

# **PERTH AND KINROSS COUNCIL**

**27 January 2021**

## **ADOPTION OF SUPPLEMENTARY GUIDANCE ON OPEN SPACE PROVISION AND FLOOD RISK & FLOOD RISK ASSESSMENTS**

**Report by Executive Director (Communities) (Report No. 21/11)**

### **PURPOSE OF REPORT**

This report provides a summary of the comments received on two pieces of supplementary guidance published for consultation in 2019. It makes recommendations for changes where appropriate and seeks consent to finalise and adopt the supplementary guidance to support the second Local Development Plan (LDP2) adopted in November 2019. The report also seeks approval of the revised Policy on Maintenance Options for Public Open Spaces in New Residential Developments which is associated with the supplementary guidance.

### **1. BACKGROUND / MAIN ISSUES**

- 1.1 An updated programme for preparing supplementary guidance to accompany Local Development Plan 2 was approved by Committee on 29 January 2020 (Report No. 20/25). In line with the agreed programme, this report seeks approval of the Open Space Provision for New Developments Supplementary Guidance and Maintenance Policy; and the Flood Risk and Flood Risk Assessments Supplementary Guidance. The documents were consulted on in 2019 and the proposed changes in response to stakeholder feedback are set out in this report (Appendix 1).
- 1.2 Legislation requires that all statutory supplementary guidance to be used with LDP2 is referred to in the Plan, formally consulted upon and submitted to Scottish Ministers. While the new Planning (Scotland) Act removes the option to prepare supplementary guidance, this section of the Act is not programmed to come into force until spring of 2022, when the Scottish Government propose to lay regulations and publish guidance relating to LDPs. Information published to date would suggest that Councils can continue to prepare supplementary guidance which has been committed to in an adopted LDP. Transitional arrangements should be published shortly and are expected to add clarity on how to proceed in the interim.
- 1.3 The following section of the report considers the planning guidance, the comments that were received through the consultation, and suggests changes where considered appropriate.

### **2. KEY CONCERNS, RESPONSES AND PROPOSED CHANGES ARISING FROM CONSULTATION**

- 2.1 The two pieces of guidance are considered below and the key concerns, responses and proposed changes are highlighted. The table in Appendix 1 provides a summary of all the consultation responses and the recommended Council response to these. Copies of the revised guidance can be found in

Appendices 2 & 3. A copy of the revised Policy on Maintenance Options can be found in Appendix 4.

## **Open Space Provision for New Developments**

- 2.2 The Open Space Provision for New Developments Supplementary Guidance has been produced to accompany LDP2 Policy 14: Open Space Retention and Provision. This is a new piece of guidance which was consulted on alongside the Council's revised Policy on Maintenance Options for Public Open Spaces in New Residential Developments.
- 2.3 The consultation process involved a workshop in February 2019 where the draft guidance was introduced to agents and developers, and an online survey open to all stakeholders which received 15 comments. Generally, the guidance was well received, respondents considered it useful to set out the requirements for the design and delivery of open spaces. The feedback, however, highlighted some concerns, primarily from the development industry:

1. Quantity and accessibility standards are too ambitious and would impact on development viability

The table in Appendix 1 explains in detail how quantity and accessibility standards were identified and justifies the Council's position. By setting out requirements upfront, they can be included in land value calculations and factored into viability assessments. While it is not proposed to lower these standards, it is acknowledged that they would be more onerous for smaller developments which are outwith the catchment of existing facilities. It is proposed that a caveat is added to the guidance that allows for alternative arrangements where small proposals would be required to provide new play provision (see Appendix 1 section 5.4).

2. Developers should be able to choose from a range of options for the adoption of public open spaces, including ones without Council adoption.

The Maintenance Policy is unique to Perth and Kinross Council and, as a statutory document, it will provide the policy basis for requiring the Council adoption of Priority Public Open Spaces (PPOS). This is to ensure that PPOS are maintained in perpetuity at a high standard and for public benefit, at no charge to the residents of the area. Other landscaped areas not classified as PPOS can be factored via a Development Management Scheme.

3. As part of Council adoption, charging commuted sums over 20 years and charging for the cost of play area replacement due after 15 years is disproportionate.

The 10-year period which the Council has been working with so far did not prove to be sustainable and required revision. 20 years is more in keeping with other Local Authorities' timeframes and is considered

reasonable as the Council takes on maintenance in perpetuity. The point about charging for play area replacement years is noted, and it is acknowledged that the developer should not be entirely responsible for the replacement of the play equipment. It is proposed that the play area replacement cost is shared with the Council and the developer's contribution is reduced to 1/3 of the total replacement cost (equal to a 5 year period). This would ensure that the developer's responsibility does not extend beyond the 20 years maintenance period.\*

\*15 years (lifespan of new facility) + 5 years (1/3<sup>rd</sup> of replacement facility) = 20 years

4. Technical and maintenance requirements make it difficult to achieve multifunctional Sustainable Drainage Systems (SuDS) promoted in the guidance.

The Council held two workshops attended by a number of stakeholders including Scottish Water, SEPA and the development industry in order to address issues around technical requirements, land take and maintenance associated with SuDS design. Based on the workshop findings, the guidance has been updated and a separate, longer-term action plan has been prepared. Sections on design have been revised and illustrations have been added to the supplementary guidance to provide clearer advice on SuDS.

5. The guidance should be informed by an open space audit.

The value of the open space audit is acknowledged. It is a prerequisite for the Open Space Strategy required by the Planning (Scotland) Act 2019 and would support this guidance, as well as the emerging Food Growing Strategy. The Council is currently investigating the resource implications of taking this work forward.

## **Flood Risk and Flood Risk Assessments**

- 2.4 The Council is revising and updating the existing Flood Risk and Flood Risk Assessments Supplementary Guidance to support LDP2 Policy 52: New Development and Flooding. The Guidance assists developers, their consultants and all stakeholders involved in the planning process in relation to flooding and drainage and sets out the requirements of Perth & Kinross Council. It provides detailed guidance, including when a flood risk or drainage impact assessment will be required, and what those assessments should contain. This revised supplementary guidance is largely unchanged from the existing version, although we are seeking to update advice on climate change and to firm up the requirements for sustainable urban drainage systems (SuDS). The guidance sets out the ongoing adoption and maintenance responsibilities for SuDS, including information on new agreements with Scottish Water under Section 7 of the Sewerage (Scotland) Act.

- 2.5 A total of 11 comments were received from a variety of respondents including SEPA, Scottish Water, Scottish Natural Heritage, and the development industry, along with some community representation. In response, it is proposed to make several minor modifications to the guidance to add clarity to technical matters and update references to further guidance documents.

1. SuDS Design and Maintenance

In response to SNH's concerns, it is considered that the guidance should better highlight the need for SuDS to be well-designed and multi-functional and to achieve high amenity and biodiversity standards. In revising the guidance in response to this consultation, it now better emphasises amenity and biodiversity requirements and refers to the Council's Open Space Guide where there is further guidance on these aspects. It also discourages SuDS which are isolated and/or provide little amenity value. The Council has also updated information on joint agreements with Scottish Water under the Sewerage (Scotland) Act, which confirm adoption and ongoing maintenance responsibilities for SuDS. This revision is necessary as at the time of the consultation, the Council was considering a Memorandum of Understanding on these agreements with Scottish Water, and the Council's officers have now considered and adopted the principles set out therein.

2. Climate Change

Another key change proposed is in relation to climate change. Since submitting their comments, SEPA have published 'Climate change allowances for flood risk assessment in land use planning guidance' in April 2019. This guidance includes separate uplift figures for potential future increases in estimated peak river flows, peak rainfall intensity and sea level rise due to climate change. SEPA's conservative guidance on projected national climate change scenarios are based on low probability and high emissions. This assumes limited efforts to mitigate climate change and that greenhouse gas levels in the atmosphere will continue to increase. The Supplementary Guidance has been updated to include for these allowances, which now require a 35% uplift in peak river flow and rainfall intensity (the previous allowance was 20%) to allow for future climate change in the Tay Catchment. These allowances may change again next year, with the release of further research following the UKCIP18 data.

3. Potential Development Areas Behind Flood Protection Schemes

The Council has also considered its approach to potential development areas behind Flood Protection Schemes (FPS). Such schemes are justified on the basis of protecting existing development and not future development. Ideally these schemes would be constructed to reduce the risk of flooding to the 1 in 200 year standard and include a suitable allowance for freeboard and future climate change. However, this is often not feasible and many existing FPS in Scotland were also built to

older standards. As such, an assessment is required in support of any proposed development in these areas. SEPA's guidance notes state that for development to be acceptable, FPS should be built to a 1 in 200 year standard of protection and include a climate change allowance equivalent to a 20% increase in estimated peak river flow. It states that 'in the short to medium term, we consider it pragmatic to continue to require a 20% allowance as a minimum, with the allowances set out in this guidance that are greater than 20% being recommendations only. However, the Council has taken a different approach which was recently endorsed by the LDP2 Examination Reporters' conclusions and recommendations. The Council's approach permits the climate change allowance to be accommodated in the development design (e.g. by raising finished property floor levels) rather than insisting that the FPS itself includes a 20% allowance for climate change. Whilst the approach differs, there is comparable residual risk to the new residential development in view of what the Council proposes. The Council, therefore, considers that in areas defended by a 1 in 200 year FPS, its supplementary guidance should require residential development to have finished floor levels set a minimum of 600mm above the estimated peak flood level which is 1 in 200 year flood level plus a 20% allowance for climate change.

### **Next Steps for Revised Guidance**

- 2.6 The above section provides an update on the changes that are suggested to the supplementary guidance, as a result of public consultation, as well as the Examination of the Proposed Plan. Following consideration of this report, the guidance will be finalised and submitted to Scottish Ministers who have 28 days to consider it. On completion of this process, and if not otherwise directed by Ministers, the guidance will become statutory policy and have the same status as the Development Plan.

## **3. CONCLUSION AND RECOMMENDATION(S)**

- 3.1 This report and associated appendices highlight the significant work undertaken to date in respect of the supplementary guidance required to support LDP2.
- 3.2 It is recommended that the Council:
- i) approves the following pieces of Supplementary Guidance as key policy documents to support LDP2:
    - Open Space Provision for New Developments & Associated Maintenance Policy
    - Flood Risk and Flood Risk Assessments
  - ii) remits the Executive Director (Communities) to finalise the Supplementary Guidance and to submit to Scottish Ministers

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**Approved**

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## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

<b>Strategic Implications</b>	<b>Yes / None</b>
Community Plan	<b>Yes</b>
Corporate Plan	<b>Yes</b>
<b>Resource Implications</b>	
Financial	<b>None</b>
Workforce	<b>None</b>
Asset Management (land, property, IST)	<b>None</b>
<b>Assessments</b>	
Equality Impact Assessment	<b>Yes</b>
Strategic Environmental Assessment	<b>Yes</b>
Sustainability (community, economic, environmental)	<b>Yes</b>
Legal and Governance	<b>None</b>
Risk	<b>None</b>
<b>Consultation</b>	
Internal	<b>Yes</b>
External	<b>None</b>
<b>Communication</b>	
Communications Plan	<b>None</b>

### 1. Strategic Implications

#### Community Plan

- 1.1 This report supports the Community Plan/Single Outcome Agreement strategic objectives of promoting a prosperous, inclusive and sustainable economy; and creating a safe and sustainable place for future generations.

#### Corporate Plan

- 1.2 The Council's Corporate Plan 2013 – 2018 sets out five outcome-focused strategic objectives that provide clear strategic direction, inform decisions at a corporate and service level, and shape resources allocation. They are as follows:
- (i) Giving every child the best start in life;
  - (ii) Developing educated, responsible and informed citizens;
  - (iii) Promoting a prosperous, inclusive and sustainable economy;
  - (iv) Supporting people to lead independent, healthy and active lives; and
  - (v) Creating a safe and sustainable place for future generations.
- 1.3 This report relates to all of the above.

## **2. Resource Implications**

### Financial

- 2.1 There are no financial implications arising from the recommendations of this report.

### Workforce

- 2.2 None

### Asset Management (land, property, IT)

- 2.3 None

## **3. Assessments**

### Equality Impact Assessment

- 3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.
- 3.2 The supplementary guidance referred to in the Committee Report has been considered under the Corporate Equalities Impact Assessment process (EqIA) and where necessary, assessments have been undertaken.

### Strategic Environmental Assessment

- 3.3 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 3.4 The supplementary guidance referred to in the Committee Report has been considered under the Act and where necessary, Screening Reports and Environmental Reports have been undertaken.

### Sustainability

- 3.5 Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. Under the Climate Change (Scotland) Act 2009 the Council also has a duty relating to climate change and, in exercising its functions must act:
- in the way best calculated to delivery of the Act's emissions reduction targets;
  - in the way best calculated to deliver any statutory adaptation programmes; and
  - in a way that it considers most sustainable.



- 3.6 The proposals have been considered under the provisions of the Acts using the Integrated Appraisal Toolkit.
- 3.7 The supplementary guidance referred to in the Committee Report has been or will be considered under the Acts where necessary. It supports the policy framework set out in the Local Development Plan, which seeks to achieve sustainable development and reduce the impact of climate change through its vision, strategies, policies and proposals, and will therefore contribute to the delivery of a more sustainable Perth and Kinross.

#### Legal and Governance

- 3.8 None

#### Risk

- 3.9 There are no specific risks associated with the proposals outlined within the Committee Report.

### **4. Consultation**

#### Internal

- 4.1 Officers in Community Greenspace and Flooding have been consulted in the preparation of this report.

#### External

- 4.2 None.

### **5. Communication**

- 5.1 None.

## **2. BACKGROUND PAPERS**

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (and not containing confidential or exempt information) were relied on to a material extent in preparing the above report:

- Perth and Kinross Local Development Plan 2 (Adopted November 2019);

## **3. APPENDICES**

- Appendix 1 – Comments received on the supplementary guidance
- Appendix 2 – Revised Open Space Provision for New Developments Supplementary Guidance
- Appendix 3 – Revised Flood Risk and Flood Risk Assessments Supplementary Guidance
- Appendix 4 – Revised Maintenance Options for Public Open Spaces in New Residential Developments Policy 2020