

**18/01117/APP**  
**26th March 2019**

**Erect 12 dwellinghouses and associated roads and landscaping at OPP4 St Leonards Road Forres Moray for Mr Ray McDonald**

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**Comments:**

- A site visit has been carried out.
- The application falls within the category of "major development" as defined within the approved delegation scheme, where the overall area of the proposed site exceeds 2 hectares.
- Advertised for neighbour notification purposes and as a departure from the local development plan.
- 75 representations received.

**Procedure:**

- Completion of legal agreement required prior to issue of any consent regarding developer obligations towards, sports/recreation, affordable housing, compensatory woodland planting and healthcare facilities.

**Recommendation**      **Grant Planning Permission - Subject to the Following:-**

**Conditions/Reasons**

1. No development shall commence until:
  - a) a detailed drawing (scale 1:500 or 1:1000 which shall also include details to demonstrate control of the land) showing a visibility splay 4.5m by 120m in both directions onto the U94E Brodieshill to Califer Road, with all boundaries set back to a position behind the required visibility splay and a schedule of maintenance for the splay area has been submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority; and
  - b) the visibility splay shall be provided in accordance with the approved drawing prior to works commencing.

Thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 0.6m above the level of the carriageway in accordance with the agreed schedule of maintenance.

**Reason:** To enable drivers of vehicles entering or exiting the site to have a clear view so that they can undertake the manoeuvre safely and with the minimum interference to the safety and free flow of traffic on the public road.

2. The access road is to be constructed as follows:
  - a) width of the vehicular access road to be 3.5m, widening to 5.5m with localised passing place provision as detailed on Drawing No. MDS 0047-5, with a 2.0m service verge either side;
  - b) access corner radii to be 7.6m;
  - c) drop kerbs shall be provided across the access to The Moray Council specification for pedestrians/cyclists, providing access to the Woodland Educational Area; and
  - d) 2m cycle/footpath connections to be provided within the site between Plots 5 and 7 and in the North-East corner of the site adjacent to Plot 10.

**Reason:** To ensure acceptable infrastructure at the development access in the interests of road safety.

3. No development shall commence until a detailed scaled drawing (scale 1:500) showing the provision of a 2m wide cycle and pedestrian path, set back from the B9010, linking the site to the existing Council Woodland Car Park and timescales for provision have been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority.

Thereafter the path shall be constructed in accordance with the approved details and agreed timescales.

**Reason:** To ensure acceptable pedestrian and cycle infrastructure at the development access in the interests of road safety.

4. No development shall commence until detailed drawings showing the widening of the U94E Brodieshill to Califer Road to a minimum of 5.5m, between the junction with the B9010 and the Eastern Site boundary, with a suitable tie in with the existing road carriageway at "Scania" and timescales for provision have been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. Existing drainage infrastructure within the public road carriageway/verge will need to be incorporated into the design.

Thereafter the upgrading shall be constructed in accordance with the approved details and timescales.

**Reason:** To ensure acceptable infrastructure at the development access in the interests of road safety.

5. The width of each individual vehicular access will be 3.0m minimum as shown on Drawing No. MDS 0047-5, and have a maximum gradient of 1 in 20 for the first 5.0m from the edge of the access road.

**Reason:** To ensure acceptable infrastructure at individual development accesses.

6. Driveways over service verges shall be constructed to accommodate vehicles and shall be surfaced with bituminous macadam.

**Reason:** To ensure acceptable infrastructure at individual development accesses.

7. Parking provision shall be as follows:
  - 2 spaces for dwellings with 3 bedrooms or fewer;
  - 3 spaces for dwellings with 4 bedrooms or more

The car parking spaces shall be provided within each plot prior to occupation, or completion of each dwellinghouse, whichever is the sooner.

**Reason:** To ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

8. No boundary fences, hedges, wall or any other obstructions exceeding 0.6m in height and fronting onto the public road shall be within 3.0m of the edge of the carriageway. Therefore, any proposed hedging and other boundaries must be set back by a minimum of 1m from the rear of the service strip.

**Reason:** to enable drivers of vehicles leaving the site to have a clear view over a length of road sufficient to allow safe exit, in the interests of road safety for the proposed development and other road users to and prevent any root interference that could compromise the public road carriageway (and the utilities contained therein).

9. Trees shall be set back at a minimum of 5.0m from the edge of the prospective public road carriageway, unless suitable root protection is utilised. The details of any proposed root protection shall be submitted to and approved in writing by the Council, as planning authority in consultation with the roads authority. Thereafter the root protection measures shall be installed in accordance with the agreed details.

**Reason:** to prevent root interference that could compromise the public road carriageway (and the utilities contained therein) thereby ensuring acceptable infrastructure at the development access, in the interests of road safety.

10. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.

**Reason:** To ensure the safety and free flow of traffic on the public road and access to the site by minimising the road safety impact from extraneous material and surface water in the vicinity of the new access/accesses.

11. A turning area shall be provided within the curtilage of each site to enable vehicles to enter and exit in a forward gear.

**Reason:** To ensure the provision for vehicles to enter/exit in a forward gear in the interests of the safety and free flow of traffic on the public road.

12. The tree shelters (deer protection) for the area of woodland retained outside the dwelling gardens must be 1.2m height.

**Reason:** To protect the retained woodland from deer.

13. Prior to occupation of the dwellings connection to the public foul sewage system must be completed and details of the maintenance arrangements of the sections of private sewer within the site shall be submitted to and approved in writing by the Council.

The maintenance arrangements shall be carried out in accordance with the approved details.

**Reason:** To ensure adequate infrastructure is provided and maintained.

14. No development shall commence until details of a scheme for the implementation, timing and maintenance of landscaping works have been submitted to, and approved in writing by, the Council as Planning Authority. Details of the scheme shall include for the site as a whole and for each individual plot:
- a. the final location and design, including materials, of proposed walls, fences, gates, and picnic table and education board.
  - b. the phased implementation of landscaping and planting, and picnic table and education board to occur out with and within the individual plot boundaries,
  - c. details of the arrangements for the long-term maintenance of all landscaped and the educational areas.

Landscaping works shall be carried out in accordance with the approved scheme. Outwith the individual plots to be developed, all planting, seeding or turfing as may be comprised in the approved landscaping details shall be carried out in the first planting and seeding seasons following the commencement of development. Similarly the landscaping scheme within each individual plot boundary must be planted following completion of the dwelling within the same plot. The timing of the landscape provision and education areas must be in accordance with the above triggers unless otherwise agreed in writing with Council as Planning Authority.

Any trees, plants or hedging, which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

**Reason:** In order to ensure that landscaping is timeously carried out and properly maintained in a manner which will not adversely affect the amenity and character of the area.

15. Unless otherwise agreed in writing with the Council, as Planning Authority no existing trees other than those detailed for removal in the Arboricultural Impact

Assessment/Method Statement. Rev B (dated 29.10.18) shall be lopped, topped or felled, unless information from a qualified arboriculturalist is submitted justifying why the tree or part thereof should be removed.

**Reason:** To ensure the existing trees are retained in the interests of the character and appearance of the area.

16. No development shall commence until the following have been submitted to and approved by the Council, as Planning Authority in consultation with SNH regarding details to confirm the arrangements to undertake pre-construction surveys for all protected species and nesting birds recorded as using the site, to include the time-scale(s) for undertaking surveys and thereafter, the arrangements for reporting the results of the survey. Where any survey identifies protected species using the site, the survey results shall identify all required/proposed measures to be implemented to mitigate the impact of the development upon any identified protected species;

Thereafter, the development shall be implemented in accordance with the approved protected species details including mitigation measures.

**Reason:** To ensure an acceptable form of development taking into account the need to afford protection to all protected species and nesting birds recorded as using the site.

17. The development as hereby approved shall be carried out in accordance with the submitted particulars of the Protected Species Survey Report dated 3rd June 2017 and the identified measures to mitigate the impact and disturbance upon European Protected Species and nesting birds in the Recommendations Section.

**Reason:** To ensure an acceptable form of development that will not adversely impact upon or disturb European Protected Species and nesting birds.

#### **Reason(s) for Decision**

The Council's reason(s) for making this decision are:-

The proposal accords with the relevant provisions of the development plan and there are no material considerations that indicate otherwise.

#### **List of Informatives:**

THE TRANSPORTATION MANAGER, has further commented that:-

Planning consent does not carry with it the right to carry out works within the public road boundary.

Before commencing development the applicant is obliged to apply for Construction Consent in accordance with Section 21 of the Roads (Scotland) Act 1984 for new

roads. The applicant will be required to provide technical information, including drawings and drainage calculations, and provide a Road Bond to cover the full value of the works in accordance with the Security for Private Road Works (Scotland) 1985 Regulations. Advice on this matter can be obtained from the Moray Council web site or by emailing [transport.develop@moray.gov.uk](mailto:transport.develop@moray.gov.uk)

Before starting any work on the existing public road the applicant is obliged to apply for a road opening permit in accordance with Section 85 of the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road. Advice on these matters can be obtained by emailing [roadspermits@moray.gov.uk](mailto:roadspermits@moray.gov.uk)

It is Transportations understanding that no street lighting is proposed within this development. If street lighting has to be provided in the future the cost will be met by the householders. This should be included as a condition in the title deeds of each plot.

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

If required, street furniture will need to be repositioned at the expense of the developer. Advice on this matter can be obtained by emailing [road.maint@moray.gov.uk](mailto:road.maint@moray.gov.uk)

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into his property.

The applicants shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.

**DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER**, has further commented that:-

Please note that the thinning operations suggested here for the area of retained woodland will require a felling licence and the thinning would not be authorised through planning permission. The applicant should contact the Forestry Commission to apply for a felling licence when required. Felling trees without a licence is an offence.

This development is subject to a legal (Section 75) agreement in regard to the arrangements for developer obligations towards addressing the impact of the development upon sports/recreation, affordable housing, compensatory woodland planting and healthcare facilities.

A Building Warrant will be required for the proposals. Should you require further

assistance please do not hesitate to contact Building Standards, Environmental Services Department, Council Office, High Street, ELGIN IV30 1BX or by telephoning 01343 563243.

SCOTTISH WATER, has commented that:

See consultation response dated 27 August 2018

SEPA, has commented that:

See consultation response dated 10 September 2018

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT	
Reference No. Version No.	Title/Description
01019 A	Drainage Strategy/Testhole Locations
01019 A	Foul drainage longitudinal sections
01019 D2	Indicative drainage details
MDS 0047-6	Site sections
	Education board
MDS 0047-5	Road design plan
MDS 0047-10	Style D house
MDS 0047-11	Style E house - elevations and floor plans
MDS 0047-12	Style F house - elevations and floor plans
MDS 0047-2 B	Block plan
MDS 0047-5	Road design plan

MDS 0047-1 B	Site plan
1 of 1	Tree protection plan
MDS 0047-13 B	Plot 6 and 12 - elevations and floor plans
MDS 0047-7 A	Site 1 - elevations and floor plans
MDS 0047-8 A	Site 3 - elevations and floor plans
MDS 0047-9 A	Site 11 - elevations and floor plans
1 of 1	Tree planting plan

Supporting Information to accompany formal decision notice:

Protected Species Survey report dated 3 June 2017





## PLANNING APPLICATION COMMITTEE SITE PLAN

**Planning Application Ref Number:**

**18/01117/APP**

**Site Address:**

OPP4

St Leonards Road

**Applicant Name:**

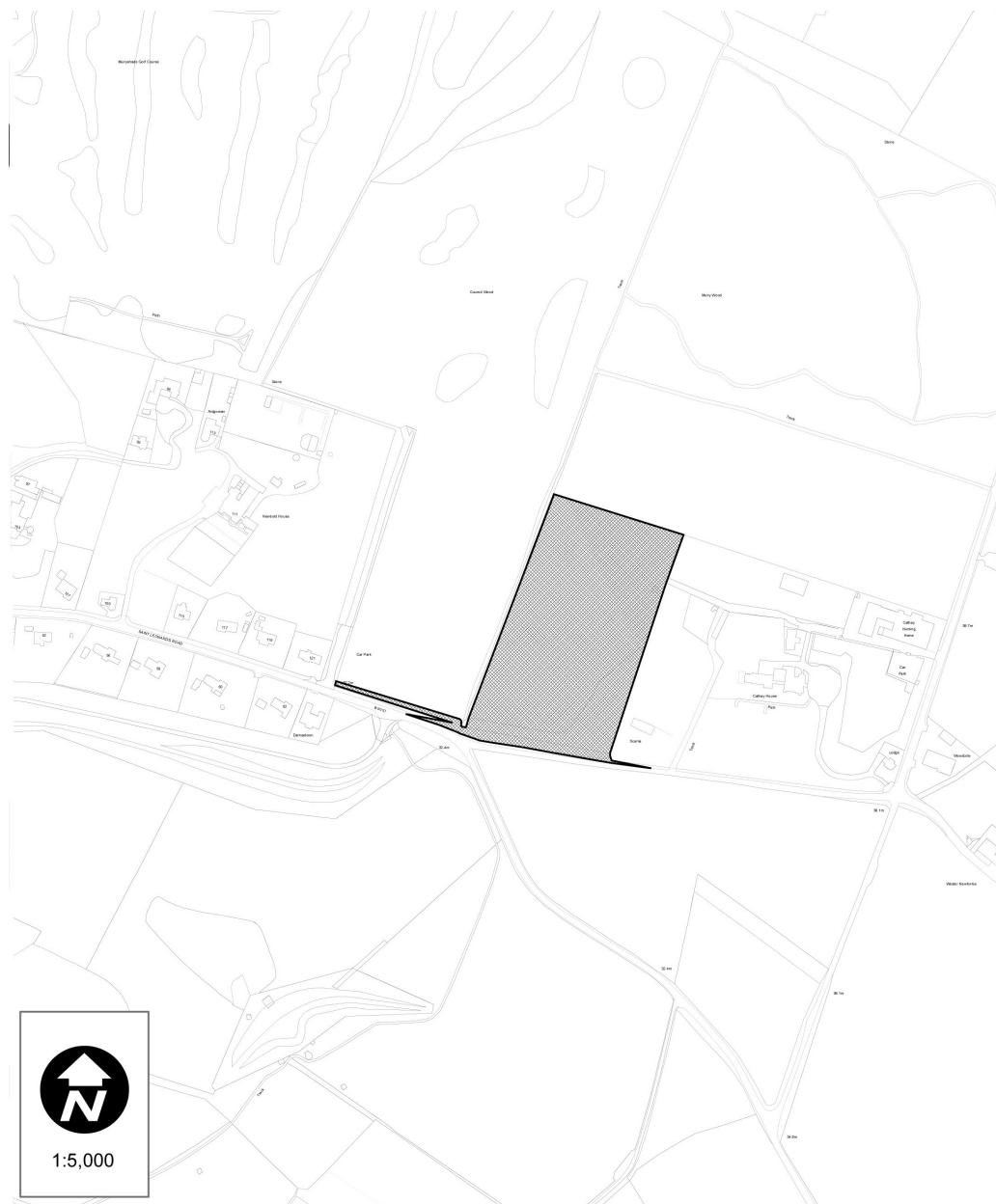
Mr Ray McDonald

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## Location Plan



Site Location



















## PLANNING APPLICATION: 18/01117/APP

*In the event that a recommendation on this planning application is overturned the Committee is reminded of the advice contained on the front page of the agenda for Reports on Applications*

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### **THE PROPOSAL**

- The application (as amended) seeks planning permission to erect 12 houses, associated infrastructure and landscaping on St Leonards Road, Forres.
- The houses compromise a mix of 7 different house types, A to G.
- House type A (1 and ½ storey 4/5 bed with attached garage) is located on site 1.  
House type B (1 and ½ storey 4/5 bed with attached garage) is located on site 3.  
House type C (1 and ½ storey 4 bed) is located on site 11.  
House type D (1 and ½ storey 4/5 bed) is located on sites 4 and 8.  
House type E (1 and ½ storey 4/5 bed with attached garage) is located on site 7 & 9.  
House type F (1 and ½ storey 4/5 bed with attached garage) is located on site 2, 5 & 10.  
House type G (Single storey 3 bed - Accessible) is located on sites 6 & 12.
- All the plot sites are large and range in size from 734sqm to 1996sqm.
- Proposed external finishes include beige render, larch timber cladding, pale green timber framed windows and slate roofs.
- For all houses, parking is “in plot” with three spaces being provided, generally located within a garage and to the side and front elevations.
- A new vehicular access is proposed to the site from St Leonards Road, located on the southern boundary.
- Waste water drainage compromises a new private sewage pumping station which will connect to the Scottish Water foul water system.
- A Woodland Educational area is proposed on the East of the site, it is 8867sqm in size. Picnic tables and an education board will be provided within a natural clearing in the trees. It is accessed via a footpath connecting to the main access of the site.
- Supporting documents accompanying the application include a Drainage Report (Drainage Impact Assessment), Protected Species Report, Woodland Management Plan, Arboricultural Impact Assessment and Methodology and a Design and Access Statement.

### **THE SITE**

- The application site extends to 3.11 ha and forms part of the Forres OPP4 designation.
- This site is a wooded area off St Leonards Road in Forres.
- The site lies to the south east of Forres and is within the settlement boundary.
- The site is bound to the south by the U94E Brodieshill to Califer Road, beyond this lies open flat farmland. Muiry Woods are located to the west of the site. A dwelling set in woodland bounds the east of the site. Private woodland bounds the south of the site.

- A belt of Scots Pine trees are located adjacent to the roadside and part way up the Eastern boundary. The remainder of the sites features smaller middle-aged trees which have established in the last 15-20 years since the area was clear felled. The site is open to several area of thinner tree cover/open glades within its core.

## **HISTORY**

For the Site:

### **Planning History**

The inclusion of the site as an opportunity site for low intensity residential or appropriate business use has been scrutinised by Reporters during the preparation of two local plans.

#### **Moray Local Plan 2008**

Following objections the inclusion of an opportunity site (including the planning application site, Cathay Nursing Home, Cathay Lodge House and a private dwelling) within the Moray Local Plan 2008 was considered as part of the Public Local Inquiry (PLI). The Reporter supported the sites inclusion stating "The site does not have dense or even tree cover leaving scope for sensitive low density development within a woodland setting. There is scope for retention of significant areas of woodland and heath."

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

Following objections the continued inclusion of the site was considered as part of the Moray Local Development Plan 2015 Examination and the Reporter supported the allocation of a reduced OPP designation which reflects the current OPP4 site.

**15/00394/PE** - Preliminary enquiry for housing proposals on part of site OPP4, detailed comments provided to assist and front load the planning consideration process.

**17/01887/APP** - Application for 14 dwellings, associated roads and landscaping was withdrawn due to various issues including lack of drainage information/tree retention. Subsequently withdrawn.

## **POLICY - SEE APPENDIX**

## **ADVERTISEMENTS**

- Advertised as a departure from the Moray Local Plan 2015 and for neighbour notification purposes.

## **CONSULTATIONS**

**Developer Obligations** – A contribution totalling £103,758.20 towards Healthcare (£52,756.20), Sports and Recreation (£3,002) and Affordable Housing (£48,000) is



required to be the subject of a S.75 Legal Agreement to be signed and registered before being issued.

**Moray Access Manager** – No objection.

**Moray Flood Risk Management** – No objection.

**SEPA** – No Objection.

**Scottish Natural Heritage** – No objection subject to conditions relating to pre-construction impact on protected species surveys being attached to the consent.

**Development Plans** – No objection, the proposal complies with the requirements of the Moray Local Plan 2015 and supplementary guidance. £12,000 has been agreed to be paid by the applicant for compensatory planting and will form part of the S.75 legal agreement.

**Housing & Property Services Manager** – No objection.

**Forres Community Council** – Object for the following reasons:

1. Should this development proceed it will result in damage to the environment and destroy the habitat of an ancient woodland – its flora and fauna. Also the wildlife including wild birds.
2. This development will have a detrimental impact on adjacent woodlands (Council Woods, Muiry and Newforres).

**Environmental Health** – No objection.

**Contaminated Land** – No objection.

**Scottish Water** – No objection.

**Transportation Manager** – No objection subject to conditions and informatives.

**Forestry Commission** – No objection to the proposals as the decision to include the site for development was made prior to the introduction of the Scottish Government's Control of Woodland Removal Policy and is instead seeking compensatory planting of the same type and equal area, which is being provided via a Section 75. Legal Agreement.

## **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).

Representation were received from the following individuals/groups. Whilst 75 individual representation were received, please note that several of the respondents (59 in total) below submitted multiple representations.

[REDACTED]

[REDACTED]

[REDACTED]

Two neighbour notification periods were run during the consideration of the application and all representations have been considered and are summarised below, with no assumption that previous objections/representations have been withdrawn (several representations specifically state that the further amendments have not addressed their original concerns which remain). Where issues raised are common to all representation or have been re-stated, the below summary will not reiterate/repeat issues clearly stated at least once. All objections/representations have been read and where material, given the appropriate consideration prior to the recommendation now reached.

A petition has been received in relation to the proposal. The petition was run online via change.org and it was submitted to the Council by the Forres Community Woodlands Trust, a list of those who had signed it and their location was given. The petition submitted received 112 signatures at the time it was submitted. The covering letter states 'Keep local ancient woodlands safe from housing development'. It is noted that this particular type of petition gave those signing it the chance to comment however these comments were not submitted formally to the Council as instructed.

Headings of objection reasons selected by objectors from objection/representation web link:

- Affecting natural environment
- Contrary to Local Plan
- Loss of privacy (being overlooked)
- Over-development of site
- Drainage
- Noise
- Precedent
- Reduction of natural light
- Road Access
- Road Safety
- Traffic
- Smell
- Community Council/Association Consult
- Inadequate Plans
- Procedures not followed correctly

The grounds for objection/representation are summarised as follows:

The main points of the representations are:

- How much woodland do we have to lose?
- The development will destroy this piece of dense mature woodland.
- Concern for the loss of more than 300 mature trees.
- We should be protecting our trees and woodlands and wildlife for future generations.
- This area of woodland is popular with the Forres Community; they are enjoyed by local walkers, runners, pet owners and those who want to get closer to nature but can't travel.
- The 3.11 hectare site is in the Ancient Woodland Inventory.
- In Scotland, ancient woodland is defined as land that is currently wooded and has been continually wooded since at least 1750. The biodiverse soils that develop as a result simply cannot be replaced, nor can their associated rich assemblage of ground flora and wildlife. The Forestry Commission define Ancient Woodland as an important and irreplaceable national resource that should be protected and enhanced.
- Compensatory planting simply cannot replicate ancient woodland.
- The site also appears in the Native Woodland Survey of Scotland.
- Muiry is part of the wide spreading, publicly accessed local green belt, incorporating woodlands of Wester Forres, Sanquhar woodlands and Cluny. These combined woodlands provide excellent public amenity for all to enjoy, but the felling of well over 300 trees on this private site is disastrous for wildlife, minimising and reducing their access for foraging if they are forced to retreat.
- Reducing the number of houses from 14 to 12 will do nothing to lessen the impact on the adjacent woodlands
- The proposed buffer zone between the development and the Council Wood to be totally inadequate.
- Concern that physically uprooting the trees on the site will impact on the adjacent Muiry Woods and the mature trees in neighbouring properties. If the roots are disturbed at neighbouring properties it could have a domino effect on further neighbouring properties trees and cause windblow. This does not appear to have been assessed in the Arboricultural Impact Assessment.
- There are countless scientific studies clearly demonstrating that by fragmenting and reducing the overall size of a patch of woodland, biodiversity within that whole patch is adversely affected. Species within reduced patches are at much higher risk of local extinction. Therefore by destroying the habitat adjacent to our woodlands, wildlife that we have been working hard to encourage could be significantly impacted. The creation of edges significantly alters micro-climatic variables, including solar radiation, incident light, temperature, humidity and wind speed. Plant communities change, shifting towards more aggressive, weedy, pioneer species.
- Sanquhar Woodlands had issues where houses were built too close to existing woodlands. Subsequently, an extended buffer zone of 50m had to be created through the removal of healthy trees to appease the local residents who had safety

and shading concerns. Our fears regarding the fragmentation effect that a housing development of this type would have on these ancient woodlands remains.

- Concern for the remaining trees in that the Arboricultural report makes reference to leaf drop and shading of the gardens in the residential development and without proper protection in place there would be nothing to prevent the new residents from removing trees within their feu.
- Some retained trees are in close proximity to the plots. It is inevitable that, in time, owners will demand they are removed due to dangerous branches or leaf drop (such as happened in Sanquhar).
- The Arboricultural Impact document states that 114 Scots Pine are to be removed, this is not acceptable. They are a rare variety indigenous to Scotland.
- The Forestry Commission have indicated that if this application for planning permission was assessed under the Scottish Government's current control of woodland removal policy it would lead to a strong presumption against development on this site. The Forestry Commission Scotland has clearly stated "that woodland removal at this site is inappropriate". They have further stated; "that the woodland in question is an important and irreplaceable resource that should if possible be protected and enhanced and that there should be a strong presumption against removing semi-natural habitat of this type." Unfortunately, FCS is not a statutory consultee and as such they do not have the power to object to a planning application.
- The report lodged with the amended application still provides for the loss of 281 trees – a staggering amount. The report also suggests new planting of whips but these would take decades to mature and there is no guarantee that residents of the new builds will tolerate the inconvenience of lack of light leaf fall etc. and may well fell existing remaining trees or the newly planted trees. The proposed management plan places too much trust on the individual residents.
- The proposal cannot be said to be carefully integrated into the site with extensive areas of woodland retained.
- The Muiry Woods are enjoyed by local walkers, runners, pet owners and those who want to get closer to nature but can't travel further afield.
- Cutting down trees alongside the road will cause a domino effect and expose neighbouring trees to the south westerly winds. The whole woodland area would be lost altogether, not to mention trees on adjoining properties.
- The number of trees removed does not include the number that will be lost to windblow.
- Loss of trees when Scotland as a nation is trying to grow more is wrong.
- This would destroy the nearest significant woodland area within walking distance of Forres which has a high value for the study of natural history and its functioning habitat.
- Destroying the woodland and the removal of trees is bad for global warming and for our overall well-being and health. We have seen the negative effect of this in other countries across the world creating flooding and destroying their national heritage.
- The continual removal of woodland to the south of Forres should be deplored on the grounds of loss of amenity.

- The tree protection barriers 2m high to be put up are ugly and look unsafe.
- Destroying woodland to build houses on OPP4 would adversely affect amenity, landscape, biodiversity and recreational value and the only economic benefit might be for the developer, while the loss for community would be enormous and permanent.
- Disappointed to learn the necessity to virtually clear fell the majority of trees currently on the site.
- There is no mention of tree preservation orders in respect of tree loss which includes mature Scots Pines.
- The woodland provides a natural boundary to the south of Forres.
- Were planning permission to be granted, it is submitted that this would be contrary to the biodiversity duties of Moray Council in terms of Section 1 of the Nature Conservation (Scotland) Act 2004. Furthermore, retention of trees plays an important role in Moray Council fulfilling its obligations under Section 44 of the Climate Change (Scotland) Act 2009 and to permit their removal would be unsustainable.
- The choices of native trees specified in the “Woodland Management Plan” have different requirements that must be met in order to thrive, such as certain drainage and soil requirements. At no point does the “Woodland Management Plan” address differing soil requirements of the choice of native trees to be planted. Indeed, at paragraph 6.2.6 under “New tree planting” it states “No additional drainage has been specified”.
- The “woodland management Plan” stated that would be an expert visiting the site every 2nd year over a 5 year period to inspect new trees. The Scottish Governments policy on Control of Woodland Removal states that an annual review should be used to monitor progress.

**Comments (PO):** As detailed in the observation section below of the report the proposal complies with the requirements of the Moray Local Plan 2015 and supplementary guidance.

The development will involve the loss of approx. 50 trees and 231 group trees which are to be replaced by 497 new native broadleaved trees. A Legal Agreement will also be in place if the application is approved, this will detail the terms of a monetary contribution for a hectare of tree planting off site.

The site was designated as an opportunity site prior to the introduction of the Scottish Government’s Control of Woodland Removal Policy therefore it has been accepted that for the site to be developed some trees will lost.

A Woodland Management Plan has been submitted with the proposal that will ensure the impact of the development is minimised and a sustainable tree population will be developed on site.

The site itself is not accessible in any way for the general public. The site is surrounded by deer fencing.

The site was previously used for commercial Forestry and was clear felled in 1989, with the exception of some Scots Pine at the front of the site. It was not replanted. In 1998 the

site was part of an approved extension to Cathay Nursing Home. Then in 2008 the site was included in the Moray Local Plan as an Opportunity Site for low density housing or business use. The trees that are currently on the site (bar the scots pine at the front and eastern boundary) have self-seeded since the site was clear felled 30 years ago

The Forestry Commission Scotland were consulted on the proposal and have stated that 'as the decision was made prior to the adoption of 'the Policy', to accept this area as a development site (in the current and previous Local Development Plans) then FCS recommends that if development is now approved then compensatory planting of the same type and equal area as that lost to the development should be made a condition of the approval'. This has been adhered to by the applicant with double the number of trees being planted on the site as to those being removed and a monetary sum being provided by way of a legal agreement for compensatory tree planting off site.

Within the Arboricultural Impact Assessment/Method Statement (Rev B) has been undertaken that ensures that the trees that are to be retained to be protected.

The proposal demonstrates that it can be integrated into the woodland that is to be retained through plans, Arboricultural Impact Assessment/Method Statement and A Woodland Management Plan.

A buffer is to remain along the boundary of Muiry Woods and the front of the site (along St Leonards Road) therefore a woodland corridor would remain between Muiry Woods and the top of St Leonards Road and will lessen the impact of the proposal to the neighbouring woods and provide a corridor for wildlife.

The proposal will not impact Muiry Woods Visually from the surrounding area the woodland will not appear to be significantly changed due to the band of scots pine that remain which fronts onto the public road.

Tree protection barriers are necessary while the site is being developed. They will be removed upon completion of the site.

The site does not have a Tree Preservation Order on it.

Young trees can take many years to establish however given the number of to be retained the site will still appear wooded.

## **Wildlife**

- The proposal will adversely affect wildlife such as red squirrels, badgers, pine martens, polecats and various birds by the removal of valuable habitat which is home to important fauna and flora.
- The fact that no dreys or setts have been found does not change the fact that the area acts as a corridor and feeding ground for wildlife, which is just as vital as providing den sites. Removal of trees, no matter what their age, would threaten the viability of this corridor. The wildlife could disappear from the area in the course of destruction of the woods and construction of the housing estate.
- Particular concerns for the pine marten which requires a substantial area of woodland and it would be sad if such protected species disappeared from the locality altogether as a result of this proposed development.

- Pine marten, crested tit and red squirrel as listed as UK BAP priority species, all exist in the woods that will be severely changed to accommodate more humans if this plan is realised.
- It is not in the public's overriding interest to disturb European Protected Species that are found on the site.
- Neighbouring properties have photographic evidence of their gardens being frequented by protected species including adult and young pine martens.
- The public who visit Muiry Woods think it is inconceivable that there is not evidence of protected species on the proposed site.
- During construction and engineering works and the deforestation required in connection with the development and subsequent human habitation there is no doubt that protected species would be considerably disturbed.
- Red squirrels nest in the large mature pine trees.
- Destroying habitat is not what is needed in our current times of climate change and mass species extinctions.
- Wildlife will not just be put at risk from the building of 12 houses but also the cars, lawn mowers, radios, trimmers, domestic animals, gully pots that will trap large numbers of invertebrates, amphibians and small mammals and windows causing deaths of birds.
- The woodland developing on OPP4 is the natural succession from clear felling Scots Pine around 24 years ago. Birch and pine now dominate a ground cover of heather and grass with rhododendron in damper and less stony parts. A pinewood orchid, creeping lady's tresses grows below older pines and intermediate wintergreen grows around the old town gravel quarry.
- The 2m high fence erected by the previous owner deterred the public but also prevented free ranging dogs, so roe deer and the ground nesting woodcock have found it a haven. Breeding birds include willow warbler, chiffchaff, blackcap, song thrush, long-tailed and great tit. Although garden cover might provide cover for a few bird species, the introduction of domestic cats would be devastating for all ground nesting species in the whole woodland.
- One or two pairs of Woodcock, now a red listed species, nest every year and the undisturbed cover is a haven for visiting continental birds in the winter months. Badgers have been present in OPP4 for many years, accessing surrounding woodland and neighbouring houses gardens. The perimeter fence has tunnels dug under it and feeding scrapes are widespread in the woodland, including wasp nest excavations.
- An independent survey should be commissioned to accurately determine the full impact on this wildlife if building here was to go ahead.
- Wildlife is at further risk of being killed on the road due to the increase in traffic that 12 houses will create especially at night. Speeding on St Leonards Road has led to frequent killings of Red Squirrels Reports of sighting of dead squirrels are often made to SWT Red Squirrel project.
- Scottish Natural Heritage's (SNH) consultation response can be given no substantial weight in justifying a decision to permit the proposed works as it is contradictory in its terms regarding impact and purely observational.



**Comment (PO):** Scottish Natural Heritage (SNH) were consulted on the proposal and advised that there are natural heritage interests of local importance on site which will be impacted by this development but this will not be detrimental to the conservation status of European Protected Species with their natural range therefore do not object.

The Protected Species Survey report confirms that no Red Squirrel dreys are found on the site. However it is probable that over time wildlife activity on the site may change therefore if the proposal is approved, a condition will be attached to the consent requiring pre-construction surveys to be carried out to ensure that the development will not adversely impact upon or disturb European protected Species.

The woodland buffer to be provided along the boundary of the site and Muiry Woods will lessen the impact of the proposal to the neighbouring woods and provide a corridor for wildlife.

The Protected Species Survey report states that badgers and red squirrels do visit the site however SNH have commented that the proposal will not be detrimental to the conservation status of European Protected Species including badgers.

The submitted Protected Species Survey report has been carried out by an independent Ecological Consultant as will the pre-construction surveys.

While the proposal will generate extra traffic on the joining public roads in context to the volume of traffic that uses the joining roads it is insignificant to road kill.

If the application is approved a condition stating that any clearance of vegetation takes account of breeding birds, either confirming that none are present or require protection would be covered by the pre-commencement surveys.

## **Road Safety**

### **Pedestrians**

- Crossing St Leonard's Road at several places (Alexandra Terrace, Nelson Road, St Leonard's Drive, Adam Drive) is a dangerous business and there is worry about children on their walk to/from school.
- No pavements on this section of St Leonards Road or speed limit.
- Some stretches of St Leonards have sections of no pavements.
- The Moray Council Transportation Manager at Condition 3 of his response has placed a requirement on the developer to provide a 2m wide cycle and pedestrian path, set back from the B9010, linking the site to the existing Council Woodland Car Park. We believe that this requirement should extend the length of the path to the entrance to Leancoil Hospital as the current path from the Council Woodland Car Park to the Hospital is very narrow, inadequately surfaced and unmaintained.

### **Increase in Vehicles**

- St Leonard's Road is a narrow long road with a narrow pavement all the way up on one side only and is already an unpleasant, sometimes dangerous, road to

walk/cycle on due to lack of width. Residents of the proposal will be forced to use it thereby increasing traffic on an already unsuitable road.

- Increased traffic (approx. 70 cars) will lead to more speeding.
- The road is particularly dangerous at night.
- Taking road safety into consideration, a major rethink of the junction, width and usage of this road would require to be undertaken.
- Should planning consent be granted where would the many builders lorries and vans working on this site park? There is no space to park on B9010. Lorries parking on B9010 would cause obstruction and be dangerous to other road users and pedestrians.
- The road is in a very uneven state and the grassy bank which used to be on the northern side of the road has been totally eroded by heavy traffic and quarry lorries. In wet weather it is impossible to walk along the road without getting drenched. The road needs up grading if it is to support more traffic.
- Access to the A96 through Forres Enterprise Park has undoubtedly increased traffic flow on this minor road since the last MLDP was produced that included OPP4.

#### Existing Dangers

- This part of the road is not wide enough for two cars to pass each other comfortably. Travel towards Califer in the face of an oncoming vehicle requires leaving the road surface and using the verge or a complete stop for a large oncoming vehicle.
- The junction at the road to Rafford is dangerous and there have been many accidents there. The Y junction just beyond the entrance to the Council owned woods is also dangerous.
- As it stands the public road is susceptible to potholes and surface water splashes onto the boundary wall at Cathay and has caused damage to the wall by eroding the mortar.

#### Access

- The proposed entry/exit point for this development cannot be seen by vehicles turning from the B9010 onto the minor road until after they have passed the junction due to trees on land outside that owned by the developer.

#### Speeding

- Speed limit on this section would need to be lessened.
- Vehicles do not normally slow down when taking the nearby junction; they will have very little warning of any traffic emerging from the development.
- St Leonards Road already has considerable lorry traffic from the farms, conifer plantations and from the quarry which already break the speed limit and cause disturbing shockwaves / heavy vibration in the adjacent buildings.
- Residents of St Leonards Road have already complained to the police about the speed of the traffic on a constant basis.

**Comment (PO):** The Transportation Section has considered all these issues as part of the application but does not object to the proposal on road safety and increase in traffic subject to conditions and informatives being attached to the planning consent.

Prior to the commencement of works the public road (U94E Brodieshill to Califer Road) along the site frontage is required to be widened to a minimum of 5.5m, between the junction with the B9010 and the Eastern site boundary, tying into the existing carriageway at "Scania". This works will also need to take into consideration existing roads drainage infrastructure within the carriageway. A 2m pedestrian and cycle path is also required linking the site and the existing Council Car Park to the West of the site.

It is speculative to assume that development of the scale proposed for 12 housing units, with the required access visibility splays would create road safety concerns.

Speeding on St Leonards Road is a matter separate to the planning consideration of the above development and would not constitute a reason to refuse the current planning application.

The Transportation Section has not objected to the proposals on the grounds of road safety on St Leonards Road and the surrounding roads are capable of dealing with the additional traffic generated.

It is unreasonable to ask for the applicant to extend the length of the path to the entrance of Leancoil Hospital.

Accident data (where reported) has been taken into consideration as part of the process.

## **Pollution**

- If the development preceded the quiet and peaceful ambience of the area which has long been recognised would be jeopardised. It would lead to increased noise and light. This would affect local people such as star-watchers and walker and nearby current residents during construction and once the house are built.
- The street lighting required for the proposal will be reducing and disruptive in what is currently a 'dark sky' area at the moment.
- Increase in traffic noise and pollution to a quiet country road is unacceptable.
- Increase in dust and litter.
- During construction the works required will be on an industrial scale, this could create health issues for existing residents including anxiety, stress and fear.
- The constant stress of construction followed by daily living of 60 permanent house dwellers will soon impact negatively on the surrounding environment.
- The inclusion of benches in the woods could lead to noise and a disruption of the tranquillity of the natural surroundings. This could also encourage barbecues, music, late night activities and an increase of litter. All of which will have an impact on the area.
- It is a major failing on the applicant's part to not address the nuisances such as noise, increased vehicular traffic, lights and drilling etc. in the planning proposal documentation.

**Comment (PO):** Given the amount of planting that is to be retained on the site it is unlikely that dust will be an issue, it is not considered necessary to set out further controls on dust. Environmental Health were consulted on the proposal and have raised no objections.

It is speculation that the proposal will cause an increase in litter.

As with any new build or re-development on a site, construction impacts including disturbance and disruption are somewhat inevitable but likely to be intermittent, occur over a short-term period and are temporary in duration. Attention to the on-site management of construction activity, including 'best practice' and adherence to requirements of other legislation can also address and mitigate the impact of such effects to ensure that any residual impacts, if any, are not significant.

The increase in the numbers of traffic that would be generated if development were to occur would not result in any substantive or detrimental increase in air pollution.

### **Drainage/Sewage**

- Sewage and drainage is already a big problem in St Leonards Road, it often smells disgusting, despite drains having been professionally cleaned out the length of the road. New houses will compound these problems.
- Neighbouring properties have experienced difficulties with their septic tanks, the proposal could exacerbate this.
- Neighbouring properties are becoming increasingly waterlogged and surrounding fields appear to have been standing in places on a more or less permanent basis.
- Drainage Assessment lodged with the application makes reference to 12 new residential units when the application is for 14 new residential units. The report also lacks detail as to how the soakaways are to operate.
- Even with the new proposed drainage arrangements neighbouring properties are still concerned about the effect all the construction and engineering works will have their soakaways.
- Forres sewage works cannot cope with deluges of rain water, outpouring straight into Findhorn bay, along with waste matter and associated items.
- Find it very difficult to understand why connection to the public sewer should be acceptable when in recent years an application for connection to the public sewer by the nearby established Cathay Nursing Home was refused.
- The application by the nursing home to connect to the public drainage, required public advertisement so I do not understand why the amendment to the application is not being advertised publicly. Surely an increased burden on the public sewer is a matter of public concern?
- Scottish Water have stated that they will not normally accept water connection into their combined sewage system – without this where would this contaminated water end up? In the Chapelton Spring? This would be a catastrophe. It feed the renowned Speyside Distillery.
- The underlying soil is a hard mixture of gravel, sand and boulders, as left by the Ice Age. In some areas a hard iron pan, from leached iron salts, has been caused by

acidic surface conditions, cementing materials together and impeding drainage.

Nearby, Cathay Nursing Home has had major septic tank problems as foul water has not drained but some seems to have surfaced, slightly downhill, in a nearby field.

- The proposal should not compromise the water supply for the distillery to the north side of Forres, where its water supply passes within 200m of the site.

**Comment (PO):** The Drainage Impact Assessment has been assessed by SEPA and the Councils own Flood Risk Management Team. Following amendments to the assessment following questions raised by consultees, they are now satisfied with the proposed drainage which is connection to the public sewer. Risk of increased problems to neighbouring properties septic tanks etc. will have been taken into consideration as part of the assessment process.

The public road (U94E Brodieshill to Califer Road) along the site frontage is required to be widened to a minimum of 5.5m, between the junction with the B9010 and the Eastern site boundary, tying into the existing carriageway at "Scania". This works will also need to take into consideration existing roads drainage infrastructure within the carriageway.

Scottish Water have raised no objections to the proposal and have stated that there is capacity within the sewers for the development. The development will include a sewerage pumping station which will in turn to connect to the public sewer to the west. It is not considered that the site, through which no water courses flow or spring from, would have a detrimental impact upon private water supplies within the area.

## **Flooding**

- The area has a history of occasional flooding and this proposal will increase this threat due to the major excavation work and indiscriminate felling of trees.
- There is frequently surface water flooding on the U94E Road, the proposal could exacerbate this problem with more (contaminated) water having nowhere else to go. Any rainwater from the site will add to the regular flooding of gardens on St Leonard's Road.

**Comment (PO):** Parts of the application site lie within the medium likelihood (0.5% annual probability or 1 in 200 year) flood extent of the SEPA Surface Water Flood Map. The proposed on-site drainage and Sustainable Urban Drainage are acceptable to Moray Flood Risk Management therefore there is no increased of flooding caused by the proposal.

## **Design**

- The houses are not in keeping with the rural design; they are too large, clunky and cumbersome to be sympathetic to a woodland setting.
- The houses include boilers. It does not state whether they are oil or gas. Has the gas supply been contacted and/or is oil a safe and sustainable product to be using in woodlands. Both gas and oil are highly combustible.
- Larch cladding is shown for the houses. Larch is a top recommend fuel for commercial firewood suppliers – it burn easily and at a high temperature.

- Black P.V.C. (rainwater goods) would burn and melt at an extremely high temperature.

**Comment (PO):** The proposed houses are of a high standard of design and will sit well within the site and its surroundings.

The suitability of gas or oil for the houses will be assessed as part of the Building Warrant.

The use of Larch cladding is used throughout Moray and Scotland and is an acceptable external material for the housing.

### **Precedent**

- Risk of development setting a precedent

### **Character**

- Development is wholly out of character with the locality. St Leonards Road is a road comprising large houses with associated large gardens and it would be inappropriate to construct a housing estate with a few trees around it and destroy a whole woodland and the wildlife therein in the process.
- The proposal would be more suitable in a suburban situation.
- The proposal would completely destroy the tranquillity and character of the area forever, as has happened already with a number of developments around Forres.

**Comment (PO):** St Leonards Road comprises many different house types ranging from large villas to modern bungalows. The plot sizes on St Leonards Road vary in size to accommodate the differing house types. As detailed in the observation section of the report below the proposal complies with the Moray Local Plan 2015 and supplementary guidance. The proposal therefore is not out of character with its surroundings and it will not destroy a whole area of woodland and measures will be in place to protect wildlife.

The proposal is within the Forres settlement boundary.

The surrounding woodland will not be significantly impacted by the proposal.

### **Overdevelopment**

- The development is unnecessary and constitutes inappropriate/overdevelopment as a large cul de sac is not in keeping with existing dwellings in the area.

**Comment (PO):** The proposed 12 plots range in size from 734 sqm to 1996 sqm therefore are large. With the overall site being 31100 sqm in size the proposed sites can be classed as low density.

### **Moray Local Plan, Supplementary Guidance and National Policy**

- The proposal is contrary to policy ER2 as there is no social or economic benefit of national, regional or local importance, indeed the only economic benefit will be to the developer. It is also contrary to policy EP1 of the current and proposed new plan.

- The proposal shows complete disregard to the “Moray Local Plan 2000, Housing in the Countryside”.
- Concerns for the environment and awareness of the long term impact of removal of woodlands has grown significantly since OPP4 was originally included in Moray's Long Term Plan and current policies should be strictly enforced if the Council are to have any credibility in their concern for our wonderful environment in Moray.
- Revised proposal cannot be classed as low density as required by OPP4.
- The development's impact conflicts with the Moray Woodland & Forest Strategy – Supplementary Guide - published by Moray Council (January 2018), which states the following;

Expanding, Protecting & Enhancing Our Woodlands, page 4

- Support the protection of existing woodland.
  - Promote woodland practices that protect and enhance environmental quality and biodiversity.
  - Promote the conservation of species and habitats (e.g. red squirrel)
- Connecting People & Communities to Our Woodlands, page 15.
- Promote the creation of woodlands close to towns and villages.
  - Prepare masterplans and development briefs for development sites to secure, woodland creation, green infrastructure and green networks
- It also conflicts nationally with Scottish Planning Policy through the Scottish Forestry Strategy (SFS) - The right tree in the right place - Planning for forestry & woodlands, page 9 (2.3 Planning).
- published by Forestry Commission Scotland.
- "The second National Planning Framework (NPF2) reiterates the objectives of the SFS and the need to plan proactively for an expansion of woodland cover.
- In addition, NPF2 confirms the protection that should be afforded to existing woodland, and that woodland removal should only be permitted where it will achieve significant and clearly defined additional public benefits. NPF2 also emphasises the importance of developing green networks and habitat networks for the benefit of people, landscape and nature".

- Proposal does not comply with Scottish Planning Policy (Para 34 - pt7, Para 35 - pt 7, Para 37) Section 1 Nature Conservation (Scotland) Act 2004, Section 3E – part 2 of the Planning etc. (Scotland) Act 2006, Section 25 of the Town and Country Planning (Act)1997, Section 15 of the Planning etc. (Scotland) 2009, Section 1 of the Nature Conservation (Scotland) Act 2004, Schedule 5 and 6 of the Wildlife and Countryside Act 1981 (as amended), European Habitats Directive (Council Directive 92/43/EEC) and Appendix III Berne Convention on the Conservation of European Wildlife and Natural Habitats 1982.

**Comment (PO):** It is assumed that it is in fact the Moray Local Plan 2015 that is being referred to. Policy H7 ‘New Housing in Open Countryside’ does not apply to this proposal due to the site being located within the Forres settlement boundary.

The site was designated as an opportunity site prior to the introduction of the Scottish Government's Control of Woodland Removal Policy and the change in policy regarding woodland for Moray Council therefore it has been accepted that for the site to be developed some trees will lost.

As detailed further in the observation section below the proposal complies with the required policies of the Moray Local Plan and supplementary guidance therefore in turn complies with Scottish Government policy given the site is designated as an opportunity site.

## **Environment**

- Building houses so far from centre of town leads to reliance on private transport. Environmentally damaging and goes against Scottish Executive's long term aim of reducing Scotland's carbon footprint.

**Comment (PO):** This is noted however it would not constitute a reason to refuse the current planning application.

## **Other**

- The development applied for occupies less than 50% of the area designated OPP4. There is concern that if this development application is approved and built, a further application will be made for the remaining area of OPP4 with the submitted Block Plan already showing 'future access' onto the minor road by Cathy nursing home. This would mean even more woodlands destroyed and more houses built. The Developer should state his intentions for the remainder of the land before this proposal is even considered.

**Comment (PO):** The developer is not required to give his intentions for the remainder of designated OPP4 site.

- The developer also has land in the Forres area which has lain undeveloped for the past 10 years.

**Comment (PO):** This is not a material planning consideration.

- Aware there is not a high demand or an urgent need for new housing in Forres and what demand there is can be met by the unsold stock of existing houses and the large development at Knockomie Braes where many houses remain unsold.

**Comment (PO):** This is not a material planning consideration.

- This application is similar to the Dallas Dhu applications in that it is in an area of rural countryside previously untainted and inappropriate for new development. Most of the other areas with development in Forres have already lost their rural character.

**Comment (PO):** The proposal complies with the requirements of the adopted Moray Local Plan and supplementary guidance as detailed in the observations section below.

- The houses will no doubt be in the expensive bracket which is already being enlarged towards Califer -Blervie Castle and along the tracks at the south end of Rafford which are treeless.



**Comment (PO):** This is not a material planning consideration.

- The development will produce extra costs to the Council, NHS and Scottish water.

**Comment (PO):** A developer obligation is required to be paid and will be covered prior to the planning consent being issued. This is sought to ensure sustainable economic growth in Moray.

- This development should not be permitted to go ahead despite the area being designated in the current Plan as a development opportunity. It is only a potential opportunity that was identified, and not a guarantee of development.

**Comment (PO):** Policy ED5 (Opportunity Sites) states that it seeks to promote sustainable development and encourage the use of previously used land which is now vacant or derelict. The town and village statements identify “opportunity sites” which present the opportunity for appropriate alternative uses in the event of a proposal to redevelop. With the designation text (OPP4) the change of the use of the site to low density residential use is given.

- Some of the residents will be smokers and some of these will be careless. Given the number of trees in the area and the abundance of gorse, the unsavoury prospect of a woodland fire looms to mind.

**Comment (PO):** Whilst this could happen, it is not a material planning consideration and does not constitute a reason for refusal.

- The area is a small paradise that is free of charge. People have been dependant on nature sanctuaries like these for a good while to unwind and generally detach from modern life’s stresses and strains. Their freedom is being taken away from people whose only regard is for financial gain.

**Comment (PO):** The proposal site is not accessible to the public.

- The whole scheme looks like a package ready for a developer who would impose a uniformity quite alien to this part of the town, where variation in size and style, as well as large gardens, make an attractive mix.

**Comment (PO):** This is not a material planning consideration and any changes to the proposal (if approved) would either require to be agreed via a non-material variation or by further planning consent.

- The proposal would impact on the residents of St Leonards Road and other surrounding properties.

**Comment (PO):** The proposal would have a minimal impact on the residents of St Leonards Road.

- This area was granted its OPP4 status in 2008. At that time a development of the type proposed may have been deemed appropriate by the planners. However, public opinion has moved on since then with new Scottish Government legislation and policies and Moray Council environmental policies introduced to address the protection of woodlands and wildlife habitats of this type. We believe that this development, if approved, would directly contravene these policies.

**Comment (PO):** As correctly stated that site was designated prior to a shift in policy by the Scottish Government therefore it is accepted that the site can developed as per its designation.

- The developer has not consulted with FCWT regarding the future management of any buffer zone and links to the existing paths network, per the current MLDP.

**Comment (PO):** It is anticipated that the future management of the buffer zone will be discussed with FCWT if it is approved.

- Given the strong community opposition to housing development in this area it is requested that the OPP4 Cathay opportunity site designation be rescinded and changed to ENV designation in MLDP2020.

**Comment (PO):** The site is to remain as an 'opportunity site' within the new Moray Local Plan 2020.

- The Forres Community Woodlands Trust has received over 20 public objections comments and 336 negative reactions on via social media, not to mention direct emails from concerned members of the Forres community.

**Comment (PO):** Only representations received to the Council via the correct channels can be considered as representations to the proposal.

- One of the Footpaths Trust's most popular way marked walks, which also appears on national websites, passes very close to the site of this proposed development which would be intrusive and totally inappropriate in this vicinity.

**Comment (PO):** The proposal will have a minimal impact on the surrounding woodland. A woodland buffer is being provided between the site and Muiry Woods.

- There are satisfactory alternative sites in Forres that would not cause the same degree on environmental damage.

**Comment (PO):** The site is an ‘opportunity site’ within the Moray Local Plan and complies with the proposal complies with the Moray Local Plan and supplementary guidance.

- The ‘Developer Obligations’ consultation response states that contributions towards healthcare and a sports field are required, censored public benefits cannot be deemed as clearly defined and significant in accordance with Scottish Planning Policy (SPP) Para.148 as stated.

**Comment (PO):** The Council has previously agreed that specific developer contribution amounts should not be published to unduly influence the assessment of planning matters. The reference to para 148 of the SPP is unclear where it relates to designated Gardens and Designed Landscapes. The closest to the site is at Grant Park over 1km away and visually separated from the site.

- The public should not be faced with a decision to opt for one social benefit at the cost or detriment to another socially beneficial asset.

**Comment (PO):** The planning application does not seek to pose that question. Developer obligations are in place to offset and compensate for the effect of the development, where it is otherwise deemed to be acceptable.

- To allow the proposed works to commence would not be in the overriding public interest and would leave Moray Council and the developer at risk of further legal action

**Comment (PO):** This premise of the statement is unclear, where the site if approved would be in accordance with a designated opportunity site, within the adopted local development plan. It cannot be presumed that the public interest is unanimously against a housing development, where pressure and demand for new housing has been identified nationally.

## **OBSERVATIONS**

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the Development Plan i.e. the adopted Moray Local Development Plan 2015 (MLDP) unless material considerations indicate otherwise. The main issues are considered below. On 18 December 2018, at a special meeting of the Planning & Regulatory Services Committee, the Proposed Plan was approved as the “settled view” of the Council and minimal weight will be given to the Proposed Plan, with the 2105 MLDP being the primary consideration.

The main planning issues are considered below.

### **Forres OPP4 Designation**

The principle of this proposal for 12 houses accords with the Moray Local Plan 2015, which identifies the site for low density residential or an appropriate business use suited to the amenity of the site.

The proposal falls to be assessed against the provisions of the governing policy ED5: Opportunity Sites and the site specific requirements of the OPP4 designation. Policy ED5 states that 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. This policy seeks to promote sustainable development and encourage the use of previously used land which is now vacant or derelict.

The Forres OPP4 designation text makes reference to the opportunity for low density residential use or appropriate business uses, carefully integrated into the woodland with extensive areas of woodland retained. The text also sets out a number of requirements that must be met including significant tree retention, buffers to existing woodland and connecting pedestrian/cyclepaths to the north and west.

The submitted application for the proposed development of 12 houses with associated roads/drainage infrastructure across part of the opportunity site provides sufficient detail to consider the proposal against the requirement of policy ED5 and Forres OPP4 designation text. The proposed layout including the landscaping, woodland management plan, drainage information, functional pedestrian/cyclepath linkage, the access, the future link to adjoining ground (to the north which forms the remainder of the OPP4 designation) address the site specific requirements of OPP4.

The 12 house proposal is a reduction of two plots from the previous planning application 17/01887APP. This reduction in density has resulted in significantly more trees being retained within the site. The proposals are supported by detailed tree survey work to inform identification of most appropriate areas for housing that minimises tree removal. To support this approach further information has been provided to show tree removal on a plot by plot basis for all plots, so it is clear which trees are being retained.

The tree survey report provided identifies tree specimens to be retained and those to be removed and details measures to protect trees during construction. One of the tree planting plans has the original layout and requires to be updated to reflect the revised layout, which is covered by the conditions recommended. As set out above compensatory planting to mitigate the effect of woodland removal is being provided with a mix of native species and would be covered by contribution via the Section 75.

The woodland buffers between the development and Muiry Wood and Council Wood to protect the recreational value of these woodlands has been provided. It is recommended that these woodland buffers are removed from the gardens of plots.

Pedestrian connectivity through to the remaining area of the OPP designation is shown. The north pedestrian/cyclepath connections are shown to the west to allow future residents to access the adjacent woodlands. The designation text also makes reference to the long term management of the buffer zone involving the Forres Community Trust and Forres Footpaths Trust. This relates to the northern section of the opportunity designation that immediately adjoins Muiry Wood which is not part of this planning application.

Given the above the proposals are considered to meet the requirements of the designation text.

### **Placemaking (PP3)**

The local development plan policy PP3 and supplementary guidance on Urban Design seek to ensure that new residential developments function well for occupants and create a sense of place and identity.

A Quality Audit (QA) was undertaken for this and the previous withdrawn application (17/01887/APP). A QA is a tool that is used to adopt a consistent and relevant approach to the assessment of design and place quality as set out by the Scottish Planning Authority. The audit consists of 12 categories which are categorised by movement, buildings and open space/landscaping. The QA assesses each category using a traffic light system; red does not comply, amber almost complies and green it complies.

In order to fully demonstrate the evolution of the proposals and the amendments undertaken by the applicant the two applications were merged into the single QA. Application 17/01887/APP was withdrawn in order to make significant alterations following the QA process which had identified all categories as red (bar car parking). 18/01117/APP was submitted taking account of the QA requirements however further amendments were still required in order for the proposal to be acceptable. The QA identified a number of changes required to improve the design and layout of the development. The changes negotiated as part of the QA have been incorporated within the development proposals, these included, amongst other things, improved pedestrian connectivity, improved site layout including road arrangement, retention of additional trees including woodland buffers along the sites boundary Muiry Wood and the Council Wood, compensatory planting (off site), improved habitat connectivity for wildlife and improved open space. As a result of these changes to the proposal all categories are now green except the Open Space category, which is amber, due to the area of greenspace and proposed education area to the rear of plots 11 and 12 has limited surveillance however it was essential to seek to retain this area of pine trees and create habitat connectivity for red squirrels and other wildlife across the site and minimise disturbance to soils.

Following this process and the amendments made, the proposed development would provide a pleasant and functional living environment, and is considered to comply with Policy PP3 Placemaking of the Moray Local Plan 2015.

### **Development within Woodland (E4 & ER2)**

The above policies collectively seek to protect woodlands from inappropriate development. The woodland on site is identified in the Ancient Woodland Inventory and appears in the Native Woodland Survey of Scotland.

E4 Trees and Development states that woodland removal will only be permitted where it would achieve significant and clearly defined additional public benefits. This policy requirement is applied to undesignated sites however the principle of developing this site has already been established through its designation for low intensity residential or appropriate business uses.

ER2 Development in Woodlands states that woodland removal within native woodlands, ancient semi natural and woodlands within protected sites under the terms of policies E1 and E2 will not be supported. Policy E2 Local Nature Conservation Sites applies as the site is identified in the Native Woodland Survey of Scotland. Under the terms of this policy proposals must demonstrate that local public benefits clearly outweigh the nature conservation value of the site and there is a specific locational requirement for the development. As with Policy E4 the principle of developing the site was established when

the site was originally designated. The planning history set out below helps explain the background to designation of the site.

Policy E4 further states that where woodland is removed developers will generally be expected to provide compensatory planting to mitigate tree removal. There are 50 trees and 231 group (clustered) trees being removed and 497 new native trees being planted which will result in a net gain of tree cover across the site. The woodland retained within the plots and additional planting proposed does not constitute compensatory planting as the existing and proposed woodland is considered to be permanently lost due to change of use to residential. Approximately 2 ha of woodland is being removed as a result of the development. It is acknowledged the applicant has made significant efforts to retain as many trees as possible within the site. The proposals seek to supplement the retained woodland area and woodland buffers around the site with additional tree planting, create an educational area and enhance access to woodland within the site and access into surrounding woodlands. In taking account of these measures, the applicant is being required to provide 1 ha of compensatory woodland planting and has agreed to a developer contribution toward woodland provision elsewhere within Moray. This contribution will be ring fenced for provision in Forres.

On the basis of the above the proposals are considered to meet the terms of E2, E4 and ER2.

### **Access and Parking (T2 & T5)**

Policy T2: Provision of Access requires that no development proposal 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. Policy T5: parking standards states that proposal for development must conform with the Council's current policy on parking standards.

Prior to the commencement of works the public road (U94E Brodieshill to Califer Road) along the site frontage is required to be widened to a minimum of 5.5m, between the junction with the B9010 and the Eastern site boundary, tying into the existing carriageway at "Scania". Trees are generally set back from the road edge by several metres, but diligence over the location of trees roots may affect several closest to the road. These works will also need to take into consideration existing roads drainage infrastructure within the carriageway. A 2m pedestrian and cycle path is also required linking the site and the existing Council Car Park to the West of the site.

The proposal complies with policies T2 and T5 subject to conditions being attached to the planning consent if approved.

### **Open Space (E5)**

Policy E5 states that Open Space must serve a function and be positioned so that it is safe and easily accessible. A minimum 15% open space is required in developments of 10 – 50 houses. Open space must serve a function and be positioned so that it is safe and easily accessible.

Reducing the number of plots from 14 to 12 has created a large area of woodland and educational space within the development. This is accepted as the layout of the development and location of the open space has been dictated by maximising retention of trees within the development.

This has resulted in an area of greenspace and a proposed educational area to the rear of

plots. It is accepted that the area has limited natural surveillance however it was essential to seek to retain this area of pine trees and create habitat connectivity for red squirrels across the site and minimise disturbance to soils.

The total open space area of the site is 9591sqm which is equal to 31% of the total site area. The proposal complies with policy E5.

### **Drainage and Water (EP5 & EP10)**

Policy EP10s aim is to achieve the satisfactory disposal of sewage; it encourages new development to connect to the mains system whenever possible. Policy EP5: Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS) requires that surface water from development should be dealt with in a sustainable manner.

### **Foul Drainage**

In accordance with good practice the development will require to be served by a separate foul and surface water system and incorporate SUDS facilities.

The individual properties are to discharge to a proposed new 150mm diameter PVC foul sewer to be located beneath the development roads. The foul sewer is to connect via gravity to a new Private sewage pumping station.

The point of connection for the new pumping station is located approximately 720m to the north west of the site at the access to Leancoil Hospital. The formal route for the rising main is to be agreed between the relevant landowners/authorities and therefore has not been shown within the Drainage Strategy plan. A condition is imposed to ensure that the appropriate Scottish Water sewer connection is in place prior to occupation of the dwellings. SEPA were consulted on the proposal and have no objection subject to a condition ensuring that the connection to the public foul sewage system is completed prior to the occupation of any dwellings.

As the pumping station is to remain privately maintained, any sewers upstream of this point will not be adoptable by Scottish Water therefore the infrastructure within the site will require to be privately maintained also, either by the applicant or appointed factor.

### **Storm Drainage**

The surface water drainage will require to be designed in accordance with the principles of sustainable development. The objective of SUDS drainage systems is to manage the surface water runoff from the development by providing flow attenuation, water treatment and controlled discharge or dispersal. The aim is to maintain the pre development runoff rate which would be achieved by agreeing a pre development Greenfield runoff rate and designing a system to limit the post development discharge to this value.

The preferred method for incorporating SUDS within a development is to provide a series of features forming a management train throughout the site for the storm water.

Source control methods such as individual soakaways, porous vehicle surfaces and roadside infiltration trenches or swales are situated at the upstream end of the train.

The downstream end of the chain can be made up of detention basins, ponds or wetlands where required.

The surface water runoff for the roof areas of the properties are to therefore discharge to individual private soakaways within the plot boundaries. The soakaways are to be designed to manage surface water runoff up to and including a 1:30 year event.

The Moray Council Transportation Department were consulted prior to designing the road drainage and as such the preferred method of surface water management was agreed to be road side swales. The surface water is therefore to discharge from the road areas via

off-lets/openings in the kerbing in to swales utilising infiltration to manage the surface water runoff. The swales are to be sized to accommodate flows up to and including a 1:200year event.

A Drainage Impact Assessment was submitted following consultation with Moray Flood Risk Management and further information was requested to include:-

- Surface water storage calculations are required to a 1 in 30 year return period plus climate change.
- Evidence is required to show a 1 in 200 year storm event will be contained on site.
- The surface water storage calculations shown are for an indicative plot, specific surface water storage calculations and layout details are required for each house type.
- Specific location details for the road filter drain.

This information was provided and Moray Flood Risk Management are satisfied with the details. If the proposal is approved the Drainage Impact Assessment will form part of the approval.

### **Control of Development in Flood Risk Areas (EP7)**

The SEPA Flood Maps indicate small areas of surface water flooding within the proposed site. There are localised low areas within the site based on the current topography. During the course of the construction it can be considered that site levelling to construct roads, plots and other infrastructure, together with the introduction of the proposed drainage features will remove alter the low areas in question. Localised flooding is therefore unlikely to occur following completion of the site.

The site does lie to the north of the Chapelton Dam area which as part of the Forres (Burn of Mosset) Flood Alleviation Scheme, restricts the peak flow on the Burn of Mosset from passing through to Forres. This will result in a large flood storage reservoir being created in times of high flow. But as displayed on the "Site Plan", this site is considerably elevated above the flood storage area and the B9010 road which runs between the site and flood storage area.

Moray Flood Risk Management and SEPA have no objections to the proposal therefore it complies with policy EP7.

### **Protected Species (E3)**

Nationally protected species are defined in the Wildlife and Countryside Act 1981. Under policy E3 any development proposals that would have an adverse effect on a European Protected Species will not be approved.

A Protected Species Report was submitted with the application. The survey was originally undertaken in March 2016. An updated report, as requested, was undertaken in June 2017.

The protected species survey report confirms that the following species do use the site – badgers, pine marten and breeding birds. The report also indicates that red squirrels are likely to use the site. Information submitted by a third party confirms the presence of red squirrels and pine marten in the area. However, no bat roosts, badger setts, pine marten dens or red squirrel dreys were found by the surveyor within the site at the time of their visits.



Pine martens, red squirrels, badgers and bats are protected species; the legal protection focuses on injury etc. to the animal itself and to damage/destruction/obstruction of access to breeding and resting places. Legal protection does not extend to the wider area used for feeding, commuting etc.

However, wildlife is mobile and territories change and can lead to individuals seeking new locations to breed and rest. It is therefore possible, and even probable, that the level of wildlife activity may change prior to the commencement of development and clearance of ground vegetation.

Scottish Natural Heritage (SNH) were consulted on the proposal and advised that there are natural heritage interests of local importance on site which will be impacted by this development but this will not be detrimental to the conservation status of these species with their natural range therefore raised no objection.

SNH have advised that the impact on protected species can be minimised by ensuring that:-

- pre-construction surveys are undertaken prior to any work commencing on site or on individual plots and this to include vegetation/tree clearance and; -
- by retaining, where reasonable and safe to do so, as many existing trees as possible on site.

A condition will be attached to the consent requiring pre-construction surveys to be undertaken prior to any work commencing on site or individual plots and this will include vegetation/tree clearance as set out in the Protected Species Report.

A large number of trees have been retained on the site and the proposal ensures that a network of trees are retained across the site which will ensure that habitat connectivity is not severed by the development.

Therefore the proposal complies with the requirements of policy E3.

### **Affordable Housing (H8 and Supplementary Guidance “Affordable Housing”)**

Under policy H8 and associated Supplementary Guidance proposals for new housing developments of 4 or more units must provide 25% of the total units as affordable housing or for practical reasons which make on site provision difficult or unviable, the provision of affordable housing off site or securing a commuted sum will be considered by the Council.

It has been agreed that a commuted payment towards affordable housing will be made to the Council prior to planning consent being granted therefore the proposal adheres with policy H8.

### **Accessible Housing (H9)**

Policy H9 requires 10% of private sector units of proposals for 10 or more houses are built to wheelchair accessible standards as detailed in the supplementary guidance “Accessible Housing”. Therefore for the proposal, 1.2 accessible housing units would be required, please note this figure is rounded up to 2 units. The Accessible Housing Supplementary Guidance requires that at least 50% of the wheelchair accessible units must be delivered as a single storey dwelling with no accommodation in the upper roof space i.e. a bungalow.

Within the site two accessible units (House Style G (Bungalow) are provided on sites 6 and 12 therefore the proposal complies with policy H9. The proposal therefore complies with policy H9.

### **PP2 Climate Change**

Proposals must be supported by a Sustainability Statement that sets out how the above objectives have been addressed within the development.

An acceptable sustainability statement was submitted with the proposal.

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

As from 14 October 2016, the Council has adopted Supplementary Guidance on developer obligations as a material consideration in the determination of planning applications. The proposal has been subject to an assessment for developer obligations.

A contribution totalling £115,758.20 towards Healthcare (£52,756.20), Sports and Recreation (£3,002), Affordable Housing (£48,000) and (£12,000) for compensatory planting has been agreed with the applicant and will be the subject of a S.75 legal agreement to be signed prior to planning consent being issued.

### **Conclusion**

Having initially been advertised as a departure from MLDP 2015, the proposals have undergone several revisions and is considered to comply with all relevant policies in the Moray Local Development 2015. The application is recommended for approval.

### **REASON(S) FOR DECISION**

The Council's reason(s) for making this decision are: -

The proposal accords with the relevant provisions of the development plan and there are no material considerations that indicate otherwise.

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## **APPENDIX**

### **POLICY**

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

##### **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.

#### **OPP4: Cathay**

An opportunity may arise for the redevelopment of this site for low density residential use or an appropriate business use suited to the amenity of the site. Plot sizes should be in keeping with the existing development along St. Leonards Road. Development proposals will need to be carefully integrated into the woodland site, with extensive areas of woodland retained. This should include a woodland buffer between any proposed development and the existing Muiry wood, to protect the recreational value of the latter. Long term management of this buffer zone should involve the Forres Community Woodland Trust and Forres Footpaths Trust. Footpath links will need to be provided by the developer to the north and west of the site to connect with existing path networks in the surrounding woodland.

Access onto the public road will be required to meet visibility standards and is likely to require the removal of mature trees.

A pedestrian/cycle connection is also required from the development access to the existing network adjacent to St. Leonards Road.

A walkover and photographic survey of habitats is required to assess the presence of wetlands and to identify any consequent requirement to address/mitigate the impact on groundwater dependant terrestrial ecosystems.

#### **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 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 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 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 ER2: Development in Woodlands**

### **All woodlands**

Development which involves the loss of woodlands will be refused where the development would result in unacceptable adverse effects on the amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice the management of the forest. Woodland removal will only be supported where it can be demonstrated that the impact on the woodland is clearly outweighed by social or economic benefits of national, regional and local importance, and if a programme of proportionate compensatory planting has been agreed with the Planning Authority.

### **Protected Woodlands**

Woodland removal within native woodlands, ancient semi natural and woodlands within sites protected under the terms of policies E1 and E2 will not be supported.

### **Tree surveys and new planting**

Development proposals must take account of the Council's Trees and Development supplementary guidance. The Council will require the provision of compensatory planting to mitigate the effects of woodland removal.

Where appropriate the Council will seek opportunities to create new woodland and plant native trees in new development proposals. If a development would result in the severing or impairment of connectivity between important woodland habitats, mitigation measures should be identified and implemented to support the wider green network.

## **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 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 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.

## **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.

## **TSP33: Rafford Road/(B9010)/Brodies Hill-Califer Road (U94E)**

Junction improvements related to development sites to South and East of Forres .

## **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.