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**REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON  
15 SEPTEMBER 2020**

**SUBJECT: SUPPLEMENTARY GUIDANCE**

**BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT &  
FINANCE)**

**1. REASON FOR REPORT**

- 1.1 This report asks the Committee to delegate authority to the Head of Economic Growth and Development to amend and then adopt some of the suite of statutory supplementary guidance which supported the Moray Local Development Plan (MLDP) 2015 as non- statutory supplementary guidance to support the MLDP 2020.
- 1.2 This report is submitted to Committee in terms of Section III (E) (2) of the Council's Scheme of Administration relating to the Review and Preparation of Strategic and Local Plans.

**2. RECOMMENDATION**

- 2.1 It is recommended that the Committee agree;
- (i) to delegate authority to the Head of Economic Growth and Development to make the necessary changes and subsequently adopt the suite of non- statutory supplementary guidance set out in para 4.1, with the Moray Onshore Wind Energy Guidance to be adopted on 21 September 2020; and
  - (ii) that a suite of statutory Supplementary Guidance is progressed and reported to future meetings of this Committee.

**3. BACKGROUND**

- 3.1 The MLDP 2015 was supported by a suite of statutory Supplementary Guidance which provided further advice and guidance to support the policies in the Plan. There are two tiers of supplementary guidance;
- (i) Statutory supplementary guidance- this forms part of the Local Development Plan and has to have the necessary "hooks" (cross

references) within the policy and also has to have been through public consultation and have been submitted to Scottish Ministers for approval.

- (ii) Non statutory supplementary guidance- this has a lower status and does not form part of the Local Development Plan, however it is still a material consideration.

#### 4. **PROPOSALS**

4.1 The Council has included the necessary hooks within the MLDP 2020 to carry forward the suite of supplementary guidance, however, this has been legally challenged. Officers have sought clarification from the Scottish Government and in their opinion the Council has to take the suite of supplementary guidance back through public consultation and the Scottish Ministers approval process for it to enjoy statutory status. This will take considerable time and officers have taken legal advice which recommended that for the avoidance of doubt the Council formally adopt the suite of supplementary guidance as non-statutory while working through a programme of replacement statutory guidance. Taking account of the latest opinion from the Scottish Government, the table below summarises the current status of supplementary guidance and the proposals for their review.

Topic	Status	Recommendation
Flood Risk and Drainage	Adopted as statutory Supplementary Guidance to support MLDP2020	No action required.
Developer Obligations	Currently being considered by Scottish Ministers, awaiting approval as statutory Supplementary Guidance to support the MLDP 2020.	No action required.
Moray Onshore Wind Energy Policy Guidance, including Moray Wind Energy Landscape Capacity Study (LCS)	In Scottish Government opinion this Guidance “falls” and has no status. The Landscape Capacity Study was approved as technical appendix to the Guidance and as a standalone material consideration, which will continue to be the case.	Delegate authority for minor changes such as new cover, update policy references, ensure consistent referencing with landscape capacity study and include spatial framework following SPP para 161. Approve as non- statutory supplementary guidance as of 21/9/20.  September 2020/ January 2021- report updated Guidance to this

		Committee, followed by public consultation and submission to Scottish Ministers for adoption as statutory Supplementary Guidance.
Elgin South Masterplan	In Scottish Government opinion this Guidance “falls” and has no status.  Elements of the Masterplan are not consistent with the new MLDP 2020, including placemaking and size of the primary school site.	Contact developer and discuss amendments to the Masterplan and report updated Guidance to this Committee, public consultation and submission to Scottish Ministers for adoption as statutory Supplementary Guidance.
Findrassie Masterplan	In Scottish Government opinion this Guidance “falls” and has no status.  Elements of the Masterplan are not consistent with the new MLDP 2020, including elements of the placemaking policy.	Contact developer and discuss amendments to the Masterplan and report updated Guidance to this Committee, public consultation and submission to Scottish Ministers for adoption as statutory Supplementary Guidance.
Dallas Dhu Masterplan	In Scottish Government opinion this Guidance “falls” and has no status.  Guidance is considered to be consistent with the new policies of the MLDP 2020.	Delegate authority to make minor changes such as update policy references and approve as non- statutory guidance as of 1 October 2020.
Kinloss Golf Course Masterplan	In Scottish Government opinion this Guidance “falls” and has no status.  Guidance is considered to be consistent with the new policies of the MLDP 2020.	Delegate authority to make minor changes such as update policy references and approve as non- statutory guidance as of 1 October 2020.
Moray Forestry and Woodland Strategy	In Scottish Government opinion this Guidance “falls” and has no status.  Guidance is considered to be consistent with the new policies of the MLDP 2020.	Delegate authority to make minor changes such as update policy references and approve as non- statutory guidance as of 1 October 2020
Bilbohall Masterplan	In Scottish Government opinion this Guidance	Delegate authority to make minor changes

	<p>“falls” and has no status.</p> <p>Guidance is considered to be consistent with the new policies of the MLDP 2020.</p>	<p>such as update policy references and approve as non- statutory guidance as of 1 November 2020.</p>
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## 5. **SUMMARY OF IMPLICATIONS**

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

The suite of supplementary guidance helps support delivery of the Local Development Plan which supports the Corporate Plan and 10 Year Plan.

### (b) **Policy and Legal**

The status of the suite of supplementary guidance has been challenged and the Council has been advised that for the avoidance of doubt, the guidance should go back through the formal process for adoption as statutory Supplementary Guidance and in the meantime some of the guidance should be adopted as non- statutory guidance, pending full review.

### (c) **Financial implications**

There will be costs incurred in terms of advertising and consultation when full reviews are undertaken and the costs will be reported at that time. Cost will be covered by existing budget.

### (d) **Risk Implications**

There is a risk that if the supplementary guidance has no status then the Council’s planning policy position is not as strong as it could be.

### (e) **Staffing Implications**

Some re-prioritisation of workloads is required to address short term actions identified in the table above.

### (f) **Property**

None.

### (g) **Equalities/Socio Economic Impact**

There are no equalities issues arising from this report.

### (h) **Consultations**

Depute Chief Executive (Economy, Environment and Finance), the Head of Economic Growth and Development, the Legal Services Manager, the Equal Opportunities Officer, Lissa Rowan (Committee Services Officer), the Development Management and Building Standards Manager, the Senior Engineer Transportation and Paul Connor (Principal Accountant) have been consulted and comments received have been incorporated into the report.

## **6. CONCLUSION**

- 6.1 The status of the Council's supplementary guidance has been challenged and after taking further advice from the Scottish Government, it is proposed that short term actions are implemented to approve some supplementary guidance as non-statutory while the longer process is followed to achieve statutory status.**
- 6.2 Some of the Masterplans are considered to require updating to be consistent with the MLDP 2020 and discussions with relevant developers will be progressed.**

Author of Report: Gary Templeton, Strategic Planning and Development Manager

Background Papers:

Ref: