
LOCAL DEVELOPMENT PLAN: REPRESENTATIONS TO PROPOSED PLAN

Report by Director - Infrastructure & Environment

SCOTTISH BORDERS COUNCIL

10 March 2022

1 PURPOSE AND SUMMARY

- 1.1 This report advises the Council on the representations received relating to the proposed Local Development Plan (LDP). It seeks 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. It seeks Council agreement to the proposed response to the representations / issues received on the Proposed Plan as set out in Appendix A.**
- 1.2 The report, in **Appendix A**, summarises the representations/issues to the Proposed LDP, 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 identifies where it is proposed to direct the Reporter to consider changes to the Plan that are considered to be non-significant.
- 1.3 **Appendix B** sets out summaries of those responses that support/note and/or provide comments on 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 Appendix A and B 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**).
- 1.6 Members should also note that the new Planning (Scotland) Act 2019 proposes a number of changes to the planning system and the emerging National Planning Framework, which will be a significant factor in guiding

how LDPs are implemented, may have implications on the Examination depending upon when it is enacted. Members should note part 5 of this report which explains this matter further.

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 of Infrastructure and Environment to make minor edit changes to Appendices A and B**
- (e) Note the Proposed Action Programme in Appendix C, the Habitat Regulation Appraisal in Appendix D and the Report on Participation Statement in Appendix E**
- (f) 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 consists 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 emerging 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(s) appointed by the Scottish Government.
- 3.2 The Council, following its meeting on 30 August 2018, 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 publication of the documentation, the MIR and ER were subject to advertisement and consultation which took place between 8 November 2018 and 31 January 2019. As part of the consultation there were a series of 10 drop-in exhibitions and 7 workshops held across the Council area attended by some 250 parties. 330 representations were received during the consultation period from a range of interested parties covering a wide range of subjects. The ER received responses from the three consulting authorities (Historic Environment Scotland, Scottish Environment Protection Agency, NatureScot). On 26 June 2019 for information, summaries of all the representations received to the MIR and ER were presented to the Council. The Council agreed to note the Summary of Consultation Responses submitted to the Main Issues Report.
- 3.3 Officers completed the Proposed LDP in early 2020. However, prior to Council referral the COVID-19 pandemic struck. At that time there was uncertainty as to the full impacts of the virus and how it would affect matters such as working arrangements and how Officers would successfully manage to ensure satisfactory opportunities for parties to make representations to the Plan given that public meetings and exhibitions, which were part of the normal process, could not take place. Consequently referral to the Council and the subsequent public engagement was postponed. Similarly the pandemic affected the LDP timescales and work programmes of other planning authorities across the country.
- 3.4 Ultimately, the Council agreed the Proposed Local Development Plan at its meeting on 25 September 2020. The Plan was subject to public representation from 2 November 2020 to 25 January 2021. As no face to face public events could take place the method for submitting representations was carried out largely online. This included, for example: a designated Council website giving advice on the Proposed Plan; an ArcGIS storymap; video guidance and advice on how submissions could be made; publicity by use of Council social media; press releases and advertisements; SBConnect article; over 400 letters / e-mails sent to relevant / interested consultees; and over 6,500 neighbour notifications. The Council must now consider those representations received and how it wishes to move forward.
- 3.5 It is proposed that all representations/issues, other than those expressing support or providing general comment to the Proposed LDP, 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 LDP. The recommended Council position to be adopted at the Examination is set out in Appendix A. Appendix A includes two main categories of response:
- Acceptance of a possible change which is not significant in legislative terms
 - Defence of the Council position in respect of the Proposed Plan
- 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, where the Council decides to make a significant change to the Plan which would require a further consultation, 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 LDP proceeds to Examination, and ultimately to adoption.

4 SUMMARY OF REPRESENTATIONS TO PROPOSED LOCAL DEVELOPMENT PLAN

4.1 There were 1043 separate representations submitted by individuals, companies or organisations to the Proposed LDP. A representation may make reference to a single issue, or may refer to a multitude of issues.

4.2 The representations/issues to the Proposed LDP and the proposed Officer response to them are set out in **Appendix A**. These responses, known as Schedule 4s, have been batched together where possible by topic as advised by the DPEA. The references to core and supporting documents within the Schedule 4s is in respect of documents to be provided at the Examination. The reference numbers will be completed prior to Examination. **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. Members will note the considerable number of representations in support of the LDP.

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

General

- Text updates required on climate change issues, including reference to national emissions reduction targets for greenhouse gases, and to the Council's own declaration of a Climate Change emergency
- Scottish Government seek removal of any indication of a preferred route for a railway extension from Tweedbank to Carlisle via Hawick
- Council should be supportive of a Borders National Park which should be centred around Jedburgh
- Challenges to housing land requirement and housing land supply
- More proactive approach should be given to policy approach for brownfield / derelict land

4.4 Placemaking and Design policies

- Policy PMD1 Sustainability – further reference to be made regarding climate change mitigation measures and helping Scotland achieve net zero emissions
- Policy PMD2 Quality Standards – more justification needed when indicative housing figures are exceeded, reference to 20 minute neighbourhoods

- Policy PMD4 Development Adjoining Development Boundaries – more flexibility for small scale house builders

4.5 Economic Development Policies

- Policy ED8 Business, Tourism and Leisure Development in the Countryside – higher policy standards of design should be applied for caravans
- Policy ED9 Renewable Energy Development – update policy to take account of new Scottish Government targets and ambitions; policy should be more proactive to support wind turbines, and reflect more closely the national ‘direction of travel’ currently being developed by the Scottish Government
- Policy ED10 Protection of Prime Quality Agricultural Land and Carbon Rich Soils – locally important agricultural land should be protected whether or not it is prime quality; exceptions should be made to allow development in areas where there is an abundance of prime agricultural land
- Policy ED11 Safeguarding of Minerals – the wording of the policy should align better with Scottish Planning Policy (SPP), and include commitment to maintenance of required landbank
- Policy ED12 Mineral and Coal Extraction – revise wording in closer alignment with SPP to positively identify where workings will be supported and provide a sustainable approach to the use and management of mineral resource

4.6 Housing Development policies

- Policy HD1 Affordable Housing Delivery – include a threshold below which housing developments will not be asked to contribute to the provision of affordable housing
- Policy HD2 Housing in the Countryside – a range of changes proposed to criteria tests
- Policy HD3 Protection of Residential Amenity – include emphasis on Agent of Change principle to ensure housing is designed to mitigate impacts on existing businesses
- Policy HD4 Further Housing Land Safeguarding – consider additional wording to provide flexibility to release longer term land early
- Policy HD6 Housing for Particular Needs – updates to take account of Housing Needs and Demands Assessment

4.7 Environmental Promotion and Protection policies

- Policy EP3 Local Biodiversity and Geodiversity - objections to a number of proposed Local Biodiversity Sites seeking amendments / removal

- Policy EP6 Countryside Around Towns – proposed changes to criteria tests including more flexibility
- Policy EP17 Food Growing and Community Growing Spaces – incorporate support for market gardens

4.8 Infrastructure Policies

- Policy IS2 Developer Contributions – varying views that contributions sought are too onerous or, conversely, should seek further contributions
- Policy IS13 Contaminated and Unstable Land – maps/ tables should be provided indicating the extent/ location of contaminated, unstable and derelict land

4.9 Site Representations

A number of representations have been received regarding sites within the Proposed Plan. All summarised representations can be viewed within Appendix A and the full redacted representations can be viewed on the Council website using the following link www.scotborders.gov.uk/ldp2reps. The main representations are summarised below:-

Berwickshire

- (ACOLD011): Hillview North 1 (Phase 1), Coldstream (Housing) - objection/support
- (ACOLD014): Hillview North (Phase 2), Coldstream (Housing) - objection/support
- (REYEM002): Former Eyemouth High School, Eyemouth (Redevelopment) – objections
- (zEL63): Eyemouth Industrial Estate, Eyemouth (Business and Industrial Safeguarding) – number of concerns raised
- (AGORD004): Land at Eden Road, Gordon (Housing) – number of concerns raised
- (AGREE009): Poultry Farm, Greenlaw (Housing) – objection
- (BLE2B): Main Street, Leitholm (Housing) – objection
- (SREST001): Reston Long Term 1, Reston (Longer Term Housing) – objection
- (AREST005): Land East of West Reston, Reston (Housing) – object to the boundary
- (MREST001): Auction Mart, Reston (Mixed Use) - raised a number of concerns
- (BR5): West Reston, Reston (Housing) – object to the boundary
- (zRS3): Reston Station, Reston (Housing) – object to the boundary
- (BSW2B): Well Field, Swinton (Housing) – propose an alternative use
- (MSWIN002): Land Adjacent to Swinton Primary School, Swinton (Mixed Use) – propose an alternative use/objection

- (AWESR005): East of Kirkpark, Westruther – concerns raised regarding deliverability

Cheviot

- (AEDNA002): West Mill, Ednam (Housing) - objection
- (AJEDB012): Howden Drive south, Jedburgh (Housing) – objection
- (AJEDB018): Land East of Howdenburn Court, Jedburgh (Housing) – objections
- (RJ30B): Howden Drive, Jedburgh (Housing) - objection
- (RJEDB003): Howdenburn Primary School, Jedburgh (Redevelopment) - objection
- (zEL206): Extension to Pinnaclehill Industrial Estate, Kelso (Business and Industrial) – objection
- (BKELS006) Wooden Linn, Kelso (Business and Industrial) – objection
- (RKE12B): Rosebank 2, Kelso (Housing) – objection
- (RKELS001): Former Foundry, Kelso (Redevelopment) - propose an alternative use/objection
- (RKELS002): Former Kelso High School, Kelso (Redevelopment) - objection
- (AMAXT001): East Maxton, Maxton (Housing)– objection
- (AMAXT002): Meadowbank, Maxton (Housing) - objection
- (AMORE001): West Renwick Gardens, Morebattle (Housing) – objections/ support
- (BMORE001): Extension to Croft industrial Park, Morebattle (Business and Industrial) - support
- (BMORE002): Croft industrial Park, Morebattle (Business and Industrial Safeguarding) - support
- (RMO6B): Renwick Gardens, Morebattle (Housing) – objection/support
- (GSMORE001): Morebattle Playing Field, Morebattle (Key Greenspace) – support/propose an alternative use
- (RSP2B): Church Field, Sprouston (Housing) – objection/support
- (BYETH001): Land North West of Deanfield Place, Yetholm (Business and Industrial) – objections
- (GSYETH003): Kirk Yetholm Allotments, Yetholm (Key Greenspace) – objections
- (RY1B): Deanfield Court, Yetholm (Housing) – objections
- (RY4B): Morebattle Road, Yetholm (Housing) – objection/support

Eildon

- (EA200), Cransfield, Ashkirk (Housing) – objections
- (ADARN005): Land South of Darnlee, Darnick (Housing) – objections
- (AEARL010): East Turrford, Earlston (Housing) - objection

- (AEARL011): Georgefield Site, Earlston (Housing) - objection
 - (BEARL002): Townhead, Earlston (Business and Industrial) – objections
 - (SEARL006): Georgefield East, Earlston (Long Term Mixed Use) – objection
 - (zEL57): Mill Road, Earlston (Business and Industrial Safeguarding) – objection
 - (AEILD002): West Eildon, Eildon (Housing) - objection
 - (AGALA017): Coopersknowe Phase 4, Galashiels (Housing) – objections
 - (AGALA024): Easter Langlee Expansion Area, Galashiels (Housing) – objections
 - (AGAL029): Netherbarns, Galashiels – objections/support
 - (EGL16B): South Crotchetknowe, Galashiels (Housing) – objection to part of the allocation
 - (EGL19B): Mossilee, Galashiels (Housing) – objection to part of the allocation
 - (EGL42): Forest Hill, Galashiels (Housing) – objection
 - (EGL43): Balmoral Avenue , Galashiels (Housing) - objections
 - (SGALA005 & SGALA016): Hollybush Valley, Galashiels – removal of ref to possible link through policies
 - (ALILL003): West of St Dunstan , Lilliesleaf (Housing) – objection
 - (AMELR013): Harmony Hall Gardens, Melrose (Housing) – objections
 - (EM4B): The Croft, Melrose (Housing) – objections
 - (EM32B): Dingleton Hospital, Melrose (Housing) – objection
 - (ANEWT005): Newtown Expansion Area, Newtown St Boswells (Housing) – objection
 - (BNEWT001): Tweed Horizons Expansion, Newtown St Boswells (Business and Industrial) – objection
 - (ASELK040): Philiphaugh Mill, Selkirk – removal of site (SEPA)
 - (ESE10B): Linglie Road, Selkirk (Housing) – objections
 - (zEL19): Extension to Charlesfield, St Boswells (Business and Industrial) – objection/proposes enabling development
 - (zEL3): Charlesfield, St Boswells (Business and Industrial Safeguarding) - objection/proposes enabling development
 - (AOXT0010): Nether Howden, Oxton – objections
 - (MTWEE002): Lowood, Tweedbank (Mixed Use) - objection
 - (EY5B): Minchmoor Road East, Yarrowford – removal of site (SEPA)
- Teviot and Liddesdale

- (RHA21B): Leaburn 2, Hawick (Housing) – objection
- (RHA25B): Stirches 2, Hawick (Housing) – objection
- (AHAWI025): Leishman Place, Hawick (Housing) – objection
- (AHAWI026): Henderson Road, Hawick (Housing) – objection
- (AHAWI027): Burnfoot (Phase 1), Hawick (Housing) – objections
- (BHAWI001): North West Burnfoot, Hawick (Business and Industrial) – objections
- (BHAWI002): Gala Law North, Hawick (Business and Industrial) – objections
- (BHAWI003): Gala Law II, Hawick (Business and Industrial) – objections
- (BHAWI004): Land to South of Burnhead, Hawick (Business and Industrial) – objections
- (MHAWI001): Gala Law, Hawick (Mixed Use) – objections
- (RHAWI017): Former Peter Scott Building, Hawick (Regeneration) – objection

Tweeddale

- (SCARD002): Long term site at Nether Horsburgh, Cardrona – objections
- (EC2): Caddonhaugh, Clovenfords – removal of site (SEPA)
- (BESHI001): Business land at Eshiels - objections
- (MINNE001): Caerlee Mill, Innerleithen – objection to allocation
- (MINNE003): Land West of Innerleithen, Innerleithen (Mixed Use)- objections
- (SINNE001): Kirklands II, Innerleithen (Longer Term Housing) - objection
- (APEEB021): Housing South of South Park (Housing) - objections re removal of site
- (APEEB031): George Place (Housing) - objections
- (APEEB044): Rosetta Road (Housing) - objections
- (MPEEB006): Rosetta Road (Mixed Use) - objections
- (MPEEB007): March Street Mill (Mixed Use) - objections
- (RPEEB001): Dovecot Road (Redevelopment) - objections
- (SPEEB005): Longer term site Peebles East (south of river)- objection, and removal of site (SEPA)
- (SPEEB004): Longer term housing south west of Whitehaugh, Peebles – objection
- (APEEB056): Land south on Chapelhill Farm, Peebles – objections
- New bridge over River Tweed, Peebles – objections

- Scottish Government seek cumulative Transport Appraisal for sites in Tweedbank, Hawick and Jedburgh

4.10 Additional Sites Proposed

A number of proposed new sites, resubmissions of sites previously rejected for inclusion and amendments to settlement boundaries have been submitted (refer to Appendix A1). Many of the proposed amendments to settlement boundaries are of a very minor scale and are for the most part to allow residential development upon them. Whilst all the representations listed below will have to be considered at Examination, it is noted that this part of the 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 an appropriate response to the required housing land allocations. None of the sites below are proposed to be included in the LDP and if any were to be included at this stage that would be considered to be a modification(s) which would require further public consultation. This would delay the process plus it is considered the proposed LDP has a sufficient housing land supply and has no need for additional units. The new and re-submitted sites are listed below.

Berwickshire

- (ABIRG005): Land South East of Treaty Park, Birgham (Housing) (1.7ha)
- (ACOPA008): Land to North of Dunglass Park, Cockburnspath (Housing) (2.8ha)
- (ACOLH009): Land North of Lawfield, Coldingham (Housing) (1.9ha)
- (ACOLH010): Coldingham Law, Coldingham (Housing) (6ha)
- (ACOLH011): Land East of Law Cottage, Coldingham (Housing) (6ha)
- (SBCOL001): Coldstream Development Boundary Amendment (Development Boundary Amendment) (2ha)
- (AGAVI002): Land at Langton Glebe, Gavinton (Housing) (3ha)
- (AGREE008): Halliburton Road, Greenlaw (Housing) (3.4ha)
- (APRES006): North Preston, Preston (Housing) (11ha)
- (AWESR010): Land to North of Westruther, Westruther (Housing) (0.5ha)
- (SBWESR002): Westruther Development Boundary Amendment, Westruther (Development Boundary Amendment) (0.02ha)

Cheviot

- (AEDNA014): Cliftonhill (VI), Ednam (Housing) (1.6ha)
- (AHEIT003): Sunlaws (Phase 2), Heiton (Housing) (7.3ha)
- (ALANT003): Land adjacent to The Loan, Lanton (Housing) (1.1ha)

- (AMORE004): Land West of Teapot Bank II, Morebattle (Housing) (1ha)
- (BMORE003): Extension to Croft Industrial Park II, Morebattle (Business and Industrial) (1.1ha)
- (GSMORE002): Land West of Primary School, Morebattle (Greenspace) (0.1ha)
- (SBMOR001): Morebattle Settlement Boundary Amendment I, Morebattle, (Development Boundary Amendment) (4.1ha)
- (ANISB003): Land West of Nisbet Smiddy, Nisbet (Housing) (0.3ha)
- (SBNIS001): Nisbet Settlement Boundary Amendment I, Nisbet (Development Boundary Amendment) (0.2ha)
- (SBNIS002): Nisbet Settlement Boundary Amendment II, Nisbet (Development Boundary Amendment) (0.3ha)
- (AYETH001): Morebattle Road II, Yetholm (Housing) (2.4ha)
- (AYETH002): Land West of Deanfield Place, Yetholm (Housing) (4.4ha)
- (BYETH002): Deanfield Court (Business & Industrial), Yetholm (Business & Industrial) (0.5ha)

Eildon

- (AANCR002): Dick's Croft II, Ancrum (Housing) (3.2ha)
- (MDARN002): Darnick Vale II, Darnick (Housing) (3.8ha)
- (MEARL004): Georgefield & East Turrford Extension, Earlston (Mixed Use) (70ha)
- (AGALA038): Easter Langlee Mains II, Galashiels (Housing) (24.5ha)
- (AGATT012): Fauhope, Gattonside (Housing) (0.3ha)
- (AGATT017): Land North and North East of Montgomerie Terrace, Gattonside (Housing) (1.6ha)
- (AGATT018): Castle Field II, Gattonside (Housing) (1.6ha)
- (SBGAT003): Land North & East of Tweed Lodge, Gattonside (Development Boundary Amendment) (0.05ha)
- (SBLILL001): Land South East of Rosemary Cottage, Lilliesleaf (Development Boundary Amendment) (0.2ha)
- (AMELR015): Land at Dingleton Road Mains II, Melrose (Housing) (1.0ha)
- (AMELR014): Land to West of Ormiston Terrace, Melrose (Housing) (1.9ha)
- (GSNEWS002): Land West of Hawthornside Cottage, Newstead (Greenspace) (0.1ha)
- (MNEWT004): Land at Hawkslee Farm, Newtown St Boswells (Mixed Use) (2.1ha)
- (AOXTO009): South west of Oxton (Housing) (1.5)
- (AOXTO019): Nether Howden, Oxton (Housing) (2.6ha)

- (MOXTO002): Oxton South West, Oxton (Mixed Use) (5.1ha)
- (ASELK032): Philiphaugh Nursery, Selkirk (Housing) (0.6ha)
- (ASELK041): Philiphaugh 2, Selkirk (Housing) (0.6ha)
- (MSELK004): Land and Buildings at Whinfield Mill, Selkirk (Mixed Use) (1.3ha)
- Charlesfield, St Boswells – request for housing (not specified where) as enabling development
- (ASTOW029): West of Crunzie Burn, Stow (Development Boundary) (1.4ha)

Teviot and Liddesdale

- (AHAWI031): Former Stonefield Quarry II, Hawick (Housing) (0.3ha)
- (SBMIN001): Garden Ground of Dean Cottage, Minto (Development Boundary Amendment) (0.2ha)

Tweeddale

- (ABROU006): Land South of Kirkbank, Broughton (Housing) (4.4ha)
- (ACARD003): West of Cardrona (Housing) (5.1ha)
- (ADOLP004): Land to north of Dolphinton (Housing) (1.3ha)
- (ALAMA001): Grange Courtyard, Lamancha (Housing) (0.6ha)
- (MLAMA001): Lamancha Mixed Use (Mixed Use) (2.3ha)
- (APEEB059): Land South of Chapelhill (enlarged), Peebles (Housing) (11.8ha)
- (MPEEB009): Standalane Steading, Peebles (Mixed Use) (1.8ha)
- (SPEEB010): East of Cavalry Park, Peebles (Longer Term Industrial and Business) (2.8ha)
- (SPEEB008): Land West of Edderston Ridge (Longer Term Mixed Use) (19.5ha)
- (APEEB045): Venlaw (7.1ha) and (APEEB058): Lower Venlaw (1.6ha)
- (SBPEE002): Staddlestones Development Boundary Extension, Peebles (Development Boundary Amendment) (0.1ha)
- (GSPEEB015) : Ballantyne Place Community Garden, Peebles (Greenspace) (0.02ha)
- (AWEST019): North East of Robinsland Farm (Housing) (3.2ha)

4.11 As noted in paragraph 4.2 above, all of the representations for change to the Proposed LDP 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 Habitat Regulation Appraisal (Appendix D); and a Report on conformity of the Council's consultation processes to its published Participation Statement (Appendix E). Appendix C will be completed pending the Council's decision.

5 DRAFT NATIONAL PLANNING FRAMEWORK 4

5.1 The Proposed LDP has been prepared under the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. However, as a result of the Scottish Government's proposals to reform the planning system the Planning (Scotland) Act 2019 has set out a series of changes as to how the Development Planning process should be undertaken in respect of preparing new LDPs. LDPs will form part of the statutory 'Development Plan' and will, alongside the National Planning Framework, be the main basis for all decisions on planning applications. The new Act seeks significant changes to strengthen and simplify LDPs and refocus plans on the outcomes that they will deliver for people and places, rather than the processes of preparing them. New Plans should be informed by consultation and collaboration so that they are relevant, accessible and interest people.

5.2 As stated in para 3.3, the Proposed LDP was completed almost 2 years ago. Whilst Officers were aware of the forthcoming planning reform and the consequent pending National Planning Framework, which would be a significant document which all LDP's should adhere to, the date of publication of the NPF4 (or the initial draft), or what would be stated, were unknown at that stage. It was decided to proceed with the Proposed LDP under the current legislation. However, Covid 19 significantly affected the timescale for delivery of the LDP. The draft NPF4 was put out for public consultation on 10 November 2021 and it is anticipated it will be complete in summer 2022 then will be referred to Parliament to obtain formal approval. Had it not been for the coronavirus pandemic it is most likely the LDP would have been through Examination prior to the publication of NPF4 which would have obviously made the process much more straightforward. However, the emergence of NPF4 is a major factor at this stage which must be considered.

5.3 The Council has therefore two options as to the course of action to be taken. On the assumption the Council supports the recommended responses, which may include any non-significant changes they may agree, it could proceed to Examination with the Proposed LDP as prepared under the current legislation. Alternatively, it could decide to revisit the LDP to be in line with NPF4 and be prepared under the new Act. Both these courses of action are not without uncertainty and risk and many planning authorities have similar difficult decisions to make in terms of deciding the most appropriate way forward for their respective LDPs given where they are within the process. Council Officers have attended many meetings with representatives from other authorities and have shared opinions on how best to proceed. Some authorities are currently at Examination and expect decisions prior to NPF4 coming into force. Others are at an earlier stage of the LDP preparation process and are putting their Plan on hold in order that they can progress it under the new legislation as it is enacted. Obviously the earlier a Plan is in the process the easier it is to adapt it accordingly.

SBC are in a more difficult position in that the Proposed LDP was completed some time ago and when it goes to Examination it is possible NPF4 will have been published. This could be a factor in the DPEA determining the Plan.

5.4 In terms of the first option, if it is decided to go to Examination the following main points should be observed:

- The Scottish Government confirmed that a Transitional Provision can allow Proposed LDPs published before June 2022 (which is the case for SBC) to proceed to adoption under the current Planning Act
- Outstanding matters not covered at Examination could be considered as Supplementary Guidance
- The majority of the Proposed LDP refers to Scottish Planning Policy 2014 which will be superseded by the National Planning Framework. Although the Proposed LDP satisfies the housing land requirement as set out in the draft NPF4, many of the policies do not fully accord with those stated in the draft NPF4. Consequently some of the policies in the LDP when adopted will have a short shelf life and the policies within NPF4 would take precedence until a Plan is prepared under the new legislation.
- If NPF4 comes into force during Examination, it is possible many queries will be raised by the DPEA to interested parties (including the Council) regarding consequent potential changes to LDP. This will prolong the Examination period and there will be a consequent increase in costs to the Council

5.5 If Members decide on the second option that the LDP should be revisited in compliance with the new Act the following main points should be observed:

- The LDP would be prepared in a format which would be under the new 2019 Act and would be a modern, up to speed and fit for purpose Plan when eventually adopted
- Scottish Government confirmed in light of the delays caused by COVID-19 there is now no requirement to have a new LDP in place every 5 years
- Given the new legislative procedures under the 2019 Act in terms of the format of the LDP, the process and the output, the Proposed Plan will be significantly different to a Plan prepared under the current legislation. Consequently it would be most likely the Plan would need to be revisited from scratch. This would result in an excessive delay in having a new Plan in place to replace the current adopted LDP 2016. The LDP 2016 would be significantly out of date on a number of key points by that stage

5.6 It is acknowledged this is a difficult decision with uncertainty and an element of risk whatever choice is made. One of the uncertainties is exactly when NPF4 will be published as obviously the Examination process would be more straightforward if it was concluded before the publication of NPF4. At this stage neither the Scottish Government nor DPEA are able to give any definitive advice, although it is appreciated given the uncertainties and legal

complications regarding possible outcomes and procedures they could not be expected to do so. Ultimately the course of action decided must rest with each planning authority being largely dependent on where they are within their respective LDP processes. Planning Officers have discussed the options in detail with Council's legal team as well taking soundings from other authorities.

- 5.7 Taking all matters into consideration, perhaps most notably that Scottish Government guidance has been setup to allow LDPs to go to Examination under the current Planning Act and given the excessive time delays in preparing an LDP under the new Act, it is recommended that taking the LDP to Examination is the most appropriate course of action in the circumstances.

6 IMPLICATIONS

6.1 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. 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 Infrastructure and Environment, and Legal and Administration to carry out the necessary work in promoting the Council position at the Examination.

6.2 Risk and Mitigations

The primary output from this report is the recommendation to remit the unresolved representations/issues to the Proposed LDP for independent evaluation by the Scottish Government Reporter(s) at Examination. Proceeding to Examination saves considerable time and resource by avoiding the need for Pre-Examination modifications to the Plan, and any resultant counter objection. The cost of Examination would increase if the Examination period is prolonged.

6.3 Integrated Impact Assessment

The primary focus of a LDP 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.

6.4 Sustainable Development Goals

The LDP 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.

6.5 Climate Change

There are no direct environmental implications arising from this report.

6.6 **Data Protection Impact Statement**

There are no personal data implications arising from the proposals contained in this report.

6.7 **Changes to Scheme of Administration or Scheme of Delegation**

There are no changes to the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

7 CONSULTATION

7.1 The Director - Finance & Corporate Governance, the Monitoring Officer/Chief Legal Officer, the Chief Officer Audit and Risk, the Director – People, Performance & Change, the Clerk to the Council and Corporate Communications have been consulted and comments received have been incorporated into the final report.

Approved by

Name **John Curry Title Director – Infrastructure and Environment**

Author(s)

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Background Papers: Nil

Previous Minute Reference: Proposed Local Development Plan (25 September 2020)

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.

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