of an appropriate scale, developments should demonstrate how they will incorporate renewable energy systems, and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria.
- f) Make provision for additional areas of open space within developments.
- g) Details of arrangements for the long term maintenance of landscape areas and amenity open spaces must be provided along with Planning applications.
- h) Conservation and where possible enhancement of natural and built environmental resources must be achieved, including details of any impacts arising from the disturbance of carbon rich soil.
- i) Avoid areas at risk of flooding, and where necessary carry out flood management measures.
- j) Address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.
- k) Address and sufficiently mitigate any contaminated land issues
- l) Does not sterilise significant workable reserves of minerals or prime quality agricultural land.
- m) Make acceptable arrangements for waste management.

## **Policy IMP2: Development Impact Assessments**

The Council will require applicants to provide impact assessments in association with planning applications in the following circumstances:

- a) An Environmental Assessment (EA) will be required for developments that are likely to have significant environmental affects under the terms of the regulations.
- b) A Transport Assessment (TA) will be sought where a change of use or new development is likely to generate a significant increase in the number of trips being made. TAs should identify any potential cumulative effects which would need to be addressed. Transport Assessments should assess the effects the development will have on roads and railway infrastructure including stations and any crossings. Transport Scotland (Trunk Roads) and Network Rail (Railway) should be consulted on the scoping of Transport Assessments. Moray Council's Transportation Service can assist in providing a screening opinion on whether a TA will be sought.
- c) In order to demonstrate that an out of centre retail proposal will have no unacceptable individual or cumulative impact on the vitality and viability of the

identified network of town centres, a Retail Impact Assessment will be sought where appropriate. This may also apply to neighbourhood shops, ancillary retailing and recreation/tourism retailing.

- d) Where appropriate, applicants may be asked to carry out other assessments (e.g. noise; air quality; flood risk; drainage; bat; badger; other species and habitats) in order to confirm the compatibility of the proposal.

### **Policy IMP3: Developer Obligations**

Contributions will be sought from developers in cases where, in the Council's view, a development would have a measurable adverse or negative impact upon existing infrastructure, community facilities or amenity, and such contributions would have to be appropriate to reduce, eliminate or compensate for that impact.

Where the necessary contributions can be secured satisfactorily by means of planning conditions attached to a planning permission, this should be done, and only where this cannot be achieved, for whatever reason, the required contributions should be secured through a planning agreement.

The Council will prepare supplementary guidance to explain how the approach will be implemented in accordance with Circular 3/2012 on Planning Obligations. This will detail the necessary facilities and infrastructure and the scale of contributions likely to be required.

In terms of affordable housing, developments of 4 or more units will be expected to make a 25% contribution, as outlined in policy H8.