

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

**REPORT OF PUBLIC LOCAL INQUIRY
INTO
OBJECTIONS TO THE INVERNESS LOCAL PLAN**

**VOLUME 1
GENERAL POLICIES AND OTHER GENERAL ISSUES**

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15 March 2005

Dear Sir

INVERNESS LOCAL PLAN INQUIRY REPORT

I have to report that, in accordance with my minute of appointment dated 8 October 2003, I conducted a public local inquiry into objections to the Deposit Draft Inverness Local Plan forwarded to me by the Council as having been duly made and not unconditionally withdrawn. The report also considers objections to changes to the plan proposed by the Council and the representations (described at paragraph 1.4 of the report) which the Council agreed to treat as objections to the local plan and to refer to the inquiry.

The deposit draft local plan was published in September 2002. Most of the changes proposed by the Council were contained in a second version of the plan, the Deposit Draft Inverness Local Plan with Modifications, published in April 2003. Further, unpublished, changes which the Council agreed in September and October 2003 to refer to the inquiry were circulated to objectors following a pre-inquiry meeting held within the Council Chamber, Glenurquhart Road, Inverness, on 20 January 2004, when administrative and procedural arrangements for the inquiry were agreed.

The inquiry took place between 14 April and 20 July 2004. Most inquiry sessions were held in the Inshes Church, Inverness. The remainder, during the week commencing 21 June, took place in the Phipps Hall, Beaulieu; Strathdearn Hall, Tomatin; Farr Community Hall; and the Memorial Hall, Fort Augustus. I made unaccompanied inspections of sites that were the subject of objections prior to, in the course of, and following, the inquiry. I also made a series of accompanied site inspections, concluding on 20 July. My recommendations take account of the evidence given and the submissions made, and of site inspections.

The report is in 3 volumes:

- Volume 1 deals with objections to the plan's general approach, including its General (BP and GP) Policies, and with objections to the effect the plan does not contain policies or provisions that the objector concerned wishes to be included in the plan.
- Volume 2 deals with objections relating wholly or primarily to the City of Inverness;

- Volume 3 deals with objections relating to the A96 Corridor, the Hinterland, and the Rural Development Area.

A separately bound Appendix lists appearances at the inquiry and documents produced by parties.

Except for correspondence initiated prior to 20 July, the report is based on matters as they stood at the conclusion of the inquiry. Specifically, it does not take account of the following documents: PAN 69: Planning and Building Standards Advice on Flooding, which was published in August 2004; SPP 15: Planning for Rural Development, PAN 72: Housing in the Countryside, and PAN 73: Rural Diversification, all of which were published in February 2005; PAN 74: Affordable Housing, published in March 2005; a letter dated 23 July 2004 from Mr G P Carter to the Council, and copied to me; a letter dated 30 August and enclosure sent to me by Inverness Chamber of Commerce; and a letter dated 11 October 2004 sent to me by Mr D Thompson. These 3 letters are enclosed, together with replies sent on my behalf by the inquiry programme officer to the Chamber of Commerce and to Mr Thompson. It is open to the Council in considering the report to take account of any changes in circumstances since the inquiry.

Where the acceptance of recommendations regarding objections would require significant or obvious consequential modifications to other parts of the plan, I have sought to draw attention to these, in the interests of consistency. However, these comments on consequential modifications are not intended to be comprehensive. The report also refers to what appear to be typographical or factual errors or omissions in the plan, where these have come to my attention. This is done to alert the Council to these matters, so that they can be verified one way or another, before a final version of the plan is published. Again, these comments are not intended to be comprehensive.

Throughout the inquiry, and in written submissions, parties referred to proposed changes to the deposit draft plan which the Council published in April 2003, and to the further changes which it agreed in September and October 2003, as “proposed modification(s)”. In the interests of consistency, I use this term in the report.

PAN 49: Local Planning advises that it is essential for easy comprehension of a plan that terms like “policy”, “proposal”, and “recommendation”, are clearly defined and are used consistently. This local plan does not distinguish between “policies” and “proposals”. However, parties, including the Council, opted to refer to “policies”, including where the text is in terms that suggest a proposal. The report follows this convention, again for consistency. I leave it to the Council to consider whether some form of differentiation between policies and proposals, such as a different typeface, would be helpful. Finally, the plan numbers “policies” in each settlement chapter consecutively, and gives policies relating to different settlements the same number in the plan text. To reduce the potential for confusion, I have adopted a convention that inserts the chapter number and a colon before the policy number (e.g. Policy 25:1, Policy 25:2 for Tomatin).

I would like to thank all Council staff for their assistance. Please convey my particular appreciation to the Programme Officer, Mrs Alison Crosbie, and to Miss Alice Brown, who undertook this role after the conclusion of the inquiry.

Yours faithfully

MISS J M McNAIR
Reporter

ABBREVIATIONS

ABDS	Agricultural Business Development Scheme
ABIS	Agricultural Business Improvement Scheme
AOD	Above Ordnance Datum
AQMA	Air Quality Management Area
BP	Background Policy
BMW	Biodegradable Municipal Waste
BPEO	Best Practicable Environmental Option
BWS	British Waterways Scotland
CAA	Civil Aviation Authority
CD	Core Document
CLEUD	Certificate of Existing Lawful Use and Development
DDILP	Deposit Draft Inverness Local Plan
DDMILP	Deposit Draft Inverness Local Plan with Modifications
DfT	Department for Transport
DPPG	Development Plan Policy Guidance
EC	European Community
IEL	Inverness Estates Ltd
EfW	Energy from Waste
EIA	Environmental Impact Assessment
FADLP	Adopted Fort Augustus & Drumnadrochit Local Plan
FAG	Flood Appraisal Group
FLAG	Flood Liaison and Advice Group
FRA	Flood Risk Assessment
GHS	Garden History Society
GP	General Policy
(H)AWP	(Highland) Area Waste Plan
HAL	Highlands and Islands Airports Ltd
HIE	Highlands and Islands Enterprise
HLA	Housing Land Audit
HLF	Heritage Lottery Fund
HMA	Housing Market Area
HNS	Housing Needs Study
HQ	Headquarters
HS	Historic Scotland
HSCHT	Highland Small Communities Housing Trust
HSE	Health and Safety Executive
HSP	The Highland Structure Plan
HWSIP	Highland Waste Strategy Implementation Plan
ICALP	Adopted Inverness, Culloden & Ardersier Local Plan
ICTP	Inverness Caledonian Thistle properties Ltd

IMF	Inner Moray Firth
IMFHS	Inner Moray Firth Housing Strategy
INE	Inverness and Nairn Enterprise
IRBP	Inverness Retail and Business Park
ISCRN	Inverness Strategic Cycle Route Network
KPG	Kilmartin Property Group
LAQM	Local Air Quality Management
LCA	Landscape Character Assessment
LHS	Local Housing Strategy
LLCT	Local Landscape Character Type
ME	Moray Estates Development Company
MSW	Municipal Solid Waste
NCR	National Cycle Route
NID	Notice of Intention to Develop
NNR	National Nature Reserve
NOSWA	North of Scotland Water Authority
NPPG	National Planning Policy Guidance
NSA	National Scenic Area
NWS	National Waste Strategy: Scotland
OS	Ordnance Survey
PAN	Planning Advice Note
PFI	Private Finance Initiative
PPG	Planning Policy Guidance
PPP	Public/Private Partnership
pfs	petrol filling station
R & D	Research and Development
RSA	Royal & Sun Alliance
RSL	Registered Social Landlord
RSPB	Royal Society for the Protection of Birds
RTS	Round Table Session
(c)SAC	(candidate) Special Area of Conservation
SAPT	Scottish Association for Public Transport
SDR	Southern Distributor Road
SE	Scottish Executive
SEA	Strategic Environmental Assessment
SEDD	Scottish Executive Development Department
SEERAD	Scottish Executive Environment and Rural Affairs Department
SE RNMD	Scottish Executive Road Network Management Division
SNH	Scottish Natural Heritage
SPA	Special Protection Area
SUDS	Sustainable Urban Drainage Systems
SSLNELP	Adopted Strathdearn, Strathnairn & Loch Ness East Local Plan

SSSI	Site of Special Scientific Interest
SW	Scottish Water
THC	The Highland Council
TPO	Tree preservation order
UHI	University of the Highlands and Islands
UWWT	Urban Waste Water Treatment
WFD	Water Framework Directive
WTW	Water Treatment Works
WWTP	Waste Water Treatment Plant

1. INTRODUCTION AND BACKGROUND

1.1 The Highland Council (THC) published the Consultative Draft Inverness Local Plan (CDLP, core document CD7) in June 2001. Following consideration of representations (CD26-28 and CD31) the Council published the Deposit Draft Inverness Local Plan (DDILP, CD9) in September 2002. This was placed on deposit on 13 September, for a period of 8 weeks. By the time this period expired, about 250 parties had made objections or representations, raising 550 matters.

1.2 These responses were considered by the City of Inverness & Area Planning Committee and by the Planning, Development, Europe & Tourism Committee, in March 2003 (CD29 and CD32), when some changes or “modifications” to the plan were agreed. These changes were incorporated in a further version of the plan, the Deposit Draft Inverness Local Plan with Modifications (the DDMILP, CD11), published in April 2003. A 6 week period, to 11 July 2003, was allowed for objections “to the Modifications only”.

1.3 The responses received to this document were considered by the committees referred to above, in September and October 2003 (CD30 and CD32). At this stage, the Council agreed to make further changes to the plan, and to refer these to the inquiry. It also agreed to refer a number of objections, which had not been duly made in accordance with the Town and Country Planning (Structure and Local Plans)(Scotland) Regulations 1983, for consideration. These related to matters that were not proposed as modifications, or had not been made within the statutory period for making objections. In these cases, the Council agreed “*that both the objectors and known third parties including landowners be notified to allow them to be represented*”.

1.4 In addition, the Council resolved to treat representations regarding draft development briefs for sites at Firthview-Woodside, Inverness (THC-11/5) and Markethill, Fort Augustus (THC-18/FOR1), which are the subject of proposals in the plan, as objections to the plan, where those who had made representations confirmed that they wished this to be done.

The local plan area and the plan period

1.5 The local plan covers an area extending from Glen Affric in the west, eastwards to Ardersier and Croy. It also includes part of the Great Glen, to just south of Fort Augustus. When it is adopted, it will replace 4 existing local plans - Beauly and District Local Plan (BDLP, CD4, adopted in 1988); Fort Augustus & Drumnadrochit Local Plan (DFALP, CD5, adopted in 1991); Inverness, Culloden & Ardersier (ICALP, CD3, adopted in 1994); and Strathdearn, Strathnairn and Loch Ness East (SSLNELP, CD6, adopted in 1997). As a result of council ward boundary changes, the plan will also replace parts of the Nairnshire Local Plan (adopted in 2000) around Cephanton and Croy, and parts of the Mid Ross Local Plan, north-west of Beauly. It deals with the period to 2011, but also includes a “longer term vision” spanning the period to 2021, under the heading “Further forward: beyond 2011”.

The structure plan context

1.6 The local plan was prepared in the context of the Highland Structure Plan (HSP, CD1) which was approved, with modifications, by Scottish Ministers, in March 2001. The HSP states that it sets out a path towards sustainable development over the next 20 years, that it

aims to promote and enhance the social, economic and environmental wellbeing of the people of Highland, and lists 19 strategic issues that it regards as encompassing the area's main weaknesses and potential threats to its future development. Its vision is founded on 3 interdependent principles of sustainable development: supporting the viability of communities, developing a prosperous and vibrant local economy, and safeguarding and enhancing the natural and built environment. Seven strategic themes are identified, to address the issues facing Highland to 2017:

- Conserving and promoting the Highland identity
- Adopting a proactive approach to the wise use of the natural environment
- Taking an integrated approach to improving accessibility to goods, services and markets
- Consolidating the settlement hierarchy
- Creating an improved business environment
- Addressing the need for quality living environments
- Working in partnership with the community and other agencies.

1.7 Figure 7 in the HSP illustrates the spatial elements of the HSP strategy, which include:

- Building on recent growth and ensuring that policies are pursued which retain the attractiveness of centres for continuing inward investment, particularly in Inverness, where there is considered to be a need for development which strengthens it as the regional centre, together with complementary measures designed to reduce congestion and avoid over-development
- Recognising the potential to encourage a shift in the current pattern of development in the Inner Moray Firth (IMF) which might otherwise threaten the attractiveness of Inverness and the surrounding countryside as a place in which to live and work, by a degree of decentralisation from Inverness, particularly to the smaller towns in the IMF, which are facing particular difficulties living in the shadow of Inverness
- Underpinning sub-regional centres outwith the IMF, and strengthening these, and local centres (which include Culloden, Beaulieu, Drumnadrochit, and Fort Augustus), to counteract the increasing accessibility of Inverness
- Meeting the development needs of rural areas for jobs, homes and services, particularly those outwith commuting distance from the main centres of employment, and those judged to be most fragile
- Special management of the high natural and cultural heritage value of the North and West Highlands

1.8 Appendix 2 in the HSP shows 9 Rural Development Zones. Most of the local plan area is within the IMF, where the following Key Policy Responses are identified:

- Impact of expansion of Inverness on other settlements
- Allocation of land for new housing
- Allocation of land for Business and Industry
- Development of an integrated transport strategy
- Waste management
- Housing in the countryside
- Countryside Around Towns framework
- Large industrial sites for oil-related industry

- Protection of the marine heritage
- Planning for hazard- erosion; flooding
- Protection of prime agricultural land
- Safeguarding identity in the face of population growth and homogenous development

1.9 The parts of the Inverness Local Plan area further from Inverness, including Fort Augustus, are within the Central Highlands, where the Key Policy Responses are:

- Arresting population decline
- Tackling high unemployment
- Capitalising on natural resource opportunities
- Expansion of native pinewood cover
- Renewable energy potential
- Management of the peatlands for community wellbeing
- Strengthening of settlements in their role as service centres
- Seek to support establishment of new crofting estates

1.10 The HSP includes 9 General Strategic Policies, G1-G8, describing these as emerging from the sustainability objectives and strategic themes, and demonstrating the Council's expectations with regard to any planning of development within the THC area. For ease of reference, these are reproduced at the end of this chapter.

The local plan and its general approach

1.11 The local plan states that it takes forward the HSP's strategic themes in the context of the following main themes:

- Supporting Communities
- Creating Prosperity
- Connecting Places
- Caring for our Heritage
- Developing the Right Places

1.12 The plan also explains that it sets out the housing allocations for the Inverness part of the Inner Moray Firth Housing Strategy (IMFHS), which was required by the Scottish Executive (SE), as part of the approval of the structure plan, to provide a more detailed land audit and locational guidance, elaborating HSP Policy H1. The plan states that, in so doing, it provides an overview for the sub-region, but that the allocations in the Housing Strategy may be subject to change as the Inverness and Ross and Cromarty East local plans proceed to adoption.

Policy zones

1.13 The plan identifies the following 5 broad zones, each with a dominant policy theme:

The City of Inverness including Culloden contains more than 80% of the population of the local plan area, and is seen as a focus for growth. The plan states that further development will consolidate Inverness as the regional capital and service centre, and that up to 300 ha of land with capacity for more than 4,000 houses remains in and around the southern periphery

of the city, supported by £25 million committed to upgrading infrastructure. Six major town expansion areas are identified, each stated to depend on developer agreements/contributions, and representing at least 10 years building capacity. The plan also seeks to safeguard a number of Green Wedges from development. These are seen as a means, among other things, of protecting the city's landscape setting, preventing coalescence, providing public access and amenity, and furthering biodiversity. Seven Action Areas, described as "key development hot spots which occupy strategic places at gateway entry points and other nodes" are also identified.

In the A96 Corridor to the east of the City, where very significant long term potential is stated to be locked up, Inverness Airport is seen as the focus for the early phases of new economic development.

The Hinterland lies to the west, south-west and south of Inverness, and includes Beaulieu, Drumnadrochit, and Strathnairn. In this area, commuting is stated to make it possible to combine the benefits of a rural or small community lifestyle with easy access to the city, Services permitting, the local centres of Drumnadrochit and Beaulieu and key villages of Kirkhill, Kiltarlity, Dores, Croy and Ardersier are expected to absorb the bulk of housebuilding outwith the city. However, the plan states that, as a rule, land allocations will not exceed 25% of the existing scale of settlements for any 10 year period. It also states that, within acknowledged "pressurised" areas, a strong presumption should be applied against housing in the countryside, where not required for occupational or related family need, in order to protect rural resources, amenity, and avoid unnecessary travel. Opportunities to add dwellings in some of the smaller rural housing clusters are recognised.

The Rural Development Area comprises the more remote and most fragile landward communities in the local plan area. Fort Augustus is the only local centre, while Tomatin is a key village. This area is subject to a range of policy initiatives intended to help regeneration, stabilise population levels, and reduce seasonality of employment. The plan states that a permissive rural housing regime is needed to facilitate young people to stay in their home communities and attract life-style settlers.

The Heritage/Natural Zone accounts for the remainder of the local plan area. It contains land covered by national and international heritage designations, notably the Western Glens and IMF Natura 2000 sites. The main policy thrust is to value the zone's natural and semi-natural features, to enable public access that complements long term conservation objectives, and to apply safeguards for the continued use and adaptation of established installations that serve a vital community purpose.

General policies

1.14 Paragraph 1.49 of the DDILP plan lists General Policies that will apply, "subject also to the overriding policies elsewhere in the plan". These comprise the Background Policies and Settlement Policies listed below, together with other General (GP) Policies (20 in the DDILP and 22 in the DDMILP) which apply throughout the local plan area. The factors that determine the BP designation of a particular area are listed in an Appendix.

1.15 Paragraph 1.49 also explains that the purpose of the General Policies is to reflect the predominant activities and character of different parts of the built-up area (S1-7) and the

countryside (BP1-4), and that these are broad, flexible land use areas intended to allow compatible uses or activities to locate together and interact.

Background policies

- **BP1:** The council will favour development subject to detailed site factors
- **BP2:** The council will favour development unless this would significantly affect important features
- **BP3:** The council will presume against development, particularly where there would be significant damage to heritage, amenity, or public health.
- **BP4:** The council will not approve development unless there is an over-riding social, economic, public health or safety reason, or for benefits of primary importance to the environment.

Settlement policies

- **Settlement Boundary:** The council will maintain a strong presumption against sporadic development outwith settlement boundaries in order to protect their landscape setting or avoid adversely affecting their longer term expansion.
- **C: City/Village Centre:** The council will encourage town centre uses appropriate to the settlement's role in the hierarchy.
- **H: Housing:** The council will safeguard the function and character of established residential areas and will encourage appropriate development.
- **B: Business:** The council will maintain or promote business/tourism.
- **I: Industry:** The council will maintain or promote industrial uses.
- **S: Special Uses:** The council will expect other uses mainly of a community, service or tourist related nature to be maintained or developed where stated.
- **E: Expansion:** The council will encourage development in accordance with a comprehensive Masterplan and will presume against piecemeal proposals.
- **A: Amenity:** The council will safeguard these areas from development not associated with their purpose or function.

1.16 The GP Policies cover a wide range of matters, including design and urban structure; affordable housing; waste management; mineral workings; infrastructure, including water/waste water and transport; flooding; and nature conservation.

1.17 The Proposals Maps are separate from the written statement. Two basic formats are employed - a 1:85,000 scale plan for the entire local plan area; and a book of Inset Maps, at a variety of scales, for the City Centre and City Districts; major land allocations at the Airport, the Ardersier Fabrication Yard, and Morayhill in the A96 Corridor; and for what are described as housing groups, local centres, key villages, and small settlements outwith Inverness. The City Insets comprise the City of Inverness West and City of Inverness East (at 1:25,000 scale, with policy notations relating to land around the periphery of the City), and an Inset for the City Centre and for each City District, (at various scales, and with policy notations relating to land within the boundaries of the District concerned).

HIGHLAND STRUCTURE PLAN GENERAL STRATEGIC POLICIES

Policy G1 Conformity with strategy

The Council will support developments, having regard to the Plan's sustainable objectives, which promote and enhance the social, economic and environmental wellbeing of the people of Highland.

Policy G2 Design for sustainability

Proposed developments will be assessed on the extent to which they:

- ☐ are compatible with service provision (water and sewerage, drainage, roads, schools, electricity);
- ☐ are accessible by public transport, cycling and walking as well as car;
- ☐ maximise energy efficiency in terms of location, layout and design, including the utilisation of renewable sources of energy;
- ☐ are affected by significant risk from natural hazards, including flooding, coastal erosion, land instability and radon gas, unless adequate protective measures are incorporated, or the development is of a temporary nature;
- ☐ are affected by safeguard zones where there is a significant risk of disturbance and hazard from industrial installations, including noise, dust, smells, electro-magnetism, radioactivity and subsidence;
- ☐ make use of brownfield sites, existing buildings and recycled materials;
- ☐ impact on individual and community residential amenity;
- ☐ impact on non-renewable resources such as mineral deposits of potential commercial value, prime quality or locally important agricultural land, or approved routes for road and rail links;
- ☐ impact on the following resources, including pollution and discharges, particularly within designated areas :

habitats	freshwater systems
species	marine systems
landscape	cultural heritage
scenery	air quality;
- ☐ demonstrate sensitive siting and high quality design in keeping with local character and historic and natural environment and in making use of appropriate materials;
- ☐ promote varied, lively and well-used environments which will enhance community safety and security and reduce any fear of crime;
- ☐ accommodate the needs of all sectors of the community, including people with disabilities or other special needs and disadvantaged groups; and
- ☐ contribute to the economic and social development of the community.

Developments which are judged to be significantly detrimental in terms of the above criteria shall not accord with the Structure Plan.

Policy G3 Impact assessments

Where environmental and/or socio-economic impacts of a proposed development are likely to be significant by virtue of nature, size or location, The Council will require the preparation by developers of appropriate impact assessments. Developments that will have significant adverse effects will only be approved if no reasonable alternatives exist, if there is demonstrable over-riding strategic benefit or if satisfactory overall mitigating measures are incorporated.

Policy G4 Community benefit and commitment

The Council will expect developments to benefit the local community and contribute to the wellbeing of the Highlands, whilst recognising wider national interests.

The Council will seek to enter into agreements with developers as appropriate on behalf of local communities for environmental and socio-economic purposes as indicated below:

- ☐ where a development will have a long term impact on the environment contributions will be sought towards a fund for local community initiatives;
- ☐ where as a result of a development new infrastructure proposals require to be implemented by The Council or other agencies, or existing programmes brought forward, developers will be expected to pay those costs as an integral part of that development; and
- ☐ in appropriate circumstances The Council will expect a financial bond to be secured for long term environmental restoration and/or socio-economic stability.

Policy G5 Integration of environmental and community interests

The Council will support measures that link the protection, enhancement, understanding and enjoyment of the natural and cultural heritage with the sustainability and vitality of local communities.

Policy G6 Conservation and promotion of the Highland heritage

The Council will seek to conserve and promote all sites and areas of Highland identified as being of a high quality in terms of nature conservation, landscape, archaeological or built environment.

Policy G7 Partnerships and community planning

The Council will adopt a partnership approach in developing and implementing community planning initiatives at both the strategic and local levels.

Policy G8 Precautionary principle

In the relatively rare situation of assessing development proposals where the potential impacts are uncertain, but where there are scientific grounds for believing that severe damage could occur either to the environment or the wellbeing of communities, The Council will apply the precautionary principle.

2.1 OBJECTION TO THE PHILOSOPHY OF THE PLAN

Objector: Mr J I Ballantyne (5)

Procedure: Written submissions

Synopsis of objection

2.1.1 As development plans on their own do not provide adequate safeguards for achieving high design standards, the Council should promote the concept of Master Planning.

Brief summary of the main points raised by the objector

2.1.2 The institutionalised orthodoxy that planners are best able to monitor and arbitrate on architectural and environmental design standards needs to be re-examined, and this role given to those trained and experienced in creative design. This would leave planners to act as enablers and promoters, with the aim of encouraging high design standards. Development plans, which deal largely with land allocation, do not, on their own, provide adequate safeguards, and their “flexibility” is easily exploited by developers. The concept of Master Planning, involving a multi-disciplinary team, to provide a 3-dimensional co-ordinated framework and vision for project work, aimed at achieving a range of agreed objectives, and re-ordering the emphasis from routine administration of statutory obligations and responsibilities back to the dynamics of creative planning and design, should be promoted.

Brief summary of the Council’s response to the objection

2.1.3 The planning system is an inclusive, dynamic process. As part of this, the council has statutory powers in the public interest. Development briefs/master plans and multi-disciplinary project teams offer scope to improve design, and these underpin the local plan’s strategy for the development and expansion of Inverness.

Conclusions

2.1.4 Section 11 of the Town and Country Planning (Scotland) Act 1997 charges all planning authorities with the duty of preparing a local plan, and stipulates a range of matters that such a plan must contain. Pursuing an approach that does not meet this statutory obligation is therefore not an option.

2.1.5 The local plan, through Policy GP1, expects all development proposals to be underpinned by a range of design principles. This provides a good policy basis for achieving the objective of ensuring that new uses or buildings fit well with their surroundings, and strengthen and add value to places.

2.1.6 That said, PAN 49 (CD25) acknowledges that local plans deal with a broad range of policy issues and serve a number of functions, and that there is sometimes a limit to how far these can go in providing specific guidance or encouraging local investment and action. Master plans and development briefs can thus play a valuable complementary role in promoting and achieving the high standards of design and execution that are advocated in national planning policy guidelines, including in SPP 1: The Planning System (CD12).

2.1.7 The local plan includes proposals for master plans and development briefs as an integral part of the development process at a range of locations, both within and outwith Inverness. I conclude that it gives due and adequate recognition to these mechanisms as part of the complementary relationship described above.

Recommendation

2.1.8 I recommend that no change is made to the local plan in response to this objection.

2.2 OBJECTIONS TO THE TIMESCALE OF THE PLAN

Objectors: Beaully Community Council (84), Mr J Russell (237)
Procedure: Written submissions

Synopsis of objections

2.2.1 The local plan should cover a longer period.

Brief summary of the main points raised by the objectors

Beaully Community Council

2.2.2 A 20 year plan would give residents a better indication of how their community might develop.

Mr J Russell

2.2.3 The plan's policies appear to cover a 10 year period, with a further 15 year period. The process began in 1999, but it has taken almost 3 years to produce a deposit draft plan. The plan should cover a 25 year period from the date on which it is accepted, with a review every 5 years. It should be possible to carry out a review in a couple of months at the most.

Brief summary of the council's response to the objections

2.2.4 Local plan procedures are largely dictated by Government regulations. Plans do take too long, but reducing unnecessary content is a key to shortening the process. While the council also does not disagree with a 25 year plan period, and has tried to include longer term (post 2011) allocations in the plan, it regards the generality of the issues raised by the objectors as extending beyond the scope of the inquiry.

Conclusions

2.2.5 Procedures relating to local plan preparation are governed by the Town and Country Planning (Structure and Local Plans)(Scotland) Regulations 1983. These do not specify a statutory minimum or maximum local plan period.

2.2.6 PAN 49 expects local plans to provide some certainty over a minimum 5 year period, but regards it as unrealistic for them to have a fixed period. It states that many elements can be expected to continue indefinitely, subject to regular review, refinement, and adjustment; that other policies and proposals may be phased, with their own timescales for implementation to achieve the plan's objectives; and that this timescale may be constrained by priorities in the structure plan. It also expects planning authorities to aim to review or appraise local plans at least every 2 years, in order to decide whether policies, proposals and recommendations remain fully applicable or whether these should be adjusted, removed or replaced.

2.2.7 The Inverness Local Plan deals with the period to 2011. It also includes a longer term vision to 2021, and a commitment to a biennial monitoring statement, which will assess the plan's performance in respect of key forecasts, the effectiveness of policies, and other relevant issues. It is therefore consistent with the thrust of the advice in PAN 49.

2.2.8 It is likely to be impractical to formulate local plan policies and proposals that are sufficiently flexible to address the range of issues likely to arise in the course of a 20 year or a 25 year plan period, while also maintain conformity with the relevant structure plan, and providing the level of detail and clarity needed to guide investment decisions that PAN 49 expects. It is unrealistic to expect to carry out a local plan review within 2 months. In any event, there is no reason to expect this process to be quicker if a 20 year or a 25 year plan period had been adopted.

Recommendation

2.2.9 I recommend that no change is made to the local plan in response to these objections.

3.1 OBJECTION BY SCOTTISH NATURAL HERITAGE TO THE PLAN'S BACKGROUND (BP) POLICY APPROACH TO NATIONAL SCENIC AREAS AND THE IDENTIFICATION OF NATURAL HERITAGE SITES

Objector: Scottish Natural Heritage (116)

Procedure: Public inquiry

Synopsis of objection

3.1.1 National Scenic Areas (NSAs) should be Policy BP3 features. Designated natural heritage sites should be accurately identified on an Ordnance Survey (OS) base.

Background

3.1.2 There are 2 NSAs in the local plan area, Glen Strathfarrar and Glen Affric, both within the Heritage/Natural Zone. The DDILP identifies NSAs as a feature to which Policy BP2 will apply. The Caring for Our Heritage diagram purports to identify a range of landscape and nature conservation designations, including NSAs and Regional Scenic Areas/Coasts, "Inventory" Woodland, National Nature Reserves (NNRs), Sites of Special Scientific Interest (SSSIs), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs).

Brief summary of the main points raised by the objector

3.1.3 The deposit draft plan treats NSAs, and indeed Designed Landscapes, as having less significance than other national designations, which it identifies as Policy BP3 features. Treating NSAs as a Policy BP2 feature, to which a presumption in favour of development would apply, is also contrary to NPPG 14: Natural Heritage (CD21), which recognises that NSAs are nationally important for their scenic quality. The NPPG indicates that the national policy test is that development should only be permitted where the overall objectives of the designation and the overall integrity of the area concerned will not be compromised, or any significant adverse effects on the qualities for which it has been designated are clearly outweighed by social or economic benefits of national importance. NSAs should therefore be a Policy BP3 feature. That said, SNH accepts that Policy BP3, as currently worded, is overly prohibitive, and suggests redrafting as follows:

"Development which affects the interests which make up BP3 ...(as detailed in the Appendix) will only be permitted where it is demonstrated that this interest will not be compromised, or any significant adverse effect on the qualities for which the area has been designated, are clearly outweighed by social and economic benefits of national importance".

The phrase "*subject also to overriding policies elsewhere in the plan*" should be removed from the preamble to the General Policies.

3.1.4 SDD Circular 20/1980 (SNH/1) states that the Secretary of State (now Scottish Ministers) looks to planning authorities to pay particular attention to applications for development in NSAs, and that development plans should set out firm policies in this respect.

SPP 1 recognises that protecting and enhancing the quality of the environment is a key objective of the planning system. PAN 60: Planning for the Natural Heritage stresses that safeguarding and enhancing landscape character is an important planning objective, and that planning authorities can contribute to this by safeguarding the scenic quality and character of NSAs. The HSP also recognises the value of the landscape resource, in Policies G2 and G6. However, as it does not provide specific policy protection for NSAs, the local plan needs to be strengthened, and made “fit for purpose” in this respect.

3.1.5 The Proposals Map also confuses the consideration that is intended for NSAs. For example, because of other sensitivities, both NSAs in the local plan area are in a Policy BP3 or BP4 zone, as well as in a Policy BP2 zone. It is therefore impossible to tell what the appropriate sensitivities are, and therefore what policy tests should be applied. An Analysis Map would at least define the boundaries of NSAs and Designed Landscapes, but would still not accord with NPPG 14, as it would not be a Proposals Map. While it might be easier to mitigate the effect of development in an NSA than in a NNR or an SSSI, this does not justify giving lesser protection to NSAs. Any anomaly relative to adopted plans that upholding the objection would create does not justify perpetuating an unsatisfactory approach. In any event, there are no NSAs in Nairnshire.

Brief summary of the Council’s response to the objection

3.1.6 The proposed modifications include deleting “overriding” from the preamble to the General Policies, thus increasing the significance of BP features in policy terms. The Council also intends to include an Analysis Map in the post-inquiry version of the plan to show natural heritage and other BP features in more detail. The list of Policy BP3 features will be altered to take account of modifications made to the HSP, whereby Areas of Great Landscape (AGLVs) were re-named Regional Scenic Areas and Coasts.

3.1.7 AGLVs and NSAs merit the same degree of policy protection, namely that afforded by Policy BP2. This protection is only marginally different from the policy test in NPPG 14. As NSAs cover a fifth of the land area in Highland, including some large villages, it would be unworkable, and inconsistent with NPPG 14, treat them as BP3 features and thus subject to a presumption against development. The alternative policy wording suggested by SNH is also unduly restrictive and would be difficult to apply in practice.

3.1.8 While some aspects of national guidance suggest that the Policy BP2 wording is not wholly appropriate for AGLVs and NSAs, the BP policies are intended to avoid precisely what SNH is requesting. The terms of any set of general policies involves compromise and they cannot be tailored to suit each vested interest group or land use. Re-wording to suit SNH would unbalance the policies relating to other land uses, proposals and/or groups. The DDILP uses the same policy wording as most recent Highland local plans. As this has been found to be a reasonable compromise when tested, re-wording the policy for the Inverness area would create an anomaly relative to other recently adopted plans. In the Nairnshire Local Plan, it was concluded that NSAs should be a BP3 feature. However, if the council’s argument is not accepted, the plan could be modified to make clear that development proposals will be assessed against development plan and national policies, and against the relevant statutory provisions. The SE appears to have endorsed this approach in the Wester Ross Local Plan, which is to be placed on deposit soon.

Conclusions

3.1.9 SPP 1 recognises that protecting and enhancing the quality of the environment is a key objective of the planning system.

3.1.10 Section 264(2) of the 1997 Planning Act, read with section 6(9) of the Natural Heritage (Scotland) Act 1991, and the saving provision in Schedule 3 of the 1997 Act, imposes a statutory duty, in the exercise of any powers under the Planning Acts, to pay special attention to the desirability of preserving or enhancing the character or appearance of NSAs.

3.1.11 NSAs are designated on account of their national scenic importance. NPPG 14 states that the presence of a national natural heritage designation is an important material planning consideration. It also states that development which would affect a designated area of national importance should only be permitted where the overall objectives of designation and the overall integrity of the area will not be compromised; or any significant adverse effects on the qualities for which it has been designated are clearly outweighed by social or economic benefits of national importance. Paragraph 71 requires planning authorities to ensure that local plan policies adequately provide for the protection and enhancement of the natural heritage, placing particular emphasis on the strength of protection afforded to international and national designations. It also requires local plans to indicate the criteria against which a development affecting a natural heritage designation will be assessed.

3.1.12 NPPG 14 makes clear that the presence of a national designation does not mean that development is precluded, but that proposals require to be assessed for their effects on the interests which the designation is designed to protect. SNH does not argue that a presumption against development should apply within nationally designated areas, and agrees that the current wording of Policy BP3 imposes too strict a test.

3.1.13 Treating AGLVs and NSAs as Policy BP2 features would remove the anomaly whereby the local plan would give a national landscape designation a lesser degree of policy protection than a regional designation. Nevertheless, Policy BP2 as it stands does not reflect NPPG 14, which advocates a more cautious approach. The cross-reference to national policy that THC suggests would not resolve this inconsistency, in policy terms.

3.1.14 The stated purpose of the local plan's General Policies is to reflect the predominant activities and character of different parts of the built-up area of the countryside (BP1-4) and the built up area (S1-7). These are regarded as covering broad, flexible land use areas intended to allow compatible uses and activities to locate together and interact.

3.1.15 It is likely to be impractical to tailor a suite of general policies, each covering a wide range of features, to fully suit all interests. The very general approach employed in the plan inevitably involves significant compromise and, as a result, is not particularly useful as a policy tool. Matters are further complicated by the identification, as BP features, of safeguarded areas and consultation distances, which could threaten, rather than be threatened by, development. A larger number of policies, each relating to a small number of features, would lead to a proliferation of policies, and duplication with more specific policies. The potential for a degree of overlap in policy coverage would also remain. However, as the "highest common denominator" BP policy would logically apply, this need not cause

problems in practice.

3.1.16 Deleting “overriding” from the preamble to the General Policies is helpful, to the extent that it removes the impression that the General Policies will always be subservient to other policies. In some cases, development is proposed at locations containing BP3 features.

3.1.17 The HSP recognises, in Policies G2 and G6, the value of landscape resources. Policy N1: Nature Conservation imposes the NPPG 14 “test” in considering effects on sites of national nature conservation importance, namely NNRs and SSSIs. It considers NSAs separately, under Recommendation L2, which addresses the impending review of this designation. As the HSP does not contain a policy relating specifically to the consideration of development proposals in NSAs, it is important that the local plan identifies the policy approach that will apply in these areas, in order to provide guidance to developers and the public.

3.1.18 As to the terms in which such a policy should be expressed, distinguishing between the policy protection afforded to NSAs and that applying to NNRs and SSSIs would reflect the approach in the HSP, which does not extend the NPPG 14 test to all national natural heritage designations.

3.1.19 It is not clear why the Nairnshire Local Plan has a policy (apparently Policy BP3) for NSAs when it does not contain any such areas. In any event, any anomaly that a rewording or reordering of the BP policies in the Inverness local Plan may create with regard to adopted plans does not in itself justify perpetuating an approach that is unsatisfactory.

3.1.20 Having had regard to all these factors, I conclude that the best solution would be to reword Policy BP2, to better reflect the thrust of NPPG 14, and the plan’s main policy thrust for the Heritage/Natural Zone, which includes presuming against intrusive developments that would detract from the zone’s intrinsic core qualities.

3.1.21 It would also be desirable, and consistent with NPPG 14, for national natural heritage designations to be shown on the relevant Proposals Maps, if this can be done without creating clutter. A colour wash may be one way forward. If this proves impractical, the plan should make clear that the Proposals Maps should be read in association with the Analysis Map that the council intends to include in a further version of the plan.

Recommendations

3.1.22 I recommend that:

- (1) the modification to the preamble to the plan’s General Policies proposed by the Council is accepted.
- (2) National Scenic Areas remain Policy BP2 features, but that the policy is reworded to read:

“The Council will permit development unless this would be likely to have a significantly adverse effect on, or be significantly adversely affected by, the features for which the area has been designated. Where it is concluded that any such adverse effects are likely to arise, development will only be permitted where it is considered

that these would be outweighed by social or economic benefits”.

(3) in addition to the Caring for Our Heritage diagram, NSAs and other national heritage designations are shown on the relevant Inset Proposals Maps, and on the overall Proposals Maps, if a notation that avoids clutter and/or confusion can be devised. If this proves impractical, these should be shown on the Analysis Map, and the plan should state that this should be read in association with the Proposals Maps.

Other matters

3.1.23 Paragraph 1.49 of the DDILP implies that Policies BP1-4 and S1-7 apply respectively to countryside and to built-up areas, and that the 2 sets of policies are mutually exclusive. However, there are BP features within some settlements, and some of these are shown in the relevant Settlement Inset Proposals Maps. Although this matter is not the subject of objection, and thus is not the subject of a formal recommendation, the Council may wish to consider whether paragraph 1.49 ought to be amended to avoid possible misunderstanding, and whether the identification of BP features in settlements should be consistent throughout the plan.

3.2 OBJECTION BY THE GARDEN HISTORY SOCIETY TO THE PLAN'S BACKGROUND (BP) POLICY APPROACH TO HISTORIC GARDENS AND DESIGNED LANDSCAPES AND TO THE IDENTIFICATION OF SITES

Objector: The Garden History Society (63)
Procedure: Written submissions

Synopsis of objection

3.2.1 Historic Gardens and Designed Landscapes should be a Policy BP3 feature. The local plan should also include a map identifying all the sites in the Inventory of Gardens and Designed Landscapes in Scotland (the Inventory) and those in the Inventory Interim list.

Background

3.2.2 The DDILP identifies Designed Landscapes as a feature to which Policy BP2 will apply. The only Designed Landscape identified in the Caring for Our Heritage diagram on page 14 of the plan appears to be Leys Castle, although the DDMILP diagram shows others.

Brief summary of the main points raised by the objector

3.2.3 The local plan should recognise that Historic Gardens and Designed Landscapes make a significant contribution to the character and appearance of the environment and the quality of life of residents, and merit conservation. It should therefore discourage development within these areas by designating them as Policy BP3 features, not as Policy BP2 features. NPPG 14 and NPPG 18: Planning and the Historic Environment (CD24), respectively, expect local plans to identify designated heritage assets worthy of conservation, irrespective of whether these designations are statutory, and to contain policies to protect the historic environment.

3.2.4 Leys Castle and Dalcross Castle are included in the Inventory. Both sites are considered to have “outstanding” architectural value, and provide the setting for Category A listed buildings. Dalcross is also regarded as of “outstanding” historic value. The Interim list proposes that 4 other sites in the local plan area are added to the Inventory – Beaufort Castle, Culloden House, Dochfour House, and Tomnahurich Cemetery. A further preliminary assessment by the objector indicates that 7 other sites merit conservation. A comprehensive survey could reveal about 20 additional sites in total.

3.2.5 The Council’s proposed modification (see paragraph 3.2.6) would satisfy the objection regarding the identification of sites in the plan.

Brief summary of the Council's response to the objection

3.2.6 The Council stated it was not prepared to alter the Policy BP2 designation of Historic Gardens and Designed Landscapes, but agreed to show Inventory and Interim List sites in the Caring for Our Heritage diagram.

Conclusions

3.2.7 Policy BC4 of the HSP states that the Council will seek to preserve Historic Gardens and Designed Landscapes in the published Inventory and in any additions to it, and requires local plans to contain policies for their protection. The HSP also makes clear that proposals will be assessed for any adverse effects on the natural and historic integrity of these areas and that Strategic Policy G6 will apply.

3.2.8 Historic Gardens and Designed Landscapes often have natural heritage interest, but tend in the main to be designated primarily on account of their historic and landscape interest, and are specifically mentioned in NPPG 18. This NPPG confirms that the effect of proposed development on a Historic Gardens or Designed Landscape is a material consideration in the determination of a planning application. It also expects local plans to define the historic environment in Proposals Maps, and to include policies for the protection, conservation and enhancement of the historic environment and its setting.

3.2.9 National and structure plan policies are therefore protective of Historic Gardens and Designed Landscapes. However, neither set of policies presumes against development within designated areas, or specifies a policy test. I conclude that Historic Gardens and Designed Landscapes should not be a Policy BP3 feature, but that Policy BP2, reworded as recommended at paragraph 3.1.22 (2), would provide a suitable level of protection. As the Inventory was published in 1989, and is now 17 years old, it may well omit sites that merit inclusion. I therefore conclude that sites in the Interim list should also be Policy BP2 features, and that the plan should identify sites in both of these categories on a map or plan.

3.2.10 THC's intention of identifying Inventory and Interim sites in the Caring for Our Heritage diagram would assist in this latter regard. However, as the diagram's small scale limits its usefulness, these should also be shown in the Analysis Map and, if practicable, on the relevant Proposals Maps (see paragraph 3.1.21).

Recommendations

3.2.11 I recommend that:

(1) Historic Gardens and Designed Landscapes in the Inventory remain Policy BP2 features, with Policy BP2 reworded as recommended at paragraph 3.1.22 (2).

(2) in addition to the Caring for our Heritage diagram, Historic Gardens and Designed Landscapes in the Inventory of Gardens and Designed Landscapes in Scotland and those in the Inventory Interim list are identified on the Analysis Map, and if practicable on the relevant Proposals Maps, on the basis recommended at paragraph 3.1.22 (3).

3.3 OBJECTION BY THE WOODLAND TRUST SCOTLAND TO THE PLAN'S BACKGROUND (BP) POLICY APPROACH TO ANCIENT WOODLAND

Objector: The Woodland Trust Scotland

Procedure: Written submissions

Synopsis of objection

3.3.1 The local plan should give ancient woodland, which is by definition an irreplaceable natural resource, absolute protection from development. It should also give greater recognition and protection to woodland in general.

Main grounds of objection

3.3.2 UK and Scottish planning policies highlight the importance of protecting ancient and native woodland. The UK Forestry Standard states that ancient and semi-natural woodlands are of special value. NPPG 14 advises planning authorities to seek to protect trees and that ancient and semi-natural woodland has the greatest value for nature conservation. PAN 60 and A Better Quality of Life, the UK Strategy for Sustainable Development, note the value of ancient woodland for biodiversity and as part of the historic landscape. Other planning authorities have accepted this approach, and include protective policies in their local plans.

3.3.3 The plan should also give greater emphasis to the contribution of woodland to quality of life, and to the value of urban green space in improving general well-being, and as an educational, amenity, and biodiversity resource. Any planning permissions for development adjacent to woodland should be subject to conditions to minimise damage to trees and their roots.

Summary of the council's response to the objection

3.3.4 The local plan protects ancient and semi-natural woodland as a Policy BP3 feature and, where this is an SAC or a SPA, as a Policy BP4 feature. This hierarchy of protective policies, which reflects the HSP, NPPG 14, and relevant legislation, seeks an acceptable balance between conservation and development in the landward area and is consistent with government advice.

Conclusions

3.3.5 The protection of semi-natural and ancient woodland, and other woodland, is consistent with national planning policy guidance and advice, which recognise trees and woodland as a valuable natural heritage and amenity resource. However, national policy does not advocate absolute protection of ancient woodland.

3.3.6 In all cases, a balance has to be struck between the interests of conservation, and the benefits arising from development. Accordingly, the possibility that

occasions could arise when the benefits of development deserved to prevail should not be ruled out.

3.3.7 Policy BP3 presumes against development, particularly where this would significantly damage heritage resources, including semi-natural and ancient woodland, other important amenity trees/woodlands, and within 20 m of woodlands. Where woodland is an SPA or SAC, a greater level of protection, under Policy BP4, would apply. I conclude, having also taken into account the recommended rewording of the preamble to the General Policies, that these policies provide a suitable level of protection for semi-natural and ancient woodland, and that they are broadly consistent with national policy. I conclude, having had regard to my conclusion at 2.59, that the plan also gives adequate recognition to the importance of woodland in general.

3.3.8 Imposition of the planning conditions sought by the objector would also be consistent with the national policy approach, and with the local plan's own policies. However, conditions stand to be applied through the development control process, when other material considerations have also to be taken into account. It would be unwise for the local plan to pre-empt the outcome of this process.

Recommendation

3.3.9 I recommend that the plan is not changed in response to this objection.

Other matters

3.3.10 I note that the Caring for Our Heritage diagram shows what is termed "Inventory Woodland". However, I suggest it would be helpful for the Analysis Map and the Proposals Maps also to show semi-natural and ancient woodland.

3.4 OBJECTION BY MR J S M CUMMING REGARDING POLICY BP3, ABRIACHAN BUSINESS POLICY AND DEVELOPMENT IN THE COUNTRYSIDE

Objector: Mr J S M Cumming (218)

Procedure: Written submissions

Synopsis of objection

3.4.1 Policy BP3 and the Business policy relating to Abriachan should be modified to provide more scope for business development in the countryside. The plan should also have a General Policy for assessing proposals for new development in the countryside that would otherwise be regarded as a departure from the plan.

Background

3.4.2 The objector owns Corryfoyness Croft in the Hinterland south of Abriachan, in an area that the DDILP shows subject to Policy BP3. He wishes to use existing buildings there to bottle and distribute spring water. The Abriachan Business policy promotes a range of business opportunities within and adjoining Abriachan.

Brief summary of the main points raised by the objector

3.4.3 The local plan should be amended to assist sustainable diversification, and to provide positively for business development as required by national policy, specifically NPPG 15: Rural Development (CD22). Policy G1 of the HSP commits the Council to supporting developments that promote and enhance the social, economic and environmental wellbeing of the people of Highland. Policy B7 encourages small scale business developments in rural areas, while Policy A3 seeks to encourage proposals for diversifying farm incomes. A presumption against development contradicts the local plan's declared objective of nurturing locally-based employment in the Hinterland. Policy BP3 should therefore be modified to read:

“The Council will presume against development not related to agriculture, forestry, or tourism, or where there is not a demonstrable need for a countryside location. In considering development proposals, due regard will be had to their likely impact on amenity or the natural/built heritage”.

3.4.4 The Abriachan Business policy also does not permit all types of business development in the countryside, even where these require a countryside location and/or use natural resources. The following opportunity should therefore be added to this policy:

- *“new business proposals that require a countryside location whether or not they relate to agriculture or forestry”.*

3.4.5 Finally, the plan should have a General Policy setting out criteria for assessing proposals for new development in the countryside that would otherwise be regarded as a departure from the plan.

Brief summary of the Council's response to the objection

3.4.6 The modifications sought by the objector are not appropriate. Policy BP3 presumes against development likely to damage resources or conservation features. Subject to compliance with Policy BP3, and siting and design criteria, Policy GP6: Farm Diversification encourages economic development in the countryside. The BP3 designation to the south of Abriachan reflects its remote location, and/or the high cost of servicing. There are also important economic and landscape considerations relating to the Great Glen Way and the setting of Loch Ness. The suitability of any specific proposal would be determined on its merits in the light of these considerations.

Conclusions

3.4.7 I adopt my conclusion at paragraph 3.1.14 regarding the stated purpose of the local plan's General Policies.

3.4.8 Policy BP3 imposes a presumption against development, particularly, but not exclusively, where there would be significant damage to heritage, amenity, or public health. Its tenor is discouraging, as it reflects the presence of potential constraints in the areas to which the policy would apply. These potential constraints are likely to be a relevant consideration irrespective of whether a proposal demonstrates a need for rural location.

3.4.9 The Abriachan Business policy promotes a range of business opportunities, including diversification of crofting activities into eco-tourism and "lifestyle" or home working within and adjoining Abriachan, where the plan identifies a settlement boundary. As Corryfoyness is about 2 km south of the settlement boundary, amending the terms of the Abriachan Business Policy would not assist the objector.

3.4.10 While I note the Council's response to this objection, Policy GP6 encourages farm diversification, "where consistent with Policies BP1-2". This indicates that the encouragement given to diversification does not extend to Policy BP3 areas, where a presumption against development would apply.

3.4.11 As to whether the plan should have a General Policy providing criteria for assessing proposals for development in the countryside that would otherwise be regarded as a departure from the plan, the statutory requirement for a local plan is to formulate the planning authority's proposals for the development or use of land. Policies BP1-4 make clear the Council's general attitude to development in the categories of countryside that these policies would cover, based on the sensitivities and/or importance of the features they contain. Furthermore, all development proposals require to be determined in accordance with the provisions of the development plan, unless material considerations indicate otherwise. These provisions include Policy G1 of the HSP, and the criteria in Policy G2, which cover a wide range of factors. I conclude that there is no need for the additional policy sought

by the objector, and that this would amount to unnecessary duplication. It would also run counter to the aim of producing shorter, more focussed, local plans.

Recommendation

3.4.12 I recommend that the local plan is not changed in response to this objection.

3.5 OBJECTION BY EURUS ENERGY (UK) LTD REGARDING THE DEFINITION OF AREAS OF GREAT LANDSCAPE VALUE AND WIND FARM DEVELOPMENT

Objector: Eurus Energy (UK) Ltd

Procedure: Written submissions

Synopsis of objection

3.5.1 The local plan fails to define AGLVs as required by the HSP. The boundaries of the AGLV east of Tomatin indicated in Figure 12 of the HSP should be carefully assessed and defined in the plan. The 3 sites where the objector proposes wind farms should be excluded, and shown as having potential for wind farm development. The local plan does not explain the criteria that were used to identify the Potential Areas for Wind Farms shown in the plan.

Factual background

3.5.2 Proposal L3 of the HSP requires local plans to identify AGLVs (described in the submitted structure plan as Regional Scenic Areas or Coasts) “*in general accordance with the areas indicatively identified in Figure 12*”. The Caring for our Heritage diagram in the DDILP shows Regional Scenic Areas/Coasts, including an area to the east of Tomatin. In the Proposals Map, the upland area at this location is covered by Policy BP3. The Creating Prosperity diagram shows 3 Potential Areas for Wind Farms enclosed by a pecked line, one to the west of Tomatin. There are no Potential Areas to the east.

3.5.3 Eurus Energy and the Royal Society for the Protection of Birds (RSPB) objected that the plan did not explain the criteria used to identify the Potential Areas for Wind Farms. The RSPB also stated that the plan’s policy on wind farms outwith these areas was unclear, and that NPPG 6: Renewable Energy Developments expects local plans to provide further guidance. THC agreed to replace the area notation on the Creating Prosperity diagram with a “wind farm” symbol, and to include a reference in the plan to the potential for wind and wave energy in parts of the landward area. It also stated that HSP Policy E1, and Policies BP1-4 of the local plan, governed the location of renewable energy proposals. No changes in response to other points raised by Eurus Energy were proposed. The RSPB objection was subsequently withdrawn.

Brief summary of the main points raised by the objector

3.5.4 Defining AGLVs requires a detailed appraisal of the indicative areas in Figure 12, and the identification of boundaries. NPPG 14 states that the boundaries of sites should normally be clearly defined on local plan Proposals Maps, and justification provided for their selection. The HSP lists the criteria on which the indicative AGLVs are based, but THC has confirmed that it did not prepare a report justifying the boundaries of the AGLV east of Tomatin. It has also confirmed that, until these indicative areas are confirmed in local plans, they are proposed AGLVs.

3.5.5 Although THC intends the local plan to treat AGLVs as Policy BP3 features, the Policy BP3 area east of Tomatin on the Proposals Map does not correlate with the indicative AGLV in the HSP. Moreover, while the 3 sites (A, B and C) where Eurus proposes wind farms lie within this indicative AGLV, none contains the type of features that the HSP lists as the basis for AGLV selection, is of outstanding scenic character or quality, or has natural heritage interest. The proposed AGLV boundaries should be carefully assessed, and the 3 Eurus sites excluded from it, and from the Policy BP3 area.

3.5.6 The local plan also fails to justify the selection of the areas that the Creating Prosperity diagram identifies as having as having potential for wind farms. Sites A-C are within the RDA, where the local plan gives priority to year-round work and regeneration. While parts of these sites are Zone 2 areas of medium sensitivity in terms of SNH's Strategic Locational Guidance for Onshore Wind Farms, the guidance recognises that Zone 2 areas often have scope for wind farm development, although possibly restricted in scale and energy output, and requiring care to avoid natural heritage impacts. Suitable safeguards could be secured by planning conditions.

Brief summary of the Council's response to the objection

3.5.7 While the DDILP reflects the AGLV at Tomatin indicated in the HSP, THC accepts that this indicative designation ought to be refined to reflect local landscape characteristics. The Proposals Map will therefore be amended to show this revised AGLV as a BP3 feature. The Potential Areas for Wind Farms in the Creating Prosperity diagram reflect high/exposed ground with no significant constraints. This does not apply to land where the Eurus sites are located. The diagram does not identify sites for wind farm development. Any proposals would be considered against the relevant policies in the development plan.

Conclusions

3.5.8 In order to conform to the HSP, and thus to be adopted, the local plan requires to identify AGLVs, in general accordance with the indicative areas shown diagrammatically in Figure 12. These areas, which Figure 12 describes as "Proposed AGLVs", appear to include land around Tomatin.

3.5.9 The identification of AGLVs will require a detailed appraisal of landscape character and quality, based on the structure plan criteria, for all the indicative AGLVs in the local plan area. These criteria apply throughout Highland, and may have to be refined to suit a more local scale, and detailed boundary definition. Whether all, or any, of sites A-C are included in an AGLV when defined will therefore depend on the outcome of a detailed appraisal. It would be undesirable to pre-empt this local plan area-wide process by recommending specific boundaries in any one location at this stage.

3.5.10 THC's response to the Eurus objection reported above has been superseded by its intention of identifying AGLVs as a Policy BP2 feature, and therefore not subject to a presumption against development.

3.5.11 In any event, until as it is established whether sites A-C would be included in an AGLV, and the policy approach that would apply, it would be inappropriate for the plan to identify these sites as a location as having potential for wind farm development. The effect of a proposed development on the qualities for which an area had been designated would also depend on the nature of the proposal concerned. The objector agrees that parts of its sites are in a zone where SNH guidance indicates wind farm development may require to be restricted in scale and output, and care taken to avoid natural heritage impacts

3.5.12 It would be helpful for the local plan to explain the basis on which the Potential Areas for Wind Farms indicated in the Creating Prosperity Diagram were selected. The Council's response suggests that these areas represent high or exposed ground with no significant constraints.

Recommendation

3.5.13 I recommend that:

(1) AGLVs are defined for the local plan area as a whole, on the basis of the HSP criteria, and the outcome of this exercise shown on the Proposals Maps and/or on the Analysis Map, on the basis recommended in previous chapters. Until this exercise is done at least, proper consideration cannot be given as to whether the objector's sites should be identified as having potential for wind farm development.

(2) paragraph 1.21 of the local plan should explain the basis on which the Potential Areas for Wind Farms indicated in the Creating Prosperity Diagram were selected.

4.1 OBJECTION TO POLICY GP1: DESIGN PRINCIPLES

Objector: Inverness Chamber of Commerce

Procedure: Written submissions

Synopsis of objections

4.1.1 The Council has been ineffectual in insisting on high quality design. The hierarchy of transport provision in Policy GP1: Design Principles should also be reassessed.

Background

4.1.2 Policy GP1 lists key principles of design that are expected to underpin all development proposals. Under the heading MAKE CONNECTIONS it states:

places need to be easy to get to and integrated physically and visually with their surroundings. This requires a hierarchy of transport provision to enable people to move around on foot, by cycle, public transport and car, in that order of priority....

Brief summary of the main points raised by the objector

4.1.3 THC has been ineffectual in insisting on high quality design. Even in recent developments, design standards are being compromised in order to achieve modest cost reductions. Until good design is insisted upon, developers and others will try to persuade planners that they should accept lower standards than in other cities. Quality should not be compromised.

4.1.4 Putting foot first and car last flies in the face of reality. Car is currently, and will remain for the foreseeable future, the preferred method of transport. Provision for car access must therefore remain a key priority in all new developments, particularly as car is the most practical method of transport for those who rely on Inverness for central services.

Brief summary of the Council's response to the objections

4.1.5 The local plan emphasises the priority the council expects to be given to design. It also recognises that transport and accessibility are key requirements of regeneration. However, access by car has to be viewed in the context of longer term congestion, safety and convenience for cyclists and pedestrians, and wider sustainability objectives, where these are part of the Local Transport Plan. The local plan confirms the council's commitments to the Southern Distributor Road (SDR) and Cross-Rail Link Road, and these emphasise the recognition given to car access.

Conclusions

4.1.6 The first issue raised by the objector appears to be directed primarily at Inverness, where Policy 2:2 of the local plan would apply. This policy sets out a number of design principles with which development and redevelopment schemes are expected to comply. Policy GP1, which would apply throughout the local plan area, listed other, broader principles intended to achieve high quality development that fits well with its surroundings. I conclude that, taken together, these policies provide a sound policy basis for achieving good quality design.

4.1.7 The transport hierarchy expressed in Policy GP1 accords with national planning policy and guidance, including NPPG 17: Transport and Planning (CD23). This states that, for individual travel, the general hierarchy of priorities should be walking, cycling, public transport, and then private cars; and that local plans should set out policies and proposals for the allocation of land integrated into effective networks for walking, cycling, and public transport, taking advantage of schemes to re-allocate road space away from the private car. However, a balance has to be struck, and NPPG 17 also expects local plan to include proposals for car transport, where appropriate, including road improvements and new infrastructure. This local plan contains a range of such proposals, including those to which the Council refers. I conclude that it strikes a suitable balance in this respect.

Recommendation

4.1.8 I recommend that the plan is not changed in response to this objection.

4.2 OBJECTIONS TO POLICY GP2: URBAN STRUCTURE DENSITY/CAPACITY AND OPEN SPACE/RECREATION PRINCIPLES AND STANDARDS

Objectors: Robertson Residential (107) and Muirtown Community Council (224)
Procedure: Written submissions

Synopsis of objections

4.2.1 Robertson Residential objects to the scale and rigidity of approach to the open space/recreation standards in Policy GP2. Muirtown Community Council's objection is that, notwithstanding the terms of the policy, THC should look closely at housing density when considering any application for housing.

Background

4.2.2 Policy GP2: Urban Structure states that the Council will make provision in City districts and neighbourhoods, local centres, and key villages and smaller settlements to develop the urban structure in accordance with "design principles/standards" set out in 3 tables. The second table, headed Density/Capacity, defines "High" density in a City/District/Neighbourhood as <40dw/ha, "Medium" density as 20-25dw/ha, and "Low" density as >10dw/ha. Other densities are given for locations outwith the city. The third table, Open Space/Recreation, lists standards for children's play areas, and for playing fields and other sporting facilities for Adult/Youth use, in terms of size, and proximity to houses. A note states that these standards "may be subject to review of NPPG 11". The policy concludes:

"The Council will allocate land, encourage provision of infrastructure and services, and promote initiatives in pursuit of these objectives. It will expect developers to meet these standards/requirements as part of development proposals and through Section 75 Agreement where necessary"

Brief summary of the main points raised by the objectors

Robertson Residential

4.2.3 Robertson did not expand upon the terms of the objection reported at paragraph 4.2.1.

Muirtown Community Council

4.2.4 Housing density might fall within the guidelines in the table, and not provide for adequate car parking. This results in cars being parked in front of houses, or on-street, to the detriment of safety and the appearance of the development concerned.

Brief summary of the Council's response to the objections

4.2.5 The Council simply noted the objection by Robertson Residential. Responding to the Community Council's objection, THC saw no need to change the plan, stating that it considers development proposals in the context of its Road Guidelines for New Development, which embrace parking standards.

Conclusions

4.2.6 As far as the Robertson Residential objection is concerned, NPPG 11: Sport, Physical Recreation and Open Space (CD20) states that every council should include in its development plan its views on the level of provision required for sporting and physical recreational facilities, including parks, open space, pitches and playing fields. Including the level of provision expected for open space and sports facilities in the plan is therefore consistent with national policy. Local plans are also required to apply the policies and strategy of the structure plan. Policy SR2 of the HSP requires local plans to assess existing open space provision, identify deficiencies and establish standards for the provision of new, or the improvement of existing, open space.

4.2.7 NPPG 11, while acknowledging that existing standards can be suitable for land use planning, also states that levels of provision in development plans should be determined locally on the basis of a range of factors, including amenity and environmental factors, as well as quantity; and that it is important that councils base these levels on local surveys of provision and need.

4.2.8 The extent to which the standards in Policy GP2 are based on local surveys and/or take account of existing provision is unclear and it would be surprising if existing levels of provision, and needs, were uniform throughout the local plan area. If surveys have not been done, it would be desirable for THC to undertake these, and review the standards in the light of the results.

4.2.9 As regards the objector's criticism of the rigidity of approach, the policy refers to the standards as levels that will be expected. Its terms therefore allow developers to make a case as to why a different standard should be applied in a particular development. An element of flexibility is therefore built into the policy.

4.2.10 Turning to the community council's objection, Policy TC9 of the HSP requires car parking provision associated with development to be carried out in accordance with the council's general maximum car parking standards, while also countenancing commuted payments in lieu of on-site provision in some situations. Setting maximum, rather than minimum, car parking standards is consistent with national planning policy guidance, including in SPP 17, the addendum to NPPG 17.

4.2.11 It is reasonable to expect the Council's standards to be based on an informed assessment of the reasonable parking requirements of housing developments, in quantitative terms, while also discouraging unnecessary car use through over-provision. Policy GP3 of the local plan, which is concerned with Designed Sustainable Construction, includes layout, aesthetics and urban design among the important aspects that developers will normally be required to take into account in new developments. Taken together, and if consistently applied, these policies should

provide a good basis for ensuring that an appropriate amount and disposition of car parking is provided in new housing developments, and the types of problem described by the community council are avoided

Recommendations

4.2.12 If not already done, the Council ought to survey existing levels of provision in the local plan area, and review its standards in the light of these results. Otherwise, the local plan need not be changed in response to these objections.

Other matters

4.2.13 Although not the subject of objection, and therefore not the subject of a formal recommendation, as currently expressed, the residential density categories for City/District/Neighbourhoods potentially overlap. This may not be what the Council intends (see paragraph 23.15.18). To avoid misunderstanding, the Council may wish to clarify these categories.

Reporter's notes:

(1) Objection 66 by Tesco Stores plc, considered at Chapter 8, has a bearing on the first table in Policy GP2

(2) Objections to the plan's approach to developer contributions, primarily in relation to housing developments, also have a bearing on the terms of Policy GP2. These objections are considered in Chapter 4.3.

4.3 OBJECTIONS REGARDING THE LOCAL PLAN'S APPROACH TO DEVELOPER CONTRIBUTIONS, INCLUDING POLICY GP2

Objectors: Scotia Homes (27), Inverness Chamber of Commerce (54) Tulloch Homes (76 and 264)*, The Richard Tyser Trustees (77), Robertson Residential (107)*, and MacRae Homes (217)

Procedures: Public inquiry (Round Table Session, RTS)* and written submissions

Synopsis of objections

4.3.1 The DDILP does not comply with the principles in NPPG 3: Land for Housing, the HSP, or SDD Circular 12/1996: Planning Agreements (HC-11/1 and 64/5). In addition, Policy GP2 and Policy 2:37 fail to provide clear policy guidance on this issue.

Factual background

4.3.2 Policy GP2 is summarised at paragraph 4.2.2. Policy G4 of the HSP, included in the extract following Chapter 1, sets out the structure plan's approach to developer contributions.

4.3.3 Paragraph 1.44 (b) of the DDILP states that each of the 6 (*sic*) major Expansion Areas identified at Inverness is dependent on developer agreements/contributions. Policy 2:36: Land Allocations, proposes major land allocations at 5 Expansion Areas - Inshes, Culduthel-Slackbuie, Westhill, Ness Castle/Ness-side, and Charleston - for the completion or development of mixed use/residential neighbourhoods, subject to the provision of certain infrastructure and services. It goes on to state that:

"The requirements referred are considered to affect the timing and phasing of development and are not intended to reflect the totality of developer contributions. Development in each case is therefore to be subject to an agreed Development Brief/Master Plan, to be prepared in consultation with the public, agencies, and others with an interest". This will set out comprehensive developer requirements, including land and common infrastructure, "all to be secured through section 75 agreement as appropriate, see (37) below. The requirement for developer contribution towards additional Secondary School capacity will be dependent on phasing and monitoring of roll projections".

4.3.4 Policy 2:37: Developer Contributions, states that:

"Individual Expansion Areas will be subject to a detailed Development Brief/Master Plan that clearly defines the totality of planning obligations applying in each case. This will be accompanied by a protocol identifying expected financial contributions, developer provisions and land plans relating to ground for roads and other public purposes which it is anticipated will be

transferred at zero consideration to the Council. These obligations will require to be met by individual landowners in proportion to their share over the overall development potential. All private landowners will be expected to enter into appropriate section 75 agreements transferring land and quantifying future financial contributions, the aim being to have these agreements in place prior to the land allocations being confirmed in the local plan”.

4.3.5 Policy GP4: Affordable Housing (See Chapter 4.5) also refers to developer contributions, as do several other policies relating to Inverness and elsewhere in the local plan area.

4.3.6 In response to the objections, the Council proposed a modified Policy 2:37. This states:

“The Council will seek developer contributions towards resolving deficiencies in infrastructure and services, including affordable housing, transport and roads, education, community facilities, recreation and other public infrastructure, in order to facilitate development. Where necessary, these will be secured by section 75 agreement compliant with Circular 12/1996, relate in scale and kind to the development proposed, and be proportionate to the deficit or additional burden arising from the impact of the development on the respective City district and neighbourhood Insofar as these principles relate to Expansion Areas and Regeneration sites, requirements, where possible, will be set in the context of a Development Brief/Master Plan, accompanied by a Protocol identifying expected contributions. These provisions will apply to all land in the City allocated for housing, business/industry, special and community uses, and in other circumstances where the Council is minded to grant planning permission.

Such developer contributions will be distinguished from other planning obligations for which developers will be wholly and entirely responsible, and which the Council will expect to be fulfilled as an integral part of development proposals. Where more than one landowner/developer is involved, obligations will be expected to be met on a fair and equitable basis, and in proportion to the share of the overall development potential. In these circumstances, all parties will be expected to enter into an appropriate agreement transferring land and quantifying the extent of works or financial commitments. This will be accompanied by definitive plans relating to ground for roads and other public purposes which it is anticipated will be transferred at zero consideration to the Council or other agency as appropriate”.

Brief summary of the main points raised by the objectors

Tulloch Homes Ltd

4.3.7 While there is no objection in principle to developer contributions, developers should only make fair, reasonable, and equitable contributions which relate to the nature and size of their development. They cannot be expected to make good existing deficiencies which go beyond their own proposals. While details of contributions are

generally a development control matter, the local plan fails to make THC's expectations clear. Policy 2:37 also gives the Council an unfair advantage, as it endorses developer contributions in principle, and then uses development briefs, which are not prepared as fairly or openly as they should be, to define the scope and level of contributions. The policy should explain which sites it will cover; which sites will have development briefs; the matters that are intended to be the subject of contributions; and that these will be set out in greater detail in briefs. It should also state that development briefs (and protocols) will be agreed in discussion with developers, who require clear advance notice of the type and scale of contributions that are likely to be sought. The references to developer contributions throughout the plan would benefit from consolidation.

4.3.8 Developer contributions should not be applied to land that has been acquired for development on the basis of the adopted local plan, or where development has commenced and the developer has already provided common infrastructure. THC is preparing briefs reactively, as an afterthought to applications. This *ad hoc* approach is delaying the determination of straightforward proposals by up to 2 years, and reducing the supply of new houses. Council officials display little knowledge of the economics of development, or willingness to negotiate, and sometimes "move the goalposts" in the course of discussions. There should be opportunities to make stage payments, related to the phased release of the development concerned, rather than putting the entire contribution in place prior to a site start.

Robertson Residential

4.3.9 Again there is no objection to developer contributions in principle. However, the various references to this issue in the plan should be consolidated. More specific guidance regarding the scope and scale of contributions is also needed. Land transfer at zero consideration should not be required where land has been acquired or options secured before this replacement plan is adopted. The objector agreed options in respect of Craig Dunain and Craig Phadrig/Charleston in 2000. To comply with SPP 3: Planning for Housing (CD14), and Circular 12/1996, contributions should be related in scale and kind to the development concerned, and should not attempt to remedy past deficiencies.

4.3.10 If Policy 2:37 is intended to apply generally to Inverness, it should appear at an earlier stage in the plan. As the indiscriminate use of section 75 agreements is contrary to government guidance, the policy should allow mechanisms other than planning conditions and agreements; indicate that contributions will only be drawn on as required; and that any developer contributions will reflect the principles in Circular 12/1996. It should also make clear that development briefs will be prepared before developers are committed to acquisition, and that they will include all the obligations for which a developer will be responsible. The words "additional burden" should be deleted. It should also be made clear that a private developer will not be responsible for other contributions on the affordable housing element of a development, and that land transfer will be at a value commensurate with its allocation. THC's approach to calculating contributions is questionable.

Scotia Homes

4.3.11 Policy GP2 should meet the criteria in Circular 12/1996. Any request for infrastructure provision must have regard to the viability of the development. The policy should state that no more than 30% of residual land value will be given over to developer contributions.

The Richard Tyser Trustees

4.3.12 Developers/landowners should only make fair, reasonable and equitable contributions relating to the size and scale of their development, and cannot be expected to make good existing deficiencies, beyond those created by their development. The lack of policy guidance in the plan regarding the type and level of contributions required creates uncertainty.

MacRae Homes Ltd

4.3.13 Policy 2:37 in the DDILP should be deleted. It does not conform to the HSP, specifically Policy G4, or accord with the principles in Circular 12/1996. While Policy 2:37 appears to apply to the whole of Inverness, it fails to accord with the expectation in the Circular, and in SPP 3, that development plans should set out clearly the circumstances in which such agreements will be sought, and their likely scale and scope. The Council should assess, and set out in the policy, the development sites where infrastructure capacity constraints are likely to arise during the plan period, and list those for which contributions will be required. The service deficiencies in the tables in Policy GP2 also fail to accord with Circular 12/1996, or with SPP 3.

Inverness Chamber of Commerce

4.3.14 Planning decisions are being driven by the prospect of developer funding rather than by the merits of the development concerned. Quality is often compromised as a result. Delays caused by discussions and negotiation over the size and scale of contributions is also holding back development, which is highly detrimental to the economy. The substantial land bank in the City Centre and at Longman should be used to fund development opportunities.

Brief summary of the Council's response to the objections

4.3.15 The Council is entitled to seek developer contributions through planning agreements and Development Briefs, and to include policy guidance on this issue in the local plan. Agreements under section 69 of the Local Government (Scotland) Act 1973, or suspensive planning conditions, can be used to secure infrastructure and facilities in some circumstances. However, conditions can have enforcement implications, particularly where there are multiple ownerships, can lead to appeals, would not normally include financial matters, and can only be applied in relation to planning applications. All in all, the Council regards section 75 agreements as the most appropriate means of meeting the plan's objectives.

4.3.16 The adopted ICALP expects developer contributions at Inshes, Milton of Leys, Charleston, Ness Castle, and Culduthel-Slackbuie. Development briefs for Inshes/Milton of Leys (THC-11/3) and Firthview-Woodside, (THC-11/5), which together have capacity for 1,750 houses, have been competed since 2002. Briefs for Ness-Castle/Ness-side and Charleston are intended. It is envisaged that agreements will cover whole neighbourhoods, and that these will be substantially completed within the plan period. Without developer funding, land stocks will become locked, development constrained, and the ability of infrastructure to meet demands will recede.

4.3.17 Agreements with landowner/developer interests to date have secured commitment to the £3.85 m required to construct Phases III and IV of the Southern Distributor Road (SDR). This has opened up the long-term supply of land on the periphery of Inverness that is reaffirmed in the DDILP. Some of this land is understood to have been acquired after the ICALP was adopted. The Council has sought to apply the DDILP policy there since March 2002, unless the site concerned already has an extant planning permission. This policy framework will also be applied to “new” land that is formally allocated.

4.3.18. The SE described Policy 2:37 in the DDILP as seriously flawed in relation to Circular 12/1996 and section 75, stating that it appeared to impose a tax on the development value of land in anticipation of its identification for development, and that this was clearly outwith the intention of planning legislation. The proposed modifications make clear that contributions will be related in scale and kind to the proposal concerned, in line with Circular 12/1996, and to the locality in which any impacts may take place, and that they will be apportioned on a fair and equitable basis, *pro rata* with the development potential of the land involved. How this will be achieved is a matter of implementation. Contributions will be sought where infrastructure or facilities are required to enable development to proceed and to secure sustainable, mixed use residential neighbourhoods, consistent with the objectives of the local plan, and with SPP 3. It is entirely possible that contributions will be sought to address existing deficiencies - such as road and school capacity, or the lack of open space and community facilities - and that overcoming these will affect the grant of planning permission.

4.3.19 The details of contributions are a matter for supplementary guidance, in this case development briefs. SPP 1 identifies briefs as appropriate to major development and regeneration projects, and as a means of combining planning objectives with community aspirations and financial constraints and opportunities. It also acknowledges their application where the scale and complexity of development requires a detailed framework to co-ordinate action and investment. Circular 12/1996 states that development plans should give guidance on the circumstances in which agreements will be used, acknowledges that plans cannot anticipate every situation where the need for a planning agreement will arise, and endorses the legitimacy of development briefs for this purpose. Contributions are determined by applying standard formulae to produce a negotiable *pro rata* sum per house. Payments can be monetary, or in kind, up-front or in stages, and in terms related to the proposal concerned. Contributions are “ring fenced” for the purposes set out in the brief. The “zero consideration” land transfer option allows choice in the way in which

contributions are conveyed. It would not be appropriate for the policy to refer to “viability”, since the purpose of the local plan is to promote development.

4.3.20 Policies for specific allocations, such as Policy 2:36, identify the key items of infrastructure and facilities where contributions will apply. These are cross-referenced to the standards in Policy GP2, and to the summary of constraints and opportunities identified for districts or neighbourhoods. SPP 1’s expectation that local plans will be prepared more quickly, and for community involvement, has to be balanced against the detail sought by objectors. That said, there is a case for clarifying the policies in the plan, and the relationship between them, and for a “GP” policy on developer contributions. Among other things, this should make clear that contributions could be triggered by the cumulative impact of development. A free-standing general protocol on this topic, similar to that prepared for affordable housing, and with input from the development industry, would also be helpful.

4.3.21 As far as the Chamber of Commerce objection is concerned, the Council is obliged to determine applications in accordance with the development plan unless material considerations indicate otherwise. The local plan provides a land use and policy framework which allows objections, recourse to a public local inquiry and independent recommendations. Development briefs not only set out developer contributions, but also encompass matters geared to securing a high quality environment. This cannot be achieved without considering the functioning of development, its impact on infrastructure and services, and, where appropriate, measures to secure improvements.

Conclusions

4.3.22 PAN 49 expects local plans to take full account of national policy considerations, as set out in NPPGs and Circulars. In addition, section 17(3) of the Town and Country Planning (Scotland) Act 1997 stipulates that, in order to be adopted, a local plan must conform to the approved structure plan for the area concerned.

4.3.23 SODD Circular 12/1996 confirms that planning authorities are empowered to enter into agreements under the Planning Act with any person interested in land in their area for the purpose of restricting or regulating the development or use of that land. This power, which is now contained in section 75 of the 1997 Act, can be employed to secure developer contributions, including for the provision of infrastructure and community facilities. However, the Circular makes clear that it is Government policy that agreements should only be sought where required to make a proposal acceptable in land use planning terms; that a planning authority should not treat an applicant’s need for planning permission as an opportunity to obtain a benefit which is unrelated in nature, scale or kind to the development proposed; and that agreements should only be required if, in land use planning terms, it would be wrong to grant planning permission without them. SPP 1 and SPP 3, which has superseded NPPG 3, reiterate this advice.

4.3.24 Developer contributions can legitimately be sought to address existing deficiencies, where a development proposal would exacerbate existing problems, and

the need for improved infrastructure is triggered by the cumulative impact of the proposal, in association with existing development.

4.3.25 Agreements under section 75 of the Act are one of several mechanisms that can be used to secure developer contributions. Circular 12/1996 refers in this context to section 69 of the Local Government (Scotland) Act 1973, and to planning conditions, stating that planning authorities should rely on the latter wherever possible, provided these meet the tests set out in SODD Circular 4/1998. It also makes clear the Secretary of State's (now Scottish Ministers') view that conditions should not be used to frustrate the right of appeal. That said, circumstances could well arise where the use of conditions alone could not secure the delivery of essential infrastructure.

4.3.26 Policy G4 of the HSP provides the strategic context for local plan policies on developer contributions. It is consistent with Circular 12/1996, and has been approved by Scottish Ministers.

4.3.27 Developer contributions have been employed to date in Inverness, under the auspices of the adopted local plan, and have assisted in implementing the development strategy for the city. They have the obvious potential to continue to do so. The local plan notes that the rapid expansion of new peripheral residential areas is outstripping the resources of public agencies to provide basic infrastructure and key services. SPP 3 recognises that the major extension of settlements, which the deposit draft plan continues to promote, will generally require partnership between the public sector, private developers and other interests.

4.3.28 I have no evidence that the prospect of developer contributions has influenced development options or a lowering of development standards in the local plan area. The principles in Policies GP1-GP3, if consistently applied, provide a sound policy basis for securing high quality development.

4.3.29 Some of the objections have been overtaken by events, including the publication of SPP 3, and the proposed modifications to Policy 2:37, which were drafted to address justified criticisms. Policy 2:37 in the DDILP does not accord with national policy, as expressed in Circular 12/1996. It also does not conform to Policy G4 of the HSP. THC accepts that this policy ought to be changed.

4.3.30 The DDILP policy refers only to Expansion Areas in Inverness. The modified policy, although included in the City of Inverness Chapter, can be interpreted as applying not only within Inverness, but beyond, "in other circumstances". In any event, other settlement chapters also contain references to developer contributions, and to section 75 agreements. There is no reason in principle why a developer contribution policy should be confined to Expansion Areas, or to the City of Inverness, provided it is consistent with Circular 12/1996.

4.3.31 SPP 3 indicates that development plans should be clear about the scale of developer contributions that are likely to be sought and that, where provisions for new infrastructure are included, these should be drawn up in consultation with the relevant parties. In addition, PAN 49 regards it as critical for policies to be framed so that they are properly justified to explain their intentions; provide clear guidance to the public

and the developer; and are expressed in unambiguous terms. The modified policy falls short of these expectations in several respects, specifically in its geographical scope, and in its relationship to other obligations.

4.3.32 SPP 1 recognises that development briefs, design guides, and master plans for areas of intensive change can be useful, and that master plans can be particularly effective where the scale and complexity of development require a detailed framework to co-ordinate action and investment. PAN 49 acknowledges that there is sometimes a limit to how far statutory documents can go in providing specific guidance, and that supplementary documents provide a useful follow up.

4.3.33 The evidence indicates that the Council's approach to developer contributions to date may not have realised to best advantage the potential for effective partnership working that SPP 1 stresses is required to implement master plans. Developer input, when constructive, is generally beneficial. That said, many of the points raised by objectors relate to the Council's approach to this issue in practice. Such matters of detail would be more appropriately included in a free-standing general protocol, or, as with affordable housing, in Development Plan Policy Guidance or Guidelines. I consider that a developer contribution policy should include a commitment to produce such a protocol or guidance, in discussion with developer representatives and other relevant interests, setting out, among other things, the principles and procedures that will apply in calculating contributions. The principles that THC described at the inquiry could provide a useful starting point.

4.3.34 The implications of developer contributions for the viability of a development are a material consideration, along with other factors. The maximum proportion of residual value that can reasonably be devoted to contributions will depend on the circumstances of the site concerned, as will the application of contributions to any affordable housing element. These matters are also more appropriate for inclusion in the protocol, and in site-specific arrangements, rather than in the local plan.

4.3.35 Drawing these matters together, I conclude that an issue of this significance merits a general (GP) policy that makes clear the purpose and general scope of developer contributions in the local plan area as a whole, and the basic principles that will be applied in implementing the policy. In this regard, it is desirable for the need for, and basis of, contributions to be identified as early as possible in the development process. However, while it would be impractical to apply a policy retrospectively to sites that already have planning permission, the need for infrastructure or facilities in order for some developments to proceed would remain, irrespective of a policy. A General Policy, by definition, cannot cover all eventualities. I conclude that there is no need for the policy to stipulate a commencement date for its application, or to specify the circumstances in which exceptions could be made.

4.3.36 The nature of the contributions sought will vary according to the circumstances of the site concerned, and land transfer, "at zero consideration" or otherwise, may not always be appropriate. The policy should also leave open the possibility of contributions being secured through means other than a section 75 agreement. The scope and nature of the "other planning obligations" mentioned in the policy, and their relationship, if any, to developer contributions are unclear. If this reference is retained, these matters should be clarified.

Recommendations

4.3.37 I recommend that:

(1) Policy 2:37 is deleted, and replaced by a General (GP) Policy on developer contributions, prior to Policy GP4, and worded along the following lines:

The Council will seek developer contributions towards resolving deficiencies in infrastructure and services, including affordable housing, transport and roads, education, community facilities, recreation and other public infrastructure, where these are necessary for a development to proceed. Such contributions will be secured by a section 75 agreement compliant with the principles in SODD Circular 12/1996, or by other appropriate means.

These contributions will be distinguished from other planning obligations, such as works required by planning conditions, for which developers will be wholly responsible. Where more than one landowner/developer is involved, obligations will be expected to be met on a fair and equitable basis, and in proportion to the share of the overall development potential*

This plan identifies locations where developer contributions will be expected, and the matters these are expected to cover. Where a Development Brief or Master Plan is identified as a requirement, this will provide greater detail on the level of contributions expected, and will be formulated in discussions with the prospective developer, where known.

The council will prepare, in discussion with representatives of the development industry, and other relevant interests, a Development Plan Policy Guideline (DPPG), or a general protocol, setting out the principles that will be applied in assessing and calculating contributions.

* this sentence is optional.

(2) other GP Policies, such as GP2, GP8 and 2:36, should make clear that developer contributions will be sought in accordance with the above policy. Consequential adjustments elsewhere are also likely to be required.

(3) to be consistent with Recommendation (1), policies in the plan relating to locations where developer contributions are expected should make this clear, and identify the matters to which these contributions will apply.

4.4 OBJECTION TO POLICY GP3: DESIGNED SUSTAINABLE CONSTRUCTION

Objector: Robertson Residential (107)
Procedure: Written submissions

The objection

4.4.1 Objection is taken to the non-specific nature of supplementary Development Plan Policy Guidelines proposed in Policy GP3.

Factual background

4.4.2 Policy GP3 of the DDILP states:

“To help achieve the fundamental objective of ensuring that development becomes sustainable, as required by Policy G2 in the Structure Plan, proposals for new buildings and most forms of development will need to demonstrate that they represent good design. Developers will normally be required to demonstrate that account has been taken of the following important aspects:

- location, transport and accessibility;*
- layout, orientation, aesthetics and urban design;*
- landscape, biodiversity and ecology including sustainable drainage systems;*
- durable building ;*
- non-toxic materials, processes and products ;*
- waste minimisation, including re-use/recycling ; and*
- local natural materials.*

The council will prepare further policy guidance on design and sustainable construction that will be contained in supplementary Development Plan Policy Guidelines”.

Brief summary of the Council’s response to the objection

4.4.3 The Council proposed modifications to the policy, deleting “normally” at the request of SNH, and including in the waste minimisation aspect a reference to the separation/collection of waste, in response to an objection by SEPA. Both of these objections were subsequently withdrawn. However, the Council simply noted the Robertson Residential objection.

Conclusions

4.4.4 Policy GP3 specifies aspects that developers are required to demonstrate they have taken into account. These aspects are consistent with national and structure plan policy guidance and are matters that are generally accepted as good planning practice. The Robertson Residential objection relates to the supplementary guidance that the council intends to prepare.

4.4.5 PAN 49 recognises that there is sometimes a limit to how far local plans can go in providing specific guidance, and that detailed documents, such as design guidance, provide a useful follow-up. However, it also stresses that it is important that these derive from the policies and proposals of the statutory plan, and do not seek to introduce new elements to the decision making process. Policy G3 does not link the guidance that the council intends to the aspects specified in the policy. It would be desirable, and consistent with national best practice advice, for this link to be expressed in the policy.

Recommendation

4.4.6 I recommend that the final sentence of Policy GP3 is modified to read:

“The council will prepare supplementary guidance on the aspects of design and sustainable construction listed in the policy in the form of Development Plan Policy Guidelines”.

4.5 OBJECTIONS REGARDING POLICY GP4: AFFORDABLE HOUSING

Objectors: Scotia Homes (27), Homes for Scotland (64)*, Tulloch Homes Ltd (76 and 264)*, Barratt Construction (101), Robertson Residential (107)*, MacRae Homes (217); Strathnairn Community Council (185)*, Mr J Robertson (228)

Procedures: Public Inquiry (RTS) and written submissions

Synopsis of objections

4.5.1 Individual housing developers and Homes for Scotland object that Policy GP4 of the DDILP is not based on a housing needs assessment, does not accord with national policy regarding affordable housing, or with SODD Circular 12/1996, and that the council's approach to affordable housing could inhibit the delivery of the supply of housing land. Strathnairn Community Council wish the local plan to provide for affordable housing at Strathnairn. Mr Robertson considers there is a need for affordable housing at Tomatin, and that there should be an independent survey before the plan is adopted.

Reporter's note: Objections relating to affordable housing at Dalreichart are integrally linked to site specific issues, and are considered at Chapter 36.3.

Factual background

4.5.2 The HSP contains 2 policies on affordable housing. Policy H4 states that the Council will work with other agencies and recommend to Government that it supports the provision of an adequate supply of social housing through increased resources and the introduction of a Social Housing Use Classes Order. Policy H5 states that the Council will, in association with other housing agencies, identify areas in local plans and through Local Housing Development Fora where there is a demonstrable need for affordable housing. Section 75 and other mechanisms will be used to secure developer contribution where justified. Affordable housing secured as part of a larger development should not be of significantly higher density or lower quality.

4.5.3 Recommendation H6 in the HSP recommends "more radical measures" for securing affordable housing in the more rural parts of Highland, including continued support for the Highland Small Communities Housing Trust (HSCHT) and Local Housing Partnerships; the use of surplus Council (and other Agency) sites and buildings, administrative and fiscal mechanisms; and other sustainable solutions identified through the Rural Partnership for Change Highland Pilot. Policy H7: Housing for Varying Needs, states that the Council will encourage the provision of a range of house types throughout the Council area ... "Local plans will identify suitable sites to meet the requirement for specific housing needs and, where there is clearly demonstrated need, will aim to secure a proportion of suitable housing through negotiation, section 75 agreements or other appropriate mechanisms".

4.5.4 Paragraph 1.5 of the DDILP states that Inverness has an acute shortage of affordable housing *“Over 230 homeless households were identified last year (i.e. 2001), and 2,300 households are on the priority waiting list for Council housing. There is a substantial number of applicants for Housing Association property. Ideally about 300 affordable houses, including for varying needs, require to be provided initially each year to address the backlog A significant contribution towards that requirement can be achieved by a standard planning obligation for future developments. This will support the local Housing Action Plan, which will bring forward a strategy for partnership working between the Council, agencies and developers. This will embrace the Inner Moray Firth Housing Partnership, which includes the HSCHT and Rural Partnership for Change initiatives.”*

4.5.5 Paragraph 1.46 states that developer contributions will be required to meet shortfalls in affordable accommodation in areas of defined housing stress in the Hinterland, along with the programmes and initiatives identified above. Paragraph 1.47 includes affordable local housing as a priority in the RDA, while paragraph 2.4 states that 300-400 houses are expected to be built in Inverness each year, including a substantial proportion of affordable homes. Individual settlement chapters also refer to affordable housing, and identify sites where this should be provided.

4.5.6 Policy GP4 states:

“Where housing land is being allocated for the first time or the allocation is reaffirmed from an earlier local plan and a planning permission does not already exist, the Planning Authority will expect to negotiate a Section 75 Agreement with the landowner/s and other interested parties which provides inter alia for an affordable housing contribution. [It] will operate a sequential test of mechanisms as set out in its Development Plan Policy Guideline (DPPG): Affordable Housing to achieve affordable housing provision by negotiation with owners/developers in each case. In this regard, the Council will expect to negotiate on the basis of an affordable housing target comprising a 25% proportion of the capacity of housing land/development proposals in the following settlements: Beauly, Drumnadrochit, Ardersier, Croy, Kirkhill, Kiltarlity, Dore, and Fort Augustus. The proportion of affordable housing will be finalised further to more detailed housing needs assessment being undertaken as part of the development of the Council’s 2002-2007 Local Housing Strategy. Categories of affordable housing may comprise social rented accommodation, low cost home ownership including shared ownership/equity arrangements, subsidised home ownership and discounted serviced plots. “Stress Areas” will be defined by the criteria set out in the Rural Partnership for Change Highland Pilot approved by the Council and Communities Scotland in consultation with Local Housing Development For a”.

4.5.7 Responding to the objections, THC maintained that Policy GP4 was consistent with SE guidance, but proposed to “streamline and update” it (in the DMILP) by deleting the references to a housing needs assessment, the Local Housing Strategy, and the stress areas and the Rural Partnership for Change Highland Pilot. It also proposed to insert “subject to market and site conditions” after “25% proportion” and to add “approved private rented” to the definition of affordable housing. This

modified policy prompted further objections, from Homes for Scotland, Robertson Residential and Barratt Construction, and the objection from Mr Robertson. At this stage, THC proposed to add “City of Inverness” to the settlements listed in the policy.

4.5.8 THC approved the DPPG on Affordable Housing (THC-4/3) in April 2003. This states that a needs evaluation has been carried out and contains a definition of affordable housing. It also states that:

- an objective target of 25% affordable housing (applied to the notional number of units capable of being developed “at standard density levels”) should normally be expected in all future housing development of 10 or more units located within local housing stress areas;
- social rented housing should comprise approximately 75% of total affordable housing provision in a local plan area;
- low cost owner occupation units are expected to make up 25% of overall affordable completions;
- where housing land is being allocated for the first time, or re-allocated, in a local plan, and a valid planning permission for housing does not exist, permission will be subject to prior completion of a section 75 agreement with the landowner/s and other interested parties which provides, *inter alia*, for an affordable housing contribution.
- the Council will operate a sequential set of mechanisms to achieve affordable housing, by negotiation in each case, whereby developers agree:
 - to transfer serviced land for a valuation based on affordable housing only (as agreed by the District Valuer) to the Council or an approved RSL or to build an agreed number, type and mix of affordable units as part of their schemefor subsidised sale or rent through an approved RSL. The units must be sold at a price equal to Communities Scotland benchmark costs
 - **OR**, if this is not achievable for market, investment, or other reasons: to transfer an area of serviced land for a valuation based on affordable housing only, or to build an agreed number, type and mix of affordable units on another site in the community that is under their control
 - **OR**, if this is not achievable for land supply reasons: agree to make an equal or equivalent financial contribution to an affordable housing accumulator fund managed by the Council which will enable it to promote the provision of affordable accommodation....
- if the Council is unable to attract public funding for affordable housing within a 5 year period (from completion of the first non-affordable house) the third option will be invoked, and the developer will be entitled to develop the remainder of the site for affordable housing.
- detailed proposals for each area/site will be the subject of advice from the District Valuer to ensure that the *pro rata* financial burden is comparable and cost-neutral with the base case.

4.5.9 The adopted ICALP and the SSLNELP contain an affordable housing policy. The former states (in summary) that in areas of local housing stress, the Council will expect to enter into agreements to ensure that an appropriate proportion of plots are available in perpetuity “*as low cost accommodation for local persons*”.

4.5.10 THC published Housing Highland’s Communities, its Housing Strategy for 2003-2008, in September 2003 (THC-4/1). The Highland Housing Needs Study (HNS, THC-4/2), prepared by DTZ Piedad, was published in December 2003. It considers 9 sub-areas, including “Inverness”, which coincides broadly with the local plan area. The sub-areas are stated to have been selected because the issues within them are broadly similar, and data can be relatively easily obtained. The HNS explains that, other than in the IMF, Highland does not operate as an HMA.

Brief summary of the main points raised by objectors

Homes for Scotland

4.5.11 Homes for Scotland does not oppose a local plan affordable housing policy in principle, and accepts that the HNS demonstrates that there is a significant unmet need in the Inverness area. However, it takes issue with the mechanisms THC intends to employ in addressing this need, and its failure to specify where it is to be met. To accord with national and HSP policies, the local plan should identify the settlements, and ideally the sites, where affordable housing will be sought. It should also specify how many units are envisaged, and how these have been calculated. Developers and landowners need this information from an early stage.

4.5.12 THC cannot seek to impose a fixed quota and/or standard obligation unrelated in scale, nature or kind to the development concerned. Ignoring market and/or site conditions can affect viability, particularly of smaller schemes. The current problems are due to lack of funding in the past. The HNS confirms that the need for affordable housing is an existing problem. It is not a consequence of a housing application. Homes for Scotland has obtained Counsel’s Opinion to that effect, and THC cannot withhold consent for market housing pending completion of a planning agreement relating solely to affordable housing. As funding now appears to be available, the critical factor is securing land. The planning system should confine itself to land use.

4.5.13 While the DPPG addresses some relevant issues, THC should be recommended to discuss these further with Homes for Scotland and other relevant agencies, on the following bases:

- while model clauses are a possibility, a standard planning obligation is not appropriate; a 25% “blanket quota”, as opposed to a target, could result in sites not being released for sale.
- the 10 unit threshold is unreasonably low, and should be replaced by 40 units. The Reporter who conducted the North East Edinburgh Local Plan Inquiry (64/2) accepted this was reasonable, and that it improved the prospect of a contribution, while also ensuring that developments remain viable, and allowed small groups of houses that could be efficiently managed.
- if funding for rented housing is not secured by the time the “market housing” on the site is built, or perhaps a year prior to completion, the developer should be able

- to provide market housing, or housing other than rented housing, rather than waiting 5 years from the commencement of the development.
- in view of the legal Opinion referred to above, legitimate developer contributions must be taken into account before affordable housing is considered. The Council also cannot require a commuted payment, although the possibility of negotiation by agreement need not be ruled out.

Robertson Residential

4.5.14 This objection is also directed primarily at the practical consequences and implications of the Council's policy. Robertson accepts that the HNS is very thorough, and identifies a need for affordable housing in the Inverness area, albeit after Policy GP4 and the DPPG were published. However, there is difficulty in translating its findings to the local plan. While the HNS confirms that Community Scotland approvals in Inverness have averaged 53 per year, its reference to "pockets of low demand within Inverness" suggests that need within the City should be determined on a sectoral, rather than a unitary basis. The local plan should also identify and allocate sites for affordable housing.

4.5.15 The housebuilding industry should be able to factor in affordable housing contributions in negotiating land purchases. The policy in the ICALP predates the approval of the HSP, and the HNS, and is at best embryonic. The intended replacement policy should not be applied "retrospectively", but only to land being allocated for the first time and, strictly speaking, only when the local plan is adopted. It should not apply to sites such as Craig Dunain, for which the objector had secured an option in 2000, before the HSP was approved, and Policy GP4 and the HNS were published. THC resolved to grant outline permission for 550 houses there in February 2004, with 420 houses being allowed to be built prior to completion of Phase 5 of the SDR. Conditions and a legal agreement are being finalised. If the council's policy is applied as it stands, it will operate as a tax, for which house buyers, rather than landowners, will pay.

4.5.16 THC-4/1 states it is based on an ability to fund 150 new affordable homes per year in Highland, through public subsidy and private finance, equivalent to 50 houses per annum in Inverness on a *pro rata* basis. It also states that 415 additional social units are required each year to meet needs in the Inverness "administration area", which does not correspond to the IMF area, or to the Inverness HMA, as SPP 3 requires. Devoting 25% of housing completions in Inverness to affordable units would generate about 100 units per year, well above the funding level in the Strategy. While increased funding now appears to make achieving 100 units a practical proposition, the affordable housing contribution should lapse, if a commitment to funding on a site is not secured within 2 years.

4.5.17 In any event, a 25% proportion is too high, especially on smaller sites, and particularly if abnormal development costs are involved. A 10 unit threshold within the City is too low; 40 units would be appropriate. The DPPG does not define "standard density level", and experience elsewhere may not be relevant to Inverness. All delivery mechanisms should be equally acceptable. The sequential test, which does not appear in SPP 3, the HSP, or the local plan, is inflexible. A developer should be able to choose a commuted payment as a first resort. A section 75 agreement

should not always be required, and conditions can suffice. The affordable housing element of a scheme should be exempt from other types of developer contributions, otherwise there will be double-counting. Any reduction in the delivery of mainstream housing will simply increase prices, add to the need for affordable houses, possibly the imposition of a higher affordable housing quota, and further burdens on market housing. The local plan should use the SPP 3 definition of affordable housing, which can include low cost starter units, and possibly approved private rented accommodation. The option to nominate occupiers from target client groups should apply only for 2 months.

Tulloch Homes

4.5.18 Tulloch Homes also does not object to contributing affordable houses, and operates a company that delivers such units. However, it considers that, as with developer contributions in general, the Council takes an *ad hoc*, reactive, inflexible approach. Policy GP4 does not take forward the concepts of “demonstrated need” or “other mechanisms” as required by HSP Policy H5. In practice, THC also fails to engage with the housebuilding industry, which should be represented on the Inverness Local Housing Development Forum. The basis for the 25% figure, which should be clearly stated to be a target, and the DPPG, need to be explained, and the latter summarised in the plan. The threshold for larger settlements should be 25 units. The time limit for securing affordable funding on sites developed for up to 50 units should be 2 years, and 5 years for developments over 200 units, with intermediate figures for sites between.

4.5.19 It is unreasonable to apply the policy retrospectively to land that has been acquired at “market rate” and where significant common infrastructure costs have been incurred. Milton of Leys (which has outline planning permission) and Resuarie South (which previously had outline planning permission) should be excluded. The City of Edinburgh Council initially excused from its affordable housing policy sites where missives had been concluded prior to the introduction of the policy. Exceptions should be made for sites, such as Cradlehall, where development costs are already high, or to sites where insistence on affordable housing would threaten viability. The DPPG should explain how the sequential mechanism was formulated, and what constitutes “market, investment and land supply reasons”.

Barratt Construction

4.5.20 Landowners and developers need to be fully aware at an early stage in the planning process what affordable housing requirement will be sought. SPP 3 requires this requirement to be policy based. THC is already applying Policy GP4, which should only be applied after the local plan has been adopted. While the HNS identifies the area’s affordable housing needs, it does not assess the needs of individual settlements, and more detail is required. The 25% target is pre-emptive, as it pre-dates the HNS. It is also arbitrary and unsubstantiated, and ignores the economic viability of schemes, or the availability of funding. It is unclear whether Policy GP4 applies only to the 8 settlements listed. In practice, THC seeks contributions at other locations, and its responses to the Barratt objections were contradictory. As the DPPG was formulated at the same time as the local plan, the grounds for exceptions to the guidance (which ought to be clarified and recognise site

circumstances), thresholds (which are too low), percentage targets, and the method of delivery, should all be included in the plan. Where there is an agreement to provide affordable housing, there should be a time limit of 3 years for this to be achieved. Commuted payments should be returned if they cannot be spent within the same period.

MacRae Homes

4.5.21 Policy GP4 of the DDILP should be deleted because it fails to comply with paragraphs 57-66 of NPPG 3. In particular, no needs assessment was done. Its objection to the “modified” policy is that, insofar as it seeks to establish a requirement for affordable housing outwith the 8 settlements mentioned, the policy fails to comply with SPP 3 in respect of establishing need.

Scotia Homes

4.5.22 Affordable housing should be based on a needs assessment specific to the location to which the policy relates.

Strathnairn Community Council

4.5.23 The local plan should acknowledge the lack of affordable housing in Strathnairn, and how this is to be addressed, in order to retain the area’s social fabric. This can best be achieved by adding Strathnairn to the settlements listed in Policy GP4, and requiring 40% of all units to be affordable. All the recent applications in the area (for 15 houses in total) have been for fewer than 10 units. Fourteen of these houses were on local plan sites. None are affordable units, as landowners always sell to the highest bidder.

Brief summary of the Council’s response to the objections

4.5.24 The DDMILP updates Policy GP4 to take account of SPP 3. Objections that refer to matters in NPPG 3 that are not taken forward to SPP 3 should be regarded as having been superseded. Policy GP4 aims to deliver an effective supply of land for affordable housing for at least 5 years; helps to create certainty for all the interests involved, including those seeking affordable accommodation; and represents a responsible approach to this issue. SPP 3 indicates how the planning system can contribute to securing affordable housing, including by ensuring that sufficient land is made available. THC is keen to foster a partnership approach to this end, in an area with a demonstrated need. Although the HNS post-dated Policy GP4, and the housing strategy, THC had known for some time that there was a need, although not its degree and extent. The HNS identifies a shortfall of 1,800-2,100 affordable homes in the Inverness sub-area in the period to 2008, and a requirement for 332-415 affordable houses per annum to address this. There were over 3,400 applications for housing accommodation in the Inverness area at March 2003, of which over 2,400 were waiting list needs, i.e. registered households without adequate accommodation. Communities Scotland has approved the LHS, and assessed it as “good”.

4.5.25 Policy GP4 does not apply to sites that already have planning permission. In geographical terms, it reflects the stress areas identified in the Rural Partnership for

Change Pilot. It also applies only (through Policy 2:37) to the main land allocations in Inverness (which was inadvertently omitted from the policy); to the 7 Hinterland locations listed; and to Fort Augustus, where an exceptional need has been identified. The “localised areas of low demand” in Inverness reflect areas where rented housing is difficult to let, not lack of need. The Local Housing Forum is the basis on which THC and its partners decide how affordable housing is to be delivered. The Area Delivery Plan, which attaches to the LHS, highlights key actions, and a framework for monitoring and evaluating progress. The housebuilding industry is not currently represented on the Forum, but THC would be happy to have an industry representative attend future meetings.

4.5.26 The DPPG, which explains how the Council intends to implement its policy, was approved following consultation. It provides clear guidance on what constitutes affordable housing and the appropriate mechanisms for securing it. In common with Policy GP4, it takes account of site suitability and viability. Section 75 agreements are the preferred mechanism for securing contributions, and are more secure than conditions. Alternative mechanisms are entertained, although it is accepted that the possibility of options could be more clearly expressed, and that there could be opportunities for the private sector to initiate agreements. THC is satisfied that agreements regarding the provision of affordable housing can meet the tests in Circular 12/1996. As the rate and scale of private housing development in the policy areas are inhibiting the ability to provide affordable housing, these 2 aspects are directly related. Housing associations can have difficulty in obtaining land at an affordable price, and SPP 3 acknowledges increasing interest in using the planning system to address this problem. The District Valuer has advised that greenfield land for housing is currently being acquired at a figure equivalent to £18,000-£25,000/unit. The comparative residual land value at which housing associations can compete is £12,000/unit, based on Communities Scotland benchmark costs.

4.5.27 Meeting affordable needs in full would mean setting the affordable housing proportion at 75%. The 25% target takes the effect on land values, and the availability of resources, into account. The latter has increased steadily since 2001, to a level that can fund the 110 units/annum that a 25% contribution from sites of 10 or more units would produce. The policy is also sufficiently flexible to accommodate annual fluctuations in funding. As the HNA demonstrates a far greater need than a 25% contribution would produce, THC would not favour any change in the policy that could be interpreted as suggesting that less than a 25% would be acceptable, other than in exceptional circumstances. That said, it has accepted a lower proportion where justified. The Inshes and Milton of Leys Development Brief indicates that affordable housing will be sought there at a rate of 12½%.

4.5.28 The 5 year period allowed for securing public funding is intended to ensure that the potential for housing development on a site is not unjustifiably constrained, while allowing housing agencies appropriate time to identify and assemble resources. It does not affect progress on at least 75% of a site, and any disadvantage to mainstream housing has not been proven. As the local plan identifies sites with capacity for 7,900 houses, there are no grounds to suggest that the policy would lead to a shortage of mainstream housing land, even if the shortfall in affordable housing was to be accommodated in full. The 5 year period also reflects THC’s Capital Plan, which is rolled forward annually on the basis of committed and indicative funding

over 3 years and the subsequent 2 years respectively. It sits comfortably with the lifetime of planning permission, the SE's expectation regarding local plan review, and the likelihood that Communities Scotland budgetary regime will be extended to 3 years. While a 3 year period could be considered for sites of under 50 units, a reduction to 2 years would not relate to public sector funding timescales. Pooling resources and directing these to "individual sites" as a matter of course, or identifying sites specifically for affordable housing, would not provide sustainable mixed residential communities offering choice and meeting local needs.

4.5.29 Retaining the DPPG as a separate document allows the local plan to be shorter and more focussed. It also allows the Guidance, which is one of a range of similar THC documents, to be altered more easily. As the Guidance applies throughout Highland, including it in this local plan would mean doing the same in other local plans, with the consequent potential for objections.

4.5.30 Policy GP4 applies to the areas with the highest rates of housing development. While the lack of affordable housing in rural locations such as Strathnairn and Tomatin is no less acute, the scale of housebuilding there is insufficient to generate a developer contribution. As most developments comprise single dwellings, and rarely exceed the 10 unit threshold, applying the policy could undermine housing provision for local people. Needs therefore ought to be met through the type of mechanisms listed in HSP Recommendation H6, through the Inverness Area Housing Development Forum, and following an assessment under the auspices of the HSCHT. The current registered need in Loch Ness South Letting Area, which includes Tomatin, is about 110 households. However, the figure for Tomatin itself is understood to be insufficient to trigger a needs assessment at this stage. This could be reconsidered if circumstances change.

Conclusions

4.5.31 Policy GP4 is intended to provide a policy basis for negotiation with landowners and developers to secure affordable housing through developer contributions. My conclusions at paragraphs 4.3.22-4.3.26 are also relevant to objections to this policy, and are adopted for their terms, together with the account of the factual background at paragraphs 4.5.2-4.5.10.

4.5.32 HSP housing policies, those in the DDILP, and the DPPG, were drafted in the context of NPPG 3. This has been superseded by SPP 3, published in February 2003, which represents current national planning policy guidance regarding the provision of affordable housing. The proposed modifications to Policy GP4 that THC agreed in Spring 2003 include changes to take account of work done by the Council on this topic following publication of the DDILP. CD10 indicates that these changes were also drafted in the context of NPPG 3, although SPP 3 had already been published by that stage.

4.5.33 In summary, SPP 3 confirms that the planning system has a role to play in ensuring that affordable housing is made available. It also states that, where a LHS identifies a shortage of affordable housing, this is a material consideration in planning processes, which should be addressed as the opportunity arises through reviews of structure and local plans. It therefore makes a clear link between the development

plan process, and the delivery of affordable housing. It also expects, where possible, that the requirement for affordable housing will be met within the HMA where the need is identified. As development plans are also required to allocate sufficient land overall to ensure that all requirements are met, the provision of affordable housing should not be at the expense of other sectors of the market.

4.5.34 Policy GP4 does not appear to have evolved in the sequence described in SPP 3, and in HSP Policy H5. The DDILP pre-dated the 2002-07 LHS. The DTZ Pidea HNS, which THC states supplements the LHS, was published after the DDMILP. It was also published after the 2003-08 LHS, although the latter appears to have been prepared with some knowledge of the HNS conclusions. In any event, as matters now stand, the evidence demonstrates that there is a significant unmet need for affordable housing in “Inverness”. This area coincides broadly with the local plan area, and lies within the Inverness HMA. SPP 3 does not require needs assessments to replicate HMAs. No party at the inquiry argued that these assessments overstate needs.

4.5.35 A buoyant market for housing land is likely to boost land values. The evidence indicates that the housing market in parts of the local plan area, in particular around Inverness, is buoyant. This is likely in turn to restrict the ability of those dedicated to the provision of affordable housing, including Communities Scotland, which is obliged to operate within benchmark costs, to address identified needs. I am satisfied that these sectors of the market are integrally linked, and that it is legitimate for the planning authority to seek to address the consequences of this link through the planning system. In any event, national policy, in SPP 3, countenances the role of planning agreements in this context, provided these accord with current policy, and the benefits sought are related in nature, scale, or kind, to the development proposed.

4.5.36 The housing land allocations required by Policy H1 of the HSP appear to encompass affordable housing. The local plan allocations are, on their face, generous. In any event, notwithstanding uncertainties regarding effectiveness in some cases, there is no evidence that any inability to meet the identified needs of other sectors of the market would be as a consequence of Policy GP4.

4.5.37 SPP 3 requires development plans to provide clarity on the expected scale of affordable housing provision, and the locations in which this will be sought. It is important that Policy GP4 also sets out the main principles that will be employed in applying the policy, and that it is sufficiently flexible to allow the range of circumstances that are likely to arise in practice to be taken into account.

4.5.38 While HSP Policy H5 requires local plans to identify areas where there is a demonstrable need for affordable housing, there is no national or strategic policy requirement to identify specific sites exclusively for affordable housing. In the larger settlements, this is also unlikely to be conducive to the creation of the sustainable mixed communities that SPP 3, and the local plan, seek to provide.

4.5.39 The settlements listed in Policy GP4 reflect most of the stress areas in the local plan area that emanated from the Rural Partnership for Change Highland Pilot. However, the LHS indicates these also include the City of Inverness, which was omitted inadvertently from the policy. The evidence indicates that the “pockets of

low demand” in the city that the HNS describes are not indicative of lack of need in these areas.

4.5.40 Policy GP4 excludes sites that already have planning permission for housing. This exclusion would apply to Milton of Leys and Resaurie South, if these fall into this category. As to whether the policy should apply to allocations carried forward from current adopted plans, a local plan review is an opportunity to reassess land allocations and policies so that these are relevant to the period concerned. Excluding all re-allocations from the policy from the outset, particularly in Inverness, could significantly undermine the ability to address affordable housing needs. That said, SPP 3 sees merit in developers being in a position to factor in the requirement to provide affordable housing to the price they will pay for the land. This is important, so that viability problems do not constrain the delivery of houses across all sectors of the market. The DDMILP policy states that the Council will “expect” to negotiate an affordable housing contribution, and a 25% proportion, “subject to market and site conditions. Taken together, these references would allow developers to make a case as to why an alternative approach was justified, including on the basis of the circumstances in which a site had been acquired, development costs, and any other developer contributions. Criticisms that THC is already applying the policy relate to a procedural issue, rather than to the terms of the policy.

4.5.41 That said, the reference to negotiation “on the basis of a 25% proportion” is capable of more than one interpretation. It is also inconsistent with the DPPG, which indicates that the council intends 25% as a “target”. To reflect this, and the terms of the DDMILP policy, the reference in paragraph 1.5 of the plan to “a standard planning obligation” should be reconsidered. To reflect my conclusion at paragraph 4.3.25, and to conform to the HSP, Policy GP4 ought to countenance mechanisms other than section 75 agreements.

4.5.42 While the financial factors on which the figures of 25% and 10 units are stated to be based are not explained, very small numbers of houses dispersed over a large number of sites are likely to be difficult and expensive for social housing providers to manage. That said, a dispersed housing stock is likely to be unavoidable in a rural area where settlements are generally small. A threshold of 10 units appears low at first sight for a city of the size of Inverness. It would also be difficult in practice to insist on a 25% proportion being provided on a site with a capacity that is not a multiple of 4. However, the evidence indicates that applying a 25% proportion to developments within the threshold would still fall significantly short of meeting the calculated need. As there is evidence that sufficient core funding to support this level of provision is likely to be available during the currency of the local plan, it would take account of available resources.

4.5.43 Having had regard to these factors, I conclude that the threshold for the application of Policy GP4 should be 10 units, and that this ought to be stated in the policy. Practical consequences of this ought also to be recognised. Strict application of the sequential test in the DPPG, which allows provision at an alternative site only where on site provision is “not achievable” for certain reasons, may not always secure the best solution; and there could be a greater role for accumulating contributions, and for commuted payments

4.5.44 The generally dispersed settlement pattern, and small scale of new housing developments in the rural parts of the local plan area outwith the stress areas that have been identified do not lend themselves to the approach in Policy GP4. The series of mechanisms in HSP Recommendation 6 are tailored to rural circumstances, are more flexible, and are likely to be more responsive to local needs. However, Policy GP4 ought to make clear the policy approach that will apply outwith stress areas, including in rural areas such as Strathnairn and Tomatin. This would also allow the local communities concerned to persuade THC, separately from the local plan, that needs assessments for these areas should be done with a view to promoting specific affordable housing initiatives.

4.5.45 Including, or summarising, the DPPG in the local plan would have the advantage of creating a “one stop shop” for the council’s affordable housing policy. However, the DDPG on affordable housing is one of a series of similar documents that it would be sensible to treat in the same way. Including all DPPGs in the plan would lengthen it considerably. PAN 49 states that local plans should be succinct, without losing their clarity, and the consultation documents Making Development Plans Deliver (THC-1/1) confirms that the SE’s aims include making plans shorter and targeted on key spatial issues. Leaving the DPPG as a separate document would provide greater flexibility for altering and/or updating its terms, which THC agrees are not set in stone. It would also afford more scope for constructive dialogue with representatives of the housebuilding industry, which would be desirable, either through, or in association, with the Forum. In any event, updating to take account of SPP 3 is required.

4.5.46 The local plan does not define affordable housing in terms, although Policy GP4 lists types of accommodation that may be comprised in this category. A Glossary and definition, consistent with the HSP definition, would be helpful.

Recommendations

4.5.47 I recommend that:

(1) the local plan summarises the basis for Policy GP4, in terms of the identification and scale of need in the local plan area.

(2) Policy GP4 is reworded along the following lines:

“In the City of Inverness, Beauly, Drumnadrochit, Ardersier, Croy, Kirkhill, Kiltarlity, Dorcas, and Fort Augustus, where housing land is being allocated for the first time or allocation is reaffirmed from an earlier local plan and a planning permission does not already exist, the Council will expect to secure, through a section 75 agreement with the landowner/s and other interested parties, or by other appropriate mechanisms, an affordable housing contribution. This policy will apply to proposals for 10 or more houses. Negotiations will be based on the sequential mechanisms set out in a Development Plan Policy Guideline (DPPG): Affordable Housing, and subject to market and site conditions, on an affordable housing target comprising a 25% proportion of the housing capacity of the proposal concerned.

Outwith the settlements listed above, the Council will seek to secure affordable housing in suitable location, through the mechanisms identified in Recommendation H6 of the structure plan”.

- (3) the reference to a “standard planning obligation” in paragraph 1.5 of the plan is deleted.
- (4) the Council considers including a Glossary in the plan, to define, among other things, affordable housing.
- (5) the Council discusses the terms of current DPPG with representatives of the housebuilding industry, and other relevant interests, to consider the scope for adjustments in the light of experience.

4.6 OBJECTIONS REGARDING POLICY GP5 AND WASTE MANAGEMENT AND DISPOSAL

**Objectors: Scottish Environment Protection Agency (SEPA, 171)*,
Ms E Fairclough (74) and Strathnairn Community Council (185)**

Procedures: Public inquiry* and written submissions

Synopsis of objections

4.6.1 SEPA's objection is that the local plan ought to identify sites for waste management facilities identified in the Highland Area Waste Plan (HAWP) and should state that all proposals for waste management will be determined in the context of the HAWP. Ms Fairclough wishes a waste recycling facility at the former Longman landfill site. Strathnairn Community Council wishes Policy GP5 to prescribe a minimum separation distance between landfill sites, agricultural land and houses.

Factual background

The evolution of Policy GP5

4.6.2 Policy GP5 of the DDILP, in summary, explains the Council's intention of implementing an integrated waste management strategy, taking account of the draft HAWP. It expects the strategy to be published in late 2002 and to be delivered through a Public/Private Partnership (PPP) from 2006. It also states that, from the closure of the Longman landfill site in April 2003 until the start of the PPP, waste would require to be taken for disposal outwith the area; that the guidance in the HSP and the HAWP would be important considerations in determining planning applications for the facilities required as part of the integrated strategy; and that proposals for private sector facilities would also be assessed under structure plan criteria.

4.6.3 The DDMILP rewords Policy GP5 to take account of the publication of the draft HAWP. It states that the infrastructure identified, indicatively, in the HAWP would include bring sites, civic amenity sites, transfer stations, and composting facilities; and that the IMF area would also require a Clean Materials Recycling Facility, an Energy from Waste (EfW) plant, and a new landfill site. It goes on to state:

"The Highland Council will prepare an Implementation Plan which will inform the delivery of the majority of the infrastructure, through a PPP contract for the provision of waste management services for the next 25 years.

....

...The development plan will therefore assist the delivery of the Area Waste Plan. Proposals will be assessed in the context of policies set out within the Highland Structure Plan and the Local Plan, guided by the Highland Area Waste Plan"

Structure plan policy

4.6.4 Policy W4 of the HSP states:

“There will be a presumption that waste generated by Highland households and businesses, which cannot reasonably be reused or recycled, will be disposed of within Highland, except for certain special wastes where regional or national disposal facilities represent the best practicable environmental option”.

4.6.5 Paragraph 2.17.13 explains that the Council is developing a strategy for the future disposal of municipal wastes involving, wherever possible, the local disposal of inert wastes and the establishment of strategic transfer stations for bulking, possible processing and transporting to strategic disposal facilities, including a site in the IMF, and that the proposed network is indicated in Figure 13. *“The elements of the sorting, processing and transfer network will be put in place over the plan period, and proposals for development will be assessed against Policy W5”.*

4.6.6 Policy W5: Facilities for the waste management network states:

“Sites for the facilities necessary for the sorting, processing, and transfer of household, commercial and industrial wastes, as part of the overall waste disposal network will be identified in local plans, and must meet the following criteria:

- be suitably located, preferably within an existing, former or proposed industrial area of a character appropriate to the development; or*
- be in a quarry or associated site, where it does not prejudice its restoration and afteruse; or*
- be appropriately located on former or existing landfill sites;*
- the operations are carried out in a building or alternative form of enclosure; and*
- the transport network and site access can accommodate the transport generated”.*

4.6.7 Policy W6: Landfill/form states:

“Proposals for landfill/form of municipal, industrial and/or commercial waste material will be assessed against the plan’s General Strategic Policies and the following additional criteria:

- compatibility with both the National Waste Strategy (NWS) and the THC Waste Strategies;*
- integration with waste recovery initiatives;*
- relationship to the strategic transport network and the ability of the local transport network to accommodate the traffic generated both in physical and amenity terms;*
- distance from inhabited dwellings; and*

- *the extent to which the geology of the site can contribute to the protection of controlled waters, in particular groundwater resources”.*

4.6.8 Policy W7: Waste combustion with energy recovery states:

“Proposals for the combustion (with energy recovery) of household, commercial and non-hazardous industrial wastes will be supported where they conform to the General Strategic Policies and the following additional criteria:

- *compatibility with the character of the area, with preference being given to sites within or adjoining general industrial areas;*
- *relationship to the strategic transport network and the ability of the local transport network and site access to accommodate the traffic generated;*
- *the extent to which the proposal makes provision for the recycling of material prior to incineration and the re-use of residues; and*
- *the links to residue processing and disposal sites”.*

Brief summary of the main points raised by the objectors

SEPA

4.6.9 The NWS (171/21), which implements a number of European Waste Directives, sets out a framework for change in the way Scotland deals with its waste, and the partnerships necessary to achieve this change. It also explains how an integrated sustainable waste management system will be implemented, and describes the process of area waste planning, and the formation of Waste Strategy Area groups. THC is a member of the group formed to develop an AWP for Highland, and endorsed the HAWP in November 2002. It is therefore committed to implementing the plan, which sets out the indicative infrastructure for the management of Municipal Solid Waste (MSW) up to 2020 and provides an appropriate level of guidance for local plan policy. However, it falls to the land use planning system to identify sites and to provide guidance for the location of infrastructure.

4.6.10 As the local plan does not identify the sites required by Policy W5 it does not conform to the HSP, and cannot be adopted in its present form. It also fails to accord with national guidance. NPPG 10: Planning and Waste Management (CD19) states that planning authorities have a duty to provide policies for waste disposal sites. It also states that local plans should conform to structure plan policies, and should identify sites consistent with the NWS when available. PAN 63: Waste Management Planning (171/19) states that AWP and the NWS are material considerations of significant weight in preparing development plans; that it is for planning authorities to tackle where the waste management facilities should go; and that they should seek to provide for such facilities in accordance with the AWP, through development plans or, where appropriate, interim guidance. The SE advised Heads of Planning in April 2003 that it was time to begin to address the land use dimensions of AWP. The SE consultation paper A Review of Strategic Planning states that identifying potential waste management sites is complex, and that it may often be impossible to do this conclusively until, for example, EIA has been done. However, it also states that planning authorities should nevertheless aim to identify sites in plans to provide a

degree of certainty for the community and for the waste management industry. The more recent SE consultation document Making Development Plans Deliver (THC-1/1) describes general exhortations or vague criteria-based policies that simply indicate the factors a planning authority will take into account as serving little practical purpose.

4.6.11 Actions 54-56 of the HAWP (117/22) state that development plans will outline the need for new facilities, and the criteria for assessing applications, with a view to ensuring a 10-year forward capacity; that the factors and facilities required to implement the AWP will be taken into account in development plans, and will be a material consideration in assessing planning applications; and that THC will update the locational framework for waste facilities, as part of development plan monitoring and review. THC advised SEPA in December 2003 that the Council's IP allowed locations for waste management facilities to be set out and considered in local plan preparation, and that, while this was too late for sites to be included in the Inverness Local Plan, these could begin to be taken forward through the review process in other local plans. However, it is the HAWP that development plans are required to implement. The Council endorsed this in ample time to take it into account in the DDMILP. The NWS makes clear that the Council also has a responsibility to safeguard existing facilities, and that these should be identified in Proposals Maps.

4.6.12 The table overleaf shows that, based on the date when facilities are required, and likely lead-in times, there is a pressing need to identify locations for the facilities listed. All of these require to be delivered within the local plan period in order to meet HAWP targets. The high reliance on landfill in the Inverness area and in Highland, with only 2% of municipal waste being recycled, is unacceptable in a national and European context. The Landfill Directive establishes national targets and timescales for the reduction of Biodegradable Municipal Waste (BMW) to landfill, although member states particularly dependent on landfill are allowed to defer implementation of the target dates by up to 4 years. The HAWP assumed that the UK will take advantage of this, and that the amount of BMW allowed to landfill by 2010, 2013, and 2020 would be 75%, 50% and 35% of 1995 levels. These targets demonstrate the urgency with which dependence on landfill needs to be reduced, although there will still be a need for significant landfilling of residual wastes.

4.6.13 Delivery of the HAWP is dependent on the Inverness Local Plan identifying sites. The Waste Disposal Network in Figure 13 of the HSP identifies only 2 waste management locations in Inverness – an existing civic amenity site at Henderson Drive, and a proposed MSW transfer station. The criteria in Policy W5 are expressed in general terms and could apply to a number of locations. While the HAWP relates the requirement for a landfill site and an EfW plant to the IMF, it would be logical, and consistent with the proximity principle, for these to be located in the Inverness area, which generates much of the waste produced in Highland. THC is exaggerating the difficulties and uncertainties involved. Progress towards recycling targets would reduce the capacity of EfW plant required, but there will still be a need for a plant by 2010. The type of technology used does not affect siting requirements. EfW emissions are more strictly controlled than those from many industrial facilities, and there are many incinerators on industrial estates throughout Scotland. Other elements of the HAWP, such as composting, segregation and baling of wastes, plus transfer

plus treatment, can also be accommodated in industrial areas. Not all waste management facilities require EIA.

Facilities for which locations should be identified in the Inverness Local Plan (information from the HAWP and the THC IP)

Facility Type (Figure 3.6 AWP)	Number in Inverness Local Plan Area	SEPA estimate of likely period required for planning and construction	Date when Facility Required (AWP ref: Figure 3.6, page 36, IP ref: Figure 6.1, page 33)
Recycling Centres (Section 5.6, Page 22 IP)	3 Inverness Drumnadrochit Fort Augustus	6 months	2004-2006 (IP) 2003-2020 (AWP)
Recycling Points* (Section 5.7, Page 23, IP)	(1 for every 500 households)	6 months	2004-2006 (IP) 2003-2020 (AWP)
In-vessel composting plant (Section 5.9, Page 24, IP)	1 x 7,000 tonne capacity	2 years	2004-2006 (IP) 2003 onwards (AWP)
Landfill (Section 5.12, Page 27,IP)	1 in Inner Moray Firth	5 years	No date given (IP) 2006 (AWP)
EfW (Section 5.11, Page 26, IP)	1 in Inner Moray Firth	5 years	2010 (IP) 2010 onwards (AWP)
Transfer Station (Section 5.13, Page 27, IP)	1 x 18,000 tonne capacity	6 months	2004-2006 (IP) 2003-2020 (AWP)

*Locations of recycling points need not be identified but the requirement *pro rata* for all new development should be an element of Policy GP5.

4.6.14 Other development plans identify locations for waste management facilities, and Scottish Ministers propose to modify the Edinburgh and the Lothians Structure Plan to require local plans to identify locations for waste management, referring to industrial sites as possible locations (171/28). THC has known for at least 6 years that the Longman site would close by 2003. The Consultative Draft HSP identified the need for a new landfill site in the Inverness area. Most of the waste from Highland is being taken by road to Peterhead or Perth, contrary to the Best Practicable Environmental Option (BPEO) for Highland, the proximity principle, and regional self-sufficiency.

4.6.15 THC's reluctance to include site locations in the local plan because of possible prejudice to its PPP project raises the danger of planning powers being used for inappropriate purposes, and allegations that financial and other interests have improperly influenced the plan. Other councils involved in PFI/PPP projects have

identified sites. PAN 55: The Private Finance Initiative and the Planning Process (171/32) states that PFI projects should be subject to the normal requirements of the UK planning system. THC appears to believe that the local plan and PPP are mutually exclusive processes, but there is no reason why these should not operate in tandem. There is also no guarantee that relying on the PPP, which in any event covers only landfill and EfW, to deliver sites would be any quicker. These sites would also require planning permission, and possibly a public local inquiry. Much of the work to identify sites has already been done. If a planning consultation exercise was to be initiated, prospective bidders are likely to seek the inclusion of the sites they must already have in mind.

4.6.16 In the light of the above, the local plan should:

- identify an area of search for a landfill site;
- identify the sites required by Policy W5;
- identify a site for an EfW plant; and
- identify and protect the sites of all existing waste management facilities.

Although the HSP does not require local plans to identify EfW sites, an EfW facility is necessary to deliver the HAWP, and to accord with national guidance. Policy GP5 should also be modified to require all new housing developments to provide a recycling point at a ratio equivalent to 1 for every 500 households.

4.6.17 Identifying industrial areas suitable for waste management facilities would take only a few days. However, as producing an Area of Search for a landfill site could take weeks, 2 options are suggested. SEPA's preferred option is that THC should be recommended to modify Policy GP5 before it adopts the plan, identifying sites for Policy W5 facilities and for an EfW facility. The second, less desirable, option, because of the danger of slippage, would be for the Council to modify Policy GP5, to promote existing industrial areas as potential sites for all HAWP facilities, except landfill, and the adoption, within a year of the recommendation, of an Alteration identifying the Policy W5 and EfW sites. While an Alteration could not be promoted until the plan had been adopted, there is no reason why preparatory work could not be done now.

Ms E Fairclough

4.6.18 The Longman landfill site is an opportunity to redress the shameful lack of recycling facilities in Highland by building a proper facility.

Strathnairn Community Council

4.6.19 Strathnairn has been targeted by developers as being within a viable distance of Inverness. The local plan should include a limiting distance between waste disposal/landfill sites and housing and agricultural land. Dangers to health and the environment arising from proximity to waste disposal and landfill sites are well documented. A paper by a local veterinary surgeon and specialist in aquaculture practice (185/1) sets these in a local context.

Brief summary of the Council's response to the objections

4.6.20 As far as SEPA's objection is concerned, THC agrees that the goal is to implement the HAWP as soon as possible. However, implementation largely depends on the outcome of the Council's Strategic Waste Fund bid. It is unclear whether the SE is prepared to fund an EfW facility, and it is understood to be unwilling to fund landfill. The Council is nevertheless willing to identify and safeguard in the plan all existing and former waste management sites (except those that are the subject of other proposals, such as the former Longman landfill site). It is also prepared to identify any other waste management sites that are committed by the time the post-inquiry modifications are published. However, it is satisfied that Policy GP5 in the DDMILP and HSP waste policies provide an adequate development plan framework for considering proposals for other new sites. The local plan already satisfies Policy W5, to the extent that it identifies areas of an industrial character. There is no need for it to refer explicitly to these areas in the context of waste management. PAN 63 recognises it may not always be possible for local plans to identify sites, because of the complexities involved.

4.6.21 THC had concluded that the location of Policy W5 facilities would best be decided through the HAWP, and the IP, which the THC witness had understood would identify sites. The Council remains satisfied its approach is legitimate and realistic, and that it will not delay delivery of the HAWP. The IP was only approved, in draft, in November 2003 as part of the Strategic Waste Fund bid. Its conclusions on preferred sites for transfer stations, recycling centres, and composting facilities are still under discussion, site requirements have changed even over the last year, and it came too late to be incorporated in the local plan without risking a second public inquiry, and the attendant cost and delay. SEPA's approach would be likely to delay implementation of the HAWP, and of the local plan, and its preferred option would be likely to set back adoption of the plan by almost 2 years. It could also take 2 years to progress a formal Alteration to adoption stage.

4.6.22 However, steps are already being taken to have the smaller, Policy W5, sites provided by the end of 2006. The HSP does not require local plans to identify sites for landfill or for an EfW facility. This reflects the difficulties involved, including uncertainties regarding the type of facilities required, and the date(s) by which these need to be delivered. A site in Easter Ross or Nairn would also be in the IMF area. The HAWP requirements and programming are only indicative, and it effectively reserves a decision on the need for an EfW plant, and on its size and type. The Council's Head of Waste Management has advised that different types of plant have markedly different siting requirements.

4.6.23 Identifying sites in the local plan would also prejudice the PPP project, in which bidders are responsible for identifying the type, size, and location of facilities required to deliver waste targets. While PAN 63 asserts that site identification offers a degree of certainty, this can also inhibit private enterprise by constraining options, unduly favour one bidder over another, and increase site acquisition costs and difficulties. Sponsor authorities cannot be prescriptive in dealing with private sector partners until the later stages of the PPP process, and outline planning permission is normally only sought at the "preferred bidder" stage. As matters stand, THC is still evaluating submissions from 2 bidders. One has a site in mind, while the other is

considering several. Neither has objected that the local plan does not identify sites. As the relative economics of different waste facility options are very fluid, the mix of facilities proposed by PPP bidders is also subject to change.

4.6.24 Given these uncertainties, the Council cannot agree to what SEPA wishes. It would also be unreasonable to blight local communities, particularly by proposing an “area of search” for a landfill site. NPPG 17 suggests that blight should be minimised by including road proposals in a local plan only where there is a degree of certainty that a scheme can be funded and completed within the plan period. The criteria based policies in the HSP are flexible and are the best basis for assessing proposals. The Council undertook a sieve exercise 3-4 years ago, based on these criteria, to identify areas of search, and shared this with prospective bidders. However, it does not have the resources required to undertake the initial environmental assessment of every potential site that would be required in order to provide definitive locational guidance.

4.6.25 In responding to Mrs Fairclough’s objection in Spring 2003, the Council stated it would seek to meet its recycling target through the PPP and as part of its own initiative with partner agencies. This would require enhanced facilities either within the (then) existing complex at Longman and/or at some other suitable location.

4.6.26 Finally, as regards the Strathnairn Community Council objection, HSP Policy W6 includes distance from inhabited dwellings as a criterion for assessing landfill proposals. Paragraph 2.17.16 of the structure plan states that best practice recommends that care is taken with the location of development within 250 m of a landfill/form site because of potential methane gas emissions; that ideally a location distant from housing is preferred; and that a separation distance from the operational area for all activities would generally be expected, ranging from 250 m in respect of single houses, through 500 m for groups of more than 10 houses, and 1 km for groups of more than 25 houses. It also recognises that landform, meteorological conditions and opportunities to mitigate adverse impacts make these separation distances indicative rather than mandatory, with each proposal being assessed on its merits. This policy, and its supporting justification, adequately set out the planning authority’s policy regarding separation distances from landfill sites.

Conclusions

4.6.27 The HSP waste management strategy seeks to carry forward the 4 key principles in the NWS: BPEO, the proximity principle and regional self-sufficiency, the polluter pays, and the precautionary principle; to set out the requirements, targets, and objectives emerging from the NWS; to put in place a framework for an integrated network of waste management facilities (illustrated in Figure 13); and to identify criteria against which proposals for these facilities can be assessed.

4.6.28 The HSP was approved after the NWS was published, but prior to the publication of the HAWP in March 2003. It requires local plans to identify sites for the facilities necessary for the sorting, processing and transfer of household, commercial and industrial wastes as part of the overall waste disposal network. It does not require local plans to identify sites for landfill or EfW facilities, acknowledging uncertainty regarding these elements of the network. It also states that only interim strategic guidance was possible at that stage, and that this would be

revisited at the earliest possible opportunity. No further strategic guidance has been published. However, the HSP agrees that, even if EfW is identified as the preferred option, there will be a continuing need for landfill provision and identifies the IMF as a search area for major recovery/disposal facilities.

4.6.29 The DDILP also predated the HAWP, which encompasses the local plan period, and indicates the key requirements for achieving BPEO targets for the management of MSW in Highland up to 2020. The HAWP's indicative structure includes an EfW, with a capacity stated to be dependent on a number of variables. Action 23 in the HAWP is that THC, in association with the Highland Waste Strategy Group, will develop an IP to flesh out the necessary actions, costings and timescales.

4.6.30 The DDMILP reports the publication of the HAWP, and confirms the Council's intention of preparing an IP, to inform the delivery of the majority of the infrastructure through a PPP. The IP, which represents THC's bid for funding from the Strategic Waste Fund, was published in draft in December 2003. It sets out proposals for THC's future waste management system, devised to ensure compliance with relevant EC targets, the NWS, and the HAWP.

4.6.31 The Inverness area, which generates the majority of waste produced in Highland, has a high degree of reliance on landfill. The need to transport waste for disposal outwith the area since closure of the Longman landfill site in 2003, runs counter to the principles of disposal close to source and regional self-sufficiency. These principles are endorsed by NPPG 10, the NWS, and by HSP Policy W4. These factors, and the need to meet increasingly strict EC targets, make it important that the HAWP is implemented as soon as possible. SEPA and the Council agree that this is the relevant goal, but disagree as to how best it should be achieved.

4.6.32 The draft IP, contrary to the expectation of the THC witness, does not identify specific sites for facilities. It confirms the need for a landfill site, and an EfW plant in the IMF area from 2010. It also sets out the number, size, general location, and operation of other MSW waste management facilities proposed to achieve HAWP targets. The IP does not identify a date for the provision of a landfill site, but the AWP describes this as desirable from 2006, and essential from 2008.

4.6.33 PAN 63 confirms that AWP and the NWS are material considerations of considerable weight in the preparation of development plans; that it is for planning authorities to tackle where sites should go; and that they should seek to provide for waste management facilities in accordance with the AWP, through development plans, or, where appropriate, interim guidance. The SE commented in August 2001 (THC-3/1) that the CDLP provided little guidance regarding waste disposal, and identified no key sites, and that the plan should be more forthcoming on this issue, despite its many sensitivities. The SE has since sought to remind planning authorities of its expectations, notwithstanding the complexities involved. The HAWP recognises that, in taking forward the BPEO, there will be significant linkage with the land-use planning system to secure approval for sites and projects.

4.6.34 THC's understandable concern to avoid prejudicing the PPP process on which it has embarked places it in something of a dilemma. However, it cannot reasonably abrogate the forward planning duty with which it is statutorily charged. It

is unlikely that PAN 63 and other recent SE advice took no regard of PPP/PFI initiatives, and PAN 55 had made clear in 1999 that PFI projects should be subject to the normal requirements of the planning system. In any event, identifying some sites in the local plan need not delay delivery of the HAWP. Proposals that emerge from the PPP process will require planning permission, and possibly a public local inquiry. The evidence also suggests that the PPP project is intended to deliver only landfill and EfW facilities.

4.6.35 The Council's additional concern that identifying waste management sites, other than existing or committed sites, in the plan could significantly delay its adoption is also understandable, as such proposals are often contentious. While it is unfortunate the Council did not grasp this nettle sooner, it would be highly regrettable if the prospect of an adopted plan was to be jeopardised at this stage. However, local plan and PPP processes could conceivably run in tandem, particularly as the Council has already undertaken initial work, and steps to provide some "smaller" sites are underway. In any event, the identification of Policy W5 sites is a structure plan requirement for the local plan, and the policy's locational criteria are sufficiently clear-cut to make identification relatively straightforward. THC-1/1 takes exception to criteria based policies that are vague.

4.6.36 The identification and safeguarding of existing and committed waste management facilities, unless these are likely to become redundant within the plan period, and their continued operation would not undermine implementation of the HAWP, is likely to form part of this overall identification process, although it seems likely that some additional sites will also be required.

4.6.37 A recycling site at the former Longman landfill site would accord, in locational terms, with HSP Policy W5. THC's evidence indicates that, notwithstanding its response to the objection in 2003, it is now reluctant to identify this site, because it is the subject of other proposals. In any event, as Policy W5 sites ought to be identified in the context of a network of sites, it would be unwise to recommend the inclusion of any one site in advance of a comparative assessment of potential locations. However, I consider that Longman should be considered in this context, and the scope for accommodating a recycling facility along with other uses investigated. As the HAWP does not provide an indicative infrastructure for non-MSW, it is impractical for the plan to identify future locations at present for non-MSW facilities.

4.6.38 While the landfill site and the EfW plant that are required in the IMF could be located outwith this local plan area and still conform to the HSP and the HAWP, it would be consistent with the proximity principle for these to be located in the vicinity of Inverness, which generates much of the waste produced in Highland. However, the HSP does not require sites to be identified for these facilities. Identifying an area of search for a landfill site, as SEPA seeks, would not take matters much further forward, and would run the risk of creating the type of uncertainty it is desirable to avoid. The Policy W6 criteria, which remain the basis for assessing landfill proposals, are comprehensive.

4.6.39 The HSP also intends the Policy W7 criteria to provide locational guidance for EfW projects. Although matters have moved on since the HSP was approved, the

process to identify an EfW site is still on-going. It is therefore desirable to retain a degree of flexibility. Identifying a site for what is intended to be a single facility for a large area on the basis of incomplete information could well be counterproductive at the end of the day.

4.6.40 The establishment of household recycling points in housing areas is consistent in principle with the HAWP, the IP, and Policy GP3 of the local plan. The means by which such facilities are secured will depend on the circumstances of the developments concerned, existing provision, and the terms of the local plan's developer contributions policy. I consider that the best way of dealing with this issue, is for Policy GP5 to identify recycling facilities as an expectation, but to leave details of the means by which these will be secured to the DPPG or protocol which I have recommended at paragraph 4.3.37.

4.6.41 The first 2 paragraphs of Policy GP5 are an account of circumstances as they stood in Spring 2003, and might be more appropriate as a reasoned justification for policy rather than policy *per se*. In any event, these paragraphs should be updated to reflect circumstances at the time the post-inquiry modifications are published.

Separation distances from landfill sites

4.6.42 Landfill sites have the potential to have adverse effects on their surroundings, including for residential amenity, the use of agricultural land and the quality of watercourses. These potential effects ought to be taken into account, in considering landfill proposals.

4.6.43 HSP Policy W6 states that proposals for landfill will be assessed against the plan's General Strategic Policies, and the additional criteria in Policy W6. The criteria in Policy G2 include impact on individual and community residential amenity, on prime quality or locally important agricultural land, and on freshwater systems, as a result of pollution and discharges. Policy G8 commits the Council to applying the precautionary principle where the potential impacts are uncertain but there are scientific grounds for believing that severe damage could occur to the environment or the wellbeing of communities. The Policy W6 criteria develop elements of the General Strategic Policies of particular significance to landfill/form, and include distance from inhabited dwellings. Paragraph 2.17.16, which stands to be read in association with this policy, sets out indicative separation distances, and reflects these factors.

4.6.44 However, the potential for these effects, their likely impact, and the scope for mitigation, will vary according to the circumstances of the site concerned, and its relationship with its surroundings. In practice, the separation distances required to guard against adverse effects will vary, and it would be impractical to stipulate minimum separation distances for universal application. Paragraph 2.17.16 recognises this, stating that the separation distances to which it refers are indicative, rather than mandatory, and that each proposal will be assessed on its merits.

4.6.45 Section 25 of the 1997 Planning Act requires planning applications to be determined in accordance with the development plan, unless other material considerations indicate otherwise. The development plan for an area comprises the

approved structure plan and the adopted local plan for the area concerned. Policy GP5 states that proposals for waste management facilities will be assessed in the context of the policies in both these plans, which stand to be applied in their context, including paragraph 2.17.16 of the HSP. Taken together, and with other material considerations, I conclude that these policies provide an adequate policy framework for the consideration of landfill proposals.

Recommendations:

4.6.46 I recommend that:

- (1) the first 2 paragraphs of Policy GP5 are updated to reflect the factual circumstances at the time the post-inquiry modifications are published.
- (2) the third paragraph of the policy is redrafted along the following lines:

“To assist the delivery of the Area Waste Plan, this local plan identifies the sites for the sorting, processing (except EfW) and transfer of Municipal Solid Waste that are required to implement the Area Waste Plan, and these will be safeguarded for this purpose. Proposals for other waste management facilities, including for commercial and industrial waste, will be assessed against policies in the Structure Plan, and in this local plan, guided by the Area Waste Plan.

Unless facilities already exist or are to be made available by other means, and where consistent with Policy GP--, proposals for new housing developments, will be expected to include household waste recycling facilities designed to achieve a level of provision equivalent to one recycling point/per 500 houses. Further guidance will be contained in the Development Plan Policy Guideline or protocol to be prepared in the context of Policy GP--*”.*

* i.e. the policy relating to developer contributions.

- (3) the sites safeguarded under Policy GP5 are identified in the relevant settlement chapters, and Inset Proposals Maps.
- (4) if recommendation (2) is not accepted, the Council should promote an Alteration to the plan, as soon as practicable following its adoption, identifying the sites required to conform to HSP Policy W5.
- (5) the local plan need not stipulate minimum separation distances from landfill sites.

4.7 OBJECTION TO POLICY GP7: MINERAL WORKINGS

Objector: Strathnairn Action Group (72)

Procedure: Written submissions

Synopsis of objection

4.7.1 Policy GP7 should state that extensions to existing sites will be preferred to new sites, and that the Council will not support quarrying that could have an adverse effect on the amenity of residential properties nearby.

Factual background

4.7.2 Policy GP3 of the CDLP assessed sand and gravel deposits with planning permission in the Inverness market area as equivalent to 8-9 years supply; and stated that, to make good any shortfall, the extension of existing sites (operating with minimal environmental impact) would be given preference over new sites.

4.7.3 The equivalent policy (GP7) in the DDILP refers to 7-8 years supply with planning permission, and to the possibility that approval of 2 applications in Strathnairn might secure a supply in excess of 10 years. It continues as follows:

“Given that uncertainty will remain with regard to the estimated supply of materials of different quality to serve market requirements will remain (sic), the Council will continue to monitor supply against rates of depletion and the scope for recycling and re-use of materials. In this context, any proposals for minerals development will be subject to Policy M2 of the Structure Plan and the General Policies contained in the local plan”.

4.7.4 No objections to the policy were received, and this wording was continued to the DDMILP. At that stage, the Strathnairn Action Group objected. A petition comprising 153 pro forma letters was also received, but was subsequently withdrawn. Strathnairn Community Council wrote prior to the inquiry to express support for the Action Group.

4.7.5 Policy M2 of the HSP states that applications for mineral extraction will be supported provided they conform to HSP General Strategic policies and there are no significant adverse environmental or socio-economic impacts. It also explains that an Environmental Assessment will be required for all new workings and major extensions; AND that approvals will be for a temporary period only, with conditions tied to a method statement and plan covering working procedure, phasing, environmental protection, restoration, and after-use and after-care, covered by a financial guarantee, where necessary.

Brief summary of the main points raised by the objector

4.7.6 The Group was not informed of the policy change between the consultative draft and deposit draft versions of the plan. This was unfair as it had represented the

local community in opposing a mineral working proposal in Strathnairn. The adopted SSLNE also has a policy that gives preference to existing workings over new sites. THC had maintained that preference when mineral reserves were lower than they are now. It has a duty to guard it against unnecessary damage to the environment. For the foreseeable future, there is no need to risk such damage by increasing the area available for mineral extraction. Policy GP7 should also make clear that the council will not support any quarrying operations which may cause detriment to the amenity and enjoyment of residential properties in proximity to such developments.

Brief summary of the Council's response to the objection

4.7.7 Policies BP1-4 indicate where development is, or is not, encouraged and the circumstances in which proposals could be acceptable. Policy BP3 imposes a restriction on development within 400 m of an active quarry. Operators' past performance is not a planning consideration. The 7-8 years supply in consented reserves of sand and gravel in the Inner Moray Firth Area falls short of the 10 year demand horizon recommended in NPPG 4: Land for Mineral Working (CD16). However, two planning applications at Strathnairn remain undetermined. If both were to be granted planning permission, consented reserves of sand and gravel would increase 11-12 years supply, in line with national guidelines. Given the uncertainty attaching to the prospects of these developments, it is incumbent on the council to ensure its policy is sufficiently flexible to ensure consistent supplies of quality materials.

4.7.8 Policy M2 of the HSP lists criteria for assessing proposals for minerals development. It does not differentiate between "new" and "extended" workings. While examination of the location and operation of established sites indicates that their expansion may accord with policy, it would not be prudent for the local plan to give precedence to this.

Conclusions

4.7.9 The most recent evidence available to me regarding consented reserves of sand and gravel in the Inverness market area is the 7-8 years supply reported in the DDMILP. This is less than the minimum 10 years' supply for which NPPG 4 states planning authorities should provide.

4.7.10 NPPG 4 also states that policies for the control of mineral developments should take into account the amenity of local communities and the sensitivity of the locality as set out in development plans, and should seek to minimise the impact of mineral extraction on the environment. This policy guidance applies, irrespective of the circumstances of the minerals supply.

4.7.11 NPPG 4 also expects structure plans to set the framework for local plans, including priorities for development control, and local plans to provide the framework for development control by specifying the criteria against which individual applications will be determined.

4.7.12 In this case, the approved structure plan, in Policy M2, identifies the criteria that are to be applied in considering applications for mineral extraction. Policy G2

requires a wide range of criteria to be taken into account in assessing development proposals, including impact on individual and community residential amenity, while Policy G8 invokes the precautionary principle. Policy M2 contains a proviso that there should be no significant adverse environmental or socio-economic impacts, and lists the controls that will be imposed where permissions are granted.

4.7.13 Mineral workings, like landfill sites, have the potential to have adverse effects on their surroundings in a variety of ways. Again, the potential for these effects, their likely impact, and the scope for mitigation, will vary according to the circumstances of the site concerned, and its relationship with its surroundings. This principle applies to new sites, and to extensions to existing sites, and there may be occasions when a new site will have a less adverse effect in some respects than an extension, even where an existing site is operating with minimal environmental impact, or will have other longer term benefits. It could therefore be counter-productive, and potentially out of conformity with the HSP, for the local plan to commit the Council to a preference for site extensions over new sites in principle. Policy BP3 does not preclude development within 400 m of active workings.

4.7.14 The 2 components of the development plan stand to be read together. I am satisfied that Policy GP7 in the DDMILP, in conjunction with the HSP's General Strategic policies, and Policy M2, provide a sound development control framework for the assessment of the amenity and other implications of minerals applications.

Recommendation

4.7.15 Policy GP7 in the DDMILP should not be changed in response to this objection. However, the opening paragraph of the policy may need to be updated to reflect factual circumstances at the time post-inquiry modifications are published.

4.8 OBJECTION TO POLICY GP8: TRANSPORT IN THE DEPOSIT DRAFT LOCAL PLAN WITH MODIFICATIONS

Objector: Robertson Residential (107)

Procedure: Written submissions

Synopsis of objection

4.8.1 Policy GP8 allows THC to seek open-ended developer contributions for transport matters. References to the Local Transport Strategy (LTS) and other parts of the policy are unclear.

Factual background

4.8.2 Policy GP8: Transport was added to the plan as a “proposed modification” and subsequent GP policies renumbered. It states:

“In accordance with its Local Transport Strategy, the Council will pursue a major package of integrated transport measures for which it will seek to assemble funding from appropriate sources, including in partnership with the relevant agencies and private sector. Specifically, the Council will continue to encourage the SE to give priority to the allocation of resources for trunk road improvements. Developer contributions will be expected in respect of relevant transport objectives (see 2.37) and proposals will demonstrate as necessary, through Green Transport Plans and in accordance with NPPG (sic), commitment to increased accessibility to public and community transport, reductions in private car commuting, increased integration of transport facilities, and modal shift in freight haulage”.

Brief summary of the main points raised by the objector

4.8.3 The local plan does not provide any justification for this policy. It also gives no indication of the circumstances in which the policy will be applied, or the level or nature of developer contributions that will be sought. These matters ought to be defined. The reference to the LTS is unhelpful, as the plan does not contain any details of the strategy, which is an entirely separate document. It is unclear what is meant by “relevant transport objectives (see 2.37)” and “NPPG”.

Brief summary of the Council’s response to the objection

4.8.4 The policy should be altered to state that developer contributions will be expected to be the subject of a section 75 agreement where necessary. In this context, the council’s expectations would be determined with regard to SODD Circular 12/1996. The local plan sets out transport objectives and improvements for the area during the plan period, and these are factors against which proposals require to be assessed. The level and nature of developer contributions would be determined by the impact of the proposal concerned, or the terms of any Development Brief. The local plan indicates the elements of the LTS that require to be pursued, and these are

subject to the due statutory processes. Chapter 2, policy 37 sets out “relevant transport objectives”, and the terms in which these, and related developer contributions, will be assessed.

Conclusions

4.8.5 CD30 indicates that Policy GP8 was prompted by a suggestion by the SE that the plan ought to make greater reference to the LTS (THC-9/15 is an extract); indicate how its objectives and Government transport policies would be supported; and set out for the benefit of developers what they would be expected to contribute to achieve these, through infrastructure provision, and other traffic reducing measures.

4.8.6 NPPG 17 states that development plans and LTSs should complement and reinforce each other, and that development plans provide the means for examining the relationship between transport and land use planning, for promoting their integration and co-ordination, and for ensuring that they contribute to strategies to reduce the need to travel. It seems likely that it is NPPG 17 that Policy GP8 has in mind. If so, it would be helpful if the policy made this clear.

4.8.7 The reference in paragraph 1.28 of the DDMILP to “the Local Transport Plan strategy of restraining road traffic” may be a reference to the LTS. In any event, the opening sentence of Policy GP8 should include a brief explanation of the basic objectives of the LTS, to provide a context for the remainder of the policy, and clarify the link between the plan’s land use proposals and these objectives. The policy should also make clear that developer contributions would be determined in accordance with the GP policy on Developer Contributions.

Recommendation

4.4.8 I recommend that, in response to this objection, Policy GP8 is modified along the following lines:

“In accordance with the objectives of its Local Transport Strategy to improve road safety and promote sustainable transport, the Council will pursue a major package of integrated transport measures for which it will seek to assemble funding from appropriate sources, including in partnership with the relevant agencies and private sector. Specifically, the Council will continue to encourage the SE to give priority to the allocation of resources for trunk road improvements. Where developer contributions are sought, these will accord with Policy GP--. Development proposals will require to demonstrate as necessary, through Green Transport Plans and in accordance with NPPG 17, commitment to increased accessibility to public and community transport, reductions in private car commuting, increased integration of transport facilities, and modal shift in freight haulage.”

4.9 OBJECTION TO POLICY GP9: TRAFFIC MANAGEMENT

Objector: Scottish Association for Public Transport (249)

Procedure: Written submissions

Synopsis of objection

4.9.1 The traffic management measures in Policy GP9 in the DDILP (Policy GP10 in the DDMILP) should be given priority in terms of resources.

Factual background

4.9.2 Policy GP9 identifies measures to assist the free flow of traffic and improve safety for all users, stating that these will be pursued as resources permit, and that they should relate to the function and hierarchy of roads in the policy.

Brief summary of the main points raised by the objector

4.9.3 The vital measures in Policy GP9 will be ineffective if they are to depend on resources becoming available. They must be given priority in the use of resources.

Brief summary of the Council's response to the objection

4.9.4 There are many schemes competing for limited resources. It is not appropriate for the plan to give priority to traffic management ahead of other transport projects in advance of any decision to do so. In most cases, the local plan promotes potential schemes, which are prioritised when funding become available. This provides flexibility, and allows priorities to be adjusted according to circumstances.

Conclusions

4.9.5 The objectives of this policy deserve support. Several of the elements that it encompasses are promoted in other policies, including those relating to specific locations. However, PAN 49 stresses that local plans should be realistic; admit difficulties and constraints if there is to be any hope of overcoming them, as these will influence the rate at which policies and proposals can be delivered; and highlight the extent to which implementation is in the hands of the private sector.

4.9.6 It is prudent, and consistent with this best practice advice, for the local plan to acknowledge that the availability of resources will influence the delivery of traffic management measures. The council's response suggests that an undertaking to give a general priority to these measures is likely to give rise to expectations that are unlikely to be realised. I conclude that this General Policy goes as far as it reasonably can in circumstances where resources are limited.

Recommendation

4.9.7 The local plan should not be changed in response to this objection.

4.10 OBJECTIONS TO POLICY GP10: WATER AND WASTE WATER

Objectors: SEPA (171)* and Scottish Water (240)

Procedures: Public inquiry* and written submissions

Synopsis of objections

4.10.1 SEPA objects that Policy GP10 and the development allocations proposed in the plan do not take sufficient account of the constraints imposed by the lack of adequate sewerage infrastructure and the need to comply with European Waste Water Directives. Scottish Water (SW) considers that to “press” it regarding its investment programme is not the most constructive way of proceeding.

Factual background

4.10.2 Policy GP10 in the DDILP states:

“The Council will press SW to give priority to schemes to improve the quality of water and clean up rivers, lochs, and beaches, consistent with the allocation of land for development at the following locations:

- *WTW (Water Treatment Works) – Beauly, Dores, Strathnairn, Lochend, Fort Augustus, Invermoriston, Dalreichart and neighbouring communities;*
- *WWTP (Waste Water Treatment Plant) – Drumnadrochit, Dores, Culloden Moor, Tomatin, Cannich, Balnain, Invermoriston, Foyers, and Stratherrick”.*

4.10.3 In response to the objections, the Council proposed a modification to the policy (renumbered Policy GP11 to take account of the addition of Policy GP8) to state that it would “encourage” SW to give priority to the schemes listed, and to insert an additional (final) sentence that:

“Mains drainage will be a pre-requisite of development within the City and in defined Local Centres and Key Villages, where land is identified for expansion or promoted for other significant purposes”.

Brief summary of the main points raised by the objectors

SEPA

4.10.4 Scotland has the poorest compliance record in Europe in terms of meeting the microbiological standards in the main European drivers for improved waste water treatment, namely the Urban Waste Water Treatment (UWWT) Directive, the Bathing Waters Directive, the Groundwater Directive and the Water Framework Directive. As a matter of law, THC as a public authority is obliged to comply with these Directives.

Infringement of the Directives could result in infraction proceedings against the UK and a daily fine.

4.10.5 The UWWT Directive, as applied by the Urban Waste Water Treatment (Scotland) Regulations 1994, (the UWWT Regulations, 171/6) requires all agglomerations to have collecting systems for urban waste water, and certain levels of treatment prior to discharge. Large agglomerations and discharges into sensitive areas were given the earliest priorities. Agglomerations with a population equivalent (pe) of 2,000 or more must have plants providing secondary or equivalent treatment by the end of 2005. Smaller agglomerations (which can include hamlets) were not given a specific timescale for this type of treatment, but require “appropriate treatment” by the same date where discharges are to freshwaters or estuaries. The only grounds for an exception to a collecting system are where this would produce no environmental benefit or would involve excessive cost. Only SEPA can certify whether there would be “no environmental benefit”. In its view, there is a clear environmental benefit from a public sewerage system. The requirement with regard to “excessive cost” is that “the same level of environmental protection shall be used”. Only Scottish Ministers can certify whether an exception is justified on this ground.

4.10.6 Other Directives require discharge standards higher than those in the 1994 Regulations (for example the Bathing Water Directive 171/4 and 171/7). Bathing Waters have been designated at Nairn, and at Dores. A WWTP at Dores now provides adequate protection there. However, the Nairn Bathing Water is significantly affected by foul drainage within the River Nairn catchment area.

4.10.7 The Groundwater Directive (171/2), which is expected to be revoked by the Water Framework Directive (171/3) in 2013, requires the prevention of groundwater by List II substances. These include ammonia, which is found in foul drainage. The Water Framework Directive will have a significant impact on the way groundwater is managed in Scotland. Its requirements include the identification of management units for groundwater; ensuring that no deterioration in their status occurs; improving “poor” status bodies to “good” where technically feasible without disproportionate cost; preventing or limiting the entry of pollutants to groundwater; reversing any significant and sustained upward trends in pollutants in groundwater; control regimes for abstraction and for sources liable to cause pollution; and a new Groundwater Directive concerned with pollution prevention.

4.10.8 SPP 1 states that the Directives are of particular relevance to planning, and that their implications for the use of land should be recognised and reflected in development plans and development control decisions. It also advises planning authorities to have regard to the impact of a proposal on air or water quality, although the regulation of emissions or discharges is dealt with under other legislation. SPP 7: Planning and Flooding confirms that drainage is a material planning consideration. SPP 3 expects planning authorities to draw up long-term sustainable settlement strategies, where key considerations will include the co-ordination of housing land with improvements in infrastructure. NPPG 15 states that pressures for growth may create severe problems, especially where there are infrastructure constraints, and that a clear development strategy in structure plans will be necessary. It also states that strategies should be agreed by the agencies, including the water authorities, and should emphasise restraint where environmental quality is threatened

or there is a lack of infrastructure. SEPA considers that principles also apply to local plans. NPPG 15 also regards it as imperative that infrastructure providers and regulators are consulted early in the development process, and that the scope for development in the countryside is justifiable in environmental and infrastructure terms. It also states that, where authorities identify a need for small groups or individual houses in the countryside in development plans, they should ensure that these match local infrastructure capacity.

4.10.9 PAN 51: Planning and Environmental Protection (171/16) states that a local plan may have to acknowledge that capacity or environmental thresholds may mean that further development is unlikely to be permitted or may have to be restricted until the constraint is resolved. PAN 36: Siting and Design of New Housing in the Countryside (171/14) notes that demands on unprogrammed public expenditure on services may result in areas being excluded from a policy favouring development. PAN 38: Housing Land (171/15) identifies infrastructure as a factor in determining site effectiveness and influencing future development and allocation.

4.10.10 THC had stated in its response to SEPA's objection that drainage capacity was one of the wide range of considerations it had to consider in identifying locations for development. However, the Directives are mandatory and should be fundamental to the Council's decisions. There is also no evidence that the Council has taken drainage capacities into account. In several locations, there is no existing system, and no capacity in some others. SEPA representatives are not aware of the inquiries THC states it made to SEPA prior to the CDLP, and no documentary evidence of these has been produced at the inquiry.

4.10.11 SEPA is not seeking an embargo on development or objecting to any allocations *per se*. However, where allocations are significant, or are within or reasonably adjacent to a public sewered area, it wishes the local plan to state that connection to the public sewer will be a pre-requisite of development. It also wishes controls to be imposed at other locations where problems are likely to arise. It maintains that this approach would increase pressure on SW to improve public drainage facilities, whereas THC's approach would have the opposite effect. In non-sewered areas, development should be very limited in scale to prevent the proliferation of private systems, and the environmental problems that would inevitably arise. Within the River Nairn catchment, to protect the Nairn Bathing Waters, private systems should discharge to land.

4.10.12 While the Directives do not preclude private treatment works, and these could theoretically comply with the standards required, this might mean imposing requirements that could not be met in practice. In SEPA's experience, such works can often have unacceptable environmental impacts, due to wide variations in flows, to which the biological system used cannot adjust; poor maintenance and management; and difficulties in securing refurbishment or replacement. These problems are inevitable when there is a multiplicity of systems. In addition, private systems in sewered areas often have their treatment processes close to other housing, which is affected when operational problems arise. The situation is compounded by enforcement difficulties due to multiple or changing ownership. Unlike regulated public sewerage infrastructure, improved standards of effluent discharge are also often difficult to achieve when required. Action under the Control of Pollution Act

(CoPA) is reactive, after the harm has occurred, and cannot backtrack to existing consents. For all but very minor developments, hydrogeological assessment is required to ensure that groundwater will not be harmed.

4.10.13 Waste water treatment in compliance with Part M of the Building Standards (Scotland) Regulations 1990 (as amended) can usually prevent harm where individual houses in the countryside are concerned. However, it does not provide protection where there is a proliferation of dwellings, set a minimum separation distance between soakaways, or include groundwater protection measures, although the cumulative effect of large numbers of small discharges can cause groundwater pollution. Building Control officials often consider applications on an individual basis. SEPA cannot influence the creeping proliferation of small-scale systems to land as it is not a statutory consultee on single house applications. It also does not consent discharges of less than 4 houses (15 pe) to land, and elects not to exercise prohibition powers in these cases. The only practical alternative to reacting to problems as they arise, is therefore for the local plan to require connection to the public sewer where significant settlements occur or are planned.

4.10.14 Against this background, SEPA considers that the local plan should make connection to the public sewer a pre-requisite of development at the following locations:

- **Morayhill:** (Policy 3:7) 12 ha allocation for industry and/or renewable energy in an area without a public sewer. Allowing a multiplicity of private systems to deal with waste water from industrial processes could have significant environmental impact.
- **Lochside:** (Policy 5:1) 8 houses in an area without public sewerage close to the very sensitive Loch Flemington. Although drainage from the site is unlikely to be in connectivity with the loch, the scale of development in the area, the absence of watercourses large enough to give dilution for a discharge to water, and the potential impact on groundwater, necessitate connection to the public sewer. The local plan identifies the lack of a WWTP as an infrastructure constraint, and a proliferation of septic tanks as a restriction.
- **Dochgarroch:** (Policy 16:1) 8.5 ha for housing, visitor, community uses, and (in the modified plan) associated leisure facilities, possibly including “*an acceptable drainage arrangement.*” Connection to a public sewer should be a pre-requisite for what would be effectively a new village.
- **Bunchrew:** (Policy 18:1) 20 houses, subject to drainage at developer expense, and 1.6 ha for business/tourist related use, subject to drainage. SEPA has concerns regarding the dilution in the watercourse to which the local public septic tank discharges, and would be concerned if private systems seeking to discharge to this were to be proposed, or if there was to be a proliferation of private systems. The IMF is designated for its nature conservation interests.
- **Culloden Moor:** (Policy 20:1) 6-8 houses with a stated requirement for “drainage”, although the plan states there is no remaining drainage capacity and no investment programmed at Culloden Moor, and that “*opportunities for development in the immediate future are limited essentially to existing commitments.*” SEPA would be concerned if a proliferation of private systems was to develop in this sewered area.

- **Clephanton:** Policies 21:1 and 21:2 of the plan refer to 8 houses, subject to “adequate drainage at developer expense.” The public system in Clephanton will need to be upgraded to ensure that it will not adversely affect the bacterial quality of the River Nairn. Connection to the public sewer should be required, and development should not be allowed until the public sewer has been upgraded.
- **Tomatin:** Given its scale, connection to the public sewer should be a pre-requisite of development in the village.
- **Invermoriston:** The River Moriston is a cSAC. This is partly due to the presence of freshwater pearl mussels, which can be affected by suspended solids and nutrient enrichment. A proliferation of private systems would threaten water quality
- **Dalchreichart:** The plan states that “water treatment works are programmed for completion by 2004” but then goes on to state that “Further linear development would be in keeping with septic tank drainage”. Many septic tanks in this area discharge to watercourses leading into the River Moriston. Drainage to land is difficult. Dalchreichart is a village, and drainage should be to the public sewer.
- **Cannich:** Policies 29:6 and 29:7 allocate 2 expansion sites, for over 40 houses in total, 0.8 ha for a WWTP, and states that “Scottish Water should give priority to programming drainage improvements” Cannich is a substantial settlement, and SEPA would be concerned if a further proliferation of private systems was to develop.
- **Foyers:** significant allocations for housing and business are proposed, and land is allocated for a new WWTP “which Scottish Water proposes to construct.” Foyers is also a substantial settlement, and SEPA would be concerned if there was to be a further proliferation of private systems. Complaints regarding foul drainage problems have never been adequately resolved. The only long-term solution is a public drainage system and the programmed treatment works.
- **Stratherrick:** significant allocations for housing and business are proposed, subject, among other things, to “improved sewerage facilities”. Unsatisfactory drainage systems in this area have caused complaints in the past. Loch Mhor has suffered algal blooms, probably affected by foul drainage discharges.
- **Strathnairn:** without adequate treatment and facilities, there is a risk of unacceptable bacterial load being received by the River Nairn, and non-compliance with the Bathing Waters Directive at Nairn.

The plan should also state that, within the River Nairn catchment, foul drainage for small-scale developments shall be to land rather than to water.

4.10.15 Policies 3:2 and 6:1 regarding Housing in the Countryside in the A96 Corridor, and in the Hinterland, state that “Some residential development associated with other smaller housing groups may also be acceptable”. However, the scale of development that is envisaged, and the consequent requirement for drainage infrastructure or impact on the environment, are unclear. As these policies stand, they could lead to unacceptable risks to water quality. It is difficult to see how the Council could have taken ground conditions into account in drafting them, when it does not seem to know where groups may occur.

4.10.16 THC appears to regard it as SEPA's responsibility to deal with problems caused by private systems. However, SE guidance makes clear this is a planning issue, and it should be dealt with in the plan. This should state:

- in relation to allocations of significant scale, within or reasonably close to publicly sewered areas, or within settlements where the scale of development is such that public sewerage infrastructure is essential, namely Morayhill, Lochside, Dochgarroch, Bunchrew, Culloden Moor, Tomatin, Invermoriston, Dalchreichart, Cannich, Foyers and Stratherrick, that connection to public sewer will be a pre-requisite of development;
- in the Housing in the Countryside policies, that new development not served by public sewers will only be acceptable if it is very limited in scale, and is located where satisfactory foul drainage can be demonstrated and where there are not existing foul drainage problems; and
- Balnafoich, Daviot East, Leanach, Strathnairn ("east of Inverarnie", School Wood, Croftcroy, Dalvourn), and Clephanton are within the River Nairn catchment. Further development should only be permitted there where foul drainage is to a public sewerage system capable of treating waste water to a high standard. Alternatively, where there is no public sewerage, limited numbers of individual houses could have a land-based drainage solution compatible with Part M of the Technical Standards.

4.10.17 Policy GP11 in the DDMILP goes some way towards meeting SEPA's concerns. However, the term "mains drainage", and the Local Centres and Key Villages that would be covered by the policy, are unclear, and there should be a statement that private waste water systems within areas served by a public sewer will not be permitted. The final paragraph of this policy should therefore be changed to read:

"Connection to public sewer as defined in the Sewerage (Scotland) Act 1968 will be a pre-requisite of development within the City and in all Local Centres and Key Villages. Private waste water systems within areas served by a public sewer will not be permitted."

4.10.18 The amended wording suggested by THC in the course of the inquiry, namely:

"Connection to public sewer as defined in the Sewerage (Scotland) Act 1968 will be a pre-requisite for all development proposals unless the applicant can demonstrate that:

- (i) connection is not feasible, technically or economically, or;*
- (ii) the receiving WWTP is at capacity and Scottish Water has no programmed investment to increase that capacity.*

Private waste water systems will only be considered for proposals that have demonstrated (i) or (ii) above. Systems serving housing in the countryside should discharge in the first instance, to land rather than water.

All development proposals must demonstrate adequate foul drainage arrangements”

is welcome, as far as it goes. However, it would allow a developer to use a private system, based solely on technical or economic considerations, irrespective of the consequences for compliance with EC Directives, or the environment. It also weakens Policy GP11, presumably unintentionally, as it would allow some development in Inverness, Local Centres, and Key Villages, without being connected to the public sewer. The phrase “adequate foul drainage” is too imprecise, particularly as the factors that will be taken into account in determining adequacy are not explained.

Scottish Water

4.10.19 Several of the drainage schemes mentioned in the plan have already been carried out or are planned, and it should be updated to reflect this. However, “pressing” SW to progress schemes is not the most constructive way of describing the fuller picture as scheme prioritisation is largely dictated by current legislation. Some of the allocations are in locations with no public sewerage. Provision for “first time” sewerage is not a principal driver for SW expenditure, and schemes would require to be assessed on a priority basis in consultation with SEPA. In some locations, if all allocations were to proceed, waste water treatment facilities would be overloaded and breach the discharge consent. SW would therefore object unless upgrading took place in conjunction with the development. This might require a revised discharge consent, and the agreement of SEPA.

Brief summary of the Council’s responses to the objections

4.10.20 Policy GP10 was phrased as a lobbying recommendation aimed at SW to influence its investment programme. The proposed modifications would add a mains drainage pre-requisite to the wording of Policy GP11, for all of the plan’s significant allocations in Inverness, in defined Local Centres, and Key Villages. It would also temper the tone of the policy regarding SW. Tomatin is a Key Village. When the next phase of waste water treatment facilities there is completed, all but the Allt Dhubag allocation could be connected to a public sewer at reasonable cost.

4.10.21 The spare capacity of existing and programmed WWTPs and the capacity of sub-soils and “controlled waters” to accept further septic tank/soakaway arrangements have been key considerations in determining land allocations. Where possible, development has been directed to locations with spare capacity. However, compliance with EC Directives is not an overriding factor in development plan preparation and other considerations also influence the allocation of land. This is consistent with national policy guidance.

4.10.22 The Council is in regular contact with SEPA and with SW regarding SW’s investment programme. SEPA lobbies SW to ensure compliance with EC Directives and other environmental regulations. THC lobbies SW to ask for its programme to also reflect social, economic and other environmental objectives.

4.10.23 Imposing a development embargo at Cannich, a large village in the RDA, would go beyond the terms of NPPG 15, and could cause a downward spiral in community and commercial facilities and population. THC's aim is to do what it can through the local plan to reverse this. By allocating land and lobbying affordable housing agencies, SW, and other bodies, it hopes to foster growth in rural communities. While decline is less evident in the Hinterland, it is still unreasonable to prohibit any further development not connected to mains drainage. In a higher demand area, the more land that is allocated increases the likelihood that SW will invest. The availability of private funding for WWTPs is also a factor.

4.10.24 All of the local plan allocations are subject to adequate foul drainage provision, and the plan makes frequent reference to this. Policy G2 of the HSP also includes a reference to "compatible" sewerage provision. The mains drainage pre-requisite in Policy GP11 is intended to apply in the City and in all Local Centres and Key Villages defined in the plan. A reference to adequate foul drainage was regarded as sufficient for the few other smaller, allocated sites, although it is accepted that the terms "adequate drainage" and "other significant purposes" should be clarified. In any event, allocation does not mean that sites will be developed. The Directives do not rule out private treatment works and SEPA has sufficient controls to address its concerns. It has greater powers than it suggests, including the ability to refuse discharge consent, and often makes representations on planning applications. Many of the problems it describes are due to poor management and maintenance, and are more appropriately dealt with through the relevant regulatory regimes.

4.10.25 THC had asked SEPA, prior to publication of the CDLP, for a list of areas served by septic tank/soakaway drainage, which cannot accept more development. SEPA provided anecdotal evidence but no definitive mapped areas that would justify emphasising restraint. THC's Building Control Service (which was responsible for checking the results of percolation tests prior to self-certification) does not consider that there are any problem areas that justify an embargo. Advances in foul drainage engineering mean that it is only very rarely that a potential house site cannot achieve adequate drainage. A small site close to other houses or a watercourse and with poorly drained sub-soils may present problems, but such "areas" cannot be mapped in local plans. Drainage options for larger sites, even with poorly drained soils, include reed beds, larger or mounded soakaways, and septic tanks incorporating a degree of treatment. Accordingly, in the absence of evidence to justify any embargos on development, it is correct to allocate sites subject to adequate foul drainage provision. Absolute presumptions against development are also very difficult to justify at appeal. THC has not refused planning permission on drainage grounds alone since losing an appeal at Dornoch in 1991.

4.10.26 The Council considers that the further amendment to Policy GP11 (quoted at paragraph 4.10.18) addresses many of SEPA's concerns and achieves a reasonable balance between environmental protection and other legitimate planning objectives, such as rural development. It significantly strengthens the previous wording, as it applies to all development in the local plan area, and seeks to achieve connection to the public sewer as a preferred outcome. However, connection cannot be a pre-requisite for all development, and policy must allow private systems to be considered for technical, economic or capacity reasons. In practice, developers are unlikely to opt for a private system, if they can connect to the public sewer at

reasonable cost. The requirement for housing in the countryside to discharge, in the first instance, to land rather than water covers SEPA's concerns on this issue. The final sentence defines what is meant by "adequate drainage". As the policy would encompass all development proposals, there is no need to change references to drainage in any of the settlement policies.

Conclusions

4.10.27 Policy GP11 in the DDMILP takes a more conciliatory tone towards Scottish Water than the equivalent policy in the DDILP, but need not be any less effective in encouraging constructive dialogue. While the plan cannot dictate how SW prioritises its expenditure, it is desirable for forward planning and infrastructure and utility improvements to be co-ordinated.

4.10.28 National planning policy guidance and best practice advice confirm that drainage is a material planning consideration, and a relevant issue for a local plan to address. SPP 3 expects planning authorities to draw up long-term sustainable settlement strategies, and identifies the co-ordination of housing land provision with improvements in infrastructure as a key consideration. NPPG 15 states that the scope for new development opportunities in the countryside should be justifiable in both environmental and infrastructural terms, and that it is government policy to focus new development in areas where it can best be accommodated, including in terms of infrastructure.

4.10.29 Given its geographical extent, with predominantly small settlements separated by extensive areas of countryside, and the limited resources available to Scottish Water, shortcomings in the extent and quality of drainage infrastructure in the local plan area are not surprising.

4.10.30 The local plan identifies some settlements where limitations or deficiencies in drainage facilities represent infrastructure constraints. It proposes additional development at some of these locations, in some cases of a significant scale. Its Housing in the Countryside policies also countenance development in the Hinterland and the A96 Corridor, where "other smaller housing groups" occur, in areas not served by a public sewer. The plan does not identify the scale of this development, or the groups encompassed by these policies.

4.10.31 Foul drainage can harm the quality of surface water and ground water and can cause significant environmental and health problems. The evidence indicates that a connection to the public sewer is likely to afford greater protection from such problems than private treatment facilities.

4.10.32 EC Directives impose requirements on water quality in relation to discharges in the local plan area. Some of these requirements are due to take effect from 2005. Failure to comply with the requisite standards could result in infraction proceedings against the UK, and associated financial penalties. While there is no statement of national policy to the effect that possible implications for compliance with European Directives will always be an overriding planning consideration, SPP 1 states that EC Directives are of particular relevance to planning, and that the

obligations that they specify have implications for the use of land, which should be recognised and reflected in development plans and development control decisions.

4.10.33 SEPA can address problems that arise as a consequence of unsatisfactory or inadequate drainage facilities. However, it cannot act in anticipation of such problems, and can only invoke proceedings under CoPA after a pollution event.

4.10.34 Drawing these matters together, I conclude that the local plan should contain a policy framework designed to minimise the potential for new land use allocations to contribute to pollution events, and the attendant problems. In this regard, I am satisfied that the local plan should require new development in the City of Inverness, and in Local Centres and Key Villages, where the majority of development is likely to occur, to be connected to the public sewer.

4.10.35 While private treatment facilities are, in general, likely to be less satisfactory than public drainage, it cannot be assumed that SEPA's concerns, which are expressed in broad brush terms, will always be realised in practice. On the evidence available, I am not persuaded that private sewage treatment facilities should be ruled out elsewhere, as a matter of principle. Scottish Water refers to potential overloading of waste water treatment facilities and breach of discharge consent, but in unnamed locations.

4.10.36 It would nevertheless be unwise for the plan to promote development without a connection to the public sewer at locations where this is likely to give rise to serious or significant environmental or health problems. It would also be undesirable for the plan to identify land for development, with a requirement for a connection to the public sewer, if this is unlikely to be a practical proposition within the plan period.

4.10.37 Although I have insufficient evidence to make a clear recommendation as to whether connection to the sewer should be a requirement at the other locations identified by SEPA, doubts regarding the potential consequences conditions at these locations nevertheless remain. I therefore conclude that the Council should reassess the allocations concerned, in discussion with SEPA and Scottish Water, based on the principles that I recommend should be included in a Water and Waste Water General Policy before deciding whether or not to confirm these allocations.

4.10.38 My recommendations at Chapter 29.3 regarding the local plan's Housing in the Countryside policies cover SEPA's objection that these policies are vague and do not identify "other smaller housing groups".

Recommendations

4.10.39 I recommend that:

- (1) the opening sentence of Policy GP10 (GP11) is modified to state that Scottish Water will be encouraged to improve infrastructure where necessary to implement the local plan strategy.
- (2) the bullet points in the policy are revised and updated to take account of the facilities that have now been provided, for example at Dores and Tomatin.

- (3) the remainder of the policy is amended to read:

Connection to the public sewer as defined in the Sewerage (Scotland) Act 1968 will be a pre-requisite of planning permission for all development proposals in the City of Inverness and in all the Local Centres and Key Villages identified in the plan. Elsewhere, connection to the public sewer will be required, unless the applicant can demonstrate that:

- (i) connection is not feasible, for technical or economic reasons, or;*
- (ii) the receiving WWTP is at capacity and Scottish Water has no programmed investment to increase that capacity, and;*
- (iii) the proposal is not likely to result in significant environmental or health problems.*

Planning permission for developments with private waste water systems will only be allowed where proposals satisfy (i) or (ii) above, and satisfy (iii). Any such systems in the River Nairn catchment should discharge in the first instance to land rather than water.

- (4) the Council reassesses the allocations and locations to which SEPA objects, in discussion with SEPA and Scottish Water, based on the principles listed above, before deciding whether or not to confirm these allocations.

Reporter's note: SEPA's objections regarding specific settlements are considered in subsequent chapters, where the settlements concerned are also the subject of other objections. Where SEPA is the only objector, there is no separate chapter, and the above recommendations apply.

4.11 OBJECTIONS TO POLICY GP11: FLOOD RISK

Objectors: Homes for Scotland (64) and SEPA (171)

Procedure: Written submissions

Synopsis of objections

4.11.1 SEPA objects that Policy GP11: Flood Risk in the DDILP does not refer to flood return periods (or flood probabilities) in quantifying flood risk; does not require a flood risk assessment (FRA) for development proposals on land at risk of flooding; and does not make clear whether the reference to "*layout and design*" encompasses emergency access and evacuation of people during a flood event. It also states that, in allocating land, THC should take account of the statement in the (then) Consultation Draft NPPG 3: Planning for Housing that locations likely to be at significant risk from flooding should be avoided. Homes for Scotland wishes the policy to identify levels of risk for different types of development.

Factual background

4.11.2 Policy GP11 states:

“Further to NPPG 7, development proposals in areas susceptible to flooding will be assessed for their sensitivity according to the following levels of risk:

- high: where a presumption against development will apply unless exceptional justification is demonstrated. Proposals will be regarded as high risk if they pose an unacceptable threat to public safety, may cause pollution in the event of flooding, or could give rise to inordinate public expenditure on flood protection works;*
- medium/low: where development could be acceptable subject to compliance with the criteria below:*

In all circumstances where flood risk occurs, developers will be required to demonstrate that:

- any new building can be adequately protected from flooding and, where appropriate, that remedial measures to alleviate the flood risk will be taken;*
- no adverse impact on the characteristics of the watercourse will arise;*
- use of best practice in the management and disposal of surface water;*
- and*
- suitable evacuation provisions are embodied in layout and design.*

The costs of flood protection works associated with development proposals will be met by developers whether on or off-site”.

4.11.3 In response to the objections, THC proposed to modify the first paragraph of the policy (renumbered Policy GP12 in the DDMILP) as follows:

“Further to NPPG 7, development proposals in areas susceptible to flooding (defined in relation to the best available flood probability data) will require a developer funded Flood Risk Assessment (FRA). Proposals will be assessed for their sensitivity according to the following levels of risk: ...”

The remainder of the policy was to be retained, other than the insertion of “site/building” before “layout and design” in the final bullet point in the policy.

Brief summary of the main points raised by the objectors

SEPA

4.11.4 The proposed modifications meet most of SEPA’s concerns. However, they do not address the issue raised in the consultation draft NPPG 3. SPP 3 and SPP 7 confirm the SE’s policy of flood avoidance. SPP 7 states that planning authorities should have regard to the planning responses in its Risk Framework, and to information in SEPA’s flood maps. The policy should therefore be further amended by deleting the first part, as far as “*criteria below*”, and substituting “*Further to SPP 7, development proposals in areas susceptible to flooding (defined using SPP 7’s Risk Framework) will require a developer funded Flood Risk Assessment.* Retaining the reference to “*a presumption against development in high risk areas ...*” would be contrary to national policy.

4.11.5 The SE has commissioned SEPA to produce fluvial flood maps consistent with the Risk Framework by September 2004. These maps will be available before the plan is adopted. In the interim, existing flood map data relating to previous fluvial flood events supplied to THC in 2002, Centre for Ecology and Hydrology’s indicative floodplain maps for 1:100 year return period floods, and local sources of flood knowledge, could be used to identify “medium to high risk areas” in terms of the Framework. Given the advanced stage of the local plan, it would be unrealistic to expect the Council to reappraise the allocations using this data, although it could have done so in preparing the plan. The data could also be used to assess development proposals.

Homes for Scotland

4.11.6 The policy must quantify the level of risk associated with the definitions in the policy. A Risk Framework, such as that in SPP 7, is required. SPP 7 suggests a “low to medium risk” return period of about 1:200 years as appropriate for residential development, but also countenances housing in “medium to high” risk areas in some circumstances. Homes for Scotland regards these return periods as appropriate, and considers that they should be reflected in the policy. Many local plans take this approach, and the Renfrewshire Local Plan identifies a “desired” level of protection for different categories of housing. A 1:30-1:50 year return period should be acceptable for car parks, amenity space, and storage and servicing areas. The policy should present risk data, again in relation to the guidance in SPP 7, which expresses a

preference for local plans to identify risk in terms of the percentage chance of flooding occurring in any one year rather than quoting return periods.

Brief summary of the Council's response to the objections

4.11.7 SPP 7 has, to a degree, moved the debate on in terms of an appropriate policy wording. However, SPP 7 is not specific on some key issues which THC wishes a flood risk policy to address. These include making clear that developers would be expected to fund any flood protection works required as a result of their developments, and that developer-funded FRAs would be required for some types of development in areas of a specified flooding probability.

4.11.8 In any event, any amended policy wording could only be applied consistently if the underlying flood probability data is comprehensive and reliable. This is not the case at present. SEPA's forthcoming data will not be completed until late 2004. The information that is currently available is mostly specific to the sites of flood events from 1997 onwards. The Centre for Ecology and Hydrology indicative flood plain maps cannot be applied sensibly to development sites because of scale limitations, and because they only relate to a 1:100 year return period. Accordingly, subject to replacing the reference to NPPG 7 by a reference to SPP 7, Policy GP12 provides an adequate framework for assessing development proposals.

Conclusions

4.11.9 PAN 49 requires local plans to take full account of national policy considerations. Current national planning policy guidance on Planning and Flooding is contained in SPP 7, published in February 2004. The SPP, which post-dates the DDILP and the DDMILP, requires planning authorities to take the probability of flooding from all sources into account in preparing development plans and in determining planning applications. It also expects planning authorities to have regard to the planning responses in the Risk Framework in drawing up policies in development plans and in development control decisions, alongside other information, including from SEPA. The Risk Framework in SPP 7 is thus a key element of national policy.

4.11.10 In summary, the Risk Framework sets out The Planning Response to Flood Risk as set out below. This is expressed in terms of the percentage chance of flooding occurring in any one year, and as a return period:

1. Little or no risk areas - annual probability of flooding less than 0.1% (1:1000).

Appropriate Planning Response - No constraints.

2. Low to medium risk areas - annual probability of flooding 1%-0.5% (1:1000-1:200).

Appropriate Planning Response – Not usually necessary to consider flood risk unless local conditions indicate otherwise. Suitable for most development, but generally not suitable for essential civil infrastructure, hospitals, fire stations, emergency depots etc.

3. Medium to high risk - annual probability of flooding greater than 0.5% (1:200).

Appropriate Planning Response – Generally not suitable for essential civil infrastructure.

3(a) Within areas already built-up – these areas may be suitable for residential, institutional, commercial and industrial development provided flood prevention measures to the appropriate standard already exist, are under construction, or are planned as part of a long-term development strategy in a structure plan context.

3(b) Undeveloped and sparsely developed areas – these areas are generally not suitable for additional development, including residential, commercial and industrial development. Exceptions may arise if a location is essential for operational reasons. Exceptionally, if built development is permitted, flood prevention and alleviation measures are likely to be required and the loss of storage capacity minimised.

4.11.11 SPP 7 states that local plans should select development sites on the basis of the Risk Framework, providing full justification if different probabilities are chosen; identify sites or areas constrained by flood risk from other sources; and indicate when a drainage assessment will be required on the grounds of flood risk.

4.11.12 Policy NH1 of the HSP requires local plans to identify areas with a perceptible risk of flooding. It also states that, within these areas, all development proposals will be assessed for their compatibility with the flood risk and with the flow character of the watercourse. This policy pre-dates SPP 7, which THC agrees has “moved on the debate to a degree”. It also pre-dates SPP 3, which states that sites likely to be at significant risk from flooding, including those on the functional flood plain, should not be developed for new housing.

4.11.13 References in both the DDILP and the DDMILP indicate that the Council took flood risk into consideration in plan preparation, based on the data that was available to it at those times, which was not comprehensive. At the time of the inquiry, comprehensive flood risk data was still not available.

4.11.14 However, SPP 7 confirms that SEERAD has commissioned SEPA to prepare 2nd generation flood maps, which will provide a better basis for identifying risk areas. SEPA refers to a commission to produce maps consistent with the Risk Framework, by September 2004. This information is therefore likely to be available prior to publication of post-inquiry modifications. It ought to allow the Council to identify areas subject to flood risk, as required by the HSP, and in relation to the Risk Framework, in line with SPP 7.

4.11.15 Undertaking FRAs and drainage assessments where required and implementing agreed measures to deal with flood risk are among the key responses for developers identified in SPP 7. It is thus appropriate for the policy to identify the circumstances in which a FRA will be required, and where responsibility for producing such an assessment will lie. SEPA is satisfied with the terms of the modified policy in relation to FRAs. Homes for Scotland does not object to developer-funded flood risk assessments in principle.

4.11.16 The Risk Framework, albeit necessarily simplifying the situation, considers the suitability of land use categories in relation to flood risk. These provide a nationally recognised basis in terms of the risk levels likely to be acceptable for various land uses. However, particular types of development within these categories,

such as housing, have differing vulnerability to flooding. This ought to be recognised. It is also desirable for site and building layout and design to embody suitable evacuation provisions. The proposed modification clarifies the scope of the policy in this respect and should help avoid misunderstanding.

Recommendations

4.11.17 I recommend that:

(1) the Flood Risk policy is reworded along the following lines:

“Development proposals in areas susceptible to flooding (defined using SPP 7’s Risk Framework) will require a developer funded Flood Risk Assessment.

In all circumstances where flood risk occurs, developers will be required to demonstrate:

- *that the development can be adequately protected from flooding in terms of the Risk Framework and, where appropriate, that remedial measures to alleviate the flood risk will be taken;*
- *that no adverse impact on the characteristics of the watercourse will arise;*
- *use of best practice in the management and disposal of surface water;*
and
- *that suitable evacuation provisions are embodied in site/building layout and design.*

The costs of flood protection works associated with development proposals will be met by developers whether on or off-site”.

(2) the local plan recognises, along the lines suggested by Homes for Scotland (and incorporated in the objector’s statement) the differing vulnerability to flooding of particular types of housing development.

Other matters

4.11.18 SEPA agrees it would be unrealistic to expect the Council, at this stage, to reappraise its local plan allocations using the forthcoming data. However, I consider that would be prudent for the council to give consideration to this if the flood risk maps indicate any allocations that would be subject to a significantly higher flood risk than had previously been thought.

4.12 OBJECTION TO POLICY GP12: SURFACE WATER DRAINAGE

Objector: SEPA (171)

Procedure: Written submissions

Synopsis of objection

4.12.1 Policy GP12 should refer to PAN 61: Planning and Sustainable Drainage Systems (SUDS, 171/18); and to the need to avoid culverting or canalising watercourses, and to restore them, wherever possible.

Factual background and summary of the Council's response to the objection

4.12.2 Policy GP12 in the DDILP states:

“The Council has a statutory responsibility to maintain the efficiency of existing watercourses, together with related powers and responsibilities under the Flood Prevention Act 1961 and the Flood Prevention and Land Drainage Act 1997. The Council will expect surface water to be disposed of in accordance with SUDS and the maintenance of resultant systems in line with the framework in the SUDS Design Manual CIRIA C521. Development proposals will be assessed for any requirement to provide attenuation measures, remedial works associated with existing drainage systems and consideration shall be given to their environmental effects and scope to create or enhance habitats. Some designs require substantial areas of land to implement and will influence site layouts. There will be a strict presumption against development not associated with the open space function of the “green” corridors adjoining rivers and as identified in the local plan, to avoid jeopardising their potential for disposal or attenuation of surface water”.

4.12.3 The Council agreed to insert (in what became Policy GP13 in the DDMILP) “and PAN 61: Planning and Sustainable Drainage Systems” after “CIRIA C521”. However, it stated that culverting and canalisation were technical and design matters, and were dealt with in Policy GP11: Flood Risk.

Brief summary of the main points raised by the objector

4.12.4 SEPA welcomed the proposed modification, as far as it went. However, it stated that culverting and canalising works had been particularly important in Inverness, and had been proposed in numerous planning applications. The Council's Biennial Flooding Reports had identified many culvert-related flooding problems in the area. Culverting and canalising also raise other considerations that cannot be dealt with adequately under the flood risk policy.

4.12.5 NPPG 14 states that developers should be encouraged to seek alternatives to extensive culverting or canalisation, as these greatly reduce the ecological and amenity value of watercourses; and that opportunities should be taken to restore culverted or canalised watercourses in redevelopment and land rehabilitation schemes.

SPP 7 states that watercourses should not be culverted as part of a new development, unless there is no practical alternative; and that existing culverts should be opened whenever appropriate. The references sought by SEPA would therefore fully accord with national planning policy, particularly in the light of experience at Inverness. The following addition to the policy is suggested:

“Culverting or canalising of watercourses will be acceptable a) where alternatives are demonstrated to be impractical; and b) where their design demonstrates good environmental practice. Where a site contains culverted or canalised watercourses, opportunities to restore the natural form of the watercourse will require to be explored”.

Conclusions

4.12.6 PAN 61 sets out national best practice advice regarding the application of SUDS principles in development planning. It ought to be mentioned in the policy.

4.12.7 Culverting and/or canalisation of water courses can have a range of consequences, not only for flooding, but also for the ecological value and nature conservation interest of watercourses.

4.12.8 It is national policy, as expressed in NPPG 14 and SPP 7, to discourage culverting and/or canalising of watercourses, in order to avoid these effects. It is also national policy to encourage, to the same end, the restoration of watercourses where it is appropriate and practical to do so. The reference sought by SEPA would therefore accord with national planning policy.

4.12.9 However, the local plan's Surface Water Drainage policy already requires development proposals to be assessed for any requirement to provide remedial works associated with existing drainage systems, and consideration to be given to their environmental effects and scope to create or enhance habitats. I conclude that, as a general policy that would apply throughout the local plan area, the wording in Policy GP13 of the DDMILP, would provide an adequate policy framework for addressing the issues raised by the objector.

Recommendation

4.12.10 I recommend that the modification proposed by the Council, as incorporated in Policy GP13 in the DDMILP, is accepted.

4.13 OBJECTIONS TO POLICY GP14: FLOOD APPRAISAL

Objectors: Homes for Scotland (64) and SEPA (171)

Procedure: Written submissions

Synopsis of objections

4.13.1 SEPA objects that Policy GP14 in the DDMILP should require an Integrated Catchment Management Plan for the River Nairn. Homes for Scotland's objection is that the lack of detail in the plan regarding flood risk and flood events places a substantial burden on developers to obtain flood information in support of planning applications.

Factual background

4.13.2 Policy GP14 (in summary) expresses THC's support for an Integrated Catchment Management Plan for the River Ness, to be prepared under the EC Water Framework Directive, to enable flood appraisal and management in the context of wider development and land use activities. It states that a Flood Appraisal Group (FAG) will facilitate a co-ordinated approach throughout the area, and will also advise on river-related works that do not require planning permission, consistent with a National Code of Practice being prepared by the SE.

4.13.3 In response to the objections, THC proposed to modify the policy (Policy GP15 in the DDMILP) to extend support for an Integrated Catchment Management Plan to the River Nairn. SEPA conditionally withdrew its objection, subject to this change.

Brief summary of the main points raised by Homes for Scotland

4.13.4 SPP 7 requires the potential for sites to flood to be considered during local plan preparation. It also requires this consideration to take into account any flood risk areas identified in the structure plan, SEPA's indicative flood risk maps, and other information on flooding. SEPA has undertaken to provide mapping information to local authorities (64/4) for a 1:100 year (1%) flood return period. This information should be obtained and presented in the local plan. The plan should also contain a commitment to the collation and publication of comprehensive flood data, including mapping of flood risk areas, at the earliest opportunity. Finally, a Flood Liaison and Advice Group (FLAG) should be established, to provide advice on planning and flooding issues, and assist in providing flood risk data.

Brief summary of the Council's response to the Homes for Scotland objection

4.13.5 The FAG that was established for the Highland area in November 2002, which includes representatives of SEPA, Scottish Water, THC, and the insurance industry, has agreed to seek better information on flood risk. Homes for Scotland did not reply to an invitation to sit on this group.

4.13.6 In terms of practical action, SEPA announced in October 2003 that the SE is to provide funding to allow national flood maps to be published on the Internet. It is understood that SEPA will commission consultants to produce floodplain maps for catchments of greater than 3 km and the choice of return periods are likely to accord with the 1:200 and 1:1000 year flood probabilities suggested in SPP 7. It is hoped that initial (flooding from watercourses) work will be completed by late 2004, and that all information will be available on the Internet by spring 2006. This information will provide a comprehensive resource for private developers and a sound basis for developing locational guidance in Highland development plans.

4.13.7 In the absence of comprehensive flood probability data, the local plan's Flood Risk and Flood Appraisal policies provide an adequate policy framework for assessing development proposals. Flood data currently held by SEPA and THC is partial. Most is specific to the sites of flood events and dates back only to 1997. Until better data is available, it is reasonable to expect developers to fund flood risk assessments.

Conclusions

4.13.8 Policy NH3 of the HSP commits the council to supporting the production of Integrated Catchment Management Plans, to include flood management. The local plan's support for such plans therefore conforms to the structure plan. While Policy NH3 does not identify the River Nairn as a priority for an Integrated Catchment Management Plans, this river has an extensive catchment. As an Integrated Catchment Management Plan is therefore likely to be beneficial, I conclude that the proposed modification should be accepted.

4.13.9 SPP 7 explains that FLAGS were formerly called Flood Appraisal Groups, under NPPG 7, and that this is a non-statutory advisory group of public and private sector representatives, convened by Councils to share concerns and knowledge and to provide advice on a wide range of planning and other flooding issues. As a FAG was established for Highland in November 2002, the forum sought by Homes for Scotland already exists.

4.13.10 The remainder of the Homes for Scotland objection focuses on flood risk, the availability of flood probability data, and the role of developers. These matters are considered in Chapter 4.11.

Recommendation

4.13.11 I recommend that the modification proposed by the Council, as incorporated in Policy GP15 in the DDMILP, is accepted.

4.14 OBJECTION REGARDING RECOGNITION OF CULLODEN BATTLEFIELD AND CONSERVATION AREA

Objector: National Trust for Scotland (9)

Procedure: Written submissions

The objection

4.14.1 The local plan should make more reference to Culloden Battlefield, which is of international significance, a major economic asset to Inverness, and a focus for tourism. It should also identify the new boundaries that are intended for the conservation area surrounding the Battlefield, so that any future applications for housing can be assessed in relation to these boundaries.

Factual background

4.14.2 Culloden Battlefield adjoins the B9006, between Westhill and Leanach. Policy GP17: Orientation Centres of the DDILP (renumbered Policy GP18 of the DDMILP) identifies the Battlefield as a location where consideration should be given to establishing or expanding a themed Visitor Centres, in this case relating to military history. It also states:

“The Council proposes to extend/modify the boundary of the Battlefield Conservation area, and pursue an Article 4 Direction to bring certain types of development within planning control. This will be subject to separate statutory procedures and consultation”.

Brief summary of the Council’s response to the objection

4.14.3 Policy GP17 reflects the matters raised by the objector.

Conclusions

4.14.4 The local plan, at paragraph 1.39, recognises that Culloden Battlefield is of international significance. The plan also promotes it as a location for the further development of visitor facilities. I conclude that these references give suitable recognition to the Battlefield.

4.14.5 The local plan Proposals Maps appear to show the boundaries of the existing conservation area. The plan also gives notice of the Council’s intention of changing the boundaries of this conservation area. This is consistent with NPPG 18, which states that a local plan should outline any proposal for designating or changing a conservation area boundary. However, formal designation involves statutory procedures separate from local plan procedures. The local plan ought not to pre-empt the outcome of these procedures, or the consultation that the Council intends. Showing an intended boundary could also be misleading, as the statutory boundary might turn out to be different.

Recommendation

4.13.6 The local plan should not be changed in response to this objection.

4.15 OBJECTION TO POLICY GP22: HABITATS AND SPECIES IN THE DEPOSIT DRAFT LOCAL PLAN WITH MODIFICATIONS

Objector: Scottish Natural Heritage (116)
Procedure Written submissions

Synopsis of objection

4.15.1 The local plan should have a General Policy protecting the natural heritage in the wider countryside

Factual background

4.15.2 In its objection, SNH suggested a policy that would presume against development that would have a significant adverse impact on priority habitats and/or sites supporting species in Schedules 1, 5 and 8 of the Wildlife and Countryside Act 1981 (as amended), Annexes 2 or 4 of the Habitats and Species Directive, and Articles 4.1 and 4.2 of the Wild Birds Directive, unless there were over-riding reasons of public importance.

4.15.3 In response, THC proposed, as a modification, an additional policy, GP22: Habitats and Species. This states (in summary) that development proposals which affect habitats or species to which the above provisions refer would be considered in the context of HSP Policies N1 and G2.

Brief summary of the main points raised by the objector

4.15.4 NPPG 14 acknowledges that the natural heritage extends outwith designated sites, and advises planning authorities to seek to safeguard and enhance this wider interest. It also refers to obligations under the Habitats Directive to encourage features of major importance for wild flora and fauna, with a view to complementing and improving the ecological coherence of the Natura 2000 network. The Wild Birds Directive also contains wider countryside obligations.

4.15.5 While a policy that would apply outwith designated sites is welcome, Policy GP22 is very loosely worded, and does not give adequate consideration to species or habitat protection, as it links back to HSP Policies N1 and G2. Policy N1 relates specifically to designated sites. Although Policy G2 could be interpreted as relating more to the wider countryside, it is qualified with particular reference to designated areas. Policy GP22 should also refer to Annex I and Annex V of the Habitats and Species Directive. The following alternative wording for Policy GP22 is therefore proposed:

“The Council will encourage the management and maintenance of areas supporting the following habitats and species and ensure these are given full consideration in the assessment of development proposals which may affect them.

This applies to those areas listed below where they contribute to the coherence of the Natura network or are of major importance:

- *Areas of habitats listed in Annex 1 and the habitats or species of community interest listed in Annexes II, IV, and V of the EC Habitats Directive*
- *Areas which support habitats of naturally occurring wild birds, particularly those on Annex 1 of the EC Birds Directive and migratory species.*

In respect of the animals and plants identified in Annex IV, planning permission will not be granted unless it is demonstrated that the proposal will either not impact adversely on any European Protected Species on the area, or that all 3 tests as detailed in Regulation 44 of the Habitats Regulations are satisfied.

In addition to these, full consideration will be given to species listed in Schedules 1, 5 and 8 of the Wildlife and Countryside Act 1981 as amended.

Brief summary of the Council's response to the objection

4.15.6 The Council rested on its response in CD30 to the objection to Policy GP22, namely that Policy N1 covers habitats and species of international importance, while Policy G2 covers impact on other habitats and species. As far as the Council is concerned, these policies either protect conservation interests, or seek appropriate integration of developments.

Conclusions

4.15.7 SPP 1 states that local plans should contain policies relating to the conservation of the built, natural and cultural heritage.

4.15.8 NPPG 14 confirms that the presence of a protected species or habitat is a material consideration in the assessment of development proposals and that planning authorities should take particular care to avoid harm to species or habitats protected under the Wildlife and Countryside Act 1981 Act or European Directives, or identified as priorities in the UK Biodiversity Action Plan. It is also appropriate, as HSP Policy N2 indicates, for land use planning policies to encourage the management of features that are important for wildlife.

4.15.9 PAN 49 states that, in addition to conforming to the structure plan, a local plan must take account of national planning policy guidance, Circulars, and any wider international obligations. The DDILP identifies SPAs, SACs and Ramsar sites, which derive from European Directives, as Policy BP4 features, NNRs and Ancient and semi-natural woodland as Policy BP3 features, and local natural heritage areas and local biodiversity action plan areas as Policy BP2 features. However, given the aspects of national policy summarised above, I conclude that the plan should also have a policy to protect important habitats and species, outwith designated sites.

4.15.10 As Policy GP22 is intended to afford such protection, it should not refer to HSP Policy N1, which relates to the conservation and promotion of designated nature conservation sites. Policy G2, while applying particularly within designated areas, also applies outwith designated areas. It includes impact on habitats and species as a consideration in assessing development proposals, stating that developments that are judged to be significantly detrimental in terms of these criteria shall not accord with the structure plan. It would be sensible for Policy GP22 to make clear that this test also applies for the purposes of accordance with the local plan.

4.15.11 Regulation 44 of the 1994 Habitats Regulations (116/8) deals with the grant of licences, and would continue to apply irrespective of the terms of local plan policy. However, Regulation 3(4) requires every competent authority to have regard, in the exercise of its functions, to the provisions of the Habitats Directive “so far as they may be affected by those functions”. The local plan should be compatible with this obligation.

4.15.12 Policy GP22 as it stands refers to the Annexes in the Directive that SNH mentioned in its original objection. It should also include the habitats and/or species in Annexes I and V, which SNH may initially have overlooked, if these are not covered by other policies in the plan.

Recommendations

4.15.13 I recommend that Policy GP22 is included in the plan, reworded along the following lines:

“The Council will encourage the management and maintenance of areas supporting the following habitats and species, where these contribute to the coherence of the Natura network or are of major importance:

- *habitats and species listed in Annex I of the EC Habitats Directive;*
- *habitats and species of community interest listed in Annexes II, IV, and V; and*
- *habitats of naturally occurring wild birds, particularly those in Annex 1 of the EC Birds Directive and migratory species.*

This policy will also apply to species listed in Schedules 1, 5 and 8 of the Wildlife and Countryside Act 1981 as amended.

All these resources will be given full consideration in the assessment of development proposals that may affect them, and developments that are judged likely to have significantly detrimental effects shall not accord with the plan. In respect of the animals and plants identified in Annex IV, planning permission will not be granted unless it is demonstrated that the proposal will either not impact adversely on any European Protected Species in the area, or that all 3 tests in Regulation 44 of the Habitats Regulations are satisfied”.

5.1 OBJECTION REGARDING REFERENCE TO THE INVERNESS CITY PARTNERSHIP

Objector: Inverness Chamber of Commerce (54)

Procedure: Written submissions

Summary of the objection

5.1.1 The “Forward to 2011” Chapter should refer to the creation of the Inverness City Partnership as a key driver in accelerating the development of the City Centre Regeneration Initiative.

Brief summary of the Council’s response to the objection

5.1.2 The Council agreed to add “... *whilst the Inverness City Partnership has been instrumental in early progress, ...*” to the Forward to 2011 chapter, under the heading “A Competitive Place”.

Conclusions

5.1.3 The Inverness City Partnership brings together a range of interests to further the process of city centre regeneration. The Partnership’s potential to assist in this process deserves to be recognised in the local plan’s “Vision” for the City.

Recommendation

5.1.4 I recommend that the proposed modification is accepted.

5.2 OBJECTION REGARDING REFERENCE TO THE UNIVERSITY OF THE HIGHLANDS AND ISLANDS

Objector: Inverness Chamber of Commerce (54)

Procedure: Written submissions

Summary of the objection

5.2.1 The plan should make greater reference to the establishment of the University of the Highlands and Islands (UHI). The University will inevitably create opportunities (and pressures) for the area, which ought to be well placed to capitalise on commercial spin-off relating to research and development. Land should be provided for UHI itself, and also for businesses to gather around it.

The Council's response

5.2.2 The Council simply noted this objection, and did not propose any change.

Conclusions

5.2.3 The local plan contains several references to UHI, including in its vision, Forward to 2011; at paragraph 1.23, under the heading of Creating Prosperity; and in the context of Policy 2:7: Action Areas. It also proposes a range of industrial and business land allocations, which are capable of accommodating commercial spin-off developments. These references are all supportive of UHI, and appear adequate for the purposes sought by the objector.

Recommendation

5.2.4 I recommend that no change is made to the local plan in response to this objection.

5.3 OBJECTIONS TO THE OMISSION OF PROVISION FOR INDEPENDENT EDUCATION

Objectors: Inverness Chamber of Commerce (54) and The Moray Firth School (56)

Procedure: Written Submissions

Synopsis of objections

5.3.1 The local plan should make express provision for independent education development.

Brief summary of the main points raised by the objectors

Inverness Chamber of Commerce

5.3.2 The plan does not zone an area for independent educational development. The independent school in the area operates on a constrained site and will require to relocate within the lifetime of the plan. The plan should note that flexibility will be allowed to incorporate such developments such as this, which do not fall within the general commercial/business categories.

The Moray Firth School

5.3.3 The School is an educational charity, and not a commercial operation. It plans to expand, and will require larger premises. The proposed educational campus at Ashton, or other large sites such as Stratton or Craig Dunain, are possible options, where space could surely be found.

Brief summary of the Council's response to the objections

5.3.4 The plan provides opportunities for this kind of facility, including the allocation of land for schools, as community facilities on free-standing sites and in District Centres, and as part of wider regeneration proposals. It would not be appropriate to identify land for a private education facility, unless there is a firm and specific proposal.

Conclusions

5.3.5 A local plan ought to make provision for the land requirements likely to arise during the period it is intended to cover. The DDILP identifies a range of development opportunities, including those listed in the Council's response, that could be suitable for an independent education facility. It is impractical to make express provision for all aspirations and eventualities. I conclude that the plan goes as far as it reasonably can in providing for this type of development.

Recommendation

5.3.6 I recommend that no change is made to the local plan in response to these objections.

5.4 OBJECTION TO THE OMISSION OF PROVISION FOR COMMERCIAL LEISURE DEVELOPMENT

Objector: Inverness Chamber of Commerce (54)

Procedure: Written Submissions

Synopsis of objection

5.4.1 The local plan should make specific provision for commercial leisure development.

Brief summary of the main points raised by the objector

5.4.2 NPPG 8: Town Centres and Retailing (CD18) states that planning authorities have a duty to plan positively for commercial leisure in their development plans. The local plan does not appear to provide opportunities for development and investment in commercial leisure, or include a commercial leisure strategy. It should actively promote this sector, and promote sustainable development by identifying land in and around centres for this use.

Brief summary of the Council's response to the objection

5.4.3 The plan identifies major opportunities for leisure at key urban regeneration sites, in the City Centre, and within Green Wedges. Free-standing cultural, sports and leisure activities are also earmarked for the Castle, Torvean and integrated with the College.

Conclusions

5.4.4 NPPG 8 states that local plans should identify sites for new retail and leisure developments within town centres and, if appropriate, at the edge-of-centre. The local plan does not allocate specific sites for commercial leisure development. However, Policy 2.1 includes leisure development among uses that are given priority at ground floor level in Inverness City Centre. Leisure development also features in the mixed development promotes at regeneration sites including Torvean, Muirtown Basin, Longman Bay, and the Rail Yard/College.

5.4.5 These provisions, taken together, identify a range of opportunities for commercial leisure development, at a number of locations. I conclude that they satisfy the expectations of NPPG 8.

Recommendation

5.4.6 I recommend that no change is made to the local plan in response to this objection.

5.5 OBJECTION TO OMISSION OF POLICIES FOR ESTABLISHED UTILITY SITES AND BROWNFIELD SITES

Objector: British Telecommunications plc (234)

Procedure: Written submissions

Synopsis of objection

5.5.1 The Strategy Chapter of the plan should have a policy for Established Utility Sites and a policy directing development to brownfield sites.

Brief summary of the main points raised by the objector

5.5.2 As part of its investment and growth strategy, British Telecommunications plc (BT) constantly reviews its property portfolio. A significant proportion of this will become surplus within the next 5-10 years, including sites in the local plan area. It is important that local plans are sympathetic to the potential for change, and provide maximum flexibility in order to promote and sustain investment in telecommunications. Other planning authorities recognise the disposal and redevelopment or reuse of surplus utility property as a forward planning issue. A brownfield policy would also accord with the advice in NPPG 1 regarding sustainability. The following additions to the plan are therefore proposed:

“ESTABLISHED UTILITY SITES

In circumstances where established utilities and their associated land holdings are no longer required for their original purposes, the council will positively consider change of use or new development proposals in light of other development plan policies and the surrounding land uses”.

“Recommendation EUS

The council recommends that providers of essential utilities continue to invest in infrastructure improvements with a view to improving service provision, having regard to the environmental consequences of such developments.”

“Policy BP5

The council will favour the development of brownfield land, subject to detailed site factors.”

Brief summary of the Council’s response to the objection

5.5.3 The plan’s Background and Settlement policies promote development consistent with the existing pattern of uses and activities. This guidance is refined by site specific provisions, which indicate where the Council will support or oppose development, and allow the suitability of surplus utility sites for development to be considered. The changes sought by BT are not exclusive to the objector. It would not

serve the Council's objectives, or those of the development plan system, to accept them.

Conclusions

5.5.4 SPP 1, which has superseded NPPG 1, includes promoting the use of previously developed land and minimising greenfield development among the ways in which planning should encourage sustainable development. The HSP strategy is also based on sustainable development principles. Although the local plan does not state a policy preference for brownfield development, the criteria in General Strategic Policy G2 of the HSP require to be applied in assessing all development proposals. These criteria include the extent to which a development would make use of brownfield sites and existing buildings.

5.5.5 Established utility sites are likely to include brownfield sites, in a variety of locations. As the objection indicates, established utility sites will also include telecommunications installations. PAN 62: Radio Communications states that when telecommunications equipment becomes redundant it must be removed, and the site left in good order at the operator's expense. It explains this is also a legal obligation under the Telecommunications Act 1984. Policy U4 of the HSP contains a similar expectation. Accordingly, whether or not the redevelopment of an established utility site will be acceptable will depend on its nature and location, and on other site specific factors. This applies equally to all other forms of redevelopment. In the absence of any evidence that established utility sites in the local plan area have characteristics that merit special treatment, I find no sound basis for a policy that would start from a basic premise of positive consideration.

5.5.6 All applications require to be determined in accordance with section 25 of the Act, which brings the provisions of the development plan as a whole into play. It would therefore be helpful for the local plan to contain a statement, prior to Policy GP1, to the effect that, where a development proposal raises an issue that is not covered by a GP policy, HSP Policy G2, and any relevant HSP topic policies, will apply.

Recommendation

5.5.7 I recommend that the local plan contains a statement, prior to Policy GP1, to the effect that, where a development proposal raises an issue that is not covered by a GP policy, HSP Policy G2, and any relevant HSP topic policies, will apply.

5.6 OBJECTION TO OMISSION OF A POLICY ON AIR QUALITY

Objector: Scottish Environment Protection Agency (171)
Procedure: Written submissions

Synopsis of objection

5.6.1 The local plan should contain a policy on air quality.

Brief Summary of the main points raised by the objector

5.6.2 The Council is obliged to meet statutory requirements under the Local Air Quality Management (LAQM) system, including regular review and assessment of air quality against stated objectives. It is also obliged to declare an Air Quality Management Area (AQMA), and draw up an action plan if the assessment indicates that any of these objectives are unlikely to be met.

5.6.3 National planning guidance confirms it is appropriate for local plans to address air quality through specific policies. Policy guidance on Air Quality and Land Use Planning issued by the SE in February 2004 (171/12) states that the planning system has a particularly important role to play in efforts to improve air quality, or at least to ensure it does not deteriorate. It also recommends integrating air quality considerations into land use planning at the earliest possible stage, in order to improve local air quality in the longer term; and identifies the issues that should be considered in preparing development plans and considering planning applications. The 2004 guidance was accompanied by the document Air Quality and Planning Guidance, originally issued in 2003. This states that local authorities should integrate air quality considerations within the planning process at the earliest possible stage, and consider developing planning protocols to facilitate this. This local plan is the first opportunity to apply this guidance to the Inverness area. Its Strategy recognises the relevance of air quality to land use planning.

5.6.4 NPPG 17 states that planning authorities should have regard to air quality objectives, and reviews and assessments, when preparing and reviewing development plans; and that plans should set out policies to support action required at specific locations to improve air quality in line with statutory responsibilities. PAN 51: Planning and Environmental Protection (171/16), echoes this approach, while PAN 57: Transport and Planning (171/17) states that the aim should be to locate new development in accordance with a development plan strategy which addresses air quality. The March 2004 document complements this earlier advice. A consultation draft PAN 57: Planning for Transport (171/34), issued in March 2004, states that transport aspects of land use planning will need to have regard to air quality regimes, the National Air Quality Strategy, statutory air quality objectives, and designated air quality management areas.

5.6.5 The council's most recent LAQM review, of June 2003 (171/24) identifies road traffic as the most significant source of nitrogen dioxide. Concentrations in some streets in Inverness City Centre are close to the LAQM maximum standard. It is

essential for the local plan to ensure these concentrations are not exceeded due to further development. Otherwise, an AQMA and action plan will be required. The Council's review suggests that a more detailed assessment is not needed, because the plan's proposals for pedestrianisation in the affected streets, and the Cross Rail Link Road, will allow LAQM objectives to be met. Relying on the local plan to deliver LAQM objectives is at odds with the Council's response to the objection, namely that the local plan does not affect its statutory air quality responsibilities.

5.6.6 The local plan should therefore contain a GP policy, stating that the planning authority will take into account the impact of development on air quality in general and the findings of its LAQM review and assessment in particular. HSP Policy G2 makes only a passing reference to air quality, in the context of protecting the natural and cultural heritage, particularly in designated areas.

Brief summary of the Council's response to the objection

5.6.7 THC's responsibilities in relation to LAQM do not require a specific general policy in the local plan. Insofar as the development plan should refer to this matter, the reference to air quality in HSP Policy G2 is adequate.

5.6.8 Air quality is an evolving area of land use planning policy, and there is no specific national planning guidance on this issue. The only specific planning advice, in PAN 51, is that *"Local plans may also need to refer to particular environmental protection regimes if they are likely to impose constraints or limitations on development or particular uses of land in a specific area."* The guidance in 171/12 is phrased in a very advisory way.

5.6.9 However, there is an increasing emphasis from Government on the need for planning authorities to produce shorter, more focused development plans. An SE consultation paper on modernising the development plan process is likely to in similar terms to Planning Policy Guidance 12 (PPG 12, THC-1/4). The PPG advises against over-elaborate and unnecessary detail. It also states that development plans should not contain policies for matters other than the development and use of land or policies that duplicate provisions in other legislative regimes.

5.6.10 SEPA's concerns about air pollution at particular locations do not represent sufficient justification for a development constraint policy at these locations. The local plan gives a clear commitment to traffic reduction and pedestrian priority measures in the City Centre and to the reduction of unnecessary travel throughout the plan area.

Conclusions

5.6.11 National planning policy guidance confirms that air quality is a consideration that ought to be taken into account in land use planning, including in local plans. SPP 1 states that the planning system can play a part in reducing emissions when guiding the location and design of development, and that specific actions include reducing the need to travel and encouraging sustainable forms of transport. NPPG 17 states that local plans should set out appropriate land use policies to support action required at specific locations to improve air quality in line with the local authority's

statutory air quality management responsibilities and the appropriate Air Quality Management Action Plan. Current best practice advice reiterates this message, which is reaffirmed in the recent consultation draft PAN 57. However, there is no express statement to the effect that local plans ought to include a generic policy on air quality.

5.6.12 The 15 sustainable objectives on which the HSP's vision is based include maximising the quality of air, water, and land. Policy G2: Design for Sustainability identifies impact on air quality as a factor to be taken into account in assessing development proposals, particularly, but not only, in designated areas.

5.6.13 The SE consultation paper to which THC refers above has been published (THC -1/1). It commends local plans that are more focussed on key spatial issues, and regards lengthy plans are likely to be less effective in co-ordinating and delivering land use change. However, it also recognises that the ability to implement proposals and to provide a robust framework for development control will be the key test of effectiveness. These fundamental objectives ought not to be sacrificed to brevity.

5.6.14 The local plan acknowledges that the relationship between land use and transport is fundamental to sustainability, and promotes a spatial and design strategy that seeks to secure the "right" development located in the "right" places. Sustainability principles therefore underpin its strategy. These principles should help to deliver air quality objectives, including in Inverness City Centre, where traffic management and pedestrianisation are proposed.

5.6.15 Air quality considerations are therefore integrated into the local plan's strategy, which seeks to guide the location and design of development with sustainability in mind. I conclude that the plan is sufficiently compatible with national policy and advice on this topic, and that a specific GP policy is not required.

Recommendation

5.6.16 If the statement recommended in paragraph 5.5.7 is included in the plan, it need not include a policy on air quality.

5.7 OBJECTION TO THE OMISSION OF A POLICY RELATING TO MAJOR HAZARD SITES AND PIPELINES

Objector: Health and Safety Executive (57)

Procedure: Written submissions

Synopsis of objection

5.7.1 The local plan does not make sufficient reference to major hazard sites or to the constraints that these impose.

Main points raised in the objection to the deposit draft local plan

5.7.2 The local plan has no comments or policies relating to development around major hazard sites and pipelines, although 2 main areas may be affected. A number of locations promoted for development at Inverness - including Longman and Carse Industrial Estates and Muirtown Basin - impinge on major hazard consultation distances. The proposals in Policies 25:9, 25:15, 25:18, 25:20 and 25:21 at Tomatin could be affected by the outcome of consultations on the hazard implications of the distillery and its warehousing. The plan should make this clear, to avoid raising expectations that are subsequently not met.

5.7.3 The Town and Country Planning (Hazardous Substances)(Scotland) Regulations 1993 require a planning authority to consult the Executive (HSE) on the siting of proposed notifiable installations. These regulations have also been amended to require planning authorities in preparing development plans to have regard to: (a) the objectives of preventing major accidents and limiting the consequences of such accidents; and (b) the need, (i) in the long term, to maintain appropriate distances between major hazard establishments and residential areas, areas of public use, and areas of particular natural sensitivity or interest; and (ii) in the case of existing establishments, for additional technical measures in accordance with Article 5 of the (Seveso II) Directive, so as not to increase the risks to people. The following text could therefore form the basis for a statement in the plan, which may avoid the submission of planning applications for inappropriate proposals:

“The area covered by this plan contains a number of installations handling notifiable substances, including pipelines. Whilst they are subject to stringent controls under existing health and safety legislation, it is also a requirement of Council Directive 96/82/EC (Seveso II) to control the kinds of development permitted in the vicinity of these installations. For this reason, the planning authority has been advised by the HSE of consultation distances for each of these installations. In determining whether or not to grant planning permission for development within these consultation distances, the Authority will consult the Executive about risks to the development from the notifiable installation, in accordance with Circular 5/1993. This will take account of the requirements of the Directive to maintain appropriate distances between establishments and residential areas, areas of public use and areas of

particular natural sensitivity or interest, so as not to increase the risks to people”.

5.7.4 The constraints imposed by major hazard sites and pipelines should also be made clear, and a presumption made towards options which do not involve significant developments near such sites, as a precautionary principle. In addition, the key diagram (sic) and Insets should be marked to show the locations of notifiable installations (particularly pipelines), consistent with paragraph 29 of NPPG 1.

Proposed changes and the objector’s responses

5.7.5 In response to the objection, THC agreed to add “other major hazards” to the BP4 features listed in the Appendix. However, the HSE was not satisfied with this change, stating that, because the plan would not show major hazard sites, it objected Policy 25:18 at Tomatin; and, in Inverness, to Policy 2:7(iii) Muirtown Basin, and to Policies 2:12 and 2:39, at Carse. It stated that these developments could lead to a significant increase in population, contrary to the intention of the Seveso II Directive.

5.7.6 As a further response, THC agreed to add major hazards to the Analysis Map. It also agreed, to make public safety zones around major hazards a BP3 feature, and the remaining consultation distance a BP2 feature.

5.7.7 The HSE indicated it was prepared to withdraw its objection, if these changes were confirmed, providing the plan followed the format proposed in the Deposit Draft Ross and Cromarty East Local Plan (THC-1/3).

Brief summary of the Council’s final response to the objection

5.7.8 The Ross and Cromarty East Local Plan has a different format to that for the Inverness Area and reflects different local circumstances. Listing major hazards and development embargo/consultation distances in the Appendix, and identifying the hazards on an Analysis Map would represent adequate policy coverage. Most of the HSE’s comments relate to consultation procedures rather than policy. However, if more detailed references are recommended, THC would reluctantly agree to add a General Policy on major hazards, listing the major hazards within the local plan area and any appropriate development embargo/consultation distances.

Conclusions

5.7.9 The reason given by HSE for its objection was that the DDILP does not identify any of the major hazard sites or pipelines in the area. HSE did not state at that stage that the sites that are the subject of the policies it mentioned should not be developed because of the presence of a notifiable hazard site or pipeline. The HSE is prepared to withdraw its objection if the plan identifies these installations and the consultation distances that apply, and uses the same format as the Deposit Draft Ross and Cromarty East Local Plan.

5.7.10 It would be prudent, and consistent with the thrust of the obligations imposed by the 1983 Regulations, for the plan to make readers aware of notifiable installations that could constrain development options. The changes proposed by THC would help

to do this. I consider that it would also be desirable to include a note in the Analysis Map legend to the effect that the HSE would be consulted on any development proposals within consultation areas; and to show consultation areas on Inset Proposals Maps.

5.7.11 The changes that THC has agreed to make would bring this local plan more into line with the Deposit Draft Ross and Cromarty East Local Plan, thus providing a more consistent approach across Highland. However, in addition to an Analysis Map, and identification as BP features, the latter plan includes a Landward Area Policy (77) committing THC to consulting the HSE regarding risks to proposed developments within the consultation distances around notifiable installations. In effect, this policy restates the statutory consultation procedures that would apply, irrespective of the terms of the local plan. It therefore serves little purpose as a policy.

5.7.12 Section 17(3) of the Act requires the local plan to conform with the approved structure plan, in order to be adopted. Policy G2 of the HSP includes the extent to which proposed developments are affected by safeguard zones where there is a significant risk of hazard from industrial installations among the factors against which proposed developments will be assessed. The cross-referencing statement recommended at paragraph 5.5.7 would “flag up” this link, and the rewording to Policy BP2 recommended at paragraph 3.1.22(2), would relate to the identification of consultation distances as a Policy BP2 feature.

Recommendations

5.7.13 I recommend that:

(1) major hazards and notifiable installations, and consultation distances, are shown on an Analysis Map on the basis described at paragraph 5.7.11, and on relevant Inset Proposals Maps.

(2) major hazards, public safety zones, and consultation distances are listed in the Appendix: hazards as a BP4 feature, public safety zones as a BP3 feature, and any remaining consultation distances as a BP2 feature.