

<b>Issue 6</b>	<b>Environment Policies</b>	
<b>Development plan reference:</b>	<p>Environment Policy EP1 Natural Heritage Designations (Volume 1, pages 74-75)</p> <p>Environment Policy EP2 Biodiversity (Volume 1, page 77)</p> <p>Environment Policy EP3 Special Landscape Areas and Landscape Character (Volume 1, pages 78-79)</p> <p>Environment Policy EP4 Countryside Around Towns (Volume 1, page 79)</p> <p>Environment Policy EP5 Open Space (Volume 1, pages 80-87)</p> <p>Environment Policy EP6 Settlement Boundaries (Volume 1, page 88)</p> <p>Environment Policy EP7 Forestry, Woodlands and Trees (Volume 1, pages 88-92)</p> <p>Environment Policy EP8 Historic Environment (Volume 1, page 93)</p> <p>Environment Policy EP12 Management and Enhancement of the Water Environment (Volume 1, pages 97-100)</p> <p>Environment Policy EP16 Geodiversity and Soil Resources – (Volume 1, page 103)</p>	<b>Reporter:</b>
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p><b>EP1 Natural Heritage Designations</b></p> <p>Royal Society for the Protection of Birds Scotland (285)</p> <p>Force 9 Energy (886)</p> <p><b>EP2 Biodiversity</b></p> <p>Springfield Properties plc (10)</p> <p>Royal Society for the Protection of Birds Scotland (285)</p> <p>Scottish Government (490)</p>		

Scottish Natural Heritage (1027)

Woodland Trust Scotland (1818)

**EP3 Special Landscape Areas and Landscape Character**

Springfield Properties plc (10)

Royal Society for the Protection of Birds Scotland (285)

Dr Janet Trythall (404)

Crown Estate Scotland (861)

Force 9 Energy (886)

Phil Mowat (1806)

Innogy (2213)

**EP4 Countryside Around Towns**

Pitgaveny Estate (214)

**EP5 Open Space**

Robertson Group (8)

Springfield Properties plc (10)

Scottish Government (490)

Woodland Trust Scotland (1818)

**EP6 Settlement Boundaries**

Springfield Properties plc (10)

**EP7 Forestry, Woodland and Trees**

Royal Society for the Protection of Birds Scotland (285)

Scottish Forestry (1136)

Woodland Trust Scotland (1818)

**EP8 Historic Environment**

Scottish Government (490)

Innogy (2213)

## EP12 Management and Enhancement of the Water Environment

Scottish Environment Protection Agency (569)

Scottish Natural Heritage (1027)

## EP16 Geodiversity and Soil Erosion

Royal Society for the Protection of Birds Scotland (285)

Dr Janet Trythall (404)

Airvolution Clean Energy (ACE) (2186)

### Provision of the development plan to which the issue relates:

Environment Policy EP1 Natural Heritage Designations

Environment Policy EP2 Biodiversity

Environment Policy EP3 Special Landscape Areas and Landscape Character

Environment Policy EP4 Countryside Around Towns

Environment Policy EP5 Open Space

Environment Policy EP6 Settlement Boundaries

Environment Policy EP7 Forestry, Woodlands and Trees

Environment Policy EP8 Historic Environment

Environment Policy EP12 Management and Enhancement of the Water Environment

Environment Policy EP16 Geodiversity and Soil Resources

### Planning authority's summary of the representation(s):

#### EP1 Natural Heritage Designations

Royal Society for the Protection of Birds Scotland (285/10/6)

Request the addition of "and Ramsar site" after Natura 2000 site in the text for EP1.

Force 9 Energy (886/2/4)

The policy tests relating to local designations create a significant barrier to development. A distinction within the policy of the relative importance of each area of designation should be drawn by the tests. Suggested wording change.

"Local Designations

Development proposals likely to have an **unacceptable** significant adverse effect on Local

Nature Reserves, wildlife sites or other valuable local habitats will be.....”

## **EP2 Biodiversity**

### Springfield Properties plc (10/13/5)

Policy EP2 Biodiversity is not required. Do not support moves to require further habitat creation and biodiversity enhancements via planning policy at a time when many land use activities, predominantly agriculture, forestry and other land-management practices appear to be chiefly responsible for loss of biodiversity and habitats and have the biggest impacts on the environment.

The submission of a Biodiversity Plan is unnecessary, developers already include compensatory bat boxes, riparian zones, hedges, wildflower meadows and significant tree planting within developments.

### Royal Society for the Protection of Birds Scotland (285/10/7)

Modification sought to replace second sentence with “Development must safeguard and if possible extend or enhance wildlife corridors and green/blue networks and prevent fragmentation of existing habitats.” This is clearer than “connect into” wildlife corridors/green networks.

### Scottish Government (490/4/7)

To accord with Paragraph 194 of SPP a modification sought to amend policy to read “Development proposals should retain, protect and enhance features of biological interest and provide for their appropriate management, where possible.”

### Scottish Natural Heritage (1027/9/3)

Some features that could be incorporated into development from the outset to benefit biodiversity may not be habitats. Recommend a minor word change in the fourth paragraph, to better reflect the intentions of EP2 (and PP1), suggest substituting “biodiversity features” for “habitat creation”.

### Woodland Trust Scotland (1818/2/2)

This is a very good policy and welcomed, with the exception of the provision on compensatory measures which should be worded to exclude irreplaceable habitats such as ancient woodland. Change policy to add ‘In the case of irreplaceable habitats, such as ancient woodland, no amount of compensation can make up for loss, therefore, development likely to impact on such sites should be located away from these areas.’

## **EP3 Special Landscape Areas and Landscape Character**

### Royal Society for the Protection of Birds Scotland (285/10/8)

Supportive of the requirement for new roads and hill tracks to avoid sensitive nature heritage sites.

### Dr Janet Trythall (404/4/2)

Strong support for the coastal Special Landscape Areas.

Force 9 Energy (886/2/5)

The tests set out in the criteria relating to local designations within the policy create a significant barrier to wind development. Will prevent development within SLA's which is contrary to Scottish Planning Policy (SPP).

Propose additional wording to the policy. Include the word "unacceptable" in the first paragraph to read "avoid unacceptable adverse effects on the landscape..."

Include "energy generation or transmission" as a suitable use in part a)ii) of the policy.

Innogy (2213/1/2)

Special Landscape Areas do not fall into Group 1 or 2 of SPP Table 1 and should be considered as Group 3. Policy should be amended to include onshore wind farm proposals as a potential acceptable use of Special Landscape Area's. Suggest rewording of the policy.

Policy currently states that proposals "should avoid adverse effects on the landscape and visual qualities the area is important for..." Adverse effects may still be acceptable.

Crown Estate Scotland (861/6/10)

Object to policy as it is very restrictive of new development which will have a stifling impact on communities within Special Landscape Areas. Want the policy exceptions in section a) to include scope for tourism facilities and accommodation and diversification projects as well as smaller scale renewables and ground mounted solar schemes which can be integrated into the landscape. This is necessary due to the uncertainty of Brexit.

Crown Estate Scotland manages land within the Lossiemouth to Portgordon Coast, the Portgordon to Cullen Coast, Lower Spey, The Spey Valley and Ben Rinnes (SLA's) which limits development in many areas on Fochabers Estate.

Phil Mowat (1806/2/2)

The Special Landscape Areas have grown greatly beyond the former Coastal Protection Zone. There is little flexibility for individual buildings in gap sites in the wording of the policy. Previously building was allowed in garden areas and on village edges and gap sites within the Coastal Protection Zone. Areas of natural beauty must be protected but there is a case for appropriate development in these areas. The use of gap sites and suitably large garden areas where individuals can build modern, fuel efficient eco houses could be regarded as an asset and helps with village sustainability. Propose that wording is altered to allow flexibility for individual buildings in these areas, with consideration afforded to gap sites with appropriate building to take place under the guidance of the planning department. Respondent has provided a map of "Area C" which is a gap site between villages where he would like to build.

Springfield Properties plc (10/13/23)

The objection seeks to review the need to establish the most appropriate boundary to the “Burghead to Lossiemouth Coast” Candidate Special Landscape Area (cSLA) ensuring that the key objectives of SPP are met.

The ‘Burghead to Lossiemouth Coast’ has been identified as a cSLA based upon its coastal “scenic” qualities. Including the land extending to the south of the B9040, Cummington, Hopeman, and north of Clarkly Hill is inconsistent with the reasoning behind its designation and is not supported by the findings of the Landscape Character Assessment (LCT 2019) published by SNH in February 2019. This splits the coastline between Burghead and Lossiemouth into two distinct landscape character types.

In contrast to the previously completed Landscape Character Assessment undertaken by SNH in 1998 the LCT 2019 reduces the extent of land covered by the Coastal Landscape Character Types. The new LCT’s are defined to the south by boundaries located to the north of the B9040.

Boundary of the cSLA should be redrawn to follow the route of the B9040 coastal road. This is consistent with SPP, the findings of the range of Landscape Character Assessments and Guidance Documents, and with the rest of the southern boundary between Lossiemouth and Burghead.

When selecting the boundaries to any proposed Local Landscape Designation consideration needs to be given to “what clear and permanent feature will best encompass the proposed area that can be tangibly identified on the ground.”

Although not adopted in the Draft Guidance 2017, SNH/HES acknowledge the scope for Authorities to work together to allow consistency in designations across landscape types. In this instance to be applied to the boundary between Moray Council and Aberdeenshire Council where the characteristics are similar and where both sides of the political boundary are subject to Special Landscape Area status.

The objection provides extracts from the SNH Landscape Character Assessment 2019 which shows that the ‘Burghead to Lossiemouth Coast cSLA’ is covered by four Landscape Character Types.

- Beach Dunes and Links (LCT 281)
- Cliffs and Rocky Coast (LCT 282)
- Coastal Forest (LCT 283)
- Coastal Farmlands (LCT 284)

SNH recognises the distinct characteristics of a ‘natural, rugged, irregular and complex coastline...coastal-orientation, intimacy and sense of isolation within fishing towns... sense of wild character’ (Page 1 Key Characteristic LCT 282), that includes Burghead in the west to Covesea, whilst from Covesea to Lossiemouth in the east ‘there is a strong sense of perceived naturalness’ (Page 3, LCT 281) in a coastline which exhibits ‘low lying, long, curving sand and pebble beaches...of a large scale, mainly natural landscape dominated by coastal processes...giving a sense of isolation away from settlements.’

This range of key characteristics sets this apart from the Coastal Farmlands (LCT 284) to the south which SNH acknowledge is also a ‘relatively well settled landscape where the fertility of soils has for several thousand years encouraged agricultural land use’ (Page 2 LCT 284). This is a settled landscape where historic often “planned villages” and

communities have continued to grow from their cores and remain highly visible along the coastline adding to the character and sense of place.

Do not challenge the values and characteristics of the 'Burghead to Lossiemouth Coast cSLA' set out in the statement of importance. However the southern boundary of the cSLA includes an area of land that bears none of the qualities of the Cliffs and Rocky Coast (LCT 282) and Beaches Dunes and Links (LCT 281) landscapes for which this cSLA is recognised and has been proposed for this designation. This is inconsistent in the application of SLA's in this area, undervaluing the key attributes of the landscape and effectively introducing a buffer zone around part of the SLA.

The boundaries to an SLA must be clear, precise, and defensible. The extent of land covered by an SLA policy must relate fully to that of the valued landscape and to be consistent with SPP buffer zones must not be established.

The southern boundary of the 'Burghead to Lossiemouth Coast cSLA' should follow the B9040 from Burghead in the west to Lossiemouth in the east as the B9040 forms an inland boundary. Footpaths that link with Duffus inland over the ridge in the Covesea area are not deemed to warrant inclusion in the cSLA and the road is a better boundary. Boundary should be consistent with the south central and south eastern boundaries of the cSLA and the Aberdeenshire Coast cSLA which would promote greater consistency in the designation of landscapes.

Viewpoints are intended to be used for further analysis as part of the assessment process to establish a landscapes scenic quality. No need to include land to the south of Cummingston, Hopeman, and the B9040 in the cSLA. The review should just acknowledge that views were used as part of the analytical process to help determine the qualities and value of the landscape at this location to identify the key components of the landscape to warrant its designation as a Special Landscape Area.

#### **EP4 Countryside Around Towns**

##### Pitgaveny Estate (214/4/4)

Policy should be amended to state that small scale solar development, such as "solar meadows" is supported within the CAT. These can generate electricity to farming businesses, Estates and other businesses that may be based within a CAT. Solar array development can assist in providing "private wire" connections to housing developments, assisting developers to meet building regulation requirements. Small scale solar development is low impact which is unobtrusive and entirely removable. It can be easily screened through topography, planting, existing walls and there is no noise or construction traffic issues.

#### **EP5 Open Space**

##### **Affordable Housing on ENV**

##### Springfield Properties plc (10/13/7)

Object to the policy wording that states change of use from ENV for essential community infrastructure is permitted in exceptional circumstances, except for housing. The promotion of 100% affordable in instances such as Stonecross (16/01074/APP), where the

Reporter found that affordable housing in an ENV area was a public use which outweighed its value as a public space. Strongly contend that these areas can deliver multiple benefits for local residents which deliver both much-needed affordable housing whilst enhancing areas of either surplus and/or below standard ENV areas.

### **Threshold for Policy Application**

Robertson Group (8/3/7)

The policy applies no matter the size or nature of the development. This could render smaller developments undevelopable. A threshold level or split in the policy for development size should be included.

### **Scottish Forestry Strategy**

Woodland Trust Scotland (1818/2/3)

The Open Space policy could include a provision to increase tree canopy cover across Moray's towns in line with the commitment to increase tree canopy cover in towns and cities within the Scottish Forestry Strategy (Feb 2019).

### **Drawing Reference**

Woodland Trust Scotland (1818/2/3)

The diagrams should be referenced in the policy text, or in the justification/notes section.

### **Quality Standard Assessment**

Woodland Trust Scotland (1818/2/3)

Unclear at what point the Quality Standard assessment will be made and how failure to meet the assessment criteria will be addressed.

### **Temporary Greening**

Scottish Government (490/4/8)

New sub-section should be inserted as part of Policy EP5 to accord with paragraph 229 of SPP, with wording as follows: 'Temporary greening can be an appropriate way to create safe and attractive places until development comes on stream. The Council will support the use of temporary greening of land awaiting development, where appropriate. Consideration will be given to whether greening of a site could bring about a positive impact to the local environment and overall amenity of the area, without prejudicing the effectiveness and viability of the site, if it is allocated for development in the longer term.'

### **EP6 Settlement Boundaries**

Springfield Properties plc (10/13/6)

Proposals for 100% affordable housing outwith but immediately adjacent to settlement boundaries should be given significant support to deliver much needed affordable housing.

Moray Council waiting lists total 3,585 households as of June 2017.

## **EP7 Forestry, Woodland and Trees**

### **Consultation with Scottish Forestry**

Royal Society for the Protection of Birds Scotland (285/10/10), Scottish Forestry (1136/6/1)

Scottish Forestry has a wider remit than commercial forestry and there may be an impact on forests which are not managed commercially. The policy wording limits the scope of consultation with Scottish Forestry (as Forestry Commission Scotland will become after 1<sup>st</sup> April 2019). It is important that all trees, woodlands, and forests are considered and the policy wording should be widened to include all woodlands and forests.

### **Compensatory Planting**

Scottish Forestry (1136/6/1)

Scottish Forestry should be consulted on compensatory planting proposals as they require to determine if these should be subject to an Environmental Impact Assessment. A screening opinion request should be completed and submitted in line with the Woodland Creation Application Guidance. Developers proposing compensatory planting should follow the site assessment and woodland design guidance within the document.

The Justification/Notes section states that Compensatory planting will be native species. In line with the Control of Woodland Removal Policy planting should be on a like for like basis unless significant additional public benefits can be demonstrated by planting alternative species.

### **Woodland Removal and Trees and Tree Preservation Orders**

Woodland Trust Scotland (1818/2/4)

The Ancient Woodland Inventory is incomplete and flawed. Stating in the policy “removal of woodlands which appear on the AWI will not be supported” is restrictive as it does not protect ancient woodland not in the inventory. Reference should just be made to ancient woodland instead. Reference to the first Ordnance Survey from the 1860s and/or a survey should be conducted to establish the value of the woodland.

The Scottish Government has published its new Scottish Forestry Strategy 2019-29 which states that unnecessary loss of ancient woodland should be avoided; this policy should be updated to reflect this.

Scottish Forestry (1136/6/1)

The last paragraph of part b) should include a presumption against removal of woodland for development for all the woodland types in the Control of Woodland Removal Policy where there is a “strong presumption against” removal.

Concerned section c) encourages development in woodlands and should be amended to make clear proposals will be assessed under the Control of Woodland Removal Policy

with the overall presumption against development in woodland. Only if a proposal is acceptable under the Control of Woodland Removal Policy would the current policy wording to retain and protect healthy trees be required.

Development, including access, must be designed to avoid any negative impact on trees. Design must give consideration to the long term relationship with trees as they grow to full height and spread. The effects of shading, leaf/needle cast, branch cast, wind blow, and impacts on the water tables should be assessed. This will require buildings to be set back from the retained trees. In rural areas the impact of commercial forestry operations and timber transport should be considered so no additional constraints are placed on forestry operations which may limit their viability and development is not adversely affected by forestry operations.

### **Trees and Development Guidance**

#### Scottish Forestry (1136/6/1)

Within the Trees and Development Guidance category U trees are discounted from the development assessment. The text should be amended so the area and habitat value of category U trees are considered in the initial Control of Woodland Removal Policy assessment. If development is supported compensatory planting is required for all category U trees.

#### Woodland Trust Scotland (1818/2/4)

To minimise biosecurity concerns only trees sourced and grown in the UK should be planted.

Remove ash from the recommended species due to the moratorium on planting ash trees due to ash dieback.

### **Ancient Woodland on site Boundaries**

#### Woodland Trust Scotland (1818/2/4)

Additional wording should be added to the policy protecting ancient woodlands adjacent to site boundaries. The following wording is proposed 'where development is likely to cause damage to an area of ancient woodland, the development should be located away from this area, ensuring that appropriate buffer areas are left between the woodland edge and the development boundary.'

### **EP8 Historic Environment**

#### Scottish Government (490/4/9)

The use of "national designations" in the wording of the policy title may cause confusion. This should be amended as other archaeological resources would be locally or regionally important. If they were nationally important they would be scheduled.

The first sentence should read "Where a proposed development potentially has a direct impact on a scheduled monument, Scheduled Monument Consent (SMC) is required, in addition to any other necessary consents. Historic Environment Scotland manage these

consents.” This is in accordance with SPP.

To align with Paragraph 145 of SPP the first part of the sentence of Policy EP8 (a) should read “Development proposals will be refused where they will adversely affect **the setting of** scheduled monuments and...” Planning authorities have no remit over direct impacts on scheduled monuments with Historic Environment Scotland being the consenting authority for Scheduled Monument Consent. Planning authorities only have a remit over unscheduled archaeology and the setting of scheduled monuments and this is a material consideration in the assessment of planning applications.

#### Innogy (2213/1/3)

With reference to the wording “unless the developer proves that any significant adverse effect on the qualities for which the site has been designated are clearly outweighed by social or economic benefits of national importance”, SPP paragraph 145 states that “permission should only be granted where there are exceptional circumstances”, rather than “social or economic benefits of national importance.” Suggest that the wording is changed to reflect SPP to allow the materiality and weighting of any benefits to be assessed by the decision maker.

Suggest that the wording needs to be revised as the measures proposed go beyond what is suggested in SPP paragraphs 150 and 151.

Paragraph 1 should include the word “unacceptable” as adverse impacts may still be acceptable.

The word “local” should be removed from “Local public benefits clearly outweigh the archaeological value of the site” as benefits may be national in nature and also justify an (unacceptable) adverse effect.

Bullet point 2 should be deleted as SPP does not require this. Consideration of alternatives is not a reasonable request.

Bullet point 3 should be revised. It may be the case that adverse effects cannot be mitigated, but that the adverse effects are found to be acceptable by meeting the test set out at bullet point 1, whereby the benefits of the proposal outweigh the archaeological value of the site.

### **EP12 Management and Enhancement of the Water Environment**

#### Scottish Environment Protection Agency (569/12/2)

Note since the draft version of this Policy, under Section a) flooding, additional wording has been added “Land raising and elevated buildings on structures such as stilts are unlikely to be acceptable **as they are unsustainable in the long term due to sea level rise and coastal change.**”

Support the introduction of the reference in the Plan to sea level rise and coastal change however have concerns with the insertion of the reference in this sentence. Stilts can also interfere with flows, trap debris and create islands of development which can lead to an increase in flood risk to people and property contrary to the flood risk principles of SPP. In addition this wording implies land raising and buildings on structures would be acceptable

in non-coastal areas and if there are no sea level rise issues or coastal change, which is not the case.

Object to the use of this wording and request that the wording be removed from the sentence or alternatively the sentence is expanded to also include the other reasons why stilt solutions are a problem.

Scottish Natural Heritage (1027/9/4)

Recognise that efforts have been made to incorporate coastal change into policy EP12 Management and Enhancement of the Water Environment and DP1 Development Principles.

Do not consider that this meets the requirements of paragraphs 88 – 91 of SPP in relation to coastal planning, or that it addresses the issues for Moray.

Around 60% of the Moray coastline is made of soft material susceptible to erosion. The proportion of soft coastline experiencing erosion has tripled in recent times from 10% to 34%. A significant length of coast has experienced substantial erosion. There is likely to be increasing erosion and flooding issue to be managed into the future. Coastal settlements, such as those along the coast between Kingston and Cullen, are already experiencing these issues.

There is a need to have robust policy in place to address the current and longer term effects of coastal change, and to manage expectations around coastal assets important to the people, nature and economy of Moray. It is strongly recommended that a coastal change policy is included in the plan, or that policy EP12 is amended to include a separate section on coastal change.

**EP16 Geodiversity and Soil Erosion**

Royal Society for the Protection of Birds Scotland (285/10/9)

Welcome the inclusion of the statement “Commercial peat extraction will not be permitted” in Policy EP16.

Dr Janet Trythall (404/4/1)

Strongly endorse the reference to peat disturbance and extraction in the context of windfarm developments. This should be more heavily emphasized in windfarm development evaluation as a reason for refusal.

Airvolution Clean Energy (ACE) (2186/1/3)

The text in Policy EP16 is overly restrictive. The policy states that proposals in peat and/or land habitat will ‘only’ be appropriate in certain circumstances. This does not reflect SPP which makes it clear that wind farms ‘may be appropriate in some circumstances’ in these areas and that further consideration will be required to ascertain the extent to which any significant effects can be substantially overcome.

The use of the word ‘only’ in the draft policy is more negative than the language used in SPP.

Request the policy is amended as follows to reflect SPP. “In considering major developments, minerals and large scale renewable energy proposals, consideration will be given to effects on areas of peat and/or land habitat and how these can be substantially overcome through siting, design or other mitigation “

**Modifications sought by those submitting representations:**

**EP1 Natural Heritage Designations**

Royal Society for the Protection of Birds Scotland (285/10/6)

Amend wording to add “and Ramsar” site after Natura 2000 site in the policy text.

Force 9 Energy (886/2/4)

Amend wording to add “unacceptable”.

**EP2 Biodiversity**

Springfield Properties plc (10/13/5)

Delete policy.

Royal Society for the Protection of Birds Scotland (285/10/7)

Change second sentence to read “Developments must safeguard and if possible extend or enhance wildlife corridors and green/blue networks and prevent fragmentation of existing habitats.”

Scottish Government (490/4/7)

Change policy text to add wording “should” and “where possible”.

Scottish Natural Heritage (1027/9/3)

Change policy text to replace “habitat creation” with “biodiversity features” in paragraph 4.

Woodland Trust Scotland (1818/2/2)

Change text to add “In the case of irreplaceable habitats, such as ancient woodland, no amount of compensation can make up for loss, therefore development likely to impact on such sites should be located away from these areas.”

**EP3 Special Landscape Areas and Landscape Character**

Royal Society for the Protection of Birds Scotland (285/10/8)

No change.

Dr Janet Trythall (404/4/2)

Farming must require full planning permission not just Prior Notification. Hill tracks should require full planning permission.

Force 9 Energy (886/2/5)

Include the word unacceptable in the first paragraph of the policy after avoid to read “avoid unacceptable adverse effects on the landscape...”

Include “energy generation or transmission” as a suitable use in part a)ii) of the policy.

Innogy (2213/1/2)

Include onshore wind farm proposals as a potential acceptable use in Special Landscape Area's.

Policy should be reworded with the insertion of the word “unacceptable” after “avoid”.

Crown Estate Scotland (861/6/10)

Include tourism facilities and accommodation and diversification projects as well as small scale renewables in part a) of the policy.

Phil Mowat (1806/2/2)

Policy amended to allow individual buildings in gap sites within Special Landscape Areas.

Springfield Properties plc (10/13/23)

Amend southern boundary of the Burghead to Lossiemouth Coast SLA to follow the B9040. A plan of the proposed boundary change has been included with the objection.

**EP4 Countryside Around Towns**

Pitgaveny Estate (214/4/4)

Amend policy EP4 to allow small scale solar development.

**EP5 Open Space**

Springfield Properties plc (10/13/7)

Party not specific regarding change, assume remove “excluding housing.”

Robertson Group (8/3/7)

Policy should provide threshold levels or split the policy in terms of development size.

Woodland Trust Scotland (1818/2/3)

Amend policy to include provision to increase tree canopy.

Reference the diagrams within the policy or justification/notes.

Clarity of timing of Quality Standard assessment required.

Scottish Government (490/4/8)

New sub section within Policy EP5 regarding temporary greening stating “Temporary greening can be an appropriate way to create safe and attractive places until development comes on stream. The Council will support the use of temporary greening of land awaiting development, where appropriate. Consideration will be given to whether greening of a site could bring about a positive impact to the local environment and overall amenity of the area, without prejudicing the effectiveness and viability of the site, if it is allocated for development in the longer term.

**EP6 Settlement Boundaries**

Springfield Properties plc (10/13/6)

Implied that policy should be amended to allow 100% affordable proposals immediately outwith the settlement boundary.

**EP7 Forestry, Woodland and Trees**

Royal Society for the Protection of Birds Scotland (285/10/10)

In the second sentence under a) Forestry the word ‘commercial’ is removed.

Scottish Forestry (1136/6/1)

In the second sentence under a) change wording to “The Council will consult with Scottish Forestry on proposals which are considered to adversely affect forests and woodlands”.

Add requirement for Scottish Forestry to be consulted on compensatory planting proposals and for EIA screening opinion to be submitted. Requirement for compensatory planting must follow the Scottish Forestry Guidance for Woodland Creation.

Amend requirement for compensatory planting to be native species to require like for like basis unless there is public benefits of alternative species.

Whilst not specified by the party it is assumed based on the Control of Woodland Removal Policy the change required is to expand the presumption against woodland removal to include woodland integral to the value of designated or special sites (Special Areas of Conservation {SACs}; Special Protection Areas {SPAs}; Sites of Special Scientific Interest {SSSIs}; Ramsar sites; National Nature Reserves {NNRs}; areas supporting priority habitats and species listed in the UK Biodiversity Action Plan; Scheduled Monuments; National Scenic Areas; and woodlands listed within the Inventory of Gardens and Designed Landscapes); woodlands critical to water catchment management or erosion control; woodlands listed as ‘Plantations on Ancient Woodland Sites’ (PAWS) or where woodland removal would lead to fragmentation or disconnection of important forest habitat networks.

Amend text to make clear proposals will be assessed under the Control of Woodland Removal Policy.

Amend wording to ensure negative impacts on trees are avoided and the long term growth

of trees must be taken into account in assessments.

Amend text to ensure the area and habitat value of Category U trees is taken into account in the Control of Woodland Removal Policy assessment and compensatory planting is required where removed.

#### Woodland Trust Scotland (1818/2/4)

Reference should be made to Ancient Woodland and not the Ancient Woodland Inventory. Policy should be updated to reflect Scottish Forestry Strategy 2019-29.

Add wording to paragraph 3 of part b) 'where development is likely to cause damage to an area of ancient woodland, the development should be located away from this area, ensuring that appropriate buffer areas are left between the woodland edge and the development boundary.'

Add requirement to Trees and Development Guidance requiring trees to be sourced and grown in the UK.

Remove reference to ash within landscaping.

#### **EP8 Historic Environment**

##### Scottish Government (490/4/9)

Change the policy title to "Scheduled Monuments and Unscheduled Archaeological Sites."

Change first sentence to read, "Where a proposed development potentially has a direct impact on a scheduled monument, Scheduled Monument Consent (SMC) is required, in addition to any other necessary consents. Historic Environment Scotland manage these consents."

Change sentence of Policy EP8 (a) to read "Development proposals will be refused where they adversely affect the setting of scheduled monuments and..."

##### Innogy (2213/1/3)

Remove "social or economic benefits of national importance" and replace with "exceptional circumstances."

Add "unacceptable" into paragraph 1 as adverse effects may still be acceptable.

Remove "local" from bullet point 1.

Delete bullet point 2

Suggest rewording of bullet point 3 to reflect that even if adverse effects could not be mitigated, they could be deemed acceptable as per bullet point 1. No specific wording given.

#### **EP12 Management and Enhancement of the Water Environment**

Scottish Environment Protection Agency (569/12/2)

Delete the wording “as they are unsustainable in the long term due to sea level rise and coastal change.”

Scottish Natural Heritage (1027/9/4)

Addition of a coastal change policy.

**EP16 Geodiversity and Soil Erosion**

Royal Society for the Protection of Birds Scotland (285/10/9)

No changes identified.

Dr Janet Trythall (404/4/1)

No changes identified.

Airvolution Clean Energy (ACE) (2186/1/3)

Amend policy to read “In considering major developments, minerals and large scale renewable energy proposals, consideration will be given to effects on areas of peat and/or land habitat and how these can be substantially overcome through siting, design or other mitigation “

**Summary of responses (including reasons) by planning authority:**

**EP1 Natural Heritage Designations**

Royal Society for the Protection of Birds Scotland (285/10/6)

Following a representation from Scottish Natural Heritage, the Council supports amending all references to “Natura 2000 site” to “European site” which is also applicable to Ramsar sites. This change is considered non notifiable and is therefore not included within this Schedule.

No modification is proposed.

Force 9 Energy (886/2/4)

The Council does not support the addition of the word unacceptable before significant adverse effect. This is on the basis that it is extremely unlikely that a significant adverse effect would be considered acceptable.

**EP2 Biodiversity**

Springfield Properties plc (10/13/5)

Biodiversity creation and enhancement was identified as a key issue in the Main Issues Report (MIR). The Environment Topic Paper (CD30, pg. 4) states “New development will have an impact on wildlife and nature conservation and therefore, there is a need to place

greater emphasis on identifying and promoting opportunities for improving biodiversity.” The policy approach sits within a wider policy framework that seeks consideration of green infrastructure, biodiversity and open space collectively with the aim of creating a high quality greenspace and connected blue/green networks. The provision of a Biodiversity Plan is not considered an onerous requirement and if, as stated, biodiversity creation and enhancement is being undertaken then this can easily be evidenced and is part of the commitment to quality placemaking Springfield Properties Plc has referred to in Schedule 2.

No modification is proposed.

Scottish Government (490/4/7)

Para 194 of SPP states the planning system should seek benefits for biodiversity from new development where possible, including the restoration of degraded habitats and the avoidance of further fragmentation or isolation of habitats. The addition of wording “should” and “where possible” in the context of EP2 Biodiversity is considered to dilute the aim of the policy and provides the opportunity for a case to be made not to create and enhance biodiversity on site. The explicit use of the word “must” throughout the Proposed Plan is intentional and based upon experience of “should” being weak and interpreted by developers as being optional. It is not considered necessary to add where possible as this will be assessed on a site by site basis as part of the planning application process, where the developer can evidence why it is not possible to retain, protect and enhance features. This policy approach is considered in keeping with SPP para 195 which highlights the Council’s duty to further the conservation of biodiversity.

No modification proposed.

Woodland Trust Scotland (1818/2/2)

The Proposed Plan requires to be read as a whole and policies are not considered or applied in isolation. Policy EP7 Forestry, Woodland and Trees in the Proposed Plan supports the Scottish Government’s Control of Woodland Removal policy and states that removal of woodland identified in the Ancient Woodland Inventory will not be supported.

If the Reporter is so minded the Council would support the addition of text within the justification section of EP2 Biodiversity clarifying that compensatory planting in respect of woodland removal is dealt with under a separate policy. The following wording is suggested. “It should be noted that reference to compensatory habitat creation within the policy does not apply to woodland removal which must meet the requirements set out in EP7 Forestry, Woodlands and Trees.”

Royal Society for the Protection of Birds Scotland (285/10/7) and Scottish Natural Heritage (1027/9/3)

The Council recognises merit in the suggested amended wording that is more explicit in regards to extending and enhancing wildlife/green corridors. A minor amendment from the suggested text changing “if possible” to “where physically possible” is preferred and is in keeping with the response to the Scottish Government’s representation.

If the Reporter is so minded, the Council would not object to revised text and the following wording is suggested “Development must safeguard and where physically possible extend

or enhance wildlife corridors and green/blue networks and prevent fragmentation of existing habitats.”

The Council recognises the merit of removing “habitat creation” and replacing it with “biodiversity features.” If the Reporter is so minded, the Council would not object to revised text and the following wording is suggested. “Developers must demonstrate through a Placemaking Statement which incorporates a Biodiversity Plan, that they have included biodiversity features in the design of the development.”

### **EP3 Special Landscape Areas and Landscape Character**

Dr Janet Trythall (404/4/2)

Issues relating to prior notification are not relevant to the Local Development Plan review process.

The final paragraph of Policy EP3 ii) Landscape Character makes reference to hill tracks and how their impact on the landscape must be taken into consideration. This wording is deemed to be sufficient to address the issue raised.

No modification is proposed.

### **Wind Energy**

Force 9 Energy (886/2/5), Innogy (2213/1/2)

It is suggested that the policy criteria create a significant barrier to onshore wind energy proposals and that it should be added as an exception.

SPP requires local authorities to identify and protect locally designated areas and to clearly explain the reasons for their designation. In line with SPP, a review of all of Moray’s landscapes was undertaken which was supported by a steering group consisting of a commissioned landscape expert, Moray Council planners, the Regional Archaeologist and Scottish Natural Heritage staff.

The objection from Innogy refers to table 1 of SPP page 39, which sets out a Spatial Framework for wind turbines and that Special Landscape Area’s (SLA’s) are not contained in them. The Proposed Plan contains Policy DP9 Renewable Energy which is supported by the Moray Onshore Wind Energy Supplementary Guidance. This policy and supporting documentation provides a positive spatial framework for where renewable energy proposals will be considered favourably if they meet the policy criteria.

The Proposed Plan provides a clear spatial framework where wind energy proposals could be deemed acceptable. It is therefore deemed to be appropriate that this is not included as an acceptable use in the policy criteria for development in SLA’s. Given the importance that the designations play in protecting Moray’s diverse and high quality landscape it is not proposed to change the current wording to include onshore wind energy as an appropriate use.

No modification is proposed.

### **Adverse Effects**

Force 9 Energy (886/2/5), Innogy (2213/1/2)

The objections state that the word “unacceptable” should be included in the first paragraph of the policy. Special Landscape Areas were designated to protect Moray’s high quality landscape from development proposals that would have any adverse impact on them. Given the sensitivity of the landscapes covered within the designations this wording is deemed appropriate. Whether or not a proposal is deemed to have acceptable or unacceptable impact on the landscape will be determined and assessed during the planning application stage.

No modification is proposed.

### **Acceptable Uses**

Crown Estate Scotland (861/6/10)

The objection seeks to include tourism facilities and accommodation and diversification projects as well as small scale renewables as acceptable uses in part a) of the policy.

Parts of Moray’s landscape are under significant pressure from development, particularly housing in the open countryside. SLA’s were designated to protect Moray’s most valued landscapes from inappropriate development as well as provide a better understanding and awareness of their special qualities.

The term “small scale renewables” is ambiguous and open to interpretation. By including this as an acceptable use could potentially undermine the designation, the qualities of the landscape, and the reasoning for the designation.

The objection provides no clarity as to what type of tourism uses would be acceptable in SLA’s. While the Council promotes sustainable economic growth it must not be to the detriment of the natural environment and similarly including these uses could undermine the designation.

Given the importance that the designations play in protecting Moray’s diverse and high quality landscape it is not proposed to change the current wording to include tourism and accommodation and diversification projects, and small scale renewables as an acceptable use.

No modification is proposed.

### **Housing in Gap Sites**

Phil Mowat (1806/2/2)

The Special Landscape Area (SLA) designations are the result of a landscape review which sought to rationalise existing designations such as the Coastal Protection Zone (CPZ) and Areas of Great Landscape Value (AGLV). These designations have been in successive local plans with little documentation as to why they were designated. The review rationalised these into the one single designation which is now the SLA. It also provided an understanding of the landscape and why it is deemed to be special.

The respondent objects to the lack of flexibility for individual buildings in gap sites within SLA's and suggests that the wording is amended to reflect this. The applicant has also provided a map with his submission showing an area of land "Area C" between two properties where he would like to build. This land is located within the Burghead to Lossiemouth Coast SLA and is not within a designated rural grouping.

The SLA designation incorporated the CPZ designation and as the respondent correctly states that this has increased in size compared to the previous CPZ. Area C is located within the CPZ of the MLDP2015 for which there is a general presumption against new development for housing, unless proposals utilise an existing building for replacement or renovation. Like the proposed SLA policy, this was to protect sensitive coastlines from inappropriate and overdevelopment which could be detrimental to its character.

The area of land proposed for housing in Area C is large and could accommodate more than one property. While the site could potentially be deemed as "infill", one of the key characteristics when travelling along the B9040 is the open views across the coastal slope towards the sea. These views are particularly important given the proximity of Cummingston and Hopeman and are one of several key reasons for the SLA and previous CPZ designations.

On this basis it would not be deemed appropriate to change the policy criteria as suggested as it could unintentionally lead to the undermining of sensitive SLA designations.

No modification is proposed.

#### Springfield Properties plc (10/13/23)

The Moray Landscape review was undertaken and supported by a steering group consisting of a commissioned landscape expert, Moray Council Planners, the Regional Archaeologist and Scottish Natural Heritage. The review was undertaken in accordance with the approach advocated in the SNH/HES guidance on reviewing local landscape designations where cultural heritage, recreational and nature conservation value are considered together with scenic qualities in a more holistic approach as to what compromises landscape.

The objection refers to 'candidate' SLA's, however, the Moray Local Landscape Designations review was approved by the Planning and Regulatory Services Committee on 18 December 2018 following a 6 week public consultation (CD 37). During the public consultation the 'Burghead to Lossiemouth Coast SLA' generated the largest number of comments with 16 supportive comments and a petition of support with 182 signatures. There was one objection from Springfield Properties plc.

The southern boundary of this area aims to encapsulate coastal character and the immediate backdrop to the coast where the distinct pattern of coastal settlements can be appreciated. The ridge behind the coast also features a community woodland and footpaths on Clarkly Hill which were considered to be important to include when considering recreational value and potential links between the coast and inland. On this basis the ridgeline offers a defined boundary to the SLA which allows the wider aspects of the landscape to be included in the designation as per the SNH/HES guidance.

Local landscape designations do not always accord with landscape character types (LCT)

as they often incorporate a number of LCT's as this increases scenic diversity which is the holistic approach advocated in the SNH/HES guidance to reviewing landscapes.

The comparison with the North Aberdeenshire Coast SLA is not relevant in this case as the context and landscape features are different. Furthermore the North Aberdeenshire Coast SLA does not sit immediately adjacent to the Burghead to Lossiemouth Coast SLA.

No modification is proposed.

#### **EP4 Countryside Around Towns**

##### Pitgaveny Estate (214/4/4)

The primary purpose of the Countryside Around Towns (CAT) is to prevent development sprawl into the countryside. A key focus is maintaining a distinction between the built up area and the countryside. Without a definition of what is considered to be "small scale" there is a danger that solar meadows could blur that distinction and give the appearance of developed countryside. This could undermine the purpose of the CAT.

No modification is supported.

#### **EP5 Open Space**

##### **Affordable Housing on ENV**

##### Springfield Properties plc (10/13/7)

Part a) of the policy aims to protect open space designated as ENV from development. The only exception to this is for essential community infrastructure required to deliver the key objectives of the Council and its Community Planning Partners. Housing has been specifically excluded from this exception. Affordable housing investment is planned through the Strategic Housing Investment Plan (SHIP) which sets out how investment will be directed over the next 5 years. Given planning for investment in affordable housing looks at a five year timescales any ENV sites that are of strategic importance to the affordable housing programme are more appropriately considered through the Local Development review process. Stonecross is not a precedent for development on ENV. At Stonecross proposals were recommended for approval by planning officers as the ENV consisted of dense Scots Pine woodland which was reaching maturity, and the ENV was not overlooked by adjacent property and was subject to anti-social behaviour.

The Local Development Plan review process would allow for an assessment to be made of the impact of the loss of any open space. Existing open spaces are an important asset for communities and should not be eroded. This plan led approach is essential to delivering high quality places and the necessary infrastructure to allow people to live healthy lives. Policy DP2 has a requirement for proposals of 4 or more units to provide 25% of the total units as affordable. Whilst there is a demand for affordable housing in Moray, this must be done on designated housing sites to ensure that Moray's settlements expand in a planned manner. The lack of maintenance or poor standard of an open space should not be used as a back door for windfall housing development.

No modification is proposed.

## **Threshold for Policy Application**

### Robertson Group (8/3/7)

Part b iii) of the policy varies the quantity of open space required within development depending on the number of housing units or type of use proposed. Therefore, within smaller development a lower percentage of the site requires to be open space. It is reasonable for the accessibility and quality standard to apply regardless of development size. It is important for open space to be accessible to all users regardless of the size or nature of the site. The easier a space is to access the more likely it is to be used. Quality plays an important role in ensuring spaces are fit for purpose and serving the needs of the community. It is considered the five criteria and associated bullet points are broad enough to provide flexibility on how open space is delivered regardless of development size.

No modification is proposed.

## **Scottish Forestry Strategy**

### Woodland Trust Scotland (1818/2/3)

Reference specifically to increasing tree canopy cover is not required. The combination of policies PP1 Placemaking, EP2 Biodiversity, EP5 Open Space, Trees and Development Guidance and site specific requirements mean that the number of trees is likely to increase whilst also ensuring open space provides multi-functional benefits without focusing solely on tree canopy coverage. In some circumstances new tree planting may not be appropriate as it could lead to the loss of important open habitat such as wetlands and semi-natural grasslands.

No modification is proposed.

## **Drawing Reference**

### Woodland Trust Scotland (1818/2/3)

If the Reporter is so minded, the Council would support adding text to the Justification/Notes to reference the policy drawings. The following wording is suggested “The drawings within the policy provide examples of how good quality multi-functional open space can be achieved within development.”

## **Quality Standard Assessment**

### Woodland Trust Scotland (1818/2/3)

Paragraph 2 of section b) of the policy states that “Open space provision must meet the accessibility, quality and quantity standards set out below ...” Therefore if a development failed to achieve a “very good quality score” it would be expected that either amendments to the proposal are sought or that the application is considered for refusal.

If the Reporter is so minded, the Council would not object to additional text being added to the second sentence of the first paragraph under ii) Quality Standard so this reads “Quality will be assessed by planning officers **at the planning application stage** against the five criteria below using the bullet point prompts.”

## **Temporary Greening**

### Scottish Government (490/4/8)

Whilst the Council would support temporary greening it is not considered this needs a specific policy reference. It is unlikely that temporary greening proposals would require planning consent and where this did there is sufficient support within primary policies for this. Given the marginal nature of many sites within Moray in terms of viability it is extremely unlikely that temporary greening would be pursued by landowners or private developers given the additional costs. Moray has comparatively low levels of brownfield land compared to other authorities, with the last audit identifying 16.6ha. Whilst many of these are long standing bringing these sites forward is often difficult due to constraints that significantly impact on viability. Temporary greening is therefore only likely in exceptional circumstance and is not likely to be funded by the Council or other public bodies whose budgets are under considerable pressure. Finance from the Scottish Government would be required to support this policy requirement if it were to be introduced and there is no indication in the representation of that being made available.

No modification is proposed.

## **EP6 Settlement Boundaries**

### Springfield Properties plc (10/13/6)

Policy EP6 is long established and aims to guide development within towns and villages, prevent ribbon development, and maintain a clear distinction between the settlement and the countryside. SPP states that the planning service should be plan led. The plan led approach is essential to delivering high quality places and all the necessary infrastructure to allow people to live healthy lives.

Policy DP2 has a requirement for proposals of 4 or more units to provide 25% of the total units as affordable. While the respondent is correct in that there is a demand for affordable housing in Moray, this must be done on designated housing sites to ensure that Moray's settlements expand in a planned manner.

The objection states that significant weight should be given to affordable housing proposals. This infers that applications for housing on the edge of settlements for 100% affordable housing should be acceptable. This approach would not only undermine the principles of the plan led planning system and SPP but it would fail to provide tenure integration which can be achieved on designated housing sites.

No modification is proposed.

## **EP7 Forestry, Woodland and Trees**

### **Consultation with Forestry Commission**

### Royal Society for the Protection of Birds Scotland (28510/10), Scottish Forestry (1136/6/1)

The comment regarding the scope of consultation with Scottish Forestry is noted. If the Reporter is so minded the Council would support amending the wording from "commercial

forests” to “forests and woodlands.” Greater clarity could also be provided to section a) of the policy by changing the policy heading and if the Reporter is so minded the Council would support amending this to “a) Moray Forestry and Woodland Strategy.”

### **Compensatory Planting**

#### Scottish Forestry (1136/6/1)

The policy seeks to clearly set out the requirement for compensatory planting and the issues raised are considered to be procedural rather than policy matters. A procedure agreed with Scottish Forestry is considered to be a better way of dealing with the issues relating to EIA and woodland design. The Council will include an action within the Action Programme to develop and agree a procedure with Scottish Forestry to support implementation of the policy.

At present the service level agreement for compensatory planting specifies native tree planting. It is noted this wording is within the Justification/Notes and not within the policy itself.

No modification is proposed, however an action to develop a procedure will be included in the Action Programme.

### **Woodland Removal and Trees and Tree Preservation Orders**

#### Woodland Trust Scotland (1818/2/4)

The Ancient Woodland Inventory whilst considered incomplete by the Woodlands Trust is considered to be the best source of information available to the Council. It is also noted that within the first paragraph of part b) of policy EP7 there is a general presumption against woodland removal unless there are significant and clearly defined public benefits.

No modification is proposed.

It is noted that since the publication of the Proposed Plan in January 2019 the Scottish Forestry Strategy was published in February 2019. The justification/notes section of Policy EP7 could be updated to reflect this.

If the Reporter is so minded the Council would support referencing the Scottish Forestry Strategy 2019 within the justification/notes. Wording is suggested in the amended policy below.

#### Scottish Forestry (1136/6/1)

SAC's, SPA's, Ramsar sites, SSSI's, NNR's and NSA's are considered within Policy EP1 Natural Heritage Designations and therefore consideration of any development that results in woodland removal in these areas would be considered under this policy. Policy EP7 also states that “Woodland removal within native woodlands identified as a feature of sites protected under Policy EP1....will not be supported.” Policy EP8 Historic Environment would not support proposals that have an adverse impact on the setting of a Scheduled

Monument. Similarly Policy EP11 Battlefields, Gardens and Designed Landscapes does not support development that would adversely affect Gardens and Designed Landscapes or their setting. Policy EP1 Natural Heritage Designations and Policy EP2 Biodiversity include policy to protect European and other protected species and require proposals to safeguard and connect into wildlife corridors, green/blue networks and prevent fragmentation of existing habitats. Therefore, other than Ancient Woodlands, it is considered that sufficient policy protection is provided to woodlands where the Control of Woodland Removal Policy has a strong presumption against removal (CD57, pg. 7). However, it is acknowledged that the policy could be re-structured and wording amended to make it clearer that there is tiered approach to the policy whereby woodland removal will not be supported within Ancient Woodland and native woodlands within sites protected under policy EP1 and that within other areas woodland removal maybe supported if certain criteria are met. Excluding housing from “public benefits” would bring the policy in line with Policy EP5 Open Space. If the Reporter is so minded the Council would support restructuring and amending the policy as set out below.

Part c) of the policy was primarily intended to relate to individual or small groups of trees within a site with part b) relating to the control of woodland removal. The wording of the policy and policy structure could be changed to make it clearer that in the first instance there is a presumption in favour of the retention of trees and that tree removal will only be considered where it is technically unfeasible to retain these. Clearer links to the Scottish Government’s policy (CD57 Control of Woodland Removal Policy and CD58 Control of Woodland Removal Policy Implementation Guidance) and a definition of what constitutes woodland removal could be added to the Justification/Notes section to provide greater clarity as to which part of the policy applies. Including a separate sub heading on “Compensatory Planting” will aid clarity by clearly setting out where and how this will be sought.

If the Reporter is so minded the Council would support amending Policy EP7 and Justification/Notes as follows

### **“Policy EP7 Forestry Woodland and Trees**

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

Proposals which support the economic, social and environmental objectives and projects identified in the Moray Forestry and Woodlands Strategy will be supported where they meet the requirements of all other relevant Local Development Plan policies. The Council will consult Scottish Forestry on proposals which are considered to adversely affect forests and woodland.

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

Proposals must retain healthy trees and incorporate them within the proposal unless it is technically unfeasible to retain these. Where trees exist on or bordering a development site, a tree survey, tree protection plan and mitigation plan must be provided with the planning application if the trees or trees bordering the site (or their roots) have the potential to be affected by development and construction activity. Proposals must identify

a safeguarding distance to ensure construction works, including access and drainage arrangements, will not damage or interfere with the root systems in the short or longer term.

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

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

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

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

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

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

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

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

### **e) Compensatory Planting**

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

### **Justification/ Notes**

Moray is recognised for the quality of its scenery and natural heritage for which forests and woodlands play an integral part of. They are an important renewable and beneficial resource in terms of climate change, economic, landscape, recreational, biodiversity and tourism opportunities. In line with the Scottish Forestry's guidance document "The Right Tree in the Right Place", the Council supports the good management of this resource to balance the potential economic benefits with protecting and enhancing forests and woodland from inappropriate development and uses.

The Scottish Government is committed to maintain and enhancing Scotland's forest and woodland resource. Preventing inappropriate woodland removal is a key policy within the Scottish Forestry Strategy February 2019, and the Control of Woodland Removal Policy

(along with associated Implementation Guidance published in February 2019). Woodlands identified in the Ancient Woodland Inventory are important not just for the trees, but for the soil structure, flora and fauna that rely on such woodlands. Ancient woodland ecosystems have been created over hundreds of years and are irreplaceable.

For the purposes of policy EP7, “woodland removal” under part c) is defined as the permanent removal of 0.1 hectares or more of woodland for the purposes of conversion to another type of land use. Proposals affecting a tree or trees covering an area less than 0.1 hectares will be considered against criteria b).

Development proposals which result in the permanent loss of woodland will be required to provide compensatory planting which will be of a native species and will include the cost of management and establishment of the woodland/ greenspace. Further details of mechanisms to deliver compensatory planting are available from Moray Council.

The Scottish Forestry, the Moray Access Manager and Scottish Natural Heritage will be consulted on issues relating to the recreational and biodiversity value of woodland.

Proposals for works to trees in Conservation Areas and trees covered by a TPO must be made in writing and be supported by a tree surgeons report to provide justification for its removal”

Policy EP7 (and Policy DP1 Development Principles) requires a tree protection and mitigation plan to be submitted with any proposal that has the potential to impact on trees or their roots. Therefore, proposals should be designed to avoid negative impacts on trees. The detail set out in the submission from Scottish Forestry would be best considered in the Guidance rather than the policy.

If the Reporter is so minded the Council would support the following amendments to the Guidance on page 91.

- Amend bullet point three to “Height and canopy spread in metres **(including consideration of full height and spread).**”
- Additional final bullet point “Consideration of the long term relationship with trees (including shading, leaf/needle cast, branch cast, wind blow, water table impacts and commercial forestry operations).”

### **Trees and Development Guidance**

Scottish Forestry (1136/6/1), Woodland Trust Scotland (1818/2/4)

The wording in the guidance could be clarified to make it clearer that the development assessment process referred to is not assessment in terms of the Control of Woodland Removal Policy (i.e. part b of policy EP7) but rather the tree survey which may influence the development design. Similarly additional wording to clarify that where trees are removed compensatory planting will be required regardless of tree category could be introduced.

Requiring trees to only be sourced and grown in the UK is a level of detail beyond that intended for guidance. Policy and regulation regarding biosecurity and impact of trees is

led by Scottish Forestry rather than through the Local Development Plan.

The comments regarding the issues surrounding planting ash trees is noted and the Council would support removing this from the Guidance text.

If the Reporter is so minded the Council would support the following amendments to the Guidance on page 91 and 92.

- Amend first sentence of sixth paragraph by deleting “development assessment” and replacing with “Based on the guidance in BS5837, only category U trees are discounted from the **Tree Survey and Tree Protection Plan** process.”
- Add new sentence to end of paragraph six stating “It is noted that in line with part b) of policy EP7 where woodland is removed compensatory planting must be provided regardless of tree categorisation.”
- Remove “Ash” from the list of recommended planting in the final paragraph of the guidance on page 92.

### **Ancient Woodland on Site Boundaries**

#### Woodland Trust Scotland (1818/2/4)

Part c) of the policy requires that where mature trees exist on or border a site a tree survey and tree protection and mitigation plan is required. This is required regardless of whether the trees are ancient woodland or not. The policy requires safeguarding distances to be identified to ensure damage to root systems is not caused.

No modification is proposed.

### **EP8 Historic Environment**

#### **Scheduled Monument Policy Title**

#### Scottish Government (490/4/9)

Following discussion with Historic Environment Scotland, if the Reporter is so minded the Council would not object to the title of Part a) of Policy EP8 Historic Environment being changed to “Scheduled Monuments and Unscheduled Archaeological Sites of Potential National Importance.”

### **Adverse Impacts on the setting of Scheduled Monuments**

#### Scottish Government (490/4/9), Innogy (2213/1/3)

If the Reporter is so minded the Council would not object to the first sentence of policy EP8 on page 93 being amended. The following wording is suggested “Where a proposed development potentially has a direct impact on a scheduled monument, Scheduled Monument Consent (SMC) is required, in addition to any other necessary consents. Historic Environment Scotland manage these consents.”

The Scottish Government’s response aims to align the proposed policy with SPP (CD53,

pg. 35 (Para.145) by including additional wording to clarify that proposals will be refused where they will have an adverse impact on the “setting” of a scheduled monument. If the Reporter is so minded, the Council would not object to additional wording being added to the first part of the second sentence of Policy EP8 (a) to read “Development proposals will be refused where they adversely affect the integrity of the setting of Scheduled Monuments and...”

No modification is proposed.

The objection from Innogy requests that the end of the second sentence of part a) of the policy is reworded. The existing wording states that development will be refused unless the developer proves that any significant adverse effect on the qualities for which the site has been designated are clearly out-weighted by the “social or economic benefits of national importance.” The proposed wording being sought in the objection seeks to replace “social or economic benefits of national importance” with “exceptional circumstances”.

SPP and the National Planning Framework 3 recognise the importance and value that the historic environment has and that it is a key economic and cultural asset. It is the Council’s view that the existing wording reflects the national importance of these designations and the social and economic and cultural benefits that they have. The existing wording is more appropriate than the suggested wording which is an ambiguous statement as it is not clear as to what will constitute an “exceptional circumstance” which could undermine the Planning Authorities ability to protect these Historic Designations.

No modification is proposed.

### **Local Designations**

#### Innogy (2213/1/3)

SPP and the National Planning Framework 3 recognise the importance and value that the historic environment has and that it is a key economic and cultural asset. SPP (CD53, pg. 33 (Para.137)) states that “change should be sensitively managed to avoid or minimise adverse impacts on the fabric and setting of the asset, and ensure that its special characteristics are protected, conserved or enhanced.”

The respondent states that the word “unacceptable” be included as adverse impacts may still be acceptable. The Council does not agree that the wording should be changed as it is the Council’s jurisdiction to protect the Historic Environment from any adverse impacts that a proposal may have on sites of archaeological importance. Whether a proposal is deemed to have an “acceptable adverse” impact on a designation will be down to the individual proposal. This will be assessed at the planning application stage where an assessment on any adverse impacts will be made.

No modification is proposed.

The respondent requests that the word “local” is removed from the first bullet point. The three bullet points in part b) of the policy have been carried over from the MLDP2015 and received no objection from Historic Environment Scotland. The Council is responsible for the protection of local designations and it is deemed appropriate that any proposal that is deemed to outweigh archaeological value has local benefits.

No modification is proposed.

The respondent states that bullet point two is not required. SPP (CD53, pg. 13 (Para.40)) states that planning should direct the right development to the right place and in Paragraph 137, page 33 it states that the planning system must promote the care and protection of the designated and non-designated historic environment. Given the Council's responsibility to protect the Historic Environment and Local Designations it is deemed entirely reasonable that if a proposal were to potentially have an adverse impact on a designation that the policy seeks to ensure that there are no other alternative sites available that could accommodate the proposal to reduce or remove the impact on the designation.

No modification is proposed.

The respondent requests that bullet point 3 is revised. It is suggested that it may be the case that adverse effects cannot be mitigated but are found to be acceptable by meeting the test set out at bullet point 1, whereby the benefits of the proposal outweigh the archaeological value of the site. It is the Council's view that to protect Local Designations the bullet points are necessary to provide this protection which requires any adverse effects on local designations to be mitigated at the expense of the developer regardless of the wider potential public benefits.

No modification is proposed.

## **EP12 Management and Enhancement of the Water Environment**

Scottish Environment Protection Agency (569/12/2), Scottish Natural Heritage (1027/9/4)

The Council recognises merit in deleting the reference to stilts, sea level rise and coastal flooding as this could be misinterpreted.

If the Reporter is so minded the Council would not object to the deletion of the following wording "as they are unsustainable in the long term due to sea level rise and coastal change" from the final paragraph of section a) flooding.

The Council has discussed this representation further with Scottish Natural Heritage and reached an agreed position with regards to the preparation of a separate policy on coastal change.

If the Reporter is so minded, the Council, Scottish Natural Heritage and SEPA would support the addition of the following Coastal Change policy.

### **EP17 Coastal Change**

New development will not generally be supported in areas that are vulnerable to adverse effects of coastal erosion and/or wider coastal change as identified in Scotland's Dynamic Coast project (National Coastal Change Assessment).

In vulnerable areas, proposals for new developments will only be permitted if they demonstrate that they:

- are adaptive to anticipated coastal change, and
- avoid the need for coastal defence measures over their lifetime, and
- will not have a detrimental impact on coastal processes.

Beyond this, only in exceptional circumstances will proposals within areas vulnerable to coastal change be approved and only where it has been demonstrated that there are:

- no alternative solutions, and
- imperative reasons of over-riding public interest including those of a social or economic nature.

### **EP 16 Geodiversity and Soil Erosion**

Royal Society for the Protection of Birds Scotland (285/10/9), Dr Janet Trythall (404/4/1)

Supportive comments in respect of the policy are noted.

Airvolution Clean Energy (ACE) (2186/1/3)

The amended policy wording is not supported. The specific wording of EP16 has been carried forward from the existing policy in the MLDP2015. In SPP (CD53, pg. 39) Table 1 Spatial Framework identifies areas of significant protection which includes carbon rich soils, deep peat and priority peatland habitat. SPP states that in these areas windfarms may be supported in some circumstances. The policy sets out the circumstances the Council require to be met in order to support development.

No modification is proposed.

**Reporter's conclusions:**

**Reporter's recommendations:**