



REPORT TO: THE MORAY COUNCIL ON 29 JANUARY 2014

SUBJECT: ELGIN WESTERN LINK ROAD

BY: ACTING CORPORATE DIRECTOR (ENVIRONMENTAL SERVICES)

1. REASON FOR REPORT

- 1.1 This report is presented to Council in light of the decision taken at the Special Planning and Regulatory Services Committee meeting on 10 December 2013 to remove reference to the Western Link Road from the proposed Local Development Plan.
- 1.2 This report is submitted to Committee in terms of Section II (7) of the Council's Administrative Scheme relating to the resolution of any conflict that may arise between committees.

2. RECOMMENDATION

2.1 It is recommended that the Council:-

- (i) notes that the Local Development Plan should reflect strategic projects to be undertaken by the Council;**
- (ii) supports the Western Link Road as a strategic project for the Council, and, therefore, its inclusion in the new Local Development Plan, for the reasons set out in this report, and approves the new timetable for the Local Development Plan (as set out in APPENDIX I); and**
- (iii) in the event of the Council not wishing to support recommendation (ii) above:-**
 - (a) considers the implications of such a decision, including the impact on the timescales (as set out in APPENDIX I) for completion of the Local Development Plan, the impact of such a decision on the Western Link Road project as set out in this report, and in particular, that planning and CPO applications will continue to be progressed unless Officers are instructed to the contrary;**
 - (b) agrees the additional cost of £50,000 for completion of the Local Development Plan (as set out in paragraph 9(c)); and**

- (iv) **agrees that a review of the Council's Administrative Scheme is carried out to consider the most appropriate governance arrangements in the Scheme of Administration for significant strategic projects.**

3. BACKGROUND

- 3.1 The Elgin Western Link Road has been identified as the strategic intent of the Council in the Local Plan since 2000. This was restated in the agreed Local Plan 2008 and has been the basis on which the proposed new Local Development Plan has been predicated. On 10 December 2013, the Special Meeting of the Planning and Regulatory Services Committee agreed to remove reference to the Western Link Road from the proposed Local Development Plan, on the basis that the Plan should present the Council's Planning and Regulatory Services Committee's settled view of future development.
- 3.2 During discussion of this issue, Officers advised that removal of the Western Link Road at this point of preparation of the Local Development Plan would require a fundamental review of the approach to the designations included within the proposed plan.
- 3.3 At its meeting on 10 December 2013, the Committee also agreed that as this decision was in conflict with the decision of the Economic Development and Infrastructure Committee of 18 December 2012 to progress with the Western Link Road. (The Council was invited to review this decision on 27 March 2013 but decided that there was no basis for such a review and so the decision of 18 December 2012 remains in force), the decision of the Committee on 10 December 2013 must be referred to the Council to resolve that conflict in terms of paragraph II (7) of the Council's Scheme of Administration.

4. POINT OF CONFLICT

- 4.1 Parliament has given the Council responsibility as both the Planning Authority and Roads Authority for the Moray area. The Council's Administrative Scheme sets out how it takes decisions in these areas. In terms of the Scheme, the Economic Development and Infrastructure Committee has delegated authority from the Council to exercise all functions of the Council as Roads Authority, including the power to deal with traffic management functions and to prepare Local Transport Strategies. The Planning and Regulatory Services Committee has delegated authority to review or prepare all Strategic and Local Plans for submission to the Council, the Council alone having power to approve the Local Plan. Only the Council may approve the compulsory acquisition of land or buildings. This can create a complex interplay between the various committees of the Council. As a result, the Council retains the power to resolve any conflict that arises on any matter between committees.

- 4.2 The decision of the Planning and Regulatory Services Committee on 10 December 2013 creates doubt as to whether the Western Link Road is a strategic objective of the Council, as Planning Authority. This is clearly in conflict with the decisions of the Economic Development and Infrastructure Committee which sees it as a strategic objective for the Council, as Roads Authority. For strategic projects such as the Western Link Road to be taken forward, both planning and transportation objectives must be closely aligned as otherwise the Council would arguably have no coherent strategic position.
- 4.3 Such a situation would be contrary to Scottish Planning Policy as the proposed Local Development Plan would not reflect the strategic intent, evidenced through the Council's Economic Development and Infrastructure Committee decisions, nor the Council's decision to progress the Compulsory Purchase Order associated with the development of the project.
- 4.4 The potential risks arising from such a position are likely to be increased uncertainty, delay and costs for the planning process, implementation of transportation policies and for the public and developers. A further risk would be that such a situation would be likely to attract external scrutiny from the Scottish Government.
- 4.5 Discussion at the Planning and Regulatory Services Committee meeting in December 2013 suggested that the Western Link Road project could proceed to planning consent consideration under the 2008 Local Plan, notwithstanding any decision to remove reference to the scheme from the proposed Local Development Plan. A planning application is to be submitted in the near future to the Planning Authority, based on a consistent series of earlier decisions of the Council. This application will be decided in terms of the provisions in the current Local Plan, which includes the Western Link Road, and any other material considerations.
- 4.6 The provisions of the proposed Local Development Plan are not a material planning consideration for the Western Link Road application (in law) at this stage, but will become increasingly persuasive with the passage of time. This would create issues in the event of any significant delay in the progression of the planning application.
- 4.7 The compulsory purchase preparations undertaken to date are based on the presumption that there is a clear case in terms of planning policy for the granting of permission for the project. Removal of the Western Link Road from the new Local Development Plan would fundamentally undermine the CPO statement of reasons and as a result, there is a significant risk that the Scottish Government would refuse the CPO application. This would in turn mean that delivery of the Western Link Road project would become more difficult. This is somewhat speculative at this stage, however the scheme would require some redesign to further reduce the land requirements, resulting in a more compromised scheme which may impact, for example, on pedestrian and cycle facilities. Acquisition would have to rely on negotiation (assuming willing sellers) and the Council's bargaining position could be compromised with the potential to have increased costs with reduced benefits.

5. **STRATEGIC TRANSPORTATION CONTEXT FOR THE WESTERN LINK ROAD**

- 5.1 The rationale for the Western Link Road has been considered in depth by the Council's Economic Development and Infrastructure Committee over the past 10 years.
- 5.2 A summary of the reports which have considered the Western Link Road is given in the table below and demonstrates the significant amount of time and consideration the Council has given to this issue.

Report	Date
ES Committee : Elgin Bypass	13 March 2002
ES Committee: Elgin Bypass	6 August 2003
ES Committee: Proposed New Road Link -Edgar Road to A96	28 April 2004
ES Committee: Proposed New Road Link -Edgar Road to A96	1 September 2004
Moray Council: Transport Model and STAG Procurement	9 November 2005
ES Committee: Elgin STAG Part 1	30 August 2006
ES (Special)Committee: Elgin STAG Part 2	30 August 2007
Planning and Regulatory Services Committee: Moray Local Plan- Report of the Public Local Inquiry	12 August 2008
ED&I Committee: Elgin Traffic Management – Report 1	3 February 2009
ED&I Committee: Elgin Traffic Management – Report 2	3 February 2009
ED&I Committee: Capital Plan 2009/10	26 May 2009
ED&I Committee: Elgin Road Hierarchy – Primary and District Distributor Roads	8 December 2009
ED&I Committee: Capital Plan 2010/11	15 June 2010
ED&I Committee: Stage 1 Option Appraisal Report	24 August 2010
ED&I Committee: Value Engineering on the Rural Corridor	19 October 2010
ED&I Committee: Option Appraisal and Progress and approval for Public Exhibition.	14 December 2010
ED&I Committee: Stage 2 Option Appraisal Report	8 March 2011
ED&I Committee: Route Approval	28 June 2011
ED&I Committee: Western Distributor road – Report 1	6 September 2011
ED&I Committee: Western Distributor road – Report 2	6 September 2011
ED&I Committee: Approach for Compensation and Acquisition of Property	1 November 2011
ED&I Committee: Capital Plan 2012/13 and Project Execution Plan	13 March 2012
ED&I Committee: Progress Update and Communication and Engagement Strategy	28 August 2012
ED&I Committee: Report 1: Outline Design	18 December 2012
ED&I Committee: Report 2: Compulsory Purchase Order	18 December 2012

Report	Date
The Moray Council: Elgin Western Link Road	27 March 2013
The Moray Council: Compulsory Purchase Order	22 May 2013
The Planning and Regulatory Services Committee: Moray Local Development Plan – Proposed Plan	6 June 2013

- 5.3 A full Stag appraisal was commissioned by the Council in November 2005, “without pre-conditions”, to determine the best solution to enable the road network in Elgin to cater for future development and economic growth. The STAG part 1 appraisal reported back with 18 possible options (including a “do nothing” option), and in the STAG part 2 these were later reduced to 7 options in 2007. This included a link from Edgar Road to the A96 using Wittet Drive and a junction improvement at the A96/Wittet Drive junction.
- 5.4 In 2010 and 2011, in accordance with the Design Manual for Roads and Bridges (DMRB), a number of alternative corridors were also assessed, and again compared with a “do nothing” option and also a “do minimum” option which consisted of existing road network enhancements.
- 5.5 Following a public exhibition which displayed all of these options, and a comprehensive evaluation of the costs and benefits of each option, the Economic Development and Infrastructure Committee selected the route from Edgar Road to the A96 via Wittet Drive in June 2011. Approval of a revised location for the proposed junction with the A96 followed in September 2011, and Officers were instructed to progress the scheme including detailed design, planning application and property acquisition of the entire route.
- 5.6 In a number of previous Committee reports the strategic transportation need for a Western Link Road has been demonstrated. The main reasons are summarised below:
- A complete network of distributor roads is needed to facilitate traffic circulating around Elgin to avoid the congestion in the centre and on the A941. The Western Link Road has previously been accepted as the missing link.
 - Continuing development on Edgar Road and in the south of Elgin has overloaded the junctions on either side of the New Elgin Road railway bridge. It has been reported to Committee previously that these junctions are already over capacity at peak periods *before* committed development or other future development proposals are considered.
 - If committed developments in the current Local Plan and Robertson’s retail park were fully operational there would be approximately 20% more traffic than 2010 observed traffic flows. If a foodstore is developed at the Marts site the increase is approximately 30%.
 - Without acquiring business properties by CPO, the prospects of which are at best mixed, the junctions at Laichmoray and Edgar Road roundabouts cannot be enlarged sufficiently to cater for additional traffic. The most

effective and achievable means of enabling additional development and economic growth in the area is to create another railway crossing to reduce the traffic load on New Elgin Road.

- When these junctions have insufficient capacity then very small increases in traffic flow will result in very significant increases in queues and delays for motorists. This leads to increased rat-running in less suitable narrow residential streets in a number of locations, and in addition to the nuisance factor there are also road safety implications. These streets, unlike the link road, will not have been designed for this use.
- The rapid increase in peak time traffic flows on The Wards and Glenmoray Drive to avoid congestion at New Elgin Road in the past 2-3 years are an example of this.
- Improving isolated junctions elsewhere instead of Western Link Road will not provide a new crossing of the railway nor relieve junctions on New Elgin Road or the town centre. This approach will probably require the acquisition of property by CPO from a number of business and residential properties, and will be ineffective because without solving the New Elgin Road problems, traffic will not be able to reach the improved junctions to benefit from the increased capacity provided. The total cost of improving whatever junctions are chosen is also likely to exceed the cost of the link road.
- Modelling work carried out by Jacobs consultants would indicate that future plans for dualling the A96 will not materially affect the need for a new railway crossing or completion of the distributor network in Elgin which will mainly benefit north-south traffic. The dualled A96 will assist east-west traffic and is unlikely to be of use to Elgin traffic wishing to circulate around the town because of its possible location and Transport Scotland's early indication of junction strategy.

6. IMPLICATIONS FOR THE PROPOSED LOCAL DEVELOPMENT PLAN

- 6.1 The development of the proposed Local Development Plan has been predicated on the inclusion of the Western Link Road as the strategic intent of the Council. Any decision to remove reference to this intent within the proposed Local Development Plan will raise a number of significant issues for the Council.
- 6.2 The inclusion and provision of the Western Link Road is fundamental for the release of housing land in Elgin. Four sites are identified as constrained and dependant on the provision of the Western Link Road totalling in excess of 200 houses. In addition, the long term housing sites identified in Elgin South (to the east and west of the Rothes Road on the southern boundary of the town) will have difficulty overcoming the traffic impact associated with the additional housing on the existing network.

- 6.3 The constraints of the existing network are summarised in Section 5 above. If the local development plan does not include the Western Link Road the housing land allocations throughout Elgin will have to be reassessed to determine deliverability. In assessing land allocation for the new Local Development Plan, consideration must be given to the existing transport network, environmental and operational constraints and proposed or committed transport projects. It will be necessary to review the land allocations in the context of no Western Link Road provision, associated traffic generation that would arise from the proposed developments and the impact this would have on the existing road network.
- 6.4 Should it not be possible to meet the housing land requirements in Elgin, alternative sites in the Elgin housing market area would need to be considered. Lossiemouth cannot accommodate further housing due to restrictions imposed by the RAF radar requirements and therefore it may be necessary to redistribute to smaller settlements, which might be out of scale/ proportion with their character and capacity.
- 6.5 The Local Development Plan sets out a Spatial Strategy for development as shown in the hierarchy below.

Primary Centre	Elgin
Secondary Centres	Buckie, Forres, Keith, Lossiemouth
Third Tier Settlements	Aberlour, Alves, Archiestown, Burghead, Craigellachie, Cullen , Cummington, Dallas, Dufftown, Duffus, Dyke, Findhorn, Findochty, Fochabers, Garmouth, Hopeman, Kingston, Kinloss, Lhanbryde, Mosstodloch, Newmill, Portgordon, Portknockie, Rafford, Rothes, Rothiemay, Urquhart
4 th Tier	Rural Groupings (78)

- 6.6 In terms of the Spatial Strategy being followed, Elgin's role as the primary location of development and investment would be compromised if development land is constrained by traffic congestion. The knock on effect of re-distributing development sites would further depart from the Spatial Strategy. This could prompt a full re-appraisal of the Spatial Strategy and may require a re-visit of the main issues and consultation process.
- 6.7 Any decision to remove the Western Link Road from the proposed Local Development Plan will require a reassessment of the plan as indicated in paragraph 6.3 above, and could result in a delay to the Local Development Plan of six - nine months. This would require a reassessment of the traffic impact on all major junctions arising from proposals in the Local Development Plan. The cost of consultants to inform this reassessment is likely to be in the region of £50,000.
- 6.8 Planning Authorities are required to set out a timetable for the review and production of their Local Development Plan, in the form of a Development Plan Scheme (DPS), and submit this annually to the Scottish Government. The decision of the Planning and Regulatory Services Committee to remove

the Western Link Road, subject to the matter being referred to the Moray Council to allow the conflict between Committees to be resolved, has resulted in a delay to that timetable of approximately two months.

- 6.9 The revised timetables for the Local Development Plan are provided in **APPENDIX I**. The Scottish Government has advised that Local Development Plans should be no older than five years. The current plan was adopted in 2008. The Council is already being criticised by the Scottish Government for the delays in progressing the Local Development Plan, as indicated in the recent response to the Planning Performance Framework.

7. CONSEQUENCES OF A DECISION NOT TO INCLUDE THE WESTERN LINK ROAD WITHIN THE LOCAL DEVELOPMENT PLAN

- 7.1 The earlier sections of this report have set out the background to the current position regarding the Western Link Road, the need for the Local Development Plan to reflect the strategic intent of the Council and the implications of removal of the project from the Local Development Plan. It is the view of Officers that any decision not to include reference within the Local Development Plan to the project would create some immediate and significant risks to the Council. Officers have used their best endeavours to detail this on the basis of known information.
- 7.2 The inconsistency between the Council's positions in relation to the strategic importance of the Western Link Road would be likely to remain a continuing source of tension between the progression of the project and the stated position in the Local Development Plan.
- 7.3 As stated earlier in this report, while the new Local Development Plan is not a material consideration in a planning application process for the project at this time, this will change over time and the new Local Development Plan will become increasingly persuasive. In law, the planning application and CPO applications could continue although difficulties previously described would arise.
- 7.4 Removal of the Western Link Road from the new Local development Plan will have the effect of bringing into question the supporting statement of reasons in the CPO submission to the Scottish Government. The strategic tensions identified above arising from the exclusion of the project from the new Local Development Plan are likely to undermine the Council's case for CPO. Without the acquisition of properties and land covered by the CPO submission, the project would become more difficult to deliver and would necessitate redesign of the scheme with reduced benefits and potentially increased costs (as set out in paragraph 4.7).
- 7.5 In the event that the Western Link Road project could not be delivered, there is no assessed equivalent solution to provision of an additional railway crossing and the alleviation of congestion at the Edgar Road and Laichmoray roundabout. Additionally, a number of consequences would arise from non delivery of the Western Link Road:-

- property already required would need to be disposed of and there would be risks in relation to potential compensation claims for future abortive costs associated with negotiations for land and property;
- as a result, future abortive costs of around £2–2.5m are projected. (This does not include the cost of £2.7m for land for the affordable housing development currently constrained by lack of access);
- an assessment of the extent to which the Council might have to return developer contributions received. These contributions currently amount to £652k, of which some will need to be spent within the next 2/3 years. If they are not spent in accordance with the legal agreements, then they must be returned with interest (calculated as at October 2013 at £100k).

8. GOVERNANCE ARRANGEMENTS FOR STRATEGIC PROJECTS

- 8.1. This issue has highlighted that the Scheme of Administration, as currently framed, does not provide a clear pathway for significant strategic projects to be considered by the Council.
- 8.2 A review of the Scheme of Administration to address this may be worthwhile to allow the Council to consider defining significant strategic projects and determining appropriate governance arrangements within the Scheme of Administration.

9. SUMMARY OF IMPLICATIONS

(a) Council / Community Planning Priorities

The Local Development Plan establishes the land use and infrastructure requirements for sustainable economic growth and is complimentary to the Council's Ten Year Plan which has sustainable economic growth as its priority.

(b) Policy and Legal

This issue has highlighted that the Scheme of Administration does not provide a clear route for major strategic projects to be considered by the Council. A review of the Scheme of Administration to address this should be considered.

Removal of the Western Link Road from the Local Development Plan, whilst retaining the intention to provide it as a strategic roads/infrastructure project, would be contrary to the requirements of the Scottish Planning Policy.

(c) Financial implications

Removal of the Western Link Road from the Local Development Plan will result in a requirement to reassess the Local Development Plan and traffic modelling for Elgin. There is no budget provision for this work and this would require £50,000 to be committed from reserves.

Future abortive costs associated with abandoning the Western Link Road are currently estimated at around £2–2.5m. This does not include the potential abortive cost of the acquisition of the affordable housing site (£2.7m) if an access road to this site is not constructed. It also does not include the

potential for the Council to have to return a proportion of developer contributions amounting to £652k. Any repayments would also have to include interest on any sums to be repaid.

Costs of approximately £2.9m have been expended on this project since 2007. These costs include the cost of staff resources, geotechnical ground investigation and consultant fees.

(d) Risk Implications

The Local Development Plan timetable is already delayed. Additional delay is likely to bring further criticism from the Scottish Government.

Dubiosity as to the status of the Western Link Road project presents a risk of undermining the CPO process which the Council is currently pursuing.

There are significant reputational risks to the Council in appearing to perpetuate an ongoing lack of clarity on its strategic intent, at a time when the Scottish Government is encouraging Councils to increase and expedite capital expenditure on infrastructure, to promote economic growth derived from the new assets and from an injection of construction money into the local economy.

(e) Staffing Implications

Removal of the Western Link Road from the new Local Development Plan will result in additional workload for staff within development plans, transportation, property (potentially beyond current capacity) and legal services. Significant work already undertaken in preparation of the new Local Development Plan would be abortive.

(f) Property

The potential for additional and abortive costs associated with property are outlined in the report.

(g) Equalities

The new Local Development Plan will consider equalities in the application of policies.

(h) Consultations

The Head of Legal and Democratic Services, the Head of Direct Services, the Head of Financial Services, Aileen Scott (Legal Services Manager); Lorraine Paisey (Principal Accountant); the Equal Opportunities Officer; the Transportation Manager; Alasdair McEachen (Legal Services); Alex Burrell (Estates Surveyor); the Consultancy Manager and Mark Cross (Principal Planning Officer) have been consulted and their comments incorporated into this report.

10. CONCLUSION

- 10.1 Removal of the Western Link Road from the proposed Local Development Plan, whilst continuing to progress the Western Link Road project, undermines the strategic coherence of the Council's approach to local development.**
- 10.2 The justification and design for the Western Link Road has been developed over the past ten years, with a full STAG appraisal and full consideration by the Economic Development and Infrastructure Committee, supported at full Council through approval of the CPO procedure and budget setting processes.**
- 10.3 The project provides a positive economic benefit and contributes to the feasibility of the land allocations for Elgin in the proposed Local Development Plan. There are no assessed equivalent proposals. Removal of the Western Link Road from the Local Development Plan will require a reassessment of the land allocations, delaying the production of the Local Development Plan and potentially constraining the availability of development land in Elgin.**
- 10.4 There are significant abortive and additional costs associated with non delivery of the Western Link Road project.**
- 10.5 The Scheme of Administration should be reviewed to consider the most appropriate governance arrangements for significant strategic projects.**

Author of Report: Jill Stewart, Acting Corporate Director (Environmental Services)
Jim Grant (Head of Planning and Development)

Background Papers:
Ref: TMC/ Western Link Road – 29 January 2014