



REPORT TO: SPECIAL MEETING OF THE PLANNING AND REGULATORY SERVICES COMMITTEE ON 25 JUNE 2019

SUBJECT: REPRESENTATIONS TO THE PROPOSED MORAY LOCAL DEVELOPMENT PLAN

BY: CORPORATE DIRECTOR (ECONOMIC DEVELOPMENT, PLANNING & INFRASTRUCTURE)

1. REASON FOR REPORT

- 1.1 This report summarises the representations received in response to the publication of the Moray Local Development Plan (LDP) 2020- Proposed Plan and sets out the Council's proposed responses. The report recommends that the Council proceeds to submit the Plan and the unresolved representations to the Scottish Government and request an Examination.
- 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:

- (i) note the representations received to the Moray Local Development Plan 2020- Proposed Plan;**
- (ii) approve the responses to the representations received as set out in the series of Schedule 4 documents contained in Appendix 1;**
- (iii) approve the minor "non-notifiable" changes set out in Appendix 2;**
- (iv) approve the Report of Conformity in Appendix 3;**
- (v) approve the responses to representations on the Strategic Environmental Assessment as set out in Appendix 4;**
- (vi) approve the responses to the Delivery Programme set out in Appendix 5;**
- (vii) delegate authority to the Head of Development Services to make any changes to the Schedule 4's arising from any decisions of the Committee;**
- (viii) delegate authority to the Head of Development Services to make any minor correction or formatting changes to the Schedule 4's;**

- (ix) approve the submission of the Plan, Schedule 4's and associated core and background documents together with the unresolved representations to the Scottish Ministers for examination and
- (x) agree to give greater weight to sites within the Proposed Plan which are not subject to the Examination process for development management purposes as of 1 August 2019.

3. BACKGROUND

- 3.1 At the special meeting of this Committee on 18 December 2018, the Committee agreed the content of the Proposed Plan and that it be issued for consultation (paragraph 5 of minute refers). The Proposed Plan represents the "settled view" of the Council. The annual Development Plan Scheme agreed at the meeting of this Committee on 29 January 2019 (paragraph 10 of minute refers) programmed the Plan to be submitted to the Scottish Government for Examination in August 2019.
- 3.2 The Proposed Plan was published for a 10 week period for representations on the 7 January 2019 with a closing date of 15 March 2019. A series of 5 well attended drop in exhibitions were held and properties affected by proposals in the Plan were neighbour notified. Meetings were held with statutory consultees, Homes for Scotland and Elgin Community Council during the consultation period. Full details are contained within the Report of Conformity in **Appendix 3**, which the Council is required to submit to the Scottish Government.
- 3.3 A total of 366 representations were received on the Plan, which split into 630 comments, with additional comments received on the Strategic Environmental Assessment and Habitats Regulation Assessment. A number of representations requested clarification on specific issues and were subsequently withdrawn. Representations vary in scale and complexity from concerns regarding small development sites, to complex policy and housing land requirement matters.

4. PROPOSALS

Procedures

- 4.1 Sections 18(3) to 18(9) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 deal with pre-examination modifications and advise that following the close of the period for representations on the Proposed Plan, planning authorities may make modifications, but only so far as to take account of representations, consultation responses or minor drafting and technical matters. This rules out the opportunity to reconsider areas of the Plan which have not attracted any representations seeking change and reinforces the status of the Proposed Plan as representing the "settled view" of the Council.
- 4.2 This report recommends that the Council does not make any notifiable modifications. This recommendation reflects the Government's expectations as set out in Circular 6/2013 Development Planning paragraph 58 which states:-

“From the Proposed Plan stage, Scottish Ministers expect the Authority’s priority to be to progress to adoption as quickly as possible. Pre examination negotiations and notifiable modifications can cause significant delay and so should not be undertaken as a matter of course, but only where the Authority is so minded to make significant changes to the Plan. The Examination also provides an opportunity to change the Plan, so if Authorities see merit in a representation they may say so in their response to the Reporter, and leave them to make appropriate recommendations. However, if Authorities wish to support a significant change to the Plan, especially one that would entail further Neighbour Notification, this should be done by means of a pre examination modification.”

- 4.3 Officers have used the guidance in Circular 6/2013 to indicate to the Reporter a number of areas where the Council sees merit in the submitted representations and leave the Reporter to make the appropriate recommendation, which is legally binding. This saves considerable time delays in progressing the Plan through to adoption.
- 4.4 Representations to the Flood Risk and Drainage Impact Assessment for New Developments Supplementary Guidance is not subject to Examination procedures. As the Supplementary Guidance refers to policies which will be subject to the Examination process, these will be reported to a future meeting of this Committee following the conclusion of the Examination process.

Schedule 4’s

- 4.5 Unresolved representations have been grouped into 14 Schedule 4’s by area or topic, summarised and responses prepared. Some negotiations and clarification of issues has taken place which have resulted in some representations being withdrawn.
- 4.6 The list of topics is at the front of each Schedule in **Appendix 1**. Each Schedule sets out
- the policies or sites covered by that Schedule
 - list of people/bodies submitting representations
 - summary of the representations and modifications sought
 - the proposed Council response to the representations
- 4.7 The concise style and format of the Schedule 4’s relies heavily upon a series of supporting Core documents which are cross referenced, such as the Council’s Housing Need and Demand Assessment 2017 and Housing Land Background Paper which take a considerable time to prepare, review and keep up to date. Relevant site plans are in **Appendix 6**.
- 4.8 Two issues have attracted a significant number of public representations, namely -
- OPP11 Walled Garden, Elgin- Approximately 150 representations have been received opposing the designation of the walled garden as an Opportunity site, especially for a potential hotel use. In addition to these representations, feedback from commercial hotel operators suggest that the site lacks the road frontage they would want to be commercially viable.

Following further discussion with Greenfingers and Moray College it has been recommended to the Reporter in **Appendix 1** Schedule 7 that the site designation is changed to “CF6 Walled Garden”, with the site safeguarded for educational and training facilities primarily related to horticulture, gardening and outdoor education.

- Hopeman- a letter of support with 150 signatories was received in support of the Council’s position set out in the Proposed Plan for Hopeman by implication supporting no additional development to the south of the village. This is in opposition to a proposal from Springfield Properties plc for further growth to the south of the village, which is detailed in **Appendix 1** Schedule 9 and Schedule 1 in terms of housing land supply.

Strategic Environmental Assessment and Habitats Regulation Assessment

- 4.9 Representations received to the Strategic Environmental Assessment have been summarised along with the Council’s proposed responses in **Appendix 4**. A copy of the final Strategic Environmental Assessment and Habitat Regulations Appraisal are available on the members portal.

Non-notifiable modifications

- 4.10 A number of minor non notifiable modifications are proposed. These are minor changes which are classed as non notifiable and do not have to be advertised as proposed modifications. These are set out in **Appendix 2** and will be forwarded to the Directorate for Planning and Environmental Appeals (DPEA) for information.

Statement of Conformity

- 4.11 As part of the Development Plan Scheme the Council produced a Communications Plan which has informed the Statement of Conformity in **Appendix 3** setting out the steps for community engagement detailing when, how and who was consulted during the Plan preparation process. The Planning etc (Scotland) Act 2006 requires Planning Authorities to submit a report on the extent they have conformed to their participation statement. This allows an assessment to be made on whether the Council has done what it said it would do.
- 4.12 The Statement demonstrates that the Council has carried out consultation on the Local Development Plan in accordance with the proposals set out in the Communications Plan.
- 4.13 Officers are continuing to explore new and different ways to engage, especially with younger people and a Young People Engagement Strategy for Development Planning is currently being prepared, aiming to embed engagement with a younger audience in wider planning activities such as woodland planting, Food Production Strategy and Wards Wildlife site management.

Delivery Programme

- 4.14 A number of minor changes will be made to the Delivery Programme since it was approved at a special meeting of this Committee on 18 December 2018 (para 5 of minute refers). Responses to the Delivery Programme are included in **Appendix 5**.

Submission for Examination

- 4.15 It is proposed to submit the Plan to Ministers at the end of June and this is the trigger for the Plan to be passed to the DPEA to hold an Examination into unresolved representations (objections). Scottish Ministers will appoint a Reporter(s) to carry out the examination and the Reporter(s) will decide which issues they want further information on and whether they wish to hold any Hearing Sessions or a formal Inquiry into specific issues. It is likely that the vast majority of issues will be decided on the basis of written representation i.e. the representation and the Council's responses, which are the subject of this report. The last LDP Examination in 2014 had one hearing session for wind energy policy matters.
- 4.16 The Council is required to submit a comprehensive amount of supporting documentation to the DPEA for the Examination. The Reporter(s) will likely issue a number of "Further Information Requests" for points of clarification. Dealing with these timeously and providing clear evidence and casework will reduce the time and costs associated with the Examination. The Examination process is expected to take between 6 and 9 months.
- 4.17 The Council is also required to publicise submission of the Plan by placing a notice in one or more local newspapers stating when and where the Plan may be viewed, making copies available in an office of the Planning Authority and libraries and publishing on the internet.
- 4.18 Upon completion of the Examination, the Reporter will issue the Examination Report which is "largely binding" on the Council. Planning Authorities may depart from the recommendations only in specific defined circumstances as set out in Regulation 2 of the Town and Country Planning (Grounds for declining to follow recommendations)(Scotland) Regulations 2009. The Council is then required to advertise modifications arising from the Report and thereafter adopt the Plan.

Material Consideration for development management purposes.

- 4.19 The special meeting of this Committee on 18 December 2018 (para 5 of minute refers) agreed that the Proposed Moray Local Development Plan 2020 be treated as a material consideration for Development Management purposes as of 1 February 2019. Further guidance on operating the Proposed Plan as a material consideration was provided at the meeting of this Committee on 29 January 2019 (para 12 of minute refers), which agreed that; "June/August 2019 - LDP adoption mid 2020 - the weight to be given to matters set out in the Proposed Plan will vary; Where matters set out in the Proposed Plan are subject to unresolved objections which will be considered through the Examination, then those

matters will continue to be given minimal weight as a material consideration in the development management process.

Where matters set out in the Proposed Plan are not subject to unresolved objections, they will be given greater weight as a material consideration in the development management process.”

- 4.20 It is therefore proposed that sites which are not subject to Examination are given greater weight as a material consideration in the Development Management process as of 1 August 2019, but none of the policies in the Proposed Plan are given greater weight at this time. Many of the policies will be subject to Examination and as the Plan should be read as a whole, to give policies greater weight at this stage would significantly increase the risk of legal challenge.

5 SUMMARY OF IMPLICATIONS

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

The LDP is a vital aspect of supporting and facilitating the Council’s priority for economic growth. In addition to the land designations for housing and employment land, the Plan sets out policies and a Delivery Programme which will be delivered through partnership working with other organisations, developers and consultees. The Plan also supports the delivery of affordable housing and conservation and enhancement of our high quality environment. The Delivery Programme will be monitored annually through a Monitoring Report to be submitted to this Committee.

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

(b) Policy and Legal

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

(c) Financial implications

The cost of the Examination of the 2015 LDP was £50,763. A budget of £60,000 has been provided for the costs associated with Examination (Reporter and DPEA).

(d) Risk Implications

If the Committee decided to make notifiable changes to the Plan at this stage, then the timetable would be delayed. This would have an impact upon other Services and on the local economy in terms of when proposed new sites would become effective and the Council would fail

to achieve the performance indicator of replacing the LDP 2015 within 5 years of adoption.

(e) Staffing Implications

Preparing the LDP is a core activity for the Planning and Development service and preparing for the Examination has represented a significant workload over a short period of time.

Responding to representations has also required significant staff time from other services, particularly Transportation, Legal and Housing.

The examination procedure and implementation of the Plan will also result in significant workload for a number of Council services.

(f) Property

The Council is required to produce a schedule of all Council owned property affected by proposals in the Plan. This was published alongside the Proposed Plan.

(g) Equalities

An Equalities Impact Assessment (EIA) was completed for the Proposed Plan which concluded that the Plan creates opportunities for advancing equality of opportunity by;

- Giving all individuals, groups and organisations an opportunity to influence the content and policy of the Local Development Plan.
- Including a primary policy on Placemaking, which aims to support development that is safe, welcoming and inclusive and supports health and wellbeing of residents.
- Including a primary policy on Sustainable Economic Growth that aims to ensure that development is planned and co-ordinated with infrastructure (including education, health, transport, sports and recreation and access facilities).
- Including a requirement for all housing developments to contribute towards the provision of affordable housing, which will increase delivery of affordable homes in Moray.
- Including a requirement for developments to provide a mix of house types, tenures and sizes and for tenure demonstration to be achieved, including requirements to ensure that architectural styles are tenure blind and affordable and private housing share catchment areas, play areas, bus stops and other community facilities and that housing provision meets the needs of the local population in terms of age and/ or disability.
- Including a requirement that 10% of the private sector units in developments of 10 or more units to be provided to wheelchair accessible standard.
- Including a policy to consider proposals for Gypsy/ Traveller sites (halting or permanent) and to safeguard sites used by Showpeople. The Action/ Delivery Programme includes an action to undertake a search for a Gypsy/ Traveller halting site(s).

- Including text in the Plan regarding translation services.
- Including a requirement in Policy PP1 Placemaking that ParentAble Moray and the Moray Disability Forum are consulted on Masterplans.

(h) Consultations

The Corporate Director (Economic Development Planning & Infrastructure), the Head of Development Services, the Legal Services Manager, the Equal Opportunities Officer, Senior Engineer Transport Development, the Transportation Manager, Paul Connor (Principal Accountant), the Development Management and Building Standards Manager, the Educational Resources Manager, the acting Head of Housing and Property, the Acting Consultancy Manager and Lissa Rowan (Committee Services Officer) have been consulted and their comments incorporated into the report.

6. CONCLUSION

- 6.1 The Proposed Plan was subject to extensive consultation and 366 responses were received which have been summarised and grouped by area/ topic into 14 Schedule 4's which set out the proposed Council response.**
- 6.2 It is proposed to submit the Plan and unresolved representations to Scottish Ministers at the end of June and request an Examination.**

Author of Report: Gary Templeton, Principal Planning Officer
 Background Papers:
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