LOCAL DEVELOPMENT PLAN: REPRESENTATIONS TO PROPOSED PLAN

Report by Service Director, Regulatory Services

SCOTTISH BORDERS COUNCIL

25 September 2014

1 PURPOSE AND SUMMARY

1.1 a) To advise the Council on the representations received to the Proposed Local Development Plan;

b) To seek Council agreement to take the representations/issues to Examination for consideration by independent Scottish Government Appointed Persons (Reporters) prior to their report back to Council for further consideration;

c) To seek Council agreement to the proposed response to the representations/issues received on the Finalised Local Plan as set out in Appendix A.

1.2 The report, in Appendix A, summarises the representations/issues to the Proposed Local Development Plan, and provides a proposed response as to the Council’s view. The report proposes resolution to those representations that do not constitute a significant change to the policies or proposals within the Plan. It also clearly identifies where it is proposed to direct the Reporter to consider a change to the Plan that could be considered a significant (notifiable) change.

1.3 Appendix B sets out those responses that support or note the content of the Plan which has not been subject to objection by other parties. These responses will not be considered as part of the Examination, but are presented to the Council for completeness.

1.4 It is recommended that the unresolved representations along with those where the Council proposes a resolution are remitted for consideration by the independent Scottish Government Reporter(s) to the Examination. The ensuing report by the Reporter(s) will subsequently be considered by the Council before moving towards adoption.

1.5 In addition to the representations and the accompanying Schedule 4 response document, it is also a requirement to submit a proposed Action Programme (Appendix C); a Habitats Appraisal Record (Appendix D); and a Report on conformity of the Council’s consultation processes to its published Participation Statement (Appendix E).
2 RECOMMENDATIONS

2.1 I recommend that Council agrees:

a) The responses and recommendations set out in Appendix A in respect of the representations/issues submitted to the Proposed Local Development Plan,

b) Remit all representations/issues to the Proposed Local Development Plan to Examination for consideration by the independent Scottish Government Reporter(s),

c) Note the additional comments received on the Proposed Local Development Plan as set out in Appendix B,

d) Delegate authority to the Service Director, Regulatory Services to make minor edit changes to Appendices A and B,

e) Note the Proposed Action Programme in Appendix C,

f) Note the Habitats Appraisal Record in Appendix D,

g) Note the Report on Consultation Conformity in Appendix E, and

h) Receive the report prepared by the independent Scottish Government Reporter(s) prior to final consideration of the Scottish Borders Local Development Plan.
3 BACKGROUND

3.1 The Development Plan for the Scottish Borders will consist of the approved Strategic Development Plan (SDP) and the adopted Local Development Plan (LDP). The SESplan SDP was approved by Scottish Ministers in June 2013. The Council’s LDP has reached Proposed Plan stage and has been subject to further public representations. This report considers those representations and proposes that they should be taken to formal Examination by an independent Reporter appointed by the Scottish Government.

3.2 The Council, following its meeting on 26 January 2012, agreed the Main Issues Report (MIR) as a basis for public consultation for a period of 12 weeks. In parallel, the Environmental Report (ER) was also subject to public consultation under separate legislative process. Following the printing of the documentation, the MIR and ER were subject to advertisement and consultation took place from 2 April to 25 June 2012. As part of the consultation there were a series of nine drop-in exhibitions held across the council area. In addition, the Council notified the neighbours of all new site proposals. Some 278 representations relating to around 1000 issues were received in relation to the MIR. The ER received positive responses from the three consultation authorities (Historic Scotland, Scottish Environment Protection Agency, Scottish Natural Heritage).

3.3 The Council, at its meeting on 25 October 2012, considered a report in relation to the consultation responses on the MIR. The Council agreed to the recommended responses to the submitted consultations, but reserved judgement on a small number of issues pending the publication of the SESplan Examination Report and further work on other key studies.

3.4 At its meeting on 25 September 2013, the Council agreed the Proposed Local Development Plan. The Plan was subject to public representation from 6 December 2013 to 3 March 2014. The Plan was subject to neighbour notification on all sites within the Plan (some 6500 notifications) and there were presentations at the Area Forums. The Council must now consider those representations and how its wishes to move forward. This could be through modification(s) to the Plan and further consultation (and neighbour notification) on the modification(s), or to proceed directly to Examination.

3.5 It is proposed that all representations/issues, other than those expressing support or providing general comment to the Proposed Local Development Plan, are placed before the Reporters to the Examination for their consideration. This will allow independent, objective consideration of the merit of the representations to the Plan.

3.6 The Reporter(s) will consider the merits of all representations/issues to the Proposed Local Development Plan. The recommended Council position to be adopted at the Examination is set out in Appendix A. Appendix A includes three main categories of response:

- Acceptance of a possible change which is not significant in legislative terms
- Direction to the Reporter to consider a possible significant change to the Plan where the Council sees merit
- Defence of the Council position in respect of the Proposed Plan.
The Appendix sets out the reasoning for the proposed position of the Council on all matters for consideration by the Reporter.

3.7 Paragraph 87 of Planning Circular 6/2013 notes that Scottish Ministers expect Authorities to progress to adoption as quickly as possible. It considers that notifiable modifications can cause significant delay and are not expected to be undertaken as a matter of course. It also states that “The Examination also provides an opportunity to change the plan, so if authorities see merit in a representation they may say so in their response to the reporter, and leave them to make appropriate recommendations”.

3.8 The main consequence of remitting all representations/issues for independent consideration by the Scottish Government Reporter(s) is that there will be no requirement to publish Modifications to the Proposed Local Development Plan for a further round of public consultation. This will maintain the integrity of the Plan for consideration by the Reporters, and also save considerable time in taking forward the Plan.

3.9 There is a requirement for any unresolved representations to be considered by Reporters appointed by the Scottish Government at Examination. The statutory basis for the examination is set out in the Town and Country Planning (Scotland) Act 1997, and in the Town and Country Planning (Development Planning) (Scotland) Regulations 2008.

3.10 Guidance on the procedures for the examination is set out in the Scottish Government's Planning Circular 6/2013. The key elements of the Examination are as follows:-

- Scottish Ministers, through the Directorate for Planning and Environmental Appeals (DPEA), and not the planning authority, will appoint the Reporter(s)
- The planning authority will be expected to submit, at the outset, all the material necessary for the examination, including a summary of the unresolved issues arising from those objections not withdrawn.
- The Reporter(s) will decide how to conduct the Examination and, for each issue, whether s/he requires further information
- The Examination will be led by the Reporter(s), and neither the objector nor the planning authority have a right to be heard at a public local inquiry
- For most issues, no further information should be required, but if it is, the Reporter(s) will decide who will be asked to provide it
- A written submission setting out the information requested should usually be sufficient
- The Reporter(s) may decide to hold a hearing if that is needed to explore the information further, and will decide who to invite to participate in the discussion at the hearing
- Only exceptionally will an inquiry session be necessary to test the information through cross-examination
- The Reporter(s) will submit a report of the Examination to the planning authority, containing his or her conclusions and recommendations on each issue
3.11 Any modifications to the plan which are recommended by the Reporter(s) will generally be binding on the planning authority.

3.12 Following the Examination the Reporter(s) will prepare the report for consideration by the Council prior to it moving towards formal adoption of the Plan.

3.13 Guidance provided by the DPEA states “Only representations to the deposit version of the plan can be considered. It is not expected that matters covered in a previous local plan inquiry will be re-visited unless circumstances have changed. Representations submitted in support of provisions of the plan should not be treated as unresolved. Any irrelevant matters raised in representations should not be defined as issues to be considered in the examination”.

3.14 Paragraph 117 of Planning Circular 6/2013 states that Scottish Ministers intend the Reporter to, “within the bounds of the issues raised in representations, primarily examine the appropriateness and sufficiency of the content of the Proposed Plan. Only if the Proposed Plan is insufficient or inappropriate should they consider other sites or approaches. They are not tasked with making the plan as good as it can be, but with modifying those parts that are clearly inappropriate or insufficient.”

3.15 Following the Examination, the Reporter(s) will prepare the Examination report. Examination reports are largely binding on planning authorities. Regulation 2 of the Town and Country Planning (Grounds for declining to follow recommendations) (Scotland) Regulations 2009 states that authorities may only depart from recommendations that:

a) Would have the effect of making the Local Development Plan inconsistent with the National Planning Framework, or with any Strategic Development Plan or national park plan for the same area;

b) Are incompatible with Part IVA of the Conservation (Natural Habitats etc.) Regulations 1994; or

c) Are based on conclusions that could not reasonably have been reached based on the evidence considered at the examination.

3.16 Section 19(11) of the Act also allows authorities to environmentally assess the plan following modification in response to recommendations, and to not make modifications that are not acceptable having regard to that assessment.

3.17 It should be noted that the Council, as Planning Authority, has a duty to continue to consider submitted planning applications within a reasonable time period. This will continue as the Local Development Plan proceeds to Examination, and ultimately to adoption.

4 SUMMARY OF REPRESENTATIONS TO PROPOSED LOCAL DEVELOPMENT PLAN

4.1 There were 187 separate representations by individuals, companies or organisations to the Proposed LDP, and these consisted of some 500 separate comments. In general, this level of response would indicate broad acceptance of the proposals within the Plan given that the site proposals have all been neighbour notified, and the response is commensurate with that received in relation to the Council’s Local Plan Amendment.
4.2 It should be noted that since the publication of the Proposed LDP the Scottish Government published an updated National Planning Framework and Scottish Planning Policy in June 2014. Where appropriate, reference is made to any implications arising from these documents within the responses to the representations. The representations/issues to the Proposed Local Development Plan and the proposed response to them are set out in **Appendix A** (N.B. the references to core and supporting documents within the Council response is in respect of documents to be provided to the Examination. If any member wishes to view these documents then they are available for inspection within the Plans and Research Section). **Appendix A1** contains maps of sites referred to within the Schedule 4 documents which are not within the Proposed LDP. **Appendix B** contains other representations (generally supporting or noting the content of the Proposed Local Development Plan) for information.

4.3 In summary, the main issues raised by the representations are as follows:-

**Vision, Aims and Strategy**
- Reference to the 5 year housing land supply
- Potential cumulative impact wind farms
- Potential for further consideration of wild land by Scottish Natural Heritage

4.4 **Economic Development Policies**
- Policy ED1 Land Protection/Hierarchy- some comment in relation to site proposals
- Policy ED3 Town Centres- some comment in respect of issues such as the sequential approach
- Policy ED5 Regeneration- support, some comment on particular areas e.g. Caerlee, Jedburgh
- Policy ED7 Business in Countryside- support, some comment on issues such as rural retail
- Policy ED9 Renewable Energy- Some 26 responses both in support and objection
- Policy ED10 Protection Agricultural Land and Peat- support, some comment on detailed issues
- Policy ED12 Minerals- support, some comments in respect of issues such as restoration

4.5 **Place Making and Design Policies**
- Policy PMD1 Sustainability- Support, minor comments e.g. public transport
- Policy PMD2 Standards- support, minor comments detailed issues
- Policy PMD4 Development Outwith Development Boundaries- some detailed comments e.g. additional exception criteria.

4.6 **Housing Policies**
- Policy HD1 Affordable Housing- Objection by housebuilders and developers in relation to the 25% requirement for affordable housing
• Policy HD2 Countryside- Support and objection, particularly in relation to scope for growth of building groups
• Policy HD4 Safeguarding- Support, some comments regarding deliverability, effective supply

4.7 Environment Policies
• Policy EP5 Special Landscape Areas- a new proposal received at Lyne catchment
• Policy EP7 Listed Buildings- minor comments e.g. case by case negotiation
• Policy EP11 Greenspace- minor comments e.g. outdoor facilities
• Policy EP12 Green Networks- support

4.8 Infrastructure Policies
• Policy IS2 Developer Contributions- support, minor comments e.g. timing, economy
• Policy IS8 Flooding- minor comments
• Policy IS16 Adverts- minor comments re wording

4.9 Site Representations
A number of representations have been received in relation to sites within the Plan. Members will note that there are a significant number of representations from SEPA. SEPA did not respond on these matters to the Main Issues Report (MIR). It is therefore disappointing to receive significant numbers of further comments from SEPA at the Proposed Plan representation stage despite ongoing officer engagement with them. The main site representations are summarised below:-
• Duns, Earlsmeadow- foodstore proposal on proposed housing site
• Houndwood- cemetery extension removal
• Clovenfords, Caddonhaugh- Sepa suggest removal
• Earlston, Station Rd- concern re employment land
• Earlston, Mill Rd- Sepa suggest removal
• Earlston, Mill- Sepa suggest removal
• Gala, Birks- support/objection
• Gala, Netherbarns- support/objection
• Selkirk, Philiphaugh Mill- Sepa suggests removal
• Newarkston, West- Sepa suggests removal
• Ettrick, Hopehouse (3 sites)- objections
• Bonchester Bridge, Caravan site- Sepa suggests removal
• Innerleithen Gas Works- Sepa suggests removal
• Peebles, general- future development including employment land provision
• Peebles, South Park- support/objection
• Peebles, George Place- support/objection
• Peebles, Violet Bank- support/objection
4.10 **Additional Sites Proposed**

A total of 56 additional sites have been proposed. Whilst these representations will have to be considered at Examination, it is noted that this part of the new planning process runs counter to the Government’s intention to front load preparation of the Plan and to ensure that as far as possible all potential sites are considered at the Main Issues Report stage. The sites identified within the LDP have all been assessed and are considered to be the appropriate response to the required housing land allocations. Of the additional sites put forward, the following sites are over 2 ha:

- Chirnside, Rear primary school 8.1 ha (longer term)
- Duns, Cheeklaw 15.6 ha (mixed use)
- Greenlaw, Poultry sheds 2.2 ha (housing)
- Lennel, West 2.2 ha (housing)
- Swinton, South 15.6 ha (longer term)
- Earlston, Georgefield 11.3 ha (housing)
- Gala, Langlee north 3.2 ha (housing)
- Gala, Langlee north 67.8 ha (business/industry)
- Jedburgh, ind est south 2.3 ha (retail)
- Jedburgh, ind est west 3.2 ha (retail)
- Newtown, South 38.6 ha (housing)
- Newtown, East 10.5 ha (mixed use)
- Stichill, South west 4.4 ha (housing)
- Cardrona, North 3.5 ha (mixed use)
- Lauder, South 5.9 ha (longer term)
- Peebles, Rosetta Rd 5.8 ha (housing)
- Peebles, Rosetta Rd 6.4 ha (mixed use)
- Peebles, Venlaw 7.2 ha (housing)
- Peebles, South Park 34.6 ha (longer term)
- West Linton, South 3 sites totalling 36.5 ha (housing)

4.11 As noted in paragraph 4.2 above, all of the representations for change to the Proposed Local Development Plan are proposed to be taken to Examination for consideration by independent Reporter(s) appointed by the Scottish Government. This will provide reassurance that the Plan and the representations to it have been subject to robust, independent scrutiny.

4.12 In addition to the representations and the accompanying schedule 4 response document, it is also a requirement to submit a proposed Action Programme (**Appendix C**); a Habitats Appraisal Record (**Appendix D**); and a Report on conformity of the Council’s consultation processes to its published Participation Statement (**Appendix E**). **Appendices C, D, and E** are available for inspection in the Members’ Library.
5 IMPLICATIONS

5.1 Financial

There are costs related to the Examination in relation to the Scottish Government Reporters, and their administrative support provided by DPEA, as well as accommodation to hold any hearings or inquiries. However, this is a process taking place under the terms of the new Town and Country Planning (Development Planning) (Scotland) regulations 2008, where the Examination is intended to be succinct and proportionate and take significantly less time than the previous process. Budgets are therefore in place to meet these anticipated costs.

It should also be noted that, in addition, there could be substantial burdens placed upon staff within Planning and Regulatory Services, and Legal and Administration to carry out the necessary work in promoting the Council position at the Examination.

5.2 Risk and Mitigations

The primary output from this report is the recommendation to remit the unresolved representations/issues to the Proposed Local Development Plan for independent evaluation by the Scottish Government Reporter(s) at Examination. The risk related to this approach is minimal in that as well as allowing independent examination of all unresolved representations/issues, the recommendation also saves considerable time and resource by avoiding the need for Pre-Examination modifications to the Plan, and any resultant counter objection.

However, there is risk to the Council if it does not proceed with due diligence towards the adoption of the Local Development Plan as it provides essential detail in delivering the Strategic Development Plan approved by Scottish Ministers in June 2013.

5.3 Equalities

The primary focus of a Local Development Plan is to provide opportunity for appropriate development in terms of the social, economic and environmental context of the area. It therefore handles equalities by seeking to provide adequate land for reasonable needs related to matters such as housing, affordable housing, and employment land.

5.4 Acting Sustainably

The Local Development Plan is a key document in prioritising the environmental framework related to the future development of the area. Environmental implications related to development have been an important consideration during the preparation and consultation stages of the Plan. An Environmental Report has been produced alongside the Plan.

5.5 Carbon Management

There are no impacts on the Council’s carbon emissions arising directly from this report.

5.6 Rural Proofing

The LDP seeks to ensure the provision of a land supply to meet housing and business requirements and to improve accessibility across the council area.

5.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes to be made.
6 CONSULTATION

6.1 Consultation on this report has been undertaken with the Chief Financial Officer, the Service Director Regulatory Services, the Chief Legal Officer, the Service Director Strategy & Policy, the Chief Officer Audit and Risk, the Chief Officer Human Resources and the Clerk to the Council. Any comments received have been incorporated in the final report.

Approved by

Service Director, Regulatory Services    Signature ……………………………

Author(s)

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Background Papers: The Town and Country Planning (Scotland) Act 1997; The Town and Country Planning (Development Planning) (Scotland) regulations 2008; Circular 6/2013 on Development Planning

Previous Minute Reference: Scottish Borders Council, 25 September 2013

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

Contact us at Jacqueline Whitelaw, Environment and Infrastructure, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 825431, Fax 01835 825071, email eitranslationrequest@scotborders.gov.uk.
Appendix A
Representations/Issues to the Proposed Local Development Plan
Appendix A1
Maps of Sites referred to within Schedule 4 documents not within the Plan
Appendix B
Other Representations to the Proposed Local Development Plan (Supports and Notes)
Appendix C
Proposed Action Programme

Available to View in Members’ Library
Appendix D
Habitats Appraisal Record

Available to View in Members’ Library
Appendix E
Report on Consultation Conformity

Available to View in Members’ Library