

## Highland wide Local Development Plan - Main Issues Report Consultation Summary and Actions Sheet

Reference Number:	<b>HWLDP-MIR-166</b>
Organisation/Individual:	WYG Planning and Design – Trustee's of Richard Tyser's Overseas Settlement

### Action:

Immediate Response Required	
Meeting required with Respondent	
Issue for Area Local Development Plan	
Further Information Required	
Other (Please Specify)	

*If no box ticked - issues raised will be dealt with in preparation of the Proposed Plan.*

### Issues Raised in Response:

Purpose of Main Issues Report	
NPF2 for Scotland	
Vision for the Highlands	
Inverness and A96	
The A96 Corridor	
Phasing of Development	
Developer Contributions	
East Inverness	
Nairn	
Tomagraim	
Smaller Settlements in A96	
Caithness and North Sutherland	
Easter Ross and Nigg	
Development of Local Centres	
Wider Countryside and Fragile Areas	
Population and Housing	
Housing in the Countryside	
Affordable Housing	x
Planning for an Ageing Population	
Gypsies/Travellers	
Retailing	
Developer Contributions	x
Natural, Built and Cultural Heritage	

Previously used Land	
Wild Land	
Water Environment	
Renewable Energy	
Flooding	
Waste Management	
Air Quality	
Sustainable Design	
Business and Industrial Land	
Accessibility and Transport	
Agricultural Land	
Subdivision of Existing Crofts	
Allocation of Inbye Land	
New Crofting Township	
Small Scale New Crofts	
Coastal Development	
Forestry and Woodland	
Minerals	
Open Space and Physical Activity	
Access to the Outdoors	
Comments on Consultation Process (+ve)	
Comments on Consultation Process (-ve)	

### Key:

Background	Spatial Strategy	Policy Options	Consultation
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### Notes:

On behalf of trustees of Richard Tyser's Overseas Settlement  
 Affordable Housing preferred option questioned – Reduction in threshold could have detrimental impact on development viability – suggests proposed plan sets definitive upper % threshold  
 Developer Contributions policy should allow flexibility to allow for a reduction in contribution

Action Sheet Completed by:	GW
Date:	09/12/09

**Dawn Sutherland**

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**From:** ingrid.jakobsen [redacted]  
**Sent:** 09 November 2009 15:35  
**To:** devplans  
**Subject:** Representation to the Highland Wide Local Development Plan - Main Issues

Dear Sirs

Please find attached an electronic copy of the document to be sent out to you in this evening's post from Joanne Plant.

Regards

**Ingrid Jakobsen**  
Receptionist

**WYG PLANNING & DESIGN**  
4 Chester Street, Edinburgh, EH3 7RA  
**Tel:** [redacted]  
**Fax:** [redacted]

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H.C. PLANNING AND DEVELOPMENT SERVICE		
10 NOV 2009		
PASS TO	INITIALS	DATE
FILE REF:		

Our Ref: FM04135/Planning/JP  
Date: 06 November 2009

Director of Planning and Development  
The Highland Council  
Freepost SC05568  
Inverness  
IV3 5BR

By Email ( [redacted] ) & Post

Dear Sirs

**REPRESENTATION TO THE HIGHLAND WIDE LOCAL DEVELOPMENT PLAN – MAIN ISSUES REPORT**

I write on behalf of the **Trustees of Richard Tyser's Overseas Settlement** in response to the **Highland Wide Local Development Plan - Main Issues Report**.

By way of background, the Council resolved to grant planning permission in 'principle' for residential development on the Trustees landholding at Torbreck, Ness Castle earlier this year subject to the conclusion of a Section 75 Agreement in relation to *inter alia* developer contributions and agreement on the accompanying planning conditions. **(Reference: 04/00585/OUTIN)**

Given that this decision effectively endorses the site's allocation for such purposes within the extant **Inverness Local Plan 2006**, it is not considered necessary to comment on the content of the Main Issues Report in terms of its vision and strategy for growth.

Accordingly, this representation focuses on those issues still to be finalised with the Council in relation to my client's land interests, namely affordable housing and developer contributions.

**Question 14 - Affordable Housing**

It is fully acknowledged that the **Consultation Draft Housing Needs and Demand Assessment** identifies a significant shortfall in affordable housing within the Highland area. In this regard, it is considered appropriate to apply a percentage requirement for affordable housing (currently 25%) within new developments over a certain size threshold to help meet this shortfall.

The Council's preferred strategy (the basis and rationale for which is unclear) seeks to reduce the existing threshold for affordable housing provision from 10no. to 4no. houses and, to increase the percentage of affordable housing provided by developers.

While the 'principle' of affordable housing contributions is accepted, experience would suggest that any significant increase in the percentage requirement beyond the existing 25% provision would likely have a serious detrimental impact upon development viability, particularly within the context of current market conditions.

The Council will be aware that the benchmark figure for affordable housing provision, as articulated by **SPP3 Planning for Homes** and **PAN 74 Affordable Housing** is **25%**. In terms of a higher percentage contribution, **PAN74 Affordable Housing** clearly states that:

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***"The local authority may also seek a higher percentage on a specific site but this will only be appropriate in exceptional circumstances, for example linked to a substantial release of greenfield land or on a site owned by the local authority or another public agency which is being released for development". (Paragraph 35)***

An increase in affordable housing provision beyond 25% would therefore not strictly comply with the guidance provided in PAN74 unless **exceptional circumstances** could be identified on a very site specific basis.

If an increase in the current percentage figure is considered appropriate, it is suggested that the **Proposed Plan** and/or relevant supplementary planning guidance (SPG) should articulate a definitive upper threshold. Unchecked policy provision would simply add to the uncertainty experienced by developers in purchasing sites and preparing detailed proposals.

It is considered that the **Proposed Plan** should provide for flexibility and allow for a reduction (where justified) in the affordable housing requirement. For instance, where the viability and deliverability of a smaller development scheme is threatened through onerous site development costs and related restrictions. While the affordable housing shortage across the Highlands is fully acknowledged, it is strongly suggested that the irregularities within the housing supply (as identified in the **Consultative Draft Highland Housing Need and Demand Assessment 2009**) should not be ignored. As a consequence, a 'lower end' figure may be appropriate in some cases, which would serve to ensure a regular flow of both general and affordable needs housing.

From experience, it is common practice for a reduction in provision to be allowed if there are abnormally high land preparation costs such as remediating contamination or providing significant levels of infrastructure for the wider benefit of the area. It is therefore imperative that the relevant affordable housing policy and/or supplementary planning guidance allows for sufficient flexibility, where it can be proven through open book accounting that development viability would be adversely affected.

In any event, it is vital that the Council's affordable housing policy provides sufficient clarity and certainty for developers in outlining the level of contribution required for any given location.

#### **Question 18 - Developer Contributions**

The Council's preferred option seeks the use of proportionate developer contributions where additional pressure would be put on existing facilities in a community as a result of new development. On the basis that it will provide greater clarity and certainty to developers, the desire to apply a consistent approach to developer contributions across the Highland area is supported.

Further support is given to the Council's recognition that developer contributions may, in certain circumstances, impact upon the viability of a particular proposal. In this regard, any policy should be sufficiently flexible to allow for a reduction in developer contributions, where it is demonstrated that they would have an unacceptable detrimental impact upon viability.

Where developer contributions are required, these may be implemented by means of a condition(s) attached to any planning permission, or more likely, by way of a **Section 75 Agreement**. In this regard, the Council will be aware that a requirement for developer contributions through condition should satisfy the six tests articulated by **Circular 4/1998** i.e. must be necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and, reasonable in all other respects (**Paragraph 2**).

**Section 75 Planning Agreements** *"should only be sought where they are required to make a proposal acceptable in land use planning terms"* (Circular 12/1996, Paragraph 4). In this respect, they are required to meet the following criteria:

- **Planning purpose** – an agreement must serve a planning purpose (**Paragraph 9**);
- **Relationship to proposed development** – planning agreements must be related to the development being proposed. Agreements should not be used by planning authorities to extract advantages or benefits or payments which are unconnected with a proposed development (**Paragraph 10**);
- **Scale and kind** – planning agreements should be related in scale and kind to the proposed development.

For example, *"developers should not be asked to fund local road improvements unless the need for these improvements arises wholly or substantially from the proposed development"*. While it is noted that planning agreements have a role to play removing obstacles to development, *"planning authorities should be aware of the financial consequences for developers of entering into an agreement"* (**Paragraph 11**); and,

- **Reasonableness** – Where a proposed development would, if implemented, create a need for particular facilities or would have a damaging impact on the environment or local amenity and these matters cannot be resolved through the use of planning conditions, it will generally be reasonable for planning authorities to seek a planning agreement (**Paragraph 12**).

Within the above context, it is important to ensure that not only is there a consistent approach taken to developer contributions, but that it is acknowledged **developers cannot be expected to make good existing deficiencies within both the immediate and wider area or in relation to that which goes beyond their own specific proposals**. It is vital that any future policy contained within the Proposed Plan seeks to ensure that developer contributions are fair, reasonable and equitable and relate to the size and nature of the development proposed.

I trust that the above comments will be taken into consideration and ask that you acknowledge receipt of this representation in writing.

In the meantime, please do not hesitate to contact Alan Farningham, consultant to WYG, or myself should you have any queries.

Yours faithfully

  
Joanne Plant  
**ASSOCIATE DIRECTOR**  
For and on behalf of WYG

cc Mr Alan Farningham, Consultant to WYG (By Email only)

