

**REPORT TO: PLANNING & REGULATORY SERVICES COMMITTEE
12 AUGUST 2008**

SUBJECT: MORAY LOCAL PLAN: REPORT OF PUBLIC LOCAL INQUIRY

BY: DIRECTOR OF ENVIRONMENTAL SERVICES

1. REASON FOR REPORT

- 1.1 This report is to advise the Committee of the Reporter's findings following the Local Plan Public Inquiry; to consider the recommendations being made; and to agree to publish any proposed changes as Modifications.
- 1.2 This report is submitted to Committee in terms of the Council's Administrative Scheme relating to the Review and Preparation of Strategic and Local Plans.

2. RECOMMENDATION

2.1 It is recommended that the Committee:

- (i) Agrees to the recommendations put forward by officers regarding the outcome of the Reporter's findings;**
- (ii) Agrees to all resulting changes being advertised as modifications, with a six week period allowed for submission of objections to these modifications.**
- (iii) Agrees to add an explanatory paragraph on housing site capacities in the context of the modified Housing Land Allocations Policy, H1.**

3. BACKGROUND

- 3.1 Members will be aware that the Review of the Local Plan attracted a significant number of objections, and that it was necessary to hold a Public Local Inquiry. This took place over a five week period in November and December 2007.
- 3.2 Following several weeks of negotiation between officers and objectors, resulting in two sets of Modifications, and a number of "Agreed Positions" being reported to the Inquiry, the Inquiry programme was reduced from an original 206 objections, to 29 "Policy" objections, and 83 "Towns, Villages and Rural Communities" objections. Written evidence had to be presented by the officers for all 112 of these cases, and for several, officers and witnesses had to appear for questioning and cross-examination. The Reporter, in his covering letter to the Council, has commended the Council's administration and conduct of the Inquiry.
- 3.3 The Inquiry Reporter, Mr Richard Bowden, has now completed his Report and has submitted his findings and recommendations to the Council. Members have already received a copy of Mr Bowden's Report. Under Local Plan regulations, the Planning Authority is responsible for the final content of the

Local Plan, and is not legally bound to accept the Reporter's recommendations; it is however customary to do so unless new significant information has come to light since the Inquiry.

- 3.4 The Reporter's recommendation on each objection topic is summarised in the table at Appendix I, along with officer recommendations as to the Council's response to them. By far the majority find in favour of the Council's position, with no change, or minor modifications. In only one instance (Mulben, where new evidence has come to light) is it recommended not to accept the Reporter's advice in its entirety. In 14 other cases, where the Reporter's advice is contrary to the Council's position at the Inquiry, officers are recommending that the Council accept in principle the Reporter's advice and promote Modifications which accord with his position.
- 3.5 The 14 in which he has found in favour of the objectors are as follows. The implications/outcomes are set out, following each case, and the officers' recommendation as to how the Plan might be changed to accommodate them are set out here, and replicated in the Appendix, along with all the other 98 cases.

- **Buckie R4: Portessie Station Site (Housing 50 units):**

Reporter's Recommendation:

That this site be deleted and excluded from the settlement boundary, due to the loss of bio-diversity, and the amenity value of the site. Development would result in the loss of an attractive and relatively unspoilt landscape; housing would raise sustainability issues, being peripheral to the town centre.

Implications and Officer Recommendation

It is recommended that this site be re-designated as ENV6, and retained within the settlement boundary. In accepting this recommendation, it will be necessary to find an alternative site to replace the 50 houses lost from Buckie's Housing land requirement. It is proposed to do this by bringing forward part of the Barhill Road LONG allocation.

- **Buckie RET 1: High Street (Retail Park)**

Reporter's Recommendation:

Acknowledges that many residents would welcome a new, larger supermarket built locally, rather than having to travel further to obtain a full range of convenience shopping. However, the Council has not provided reasons for accepting that no alternative sites are available in or adjacent to the town centre. In particular, an objector contends that there may be opportunities for redevelopment at more central locations – including the harbour area, as part of a regeneration of that area. Reporter refers to potential of harbour area to attract new offices, shops and leisure uses, and scope for new housing; and that there are larger gap sites when a single user may be appropriate. He concludes that the Council has not demonstrated that all other potential options in and around the town centre

– including the harbour area – had been exhausted or discounted when it agreed to the allocation of RET1. It is essentially an edge of town location when there may be other more central potential locations offering wider benefits of accessibility, economic regeneration, and sustainability. Reporter concludes that in his view designation RET would be contrary to SPP8, and Policy R3; and would have serious adverse impacts on the town centre. The Council should instead encourage site options in or closer to the town centre. He recommends that the RET designation should be deleted.

Implications and Officer Recommendation

The land required for a supermarket with a gross floor area of around 25,000 sq ft and associated car parking would be in excess of five acres. (This does not take into account other potential retail developments which may be proposed during the currency of the Emerging Local Plan.)

It is not considered that there are realistic alternative sites in or adjacent to the town centre which would be extensive enough, and available, in the foreseeable future.

The harbour area to which the Reporter refers is not only outside the town centre, and detached from it by significant differences in levels, but the recommended use of a substantial area at the harbour for retail development does not feature in the Buckie Harbour Study, Key Recommendations, Action Plan, or Masterplan (Cogent Si). Furthermore, the Reporter does not clarify how the impact on the Town Centre of such development at the harbour would be any less than that located at the RET designation proposed by the Council.

As a way forward, it is recommended that the specific 'RET' designation is deleted, and the site incorporated into an enlarged Business Park designation, within which retail uses may be acceptable to the Council, subject to criteria of Local Plan Policy R3 – which includes a requirement that proposals comply with the sequential approach, and not adversely impact on town centre vitality and viability. This would allow the Council the flexibility to consider the implications for these key issues at the time at which planning applications are before it.

This approach is compatible with that taken by the Reporter when making his recommendations on designation Elgin: RET Auction Mart, which is discussed below.

- **Elgin RET Auction Mart (Retail)**

Reporter's Recommendation:

Endorses the Council's intention that retail proposals conform to national planning guidelines, including adherence to sequential approach and retail impact assessment.

However, considers that specific 'RET' designation would lead to expectation that a case for retail use has been accepted in principle, although he accepts it is clear that the Council is not necessarily of this view.

Reporter concludes that it would be more appropriate for site to be redesignated as an 'Opportunity Site' – like 'OPP 1' immediately to the north – where a range of uses may be considered on a case by case basis. It would then be up to the applicant to demonstrate how any proposals would satisfy policy requirements – for example R3, if a retail development is proposed.

In April 2007, the Council put forward a change to the finalised plan in relation to both the proposed RET (Auction Mart) and OPP1 immediately to the north to the effect that: "A detailed flood risk assessment will be required for any planning application that is submitted for this site. This will be dependent on the Moray Flood Alleviation and Tyock Burn Alleviation Scheme being implemented". Reporter states that "the Council has failed to demonstrate the basis for stipulating different flooding criteria to be applied to these 2 sites – particularly when that stance has been taken against the specialist advice of SEPA and others. Accordingly, I conclude that the Council has not justified its position with regard to the new wording (proposed in April 2007 and reinforced in August 2007) on flooding in the text of OPP1 and RET (Auction Mart). Instead I conclude that it should adopt a consistent approach to dealing with areas of flood risk in and around Elgin – where there is a widespread problem and history of flooding".

Reporter concludes that this could be achieved by inserting a general statement at outset of settlement statement, along lines that it has done elsewhere to cover these sites.

Reporter recommends that RET site be redesignated as an Opportunity Site, and that wording of the introduction to settlement statement for Elgin be amended to provide a general statement on sites at potential risk of flooding. The wording which the Council proposed for RET (and OPP1 opposite) could then be deleted – all in accordance with guidance provided by SEPA.

Implications and Officer Recommendation

Alter designation from RET to Opportunity Site, and amend wording to be consistent with that which is to be applied to the 'OPP1' designation for land immediately to the north. This involves stipulating for both sites that they are considered suitable for business uses – and retail uses, subject to criteria of Local Plan Policy R3, which includes a requirement that proposals comply with the sequential approach, and not adversely impact on town centre vitality and viability. By incorporating a cross reference to Policy R3, these criteria need not be included in the wording of the designation. (Please refer to discussion under Buckie RET1: High Street, elsewhere in this report.)

Furthermore, to be consistent with the flooding criteria to be applied by the Council elsewhere in the Local Plan to areas of flood risk the statement under the revised OPP designation (Auction Mart) and OPP1 (Flemings Sawmill/former Morayshire Tractors) that development of either site will be dependent upon the Flood Alleviation Schemes being implemented, be omitted. Retention of the statement requiring a detailed flood risk assessment under the wording of each designation would be consistent with the approach taken elsewhere in the Local Plan.

- **Findhorn R1, R2 and LONG (residential)/ENV8**

Reporter's Recommendation:

Delete R1 and LONG allocations, which are seen as inappropriate extensions to the settlement. R1 should be replaced by a new housing allocation, as put forward by Novar Estate, at the eastern edge of the settlement, utilising part of ENV8.

Implications and Officer Recommendation

Remove R1 and LONG designations, but retain these areas within the Findhorn Settlement Boundary. Text for site R2 should be amended to require the preparation of a longer term masterplan, with supporting ecological studies, for the future development of the Eco-village. The white land to the north of R2 is embargoed from development within the period of the plan (2008-2012). Any development proposal on the white land to the east of the existing barrel cluster will require a detailed ecological study.

A new housing designation for 5 houses at Heathneuk, on the east edge of the settlement will now be designated, but will not include any of the ENV8 land, and will be restricted to the southern part of the suggested site. This is due to road access limitations and accords with the community's, and the Council's general objectives for Findhorn Village. A detailed ecological study will be required.

- **Forres R5: Pilmuir Road West (45 houses); Thornhill LONG**

Reporter's Recommendation:

Delete the sites from Plan due to their location in flood plain, and SEPA's continued objections to promotion of sites known to be at risk.

Implications and Officer Recommendation

Negotiations with SEPA are continuing regarding the extent of flood risk to these sites. Further Flood Risk Assessment information has been provided to SEPA from the Flood Alleviation Team, and from consultants working on behalf of the land owners. There remains a possibility that SEPA will withdraw their objection.

Should this be the case, then the sites can be retained within the Plan. Alternatively, should SEPA ultimately sustain their objection, the 45 houses “lost” from the removal of R5 will require to be replaced in order to comply with the Forres housing land requirement. Both sites would however be retained within the settlement boundary as ‘white land’, without any designation, but identified and cross referenced to an explanatory note regarding their history. Any development proposal will be considered against the terms of Policy H3.

An update on this position will be given at the Committee meeting.

- **Forres R6: Drumduan (15 houses)**

Reporter’s Recommendation:

Delete designation of site for housing due to potential loss of woodland amenity; impact on surrounding properties; road access difficulties.

Implications and Officer Recommendation

Delete housing designation, and re-designate the site as ENV9. The ‘loss’ of 15 houses from the removal of this site will require to be replaced in order to comply with Structure Plan Housing land target for Forres. It is proposed to do so by bringing forward land from the Lochyhill LONG allocation.

The removal of housing designation will be acknowledged – with reasons – in the Local Plan text.

- **Hopeman R1 Forsyth Street/Wider Expansion**

Reporter’s Recommendation:

Delete the R1 site from the Plan, and no other allocations to be made for Hopeman, with the position to be reviewed at the time of drafting the next Local Plan. Hopeman should have a period of consolidation, whilst exploring the limited expansion opportunities east or west in due course. This would have the benefit of retaining the B9040 road as effectively a southern boundary for Hopeman. (Reporter adds that if the Council wishes to pursue designation of R1, it be limited to only 12 houses.)

Implications and Officer Recommendation

In accepting this recommendation, the loss of the houses from the R1 allocation do not have to be replaced in Hopeman. The settlement boundary will be re-drawn to exclude the area of R1.

- **Keith R11: Corsairty (30 houses)**

Reporter’s Recommendation:

Delete due to encroachment on farm and loss of amenity. Redraw settlement boundary at farm track.

Implications and Officer Recommendation

The 'loss' of 30 houses from the deletion of this site will require to be replaced in order to comply with Keith's Housing land supply requirement. It is proposed to do so by bringing forward some of the LONG allocation at Edindiach Road.

- **Keith: Rosehall (Industrial Estate)**

Reporter's Recommendation:

Retain Bridge Street as an industrial designation, but delete the allocation at Rosehall and reject all others put forward for consideration. Rosehall does not represent a suitable site due to its visual prominence; distance from town; access difficulties.

Implications and Officer Recommendation

Delete Rosehall from the Plan as an industrial allocation and retain Bridge Street.

- **Lossiemouth: New Policy: Noise Contours**

Reporter's Recommendation:

An additional policy should be drafted relating to proposals for development in areas considered at risk from aircraft noise. Additional text should be introduced for Lossiemouth and Kinloss, regarding noise potential from the RAF bases.

Implications and Officer Recommendation

It is proposed to expand the existing policy on Pollution (EP7) to specifically include aircraft noise and to cross reference (into the text for all settlements where this may be an issue), that MOD publishes 'noise contours' which are referred to in the determination of planning applications in the Lossiemouth/Kinloss/Findhorn areas.

- **Lossiemouth Site R3: Stotfield Road**

Reporter's Recommendation:

Whole site area to be designated for housing, (in preference to the reduced site area put forward by the Council). Insert text relating to requirement to consult with Ministry of Defence in respect of aircraft noise from RAF Lossiemouth, to establish the extent to which development can be accommodated.

Implications and Officer Recommendation

Re-instate full extent of housing designation. Any planning application to be decided following consultation with MOD.

- **Urquhart: New Site Housing**

Reporter's Recommendation:

Whilst Urquhart would benefit from a period of consolidation during the Local Plan, it would nevertheless be appropriate to identify Site A – which has a capacity for 20 houses in the Local Plan – at least as the preferred location in Urquhart for longer term development for housing.

Implications and Officer Recommendation

Land referred to as Site A to be identified as a 'LONG' site for up to 20 houses, its release to comply with Policy H2.

- **Lintmill Nursery Rural Community**

Reporter's Recommendation:

The whole of the Lintmill Nursery designation should be deleted as a rural community. The site is considered to be isolated and remote from Cullen to be regarded as a satellite in practical terms. The proposals are not sustainable and would rely on private car usage: development of an isolated paddock would be detrimental to the visual amenity of Moray and should be avoided.

Implications and Officer Recommendation

The deletion of Lintmill Nursery does not require any compensatory provision to be made.

3.6 In **Mulben** the Reporter found in the Council's favour. However:

Reporter's Recommendation:

Amend Site B to the approximately rectangular area put forward by the Council in November 2007, with a maximum capacity for 12 houses.

Implications and Officer Recommendation

It is recommended that the Committee does not accept this recommendation.

Site B has been progressively decreased in order to keep development away from the area regarded at risk of flooding. Capacity was limited to 12. The Reporter has effectively endorsed this approach. However, his findings and recommendation do not take account of the Planning Appeal that was upheld on 29 May 2008 for 12 houses, which are now outwith the boundaries of Site B. To restrict new housing in Mulben to 12 units, Site B should now be deleted, allowing development to proceed on the appeal site only. The proposed rural community boundary should be retained.

3.7 **Policy H1: Housing Land Allocations**

The changes to house site allocations occasioned by the Inquiry findings, and their implications for the housing land quotas stipulated by the Structure Plan, has given rise to the need to clarify and expand on the 'capacity' figures allocated to designated sites. These figures are intended to be indicative, to allow an assessment and calculation of the contribution made towards the Housing Land Supply.

- 3.8 In practice, applications for housing above these stated capacity figures have consistently been treated as “departures”. However, there is currently no explanation within the Local Plan about how capacity figures were arrived at and how they are to be applied to the determination of planning applications. Therefore, the following text is proposed to be added to the ‘Justification’ paragraphs following Policy H1:-

The site designation capacity figures are the numbers attributed as appropriate to the site for the purposes of assessing their contribution to the Housing Land Supply. They represent the maximum number which the Council will consider before “Departure” procedures come in to effect; in other words, any application over the indicated capacity will be dealt with as a Departure. However, some proposals for over the attributed numbers may be acceptable departures, and this judgement will be determined through a detailed analysis of the design and layout as submitted in the Planning Application. The final capacity will be decided by consideration of the application’s compliance with the criteria used to define the designation; e.g. landscaping requirements; access constraints; neighbouring housing densities; noise contours; floodplain limitations, etc.

3.9 **Modifications**

All changes to the Plan that are agreed by the Committee (whether accepting the Reporter’s recommendations or not) will require to be advertised as Modifications, and a six week period allowed for objections to be lodged. Further objections will only be entertained on the basis of new grounds, or relevant matters which have not already been considered during the Inquiry process. Any such objections received will be brought back to this Committee for consideration.

3.10 **Adoption**

Following this, on the basis that no further competent objections are lodged, the Council can then publish a further advertisement – “Notice of Intention to Adopt”. Twenty eight days after that, (and at that stage, objections can only relate to, in effect, some mismanagement of the process) the Council is free to formally adopt the Plan as a replacement for the Moray Local Plan 2000.

It is anticipated that this will not take place until mid November (although any changes in what is a tight timetable would result in further delays). That will be over a year since the Local Plan Inquiry commenced.

3.11 **Material Considerations**

The uncontested parts of the Emerging Plan have been used as ‘material considerations’ since 3 March 2008. All of the plan, including those parts which the Committee approves at this meeting as Modifications, can now be used as ‘material considerations’ and this situation will pertain until Adoption, at which point, all use of the Moray Local Plan 2000 will cease.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Development Plan/Community Plan/Service Improvement Plan

The Review and Replacement of the Moray Local Plan 2000 is a priority. The new Local Plan will be instrumental in implementing the Council's planning policies, and assisting in strategies such as Moray 2020.

(b) Policy and Legal

The preparation of a Local Plan is a statutory requirement for the Council.

(c) Resources (Financial, Risks, Staffing and Property)

There has already been a considerable expense (approximately £85,000) in the Review of the Plan, particularly in terms of the Inquiry costs and Reporter's fees. There will be further expense in terms of adverts; printing of modification schedules, and ultimately the re-printing of the New Plan.

(d) Consultations

The Principal Solicitor (Commercial and Conveyancing) and Deborah Brands, Principal Accountant have been consulted and their views incorporated into this report.

5. CONCLUSIONS

- 5.1 The Reporter's findings from the Public Local Inquiry have substantially endorsed the Council's position in all but a small number of cases.**
- 5.2 An explanatory paragraph on 'house site capacities' is needed, to clarify the role of these figures in both Housing Land Audits, and determination of planning applications.**
- 5.3 All agreed changes to the Plan require to be advertised as Modifications, with an opportunity for objections to be submitted; these must be on new grounds to be valid and given any further consideration.**
- 5.4 On the basis that the Committee agrees to advertise as Modifications, the changes herewith recommended, the Local Plan in its entirety can be used as a material consideration for all planning decisions from this date on.**
- 5.5 A further report will need to be submitted to Committee following the objection period, when consideration can be given to formal adoption of the Moray Local Plan 2008.**

Author of Report: Mark Cross, Principal Planning Officer
Background Papers: Public Inquiry Report
Ref: MC/JC