

PERTH AND KINROSS COUNCIL

STRATEGIC POLICY AND RESOURCES COMMITTEE

25 November 2020

Adoption of Statutory Supplementary Guidance on Financial Guarantees for Minerals Development and Non Statutory Guidance on Delivery Strategies, River Tay Special Area of Conservation and the Dunkeld - Blairgowrie Lochs Special Area of Conservation

Report by Head of Planning and Development
(Report No. 20/229)

This report provides a summary of the comments received on both the statutory supplementary guidance and non statutory guidance published for consultation in February and March 2020. It makes recommendations for changes where appropriate and seeks consent to finalise and adopt the guidance to support the second Local Development Plan (LDP2) adopted 29 November 2019.

1. BACKGROUND / MAIN ISSUES

- 1.1 An updated programme for preparing both statutory supplementary guidance and non statutory guidance to accompany Local Development Plan 2 was approved by the Strategic Policy & Resources Committee on 29 January 2020 (Report No. 20/25). In line with the agreed programme, this report seeks approval of one piece of statutory Supplementary Guidance i.e. the Financial Guarantees for Minerals Supplementary Guidance; and three pieces of non statutory guidance i.e the Delivery Strategies Guidance; the River Tay Special Area of Conservation Guidance; and the Dunkeld-Blairgowrie Lochs Special Area of Conservation. The documents were consulted on in February and March 2020 and the proposed changes in response to stakeholder feedback are set out in this report (Appendix 1 in electronic format).
- 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, following which it adopts the same status as the Development Plan. Whilst 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 procedure for adoptiong non statutory guidance on the other hand is not covered by legislation; however, as previously reported to Committee on 8 February 2018 (Report No. 18/44), non statutory guidance will be consulted on in the same way as statutory guidance and reported to the Strategic Policy & Resources Committee. Therefore moving forward it is likely that all guidance prepared to support the LDP will be prepared in the same way as at present but without the step of submission to Scottish Ministers.

- 1.4 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 various pieces of guidance are considered below and the key concerns, responses and proposed changes are highlighted. The table in Appendix 1 (in electronic format) 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 2-5.

Financial Guarantees for Minerals Development Supplementary Guidance (Statutory)

- 2.2 The FGMD Supplementary Guidance was prepared to support Policy 49: Minerals and Other Extractive Activities – Supply of the Local Development Plan 2019. The purpose of the guidance is to provide information on financial guarantees to secure the sustainable restoration of minerals sites to beneficial after use once working has ceased.
- 2.3 The need to prepare this guidance arose from the Local Development Plan's examination, where the Reporter considered that '*...it would assist potential developers if detailed advice about the full range of financial mechanisms available to secure restoration were to be provided...*' A modification was recommended requiring the Council to provide such advice in the form of Supplementary Guidance.
- 2.4 The principles of securing financial guarantees for minerals development are well-established in Scotland, and a significant body of work has already been carried out by the Opencast Coal Task Force in respect of financial guarantees for minerals development. In addition, the Energy and Resources Sub-Committee of Heads of Planning (HOPS) has undertaken further work to provide a basis for a consolidated guidance and best practice note to ensure consistency across Scotland's local authorities in what is a complex area of planning activity. The findings of the Opencast Coal Task Force and the HOPS guidance note have been used as a basis for our draft guidance.
- 2.5 Consultation on the draft guidance took place between 3 February and 16 March 2020. In addition to the statutory publicity requirement, we made direct contact with recent applicants and agents for minerals developments to raise awareness of the draft guidance and the opportunity to comment.
- 2.6 Two representations were received, one from NatureScot and one from an agent, Dalglish Associates. As a result, it is proposed to make changes to the guidance to add clarity and to incorporate a correction suggested by NatureScot. The representation from Dalglish Associates particularly highlighted that the full extent and costs of restoration are not known before development commences; however, the principles for restoration and aftercare may be assessed and an appropriate restoration guarantee may be provided prior to commencement of works.

Delivery Strategies Guidance (Non Statutory)

- 2.7 Policy 23 of the LDP requires that a delivery strategy is prepared for sites allocated for development in the Plan, and also for larger windfall (unallocated) housing sites. Delivery strategies will provide information for the LDP Delivery Programme (previously called Action Programme) but they will also feed into the planning application process and will help in the early identification of any issues or constraints which may impact on the deliverability of the site. Policy 23 notes that guidance will be prepared on how landowners and developers can comply with the policy and a draft 'Delivery of Development Sites Template' was prepared and consulted on in March this year.
- 2.8 Four responses were received to the consultation, from Transport Scotland, NatureScot, and two from agents. The comments received were very constructive and generally either sought further clarification, or suggested improvements to the draft template. Several changes are now proposed to the template to make it clearer and more straightforward including the addition of introductory guidance and notes to assist completion. Two of the more significant issues raised were:
1. Clarity on how information will be used, stored and accessed
Concerns relate to the sensitive nature of some of the information requested and whether the delivery strategies will be publicly available. Advice on this was sought from the Council's Data Protection Officer and the template has been updated to include a privacy notice.
 2. Requirement for infrastructure costing information
The draft template sought estimated costs of the infrastructure necessary to deliver the site. One respondent, however, considered that there would be a greater benefit in focusing on identifying infrastructure constraints and the means of resolving these rather than on the costings themselves. It is agreed that this is a more useful and constructive approach and the template has been amended accordingly. This may also help allay concerns relating to the sensitive nature of some data as discussed above.
- 2.9 The LDP requirement in policy 23 is that a delivery strategy is prepared for each allocated site either prior to lodging a planning application or within one year of Plan adoption, so by 29 November 2020. For some landowners the preparation of a delivery strategy will be fairly straightforward but for others, maybe those with a newly identified site who haven't been through the process of taking a site forward for development before, the requirement for a delivery strategy is likely to be unfamiliar and a more daunting prospect. It had been the intention over the summer months to offer workshops or drop in sessions where planning officers would have been available to offer advice and assistance to landowners. The covid-19 pandemic, however, has meant we have not been able to engage with members of the public in this way. Furthermore, it is recognised that progress on sites may also have been significantly affected. It is, therefore, proposed that the deadline for the

submission of delivery strategies be extended to 31 March 2021 unless a planning application is submitted before that date. This has the added advantage of allowing strategies to inform the preparation of the annual housing and employment land audits which also have a base date of 31 March.

River Tay Special Area of Conservation Guidance (Non Statutory)

- 2.10 The revised River Tay Special Area of Conservation (SAC) Guidance supports the delivery of LDP2 Policy 47: River Tay Catchment which helps protect the SAC watercourses through controlling the activities within the catchment. The guidance provides advice on the types of developments that may impact the SAC and sets out the types of information and safeguards to be provided in support of planning applications. The Guidance provides step by step guidance on how developers and planning officers are expected to deliver the requirements of the policy along with further guidance on SEPA licencing and Habitats Regulations Appraisal.
- 2.11 As the guidance is a collaborative effort with SEPA and NatureScot and Angus Council, all three stakeholders were consulted during the development of the draft. Other than formatting and updating of references, the main change is the rationalised catchment boundary with updated spatial data.
- 2.12 The guidance is now non-statutory but was consulted on in accordance with best practice. Responses were received from SEPA and NatureScot only. Comments were of a minor technical nature given the previous consultation carried out with the key agencies.

Lunan Valley Area Dunkeld - Blairgowrie Lochs Special Area of Conservation Guidance (Non Statutory)

- 2.13 The revised Lunan Valley Area Dunkeld - Blairgowrie Lochs Special Area of Conservation (SAC) Guidance supports the delivery of LDP2 Policy 45: Lunan Lochs Catchment Area which helps protect the Dunkeld-Blairgowrie Lochs through controlling the amount of phosphorus entering the catchment from foul water treatment and providing additional mitigation to reduce output from other properties. This is usually through the upgrading of existing septic tank systems (remote mitigation). The Guidance provides step by step guidance on how developers and planning officers are expected to deliver the requirements of the policy along with further guidance on SEPA licencing and Habitats Regulations Appraisal.
- 2.14 As the guidance is a collaborative effort with SEPA and NatureScot, both agencies were consulted during the development of the draft. Other than formatting and updating of references, the main change is that developers will be required to provide evidence of the installation of remote mitigation before work may commence at the development site.
- 2.15 The guidance is now non-statutory but was consulted on in accordance with best practice. Responses were received from SEPA and NatureScot only. Comments were of a minor technical nature given the previous consultation carried out with the key agencies.

Next Steps for the Guidance

- 2.16 The above section provides an update on the changes that are suggested to the guidance as a result of public consultation, as well as the Examination of the Proposed Plan. Following consideration of this report, the Financial Guarantees for Minerals Development Supplementary 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. The non statutory guidance covering Delivery Strategies, the River Tay SAC and the Lunan Valley Area Dunkeld – Blairgowrie Lochs SAC will be finalised and published as guidance to be treated as a material consideration when determining planning applications.

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.

The committee is therefore asked to:

- i) Approve the Financial Guarantees for Minerals Supplementary Guidance and remit the Interim Chief Operating Officer to finalise it and to submit to Scottish Ministers.
- ii) Finalise and adopt the following non-statutory guidance as key policy documents to support LDP2:-
 - Delivery Strategies Guidance
 - River Tay Special Area of Conservation Guidance
 - Lunan Valley Area Dunkeld – Blairgowrie Special Area of conservation Guidance

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Approved

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

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

1. Strategic Implications

Community Plan/Single Outcome Agreement

- 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 Development Management and Legal Services 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 Financial Guarantees for Minerals Development Supplementary Guidance

- Appendix 3 – Revised Delivery Strategies Guidance
- Appendix 4 – Revised River Tay Special Area of Conservation Guidance
- Appendix 5 – Revised Lunan Valley Area Dunkeld – Blairgowrie Lochs Special Area of Conservation Guidance