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**Report to Council**

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**Date of Meeting: 14th May 2015**

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**Proposal: Adoption of the Clackmannanshire Local Development Plan and associated documents**

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**Report by: Head of Development and Environment**

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**1.0 Purpose**

- 1.1 The Clackmannanshire proposed Local Development Plan (LDP) was consulted on between November 2013 and February 2014. Outstanding representations to the Proposed LDP which could not be resolved were submitted to the Directorate for Planning and Environmental Appeals (DPEA) in August 2014 and considered through an Examination. Once the Examination was completed, the Reporters prepared a report setting out their findings and giving reasons for their conclusions. This was received by the Council on 20th March 2015
- 1.2 The Council are required to modify the proposed LDP to incorporate the Reporters recommended changes. This report is to seek approval of the Clackmannanshire Local Development Plan and associated documents and supplementary guidance as modified for adoption.
- 1.3 The report also seeks approval of two further pieces of Supplementary Guidance to support the LDP, 'Woodlands and Forestry' and 'Domestic Developments', for consultation.

**2.0 Recommendations**

- 2.1 It is recommended that the Council approve:
- (a) the Proposed Local Development Plan and associated documents as modified for adoption\*;
  - (b) Supplementary Guidance 1-7 as modified\*; and
  - (c) Supplementary Guidance 8, 'Woodlands and Forestry' and 10, 'Domestic Developments', and associated documents for consultation\*.

\*provided separately to Members and available electronically on the Member's portal

### **3.0 Considerations**

#### **Background**

- 3.1 The Planning etc (Scotland) Act 2006 requires the preparation of Local Development Plans to provide a robust, plan-led approach to development, setting out a clear, concise, long-term vision for the future development of the area and providing relevant and up to date policy guidance.
- 3.2 LDPs should look to guide the future use and development of land in the area for the next 20 years, and require to be reviewed at least every 5 years. This LDP looks to 2035.

#### **Representations on the Proposed Local Development Plan**

- 3.3 The proposed Local Development Plan represented the Council's position in terms of the policies it wished to adopt and the sites and projects it wished to promote and support. The LDP as modified includes the Reporters recommendations and will form the Adopted Local Development Plan.
- 3.4 When the proposed LDP was published the Council consulted Scottish Ministers, Key Agencies, Community Councils, Local Groups, the public and anyone who commented on the Main Issues Report. Additionally, all owners, lessees or occupiers of sites identified as proposals within the proposed LDP as well as owners, lessees or occupiers of land neighbouring the sites included within the proposed LDP were notified in writing.
- 3.5 During the representations period, comments could be made on any aspect of the proposed LDP, including the proposed Supplementary Guidance, the Environmental Report, the Habitat Regulations Appraisal and the Action Programme.
- 3.6 The proposed LDP was consulted on between November 2013 and February 2014. 96 parties made representations and 454 individual points were made. Some of these were objections seeking changes, some were supportive of parts of the proposed LDP and some were observations/comments.
- 3.7 Having considered all of the representations received, the Council decided that they could not all be resolved and there were therefore parts of the proposed LDP which were still the subject of objections. The proposed LDP was published and submitted to Scottish Ministers for Examination by the DPEA along with the representations received and the Council's responses.
- 3.8 The representations were grouped into 60 topics, based on the sections within the proposed LDP. 11 other topics were identified which related to either the Environmental Report, Supplementary Guidance, or other associated documents and were not required to be considered by the Reporters. Of the 60 topics, 6 included only comments or observations and did not request any changes to the proposed LDP, therefore did not

need to be considered by the Reporters. They were, however, submitted to the DPEA for information.

- 3.9 The remaining 54 topics requested changes to the proposed LDP which ranged from significant proposed changes to those of a minor nature, including minor wording changes or updating of references to refer to events and publications which had taken place following approval of the proposed LDP for consultation. Where officers saw merit in a representation to change the proposed LDP and it was considered to be of a minor nature, the responses to the Reporters indicated that, should they be minded to accept the proposed change, the Plan could be amended accordingly. The ultimate decision therefore rested with Reporters. This was the case in whole or part for 23 of the 54 topics. This was considered to be the most efficient and effective way to address many of the minor modifications that were requested without having to re-consult on the proposed LDP.
- 3.10 For the remaining 31 topics it was considered that the changes requested were not acceptable and no changes were therefore proposed to the proposed LDP.

### **Examination**

- 3.11 Outstanding representations to the proposed LDP which could not be resolved were considered through an Examination of the Plan. Responsibility for arranging and conducting the Examination falls to the Directorate for Planning and Environmental Appeals (DPEA). The Examination commenced on 30th September 2014. The DPEA appointed two Reporters to carry out the Examination and determine how representations would be considered. All representations were considered through written submissions and there were no hearings or inquiry sessions. A total of 9 Further Information Requests were made, 6 to the Council and 3 to parties who had made representations.

### **Reporters Recommendations**

- 3.12 Once the Examination was complete, the Reporters prepared a report setting out their findings and giving reasons for their conclusions. In a change to the previous Inquiry process, where planning authorities could choose not to accept a Reporter's recommendation if they felt there was good reason, Examination reports are now binding on the planning authority in all but a very limited number of exceptional cases.
- 3.13 The examination considered 60 topics arising the unresolved representations to the proposed LDP. For 25 of these issues the Reporters recommended that no modifications were required to the proposed LDP.
- 3.14 Of the remaining 35 topics, none of the modifications recommended are considered to be significant. Officers are therefore generally happy to include the modifications to the proposed LDP to allow it to proceed to adoption, with one exception (see paragraph 3.22). The modifications

generally fall into 4 categories, more than one of which may be applicable to each recommended modification :

- to update the text to refer to documents published since the proposed LDP was consulted on, e.g. Scottish Planning Policy and the National Planning Framework;
- minor wording changes which do not change the aims and objectives of the proposed LDP, and in many cases strengthen it, e.g. changes to Policy SC9 - Developer Contributions;
- additional information to give further guidance and understanding e.g. changes to Policy EP10 - Minerals - General Principles; and
- re-ordering the text to improve clarity e.g. changes to Policy SC2 - Affordable and Particular Needs Housing.

3.15 The main recommended modifications are identified below. The modifications are binding, however none are considered contentious and Officers are generally content with the modifications proposed.

3.16 The '**Housing Land Supply**' section (Issue 13) has been significantly changed, the reasons for which fall into all four categories above. There was significant discussion between the Council and the Scottish Government's Housing Division following the publication of the proposed LDP and changes were agreed between both parties. The way of calculating the Housing Target has also been revised and this too is reflected in the changes in this section. The Reporter asked the Council to submit proposed new wording, which he has accepted and which form the changes he recommends. It is worth noting that there are no recommendations to significantly change the amount of housing land which the proposed LDP is seeking to deliver, therefore while methodologies may have changed, the outcome is the same in relation to housing numbers.

3.17 The **Affordable Housing Policy** SC2 (Issue 17) has been re-written, however this is in the form of re-ordering to improve clarity, rather than any significant changes to the Policy.

3.18 Potential **flooding** concerns were raised on a number of sites which had not previously been identified as being at risk in the flood maps which were available at the time the proposed LDP was produced (Issue 34b). SEPA therefore recommended that a number of sites include the requirement for Flood Risk Assessments to be carried out, or the use of flood resilient materials. Further, they recommended Flood Risk Assessments on sites which are not included in the newest Flood Risk Maps, but where they believe there is previous evidence of flood events. It is accepted that, in the light of this more recent information it will be appropriate to raise the issue of Flood Risk Assessments for a number of sites where they were not previously required. For some of the other sites, the Council does not necessarily agree with SEPA's view that they may be at risk of flooding, however, in keeping with the precautionary principle it is proposed to accept the Reporter's recommendations to include the issue of Flood Risk Assessments for these sites.

- 3.19 It is recommended that the capacity of the **Menstrie Mains** site (H33) be reduced from 100 houses in the proposed LDP to 84 houses (Issue 42). This is based on the acknowledgement that the site is subject to a number of development requirements, including a flood risk assessment, a drainage assessment and potential flood alleviation measures. In their response to a previous planning application for 84 houses on the site, SEPA was satisfied that the flood risk assessment showed that the proposed development could be achieved outwith the functional flood plan in accordance with the avoidance principle. The Reporter therefore Recommended that it would not be appropriate to increase the capacity of the site above that number, although they recognise that this would not preclude a larger number should the detailed site assessment show that more units could be accommodated.
- 3.20 The Reporter recommended that the green belt boundary to the east of **Dollar** be adjusted to allow some flexibility for extending site H46 if the masterplanning exercise demonstrates that this would have overall benefits (Issue 45). They did not consider that it would be appropriate to recommend the proposed enlargement of the Dollar Settlement Expansion Site in the Local Development Plan, but recognised that the preparation of a formal masterplan may indicate merits in visual and landscape terms in extending the development area to the east and south-east beyond the present boundaries of H46. They suggest that this is a matter that the Council can consider further, either through the normal development management process or when the Local Development Plan is next reviewed.
- 3.21 The only 'new' site recommended for inclusion in the Plan is the reinstatement of the site at **Burnside, Clackmannan** (Issue 58). The site is allocated for residential development in the current adopted Local Plan and Alteration. Planning permission for the erection of 81 houses was granted in March 2007, although this permission has now lapsed. The site was omitted from the proposed LDP because of SEPA's concern about the risk of flooding. However, last year a further planning application was submitted for the erection of 71 houses on this site. In its consultation response on this application, SEPA indicated that it would not object to the development on flood risk grounds provided that conditions were imposed if the Council were minded to grant permission, relating to the provision of compensatory storage and the discharge of surface water being in accordance with a sustainable drainage system approach. SEPA indicated that, in accordance with Scottish Planning Policy, they had adopted a precautionary approach to flood risk when commenting on the proposed LDP. When more detailed information became available to accompany the most recent application, this was what they based their planning application response on and the site was therefore able to be developed, subject to planning conditions.
- 3.22 There is one recommendation which it is proposed not to accept, issue 43, recommendation 8, under Section 2(c) of The Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009. This is on the basis that the

recommendation "...in respect of the modification is based on conclusions that the appointed person could not reasonably have reached based on the evidence considered in the course of the examination under section 19(3) of the Act." and relates to the car park at the former Alva swimming pool. Following an objection from Ochil Leisure Enterprises (CLDP064), the Reporter recommended that the site map be amended to exclude the area of land owned by Ochil Leisure Enterprises and used as a car park. The brief history to this is that the Council sold the swimming pool and car park to Ochil Leisure Enterprises when Alva Academy was re-located. Since the Schedule 4 was prepared, Ochil's Leisure Enterprises advised the Council that they could no longer run the swimming pool and that it was now in a condition which meant that there was no possibility it could be re-opened. Under the terms of the original agreement the swimming pool and car park will therefore revert back to Council ownership. The car park will come under the ownership of the Council again and the Council would like to continue its designation as part of site M05. We are therefore required to prepare a statement setting out that the Council has not made this recommended modification and the explanation for this (see appendix 1).

### **Adoption**

- 3.23 Once approved, the Modified Local Development Plan will be published along with public notices advertising the Council's intention to adopt it. Within 4 weeks of publishing the Modified Plan, the Council is required to adopt the Plan and publish a post-adoption Strategic Environmental Assessment Statement.

### **Supplementary Guidance**

- 3.24 Supplementary Guidance can be adopted and issued in connection with the LDP and form part of the Development Plan. Seven pieces of Supplementary Guidance were produced and consulted on along with the proposed LDP :

- SG1 - Developer Contributions
- SG2 - Onshore Wind Energy
- SG3 - Placemaking
- SG4 - Water
- SG5 - Affordable Housing
- SG6 - Green Infrastructure
- SG7 - Energy Efficiency and Low Carbon Development

- 3.25 Topics covered by supplementary guidance must be specifically identified in the proposed LDP and the guidance must be limited to the provision of further information or detail in respect of the policies contained within the LDP. Comments received on supplementary guidance do not form part of the Examination and they have therefore been considered and altered where appropriate in response to the LDP Examination Report and comments received during consultation. Although Supplementary Guidance is not required to be considered by the Reporter, when approved they require to be sent to Scottish

Ministers and they can then be adopted as part of the LDP if there are no objections.

- 3.26 Supplementary Guidance on 'Minerals' has been put on hold following the Scottish Government's announcement of a moratorium on unconventional gas exploration pending further research and discussion. This Supplementary Guidance on minerals would include fracking, unconventional gas and gasification.

### **Associated LDP Documents**

- 3.27 A number of associated documents were required to be produced along with, or shortly after the proposed LDP and consulted on. These are listed below. Where necessary, they have been amended following the Reporters findings and will be re-published along with the Adopted Local Development Plan.

- 3.28 The **Action Programme** provides a clear statement on the pattern of development planned for delivery in the first ten years after adoption of the LDP, and a broad indication for development in the longer term. This can help to better co-ordinate both development activity and investment and help build confidence in the planning system. It sets out how the Council proposes to implement the Plan, including the identification of responsible persons or organisations and timescales. The Action Programme will be reviewed after two years. The Action Programme is required to :

- list the actions required to deliver the policies and proposals contained in the LDP;
- indicate the person or agency responsible for each action; and
- set out the timescale for the conclusion of each action.

- 3.29 The **Strategic Environmental Assessment** (SEA) considers the likely environmental impacts of the LDP and recommends measures to address them. The environmental implications of each policy, and any relevant mitigation measures proposed, are described after each policy in the LDP. The Reporters recommendations were subject to Environmental Assessment and none of the recommendations required any changes to the SEA.

- 3.30 A **Habitat Regulations Appraisal** (HRA) which considers what implications the Plan may have on Natura sites. The LDP can only be adopted once the HRA and appropriate assessment have demonstrated that the Plan will not adversely affect the integrity of any of the sites assessed. The Reporters recommendations did not affect any Natura sites and therefore did not require a further Habitat Regulations Appraisal.

## **4.0 Sustainability Implications**

- 4.1 The Planning etc (Scotland) Act 2006 requires planning authorities to carry out their development planning functions with the objective of contributing to sustainable development. The Policies within the

proposed LDP, and the Supplementary Guidance support the promotion of sustainability in development proposals, including green travel, encouraging improved biodiversity, the siting and layout of new development, energy efficiency, renewable energy, encouraging development of brownfield land and avoiding areas of known flood risk.

- 4.2 The proposed LDP as modified has been subject to a Strategic Environment Assessment and Habitat Regulations Appraisal, see 3.29 and 3.30 above.

## 5.0 Resource Implications

- 5.1 The resources for preparing the proposed LDP as modified, and the associated costs of the Examination are already provided for in the Development Services budget.
- 5.2 Finance have been consulted and have agreed the financial implications as set out in the report. Yes
- 5.3 No additional staff resources would be required from Services to Communities and Support Services.

## 6.0 Exempt Reports

- 6.1 Is this report exempt?  
 Yes  (please detail the reasons for exemption below) No

## 7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

- (1) **Our Priorities** (Please double click on the check box )

- |  |                                     |
|--|-------------------------------------|
| The area has a positive image and attracts people and businesses         | <input checked="" type="checkbox"/> |
| Our communities are more cohesive and inclusive                          | <input checked="" type="checkbox"/> |
| People are better skilled, trained and ready for learning and employment | <input type="checkbox"/>            |
| Our communities are safer  | <input checked="" type="checkbox"/> |
| Vulnerable people and families are supported                             | <input type="checkbox"/>            |
| Substance misuse and its effects are reduced                             | <input type="checkbox"/>            |
| Health is improving and health inequalities are reducing                 | <input type="checkbox"/>            |
| The environment is protected and enhanced for all                        | <input checked="" type="checkbox"/> |
| The Council is effective, efficient and recognised for excellence        | <input checked="" type="checkbox"/> |



(2) **Council Policies** (Please detail)

The proposed LDP accords with and supports the Council's key strategies including, the Single Outcome Agreement, Corporate Plan, the Local Housing Strategy, Local Transport Strategies, Open Space Strategy and the Sustainability and Climate Change Strategy.

**8.0 Equalities Impact**

- 8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?  
Yes  No

**9.0 Legality**

- 9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

**10.0 Appendices**

- 10.1 Please list any appendices attached to this report.

Appendix 1 Statement of Explanation for not accepting any recommendations

**11.0 Background Papers**

- 11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes  (please list the documents below) No

- Reporters Report of the Examination into the Proposed Clackmannanshire Local Development Plan - November 2013
- Clackmannanshire Proposed Local Development Plan Schedule 4's
- Clackmannanshire Proposed Local Development Plan (November 2013)
- Supplementary Guidance 1 - Developer Contributions
- Supplementary Guidance 2 - Onshore Wind Energy
- Supplementary Guidance 3 - Placemaking
- Supplementary Guidance 4 - Water
- Supplementary Guidance 5 - Affordable Housing
- Supplementary Guidance 6 - Green Infrastructure
- Supplementary Guidance 7 - Energy Efficiency and Low Carbon Development
- Supplementary Guidance 8 - Woodlands and Forestry
- Supplementary Guidance 10 - Domestic Developments
- Local Development Plan and Supplementary Guidance Strategic Environmental Assessment Environmental Report (October 2013)

- Local Development Plan Habitat Regulations Appraisal (October 2013)
- Action Programme (November 2013)
- Local Development Plan Main Issues Report (January 2011)
- Equalities Impact Assessment (November 2013)
- Local Development Plan Main Issues Report Information Pack (January 2011)
- Report to Council dated 26th June 2014 - Proposed Clackmannanshire Local Development Plan, Open Space Strategy, Muckhart Conservation Area Appraisal, Forestry and Woodland Strategy and associated documents
- Report to Council dated 16th December 2010 – Clackmannanshire Local Development Plan Main Issues Report and Open Space Framework
- Report to Enterprise and Environment Committee dated 28th March 2013 – Proposed Clackmannanshire Local Development Plan
- Report to Planning Committee dated 11th April 2013 – Proposed Clackmannanshire Local Development Plan
- Report to Education, Sport and Leisure Committee dated 25th April 2013 – Proposed Clackmannanshire Local Development Plan
- Report to Housing, Health and Care Committee dated 23rd May 2013 – Proposed Clackmannanshire Local Development Plan
- Report to Council dated 24th October 2013 - Proposed Clackmannanshire Local Development Plan, Open Space Strategy and associated documents
- Development Plan Scheme and Participation Statement (September 2013)

**Author(s)**

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**Approved by**

<b>NAME</b>	<b>DESIGNATION</b>	<b>SIGNATURE</b>
Gordon McNeil	Head of Development & Environment	
Garry Dallas	Executive Director	

## Appendix 1

### Clackmannanshire Local Development Plan Examination

#### **Statement by Clackmannanshire Council Planning Authority setting out the reasons for not accepting Issue 43 Recommendation 8 (page 244) of the Reporters' Recommendations dated 20 March 2015**

Under section 19(10) of the Town and Country Planning (Scotland) Act 2006, the planning authority are, on receiving a report submitted under subsection (8)(b) -

(a) to make -

- (i) (except in so far as they decline to do so, on such grounds as may be prescribed for the purposes of this sub-paragraph) such modifications, if any, to the proposed local development plan as the appointed person recommends, and
- (ii) such other modifications to it, if any, as appear to them to be requisite having regard to the report.

The prescribed grounds for the purposes of paragraph (a) above are set out in Regulation 2 of the Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009 (the Prescribed Grounds Regulations). The grounds prescribed in Regulation 2 on which the planning authority can decline to modify the proposed Local Development Plan in accordance with the Reporters' Recommendations are:

- (a) the modification, if made, would have the effect that the proposed local development plan would not be consistent with— (i) the National Planning Framework; (ii) the strategic development plan for the land to which the proposed local development plan relates; or (iii) any plan adopted as a National Park Plan under section 12(7)(a) of the National Parks (Scotland) Act 2000(b) for such land;
- (b) that the adoption of the local development plan as so modified would not be compatible with the requirements of Part IVA of the Conservation (Natural Habitats, &c.) Regulations 1994(a);
- (c) the recommendation in respect of the modification is based on conclusions that the appointed person could not reasonably have reached based on the evidence considered in the course of the examination under section 19(3) of the Act.

There is one recommendation which it is proposed not to accept under Section 2(c) of the Regulations. This is on the basis that the recommendation *"...in respect of the modification is based on conclusions that the appointed person could not reasonably have reached based on the evidence considered in the course of the examination under section 19(3) of the Act."* and relates to the car park at the former Alva swimming pool. Following an objection from Ochil Leisure Enterprises (CLDP064), the Reporter recommended that the site

map be amended to exclude the area of land owned by Ochil Leisure Enterprises and used as a car park. The brief history to this is that the Council sold the swimming pool and car park to Ochil Leisure Enterprises when Alva Academy was re-located. Since the Schedule 4 was prepared, Ochils Leisure Enterprises advised the Council that they could no longer run the swimming pool and that it was now in a condition which meant that there was no possibility it could be re-opened. Under the terms of the original agreement the swimming pool and car park will therefore revert back to Council ownership. The car park will come under the ownership of the Council again and the Council wishes to continue its designation as part of site M05.