



## Garioch Area Committee Report – 27 September 2022

Reference No: APP/2022/0283

Application under Section 42 for Residential Development comprising of 600 Dwellinghouses, Neighbourhood Centre, Landscaping, Open Space and Associated Infrastructure Without Compliance with Conditions 3 (Dwellinghouse Occupation Date), 4 (Dwellinghouse Occupation until Kintore Primary School opened), 9 (Formation of Access to Supermarket consented under APP/2014/1953 to be formed), 12 (Construction in the Floodplain); and Amendments to the Wording of Conditions 1 and 2 (Timing and Content of MSC submission), 5 (Energy Statement Submission), 6 (Remediation Work Phasing), 7 (Landscaping), 8 (Archaeology), 11 (Approved Use Class of Neighbourhood Centre/Community Facilities) and 13 (Foul Sewerage Details); (Change to Condition numbering) 10 (Travel Plan Phasing), 14 (Public Transport Strategy Phasing) and 15 (Junction Improvement Works Submission) of Planning Permission Reference APP/2013/3830 at Land at Kintore East, Kintore, Aberdeenshire

**Applicant:** The Kintore Consortium  
**Agent:** Ryden LLP

Grid Ref:	E:379909 N:815305
Ward No. and Name:	W12 – East Garioch
Application Type:	Planning Permission in Principle (S42)
Representations:	107
Consultations:	13
Relevant Proposals Map Designations:	Within Kintore settlement, OP1 and P1
Complies with Development Plans:	Yes
Main Recommendation:	Delegated Grant



**NOT TO SCALE**

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## 1. Reason for Report

- 1.1 The Committee is able to consider and take a decision on this item in terms of Section B.8.1 of Part 2A List of Committee Powers and Section C.3.1f of Part 2C Planning Delegations of the Scheme of Governance as there is an unresolved objection from a consultee.
- 1.2 This item was previously before the Garioch Area Committee on 6 September 2022, where the decision was taken to defer the determination of the application in order that Officers could negotiate with the developer a reduction in the time extension requested for the application.
- 1.3 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

## 2. Background and Proposal

- 2.1 This application seeks to vary a number of conditions that were applied to APP/2013/3830 for planning permission in principle for 600 dwellinghouses, neighbourhood centre, landscaping, open space and associated infrastructure that was granted 4 September 2015. The application has been made under Section 42 of the Town and Country Planning (Scotland) Act 1997.
- 2.2 The specific conditions from the original planning permission in principle that the applicant seeks to vary or remove are detailed below:

VARY

Condition no. 1 – relates to the necessary matters specified in conditions and requires the submission of as the following information;

- 1a) phasing scheme
- 1b) scheme of strategic landscaping and open space provision
- 1c) map of all water bodies and extent of functional floodplain
- 1d) written scheme of investigation relating to a programme of archaeological works
- 1e) strategy of surface water treatment for the whole site
- 1f) a scheme to connect the development to the public waste water network
- 1g) a site specific environmental management plan
- 1h) a site waste management plan
- 1i) an ecological management plan
- 1j) a public access plan
- 1k) a design guide to ensure continuity across the phases
- 1l) details of the road layout

This condition requires the submission of the matters specified in condition to be submitted as per the requirements of Section 59 of the Act within 3 years of the date of the grant of permission.

Condition no. 2 – requires the details of the specified matters for each individual phase of the development to be submitted for approval within 6 years of the date of the grant of planning permission and prohibits any start of a phase of development until all associated details have been approved.

Condition no. 5 – requires details of an Energy Statement to be approved prior to first occupation of dwellings.

Condition no. 6 – requires remediation works to be undertaken on any relevant phase to accord with Desk Study Report.

\*Condition no. 7 – implementation of soft and hard landscape proposals.

Condition no. 8 – implementation of programme of archaeological works.

Condition no. 10 – requires the submission of a residential travel plan prior to first occupation.

\*Condition no. 11 – imposes a restrictive condition relating to the use of the neighbourhood centre/community facilities to Use Classes 5 and 6.

\*Condition no. 13 – requires the disposal of foul sewerage to be to the public sewerage system.

Condition no. 14 – requires the implementation of public transport strategy prior to the occupation of the penultimate dwelling within that phase of development.

Condition no. 15 – requires the implementation of identified junction improvements at a) A96/B987 Broomhill Roundabout and b) B987/B994 Tumulus Way signalised junction prior to the occupation of any of the consented development.

\* The only change to these conditions will be the numbering.

#### REMOVE

Condition no. 3 – restrictive condition to prevent the occupation of any dwelling prior to 1 January 2017.

Condition no. 4 – restrictive condition to prevent construction starting on the residential development until such times that construction had started on the new Kintore Primary School.

Condition no. 9 – formation of a permanent access to the supermarket approved under consent APP/2014/1953 prior to the new roundabout on Schoolhill being brought into use.

Condition 12 – no building to be constructed within the functional floodplain.

#### ADDITIONAL

- i) Submission of a Construction of Environment Management Plan (CEMP) to include details of site waste management plan, dust management plan, spill response plan etc.

- ii) Full details of proposed watercourse crossings and engineering works in the water environment to be submitted to the planning authority for approval in consultation with SEPA.
- 2.3 The application includes a supporting statement that outlines the planning history of the site, national and local planning policy, along with material considerations and justification for the Section 42. It is stated that several meetings have taken place with the Council's Planning Service relating to the pending matters specified in conditions applications (APP/2016/1330 and APP/2016/2046) and that it became apparent that the general wording of the planning permission in principle (PPiP) conditions were problematic. The statement goes on to advise that for a strategic site such as Kintore East, led by a consortium of developers it is not uncommon for the development to be pursued and delivered in phases. The phased approach would allow for the site to be developed in smaller pieces that could be brought forward by individual housebuilders. In the supporting statement the agent advises that, '...the wording of a number of the existing planning conditions on the PPiP do not allow for such an approach, instead requiring the submission of significant levels of information upfront and on a site-wide basis.' The agent further advises that it is the hope of the developers that this Section 42 application would allow the variation of conditions and would facilitate a phased approach to the delivery of the site through subsequent matters specified in conditions applications.
- 2.4 Following deferral of the application, the agent advised that the applicants are agreeable to a reduction from the applied for 10 years to 7 years to allow for the submission of the matters specified in conditions applications. The agent has advised that this period is considered to be an appropriate timescale to allow for the submission of all future matters specified in conditions applications. Accordingly, recommended conditions 2 and 3 have been updated to reflect this.

### **3. Representations**

- 3.1 A total of 107 valid representations (3 support/104 objection) have been received as defined in the Scheme of Governance. All issues raised have been considered. The letters can be viewed on the [Aberdeenshire Council Website](#). The letters raise the following material issues:
- *The developer has had sufficient time to progress the development.*
  - *Flooding issues.*
  - *Loss of greenspace at Tuach Hill and the health benefits this space has provided.*
  - *Impact on road infrastructure and resultant traffic.*
  - *Impact on educational facilities and future capacity.*
  - *Kintore does not have sufficient amenities to support this number of additional residents.*
  - *Loss of wildlife.*
  - *Potential disruption of asbestos and contaminated land.*
  - *The development would not comply with forthcoming NPF4 policies and direction.*

In support of the application, comments are noted that it is felt that the proposal will allow Kintore to be supported with extra facilities and will bring additional business to the area.

#### 4. Consultations

- 4.1 **Business Services (Developer Obligations)** – has advised of no objection but that there will be a need for a variation to the Section 75 to make reference to this revised application.
- 4.2 **Environment and Infrastructure Services (Archaeology)** has advised that the initial archaeology evaluation of the southern part of the site has been completed which has revealed several areas of archaeological features which require further mitigation in the form of stripping, mapping and excavating along with post-excavation analysis. It is noted that no archaeological evaluation has been carried out to the northern part of the site and accordingly a condition needs to remain on any subsequent approval. A model condition is therefore recommended which allows work to be carried out in a phased approach as the condition can be partially discharged as each phase of works is completed on the ground.
- 4.3 **Environment and Infrastructure Services (Contaminated Land)** has advised of no objection in principle and requires that the amended condition wording should be updated to include reference to new British Standards.
- 4.4 **Environment and Infrastructure Services (Environmental Health)** advises that the development introduces sensitive receptors next to existing and proposed noise sources and requests that a Noise Impact Assessment be submitted.
- 4.5 **Environment and Infrastructure Services (Environment Team - Natural Heritage)** has advised of no objections in principle and recommends additional wording for condition 8 to include the requirement for tree protection plans and details of construction mitigation measures from Ecological Management Plan.
- 4.6 **Environment and Infrastructure Services (Flood Risk and Coastal Protection)** has advised of no objection and indicated minor text changes to be included in condition 2i) and 3d.
- 4.7 **Environment and Infrastructure Services (Landscape Services)** no response received.
- 4.8 **Environment and Infrastructure Services (Roads Development & Transportation)** – has no objection and recommends amended wording to conditions 2b) and 3b) to ensure details of means of access to the relevant phases, and from the public road and all internal roads are to be in accordance with the agreed Street Engineering Report (SER) and Public Transport Strategy.
- 4.9 **Kintore & District Community Council** has advised of its objection to the application. The grounds for objection relate to i) the use of a Section 42 application, ii) there is no need for this application as existing consent is sufficient in content and requirements, iii) the floodplain between Tuach Burn

and Station Road is unsuitable for development, iv) the development does not reflect the aims of the forthcoming National Planning Framework 4 (NPF4).

- 4.10 **Network Rail** – has advised of no objections in principle but due to the close proximity to the operational railway, informatives are recommended to advise the developer of the need to collect and divert water away from Network Rail property, consideration of species type in landscape schemes, details of change of levels, laying of foundations and operation of mechanical plant in close proximity to the rail line must be approved by Network Rail.
- 4.11 **Scottish Water** – has no objection.
- 4.12 **SEPA** has requested a number of modifications to the wording of the conditions and this aligns with the position of the Council's own Flood Risk & Coastal Protection Service.
- 4.13 **Transport Scotland** advises of no objections and recommends conditions to secure the proposed alterations to the following junctions i) A96/B987 Broomhill roundabout ii) B987/B994 Tumulus Way signalised junction.

## 5. Relevant Planning Policies

### 5.1 Scottish Planning Policy

The aim of the Scottish Planning Policies is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

Development and conservation are not mutually exclusive objectives; the aim is to resolve conflicts between the objectives set out above and to manage change. Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The planning system guides the future development and use of land in cities, towns and rural areas in the long term public interest. The goal is a prosperous and socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

### 5.2 Aberdeen City and Shire Strategic Development Plan 2020

The Strategic Development Plan (SDP) was approved on 12 August 2020.

The purpose of this Plan is to set a clear direction for the future development of the City Region. It sets the strategic framework for investment in jobs, homes and infrastructure over the next 20 years. All parts of the Strategic Development Plan area will fall within either a strategic growth area or a local growth and diversification area. Some areas are also identified as regeneration priority areas. There are also general objectives identified. In

summary, these cover promoting economic growth, promoting sustainable economic development which will reduce carbon dioxide production, adapt to the effects of climate change and limit the amount of non-renewable resources used, encouraging population growth, maintaining and improving the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility in developments.

The Aberdeenshire Local Development Plan 2017 will continue to be the primary document against which applications are considered. The Aberdeen City & Shire SDP 2020 as approved forms part of the Development Plan.

### 5.3 Aberdeenshire Local Development Plan 2017

Policy P1: Layout, siting and design  
Policy RD1: Providing suitable services

### 5.4 Proposed Aberdeenshire Local Development Plan 2020

Aberdeenshire Council on 5 March 2020 resolved to agree the Proposed Aberdeenshire Local Development Plan (LDP) 2020 as the “settled view of the Council” on what the final adopted content of the LDP 2022 should be. The Proposed LDP 2020 is a material consideration in the determination of planning applications. The Planning Authority must therefore assess what weight it should have in the context of this particular application. The Reporter's Report of Examination of the Proposed LDP 2020 has now been published (24 June 2022). Notwithstanding, there is currently no authority to use the Proposed Local Development plan as a substitute for the Local Development Plan 2017. The weight that can be given to the phrase “settled view of the Council” can only be interpreted in the context of the publication of the Proposed Local Development Plan 2020 (March 2020). Even with the certainty associated with the Reporter's Report it still remains only a material consideration in determining planning applications. However, consideration will be given on a case by case basis where the weight of the Reporter's Report should be given overwhelming significant weight when it is most advantageous to the applicant's proposals. SPP Paragraph 34 is of associated relevance.

The Scheme of Governance reserves determination of planning policy to Full Council for resolution. As such not until the Proposed Local Development Plan 2020 has been formally adopted by Full Council (as LDP 2022) can this be considered as the Council's “settled view”.

It should be borne in mind that the LDP has been written to be implemented as a whole and not the selective use of agreeable parts.

On the 18 April with reference to the legislation the LDP 2017 becomes technically ‘out of date’. Notwithstanding the Aberdeenshire LDP 2017 remains the primary document against which planning applications should be determined until such time as a new LDP for the area is adopted. Currently Scottish Planning Policy (SPP) deals with this circumstance at Paragraphs 32 to 34. The policies of the LDP 2017 are reflective of the policy position within SPP. Both SPP and the National Planning Framework 3 are confirmed as significant influences on the content of the plan, as confirmed within Section 2 – ‘Influences of the Plan’. In summary, when a development plan is more than

five years old the presumption in favour of sustainable development is a significant material consideration, this must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits. All of these matters however are already embedded within the policies of the Local Development Plan 2017 and deemed robust in their consideration.

## 5.5 Other Material Considerations

### Relevant planning history

Kintore Settlement statement within the Aberdeenshire Development Local Plan 2017 – OP1 for a mix of use including 600 homes and employment land.

Kintore settlement statement within the Proposed Aberdeenshire Local Development Plan 2020 – OP1 for 1000 homes.

Kintore East Masterplan – approved June 2014.

APP/2013/3830 – planning permission in principle for residential development comprising 600 dwellinghouses, neighbourhood centre, landscaping, open space and associated infrastructure

Granted 4 September 2015

APP/2016/1330 – approval of matters specified in relation to Condition 1a (Phasing Scheme) Relating to Planning Permission in Principle (APP/2013/3830)

Pending consideration

APP/2016/2046 - approval of matters specified in relation to Condition 1b (Strategic Landscape Scheme), 1c (Water Bodies), 1d (Archaeology), 1e (SUDS Strategy), 1f (Waste Water Connection Scheme), 1g (Construction Environmental Management Plan), 1h (Waste Management Plan), 1i (Ecology), 1j (Public Access), 1k (Design Guide), 1l (Roads and Bridges), 2c (Access Details), 2e (Levels Information), 2g (Water Bodies), 2h (Trees), 2i (Badgers), 2j (Water Voles, Otters, Bats and Red Squirrels), 6a, 6b and 6c (Remediation) of Previously Approved Planning Permission in Principle APP/2013/3830

Pending consideration

It should be noted that the original planning permission in principle (APP/2013/3830) allows for the approval of matters specified in conditions over a period of 6 years as opposed to the usual 3 year period. Councillors should also note that where a planning permission (including planning permission in principle) was due to lapse between the period of 7 April 2020 to 30 September 2022 the Coronavirus (Scotland) Act 2020 increases the 'extended period' i.e. the period for implementation until 31 March 2023. The application APP/2013/3830 therefore remains extant.

It should also be noted that the two applications that remain pending consideration (APP/2016/2046 and APP/2016/1330) have been subject to much discussion with the developer to address a number of concerns.

## 6. Discussion

- 6.1 Paragraph 33 of Scottish Planning Policy (SPP) states that where a development plan is more than five years old, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. This must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits.
- 6.2 Applications made under Section 42 of the (Town and Country Planning (Scotland) Act 1997, as amended) are an exercise to vary (or remove) conditions previously applied to a planning permission; in this case the planning permission in principle granted for the Kintore East development under APP/2013/3830. The scope of consideration of this S42 application is limited to the conditions the applicant has sought to vary, although other related conditions may have to be revisited, or the opportunity taken to update conditions that no longer meet up-to-date policy requirements. It is possible to consider the overall effect of granting a new permission, although that is primarily where the previous permission has lapsed or is incapable of being implemented, which is not the case here. The granting of a S42 application will provide a new and separate permission for that development and the duration of the new permission can be longer or shorter than the usual periods applied to a permission of that type. It is possible for a developer to hold more than one permission for a development and to implement multiple permissions.
- 6.3 The context in which this application is made is that the developer is of the view that the wording used in the planning permission in principle APP/2013/3830 is problematic and does not facilitate a phased approach to the development. In its current form the wording of a number of the planning permission in principle conditions require the submission of a significant level of information on a site wide basis. These issues have been discussed with the developer at length. It has subsequently been agreed that the submission of a Section 42 application would allow the Planning Service to consider condition revisions that would enable a more phased approach to be pursued by the development consortium.
- 6.4 The development consortium seeks to vary or remove the conditions as set out in section 2.2 of this report. The wording proposed by the development consortium has not been fully accepted and the following is a summary of the key changes:

*Condition 1 - of the PPIP requires the submission of all details listed below ahead of the commencement of any works. These details were 1a) phasing scheme, 1b) strategic landscaping and open space, 1c) identified water bodies, 1d) scheme of investigation for archaeological works, 1e) surface water treatment strategy, 1f) scheme to connect to public waste water network, 1g) environmental management plan, 1h) waste management plan, 1i) ecological management plan, 1j) public access plan, 1k) design guide for complete site, 1l) details of the road layout for the overall development (including bridges) and to include a Street Engineering Review (SER) and Stage 2 Quality Audit.*

The amended condition wording seeks to remove part 1a) relating to phasing scheme. It is proposed that a separate phasing condition be included in any consent (proposed condition no. 1). Slight amendments are also proposed to the landscaping detail requirements.

It is proposed that the requirement to submit details of means of access to the site and internal road hierarchy (part 1l), with the substantial detail required within a SER or Quality Audit be incorporated into a new condition (proposed condition no. 2b). This approach would see the substantive detail submitted as part of proposed condition no. 2b) with proposed condition no. 3b) securing the detail for each phase.

It is proposed to amend slightly the requirements of condition no.1c) which requires the submission of details of position/dimensions of watercourses, the extent of the functional floodplain of the Tuach Burn and confirmation that no buildings are permitted within the floodplain. It is proposed to separate out these requirements to create an additional condition (proposed condition no. 2i).

It is also proposed to delete 1d) (scheme for a programme of archaeological works) from this section and add into a new, separate condition which allows for a phased approach (proposed condition no. 7). Finally, the requirement for an environmental management plan (1g) and waste management plan (1h) would also be incorporated into a separate condition (proposed condition no 8) and this would require information to be submitted for each phase.

On the whole the Planning Service is accepting of these changes. With respect to the aspects that change the timing of the road layout submission and associated reports/audits comment is provided at paragraph 6.8 onwards on this matter.

*Condition 2 – requires submission of details of the specified matters to be submitted and approved within 6 years from the grant of the permission.*

It is proposed to amend this to 7 years from the grant of the permission and to align with the now applied for 7 year Direction for consent. Reference to superseded LDP guidance is also removed and it is proposed to amend the wording to allow for the detailed roads information and layouts to be submitted for each phase. The need for the higher level roads information such as the means of public access from the public road network, visibility splays (proposed condition no. 2b) and a Street Engineering Review (SER), Stage 2 quality audit, public transport strategy and parking strategy for the proposed layout and road network for the whole site remains (proposed condition no. 2b and 2j).

Condition 2 o) requires the submission of Energy Statements and it is proposed to remove this requirement from this condition and create a separate condition. Proposed condition no. 4 therefore replaces 2o) and the wording is amended to better reflect current standards and to require such Energy Statements for each house type rather than individual dwellings.

It is also proposed that the additional requirements of SEPA are built into the amended condition wording and this includes the need for a new Flood Risk Assessment to be submitted (proposed condition no. 3p).

*Condition no. 3 – restricted the occupancy of approved dwellings until after 1 January 2017 to reflect the phasing of the housing land allocations of the Aberdeen City and Shire Strategic Development Plan.*

It is proposed to remove this condition as the specified date has now passed. The Planning Service accept that this condition is no longer necessary and can be removed.

*Condition no. 4 – restricts construction of dwellings until after the construction of the Kintore Primary School has commenced.*

It is proposed to remove this condition as the school has been built. The Planning Service accept that this condition is no longer necessary and can be removed.

*Condition no. 5 – requires that no dwelling/building is occupied unless it has been carried out in accordance with the Energy Statement.*

It is proposed to amend this wording to reflect the Council's updated model condition (proposed condition no. 4). The Planning Service accepts this amended wording.

*Condition no. 6 – requires that no works shall commence on any phase until such times that the agreed remediation works have been carried out.*

The Planning Service proposes that this condition wording is amended to make reference to current British Standard and this is reflected in the consultation response from the Council's Contaminated Land Officer (proposed condition no. 5).

*Condition no. 7 – landscaping (proposed to be condition no. 6)*

*Condition 11- use class restrictions of neighbourhood centre/community facilities (proposed to be condition no. 10)*

*Condition no. 13 – disposal of foul sewerage to public sewerage system (proposed to be condition no. 11).*

These conditions are to be subject to changes to their numbering only. Their requirements remain the same and accordingly are not considered further in this assessment.

*Condition 8 archaeology requires the programme of archaeological works to be implemented in accordance with the approved written scheme of investigation.*

It is proposed to amend this condition to reflect the Planning Service standard wording which has evolved since the determination of the original application (proposed to be condition no. 7). The Planning Service support this amended wording.

*Condition no. 9 – requires the formation of a new access to the supermarket consented under APP/2014/1953 to be formed prior to the new roundabout on Schoolhill being brought into use.*

It is proposed to remove this condition as the relevant planning approval APP/2014/1953 has lapsed and is not able to be implemented. The Planning Service accept that this condition is no longer necessary or relevant and it can be removed.

*Condition no. 10 – requires the submission of a Travel Plan prior to the first dwellinghouse being occupied.*

The Section 42 seeks to amend the wording of this to allow the submission of a Travel Plan for each respective phase (proposed to be condition no. 9). The Planning Service accept this amended wording.

*Condition no. 12 – states that no building shall be erected within the functional floodplain.*

It is proposed to remove this condition as the requirement is built in to the wording of proposed condition no 2(i). The Planning Service accept that the requirements of this condition are built into the proposed new wording and accepts that condition 12 of the original consent is no longer necessary and can be removed.

*Condition no. 14 –public transport strategy as demonstrated within the supplementary information in the Transport Assessment is to be implemented prior to the occupation of the penultimate dwelling within phases demonstrated in submitted drawings (figures 4.3a, 4.3b and 4.3c).*

It is proposed to remove this condition. A public transport strategy is required under proposed condition no.2(j). The Planning Service accepts that the retention of this condition is not necessary as the requirements are built in proposed condition no. 2(j). It should also be noted that the Roads Service has been consulted and it has raised no objections to this amendment.

*Condition 15 – seeks the implementation of junction improvement works prior to the occupation of the consented development. The junction improvement works are;*

- i) A96/B987 Broomhill roundabout*
- ii) B987/B994 Tumulus Way signalised junction*

The Section 42 application seeks to amend the wording of this condition to build in a reference to, ‘...other such mitigation measures’ that an updated Transport Statement may identify (proposed condition no. 12). The Roads Service has been consulted and has raised no objections to this amendment. Transport Scotland has also not raised any objections to this amendment. Accordingly, the Planning Service accept the proposed amended wording.

- 6.5 Fundamentally, it is the role of the Planning Service to facilitate proposals that will accord with the development plan and will deliver a quality development. The Kintore East site has taken a considerable period of time to get to this stage and this is not uncommon for such a significant site. Unforeseen obstacles and changing circumstances are also not uncommon for large, complex proposals over an extended period of time and changes are sometimes required to assist with site delivery. This Section 42 application is one of the necessary outcomes and is considered to be a pragmatic solution

and acceptable to allow the submission of successful approval of matters specified in conditions in the future. Delivery of the Kintore East development is supported by Policy H1 (Housing Land) and Appendix 5 of the Aberdeenshire Local Development Plan 2017.

- 6.6 Whilst the Section 42 would result in a number of minor alterations to condition numbering these will not impact significantly on how the site is delivered nor the level and type of information the Planning Service would expect to see to discharge conditions in the future. Accordingly, the Planning Service is agreeable to these changes.
- 6.7 Further consideration is given to the proposed changes to existing conditions 1a), 14 and 15 which relate to the phasing of the site and the submission of supporting information relating to roads infrastructure and wider transportation issues. The current consent requires the submission of a SER, Quality Audit and Public Transport Strategy on a site wide basis. This approach requires the submission of significant levels of information upfront. It should also be noted that condition no. 1a) of the original consent requires a phasing plan so this was always a requirement of the development. The Council's Roads Service has considered the amendments and after discussions have agreed to the principle of some of the information being submitted on a phased basis. Proposed changes to conditions 2b) and 2j) seek appropriate site wide information such as Street Engineering Review and Stage 2 quality audit. Whereas proposed condition nos. 3b), 3k), 3l) and 3m) require much more detail such as proposed car parking, vehicle turning areas, cycle parking provision, details of footpaths but this would be on a phase by phase basis which is considered to be more appropriate for a development of this scale with a number of potential housebuilders.
- 6.8 The proposed changes sought in this Section 42 application do not significantly alter the level of information required to further the necessary approval of matters specified in conditions but seek to submit some of the information on a phased basis rather than site wide. The changes proposed to conditions relating to roads and transportation need to be considered relative to Policy RD1 (Providing suitable services) which promotes development that is close to existing public transport, delivers improvements to public transport in line with the scale of the development and provides new accesses to an agreed standard that is resource-efficient, safe and convenient for cyclists, pedestrians and public transport. The proposed amendments do mean that the more detailed information relating to the road network will be submitted on a phased basis but this will be in accordance with an agreed SER and Public Transport Strategy which relates to the whole site.
- 6.9 The wording proposed by the applicant relating to existing condition no.s 14 and 15 is broadly acceptable to the Planning Service and comments have been sought from Transport Scotland and the Council's Roads Development and Transportation team who have raised no objections in principle subject to amended wording changes which have been incorporated into the recommended conditions. Having regard to the fact that the residential development of this site is well established it remains the view of the Planning Service that with proposed condition amendments the development would continue to comply with policy RD1 and this respect the proposal is acceptable.

- 6.10 The points raised in the response from the Community Council and in representations are noted with the majority of the issues raised having been already considered in the determination of the original planning permission in principle. Some of the representations raise issues relating to the loss of greenspace and the value this has brought to residents during Covid, asbestos at the site and non-compliance with NPF4. In response to these more current issues the Planning Service would offer the view that any forthcoming applications will consider more fully the relationship with existing greenspaces as detailed layouts would be submitted and assessed accordingly. With respect to asbestos having been found on the site this was subject to an investigation at the time. A recommended condition remains to deal with matters of contaminated land in the development of the site. A number of representations refer to NPF4 and the 20 minute neighbourhood concept. It should be noted that at the time of writing this report NPF4 has not been formally adopted by the Scottish Government. Whilst NPF4 does introduce new concepts the principles of sustainable development remain central to the aims of draft NPF4 and this has been considered in the site selection process ahead of the LDP adoption.
- 6.11 Finally it is noted in the consultation response from Environmental Health that a Noise Impact Assessment (NIA) was required as the development introduces sensitive receptors next to existing and proposed noise sources that should be assessed. Members will note that a Section 42 is limited in scope as set out paragraph 6.2 of this report. The appropriate timing to request NIA's would have been on the original planning permission in principle application which does not appear have been the case. There is no scope to add such a requirement through this Section 42 application.

### Conclusion

- 6.12 The policies contained in the Local Development Plan 2017 remain compliant with the principles of sustainable development as guided by the SPP and therefore provide an appropriate basis for the determination of this application. The proposal, in making efficient use of existing infrastructure, supporting delivery of new infrastructure and the delivery of accessible housing development would contribute towards sustainable development. This carries significant material weight lending itself to an approval. The Section 42 application simply seeks to submit some of the required information on a phased basis rather than all on a site wide basis. This approach is considered to be acceptable in bringing this site forward to development.
- 6.13 In assessing the proposed development against the wider policies of SPP and the LDP 2017 and any other material considerations, there were no adverse impacts which would significantly and demonstrably outweigh the benefits of the proposal. The Planning Service therefore supports the variation of the conditions as included in section 2.2 of this report.

## **7. Area Implications**

- 7.1 In the specific circumstances of this application there is no direct connection with the currently specified objectives and identified actions of the Local Community Plan.

## 8. Implications and Risk

- 8.1 An integrated impact assessment is not required because the granting or refusing of the application will not have a differential impact on the protected characteristics of the applicant or any third parties.
- 8.2 There are no staffing and financial implications.
- 8.3 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the planning authority in a quasi-judicial role and must determine the application on its own merits in accordance with the Development Plan unless material considerations justify a departure.
- 8.4 No separate consideration of the current proposal's degree of sustainability is required as the concept is implicit to and wholly integral with the planning process against the policies of which it has been measured.

## 9. Departures, Notifications and Referrals

### 9.1 Strategic Development Plan Departures

None

### 9.2 Local Development Plan Departures

None

- 9.3 The application is not a Departure from the Local Development Plan or Strategic Development Plan and no departure procedures apply.
- 9.4 The application does not fall within any of the categories contained in the Schedule of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 and the application is not required to be notified to the Scottish Ministers prior to determination.
- 9.5 The application would not have to be referred to Infrastructure Services Committee in the event of the Area Committee wishing to grant permission for the application.

## 10. Recommendation

- 10.1 **That authority to GRANT Planning Permission in Principle be delegated to the Head of Planning and Economy subject to:-**
- a) **Satisfactory conclusion and registration of a varied Section 75 legal agreement; and**
  - b) **the following conditions:-**
01. Prior to the submission of the first application for the approval of Matters Specified in Conditions (MSC) a phasing scheme detailing the phasing of all development including the delivery of development blocks, public open space, infrastructure and transport and access arrangements to and throughout the development shall be submitted to and approved in

writing by the Planning Authority. The phasing scheme shall specify trigger points in terms of for the delivery of the road upgrades at the A96 / B987 Broomhill Roundabout, affordable housing and any developer contributions payments. Following approval of the phasing scheme the development shall be implemented in full accordance with that scheme.

Reason: To ensure that build-out of the development is phased so as to avoid adverse impact on local services and infrastructure and to ensure the delivery of infrastructure and amenities in the interests of the visual amenity of the area.

02. Notwithstanding the provisions of Section 59 of the Town and Country Planning (Scotland) Act 1997, and unless otherwise agreed in writing by the Planning Authority, details of the specified matters listed below shall be submitted for consideration by the Planning Authority before the expiration of 7 years from the date of the grant of the permission [this 7 year period substitutes the 3 year period referred to in Subsections (2)(a)(i) and (3) of Section 59 of the Town and Country Planning (Scotland) Act 1997]. No development shall begin on the site until all of the details listed in this condition have been submitted to and approved in writing by the Planning Authority, and the development shall be carried out fully in accordance with the details approved in relation to this condition:
- a) A scheme of strategic landscaping and open space provision, detailing existing landscape features and vegetation to be retained; the location of new trees, shrubs, hedges, grassed areas and water features; the layout, design and materials of all hard landscaping works including walls, fences, gates and street furniture; the extent and distribution of public open space within the development; and a programme for the completion and subsequent maintenance of the proposed landscaping.
  - b) Full details of the means of access to the relevant phase of the development and all internal roads within the phase which shall be designed in accordance with Aberdeenshire Council Standards; the agreed Street Engineering Review and the Public Transport Strategy.
  - c) A detailed map of the site showing the position and dimensions of all water bodies (including watercourses and field drains) on the site.
  - d) A strategy of surface water treatment for the entire site, detailing levels of sustainable drainage (SuDS) incorporating source control.
  - e) A scheme to connect the development to the public waste water network.
  - f) An Ecological Management Plan (including for the area around Tuach Hill and Tuach Burn) which includes:
    - Description and evaluation of features to be managed.
    - Ecological trends and constraints on site that might influence management.
    - Aims and objectives of management which shall include wetland habitat creation.
    - Appropriate management options for achieving aims and objectives.

- Prescriptions for management actions.
  - Preparation of a work schedule (including an annual work plan, capable of being rolled forward over a five-year period).
  - Details of the body or organization responsible for implementation of the plan.
  - Ongoing monitoring and remedial measures.
  - Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.
- g) A public access plan.
- h) A design guide for the complete development to ensure continuity across phases.
- i) A map showing the extent of the functional floodplain of the Tuach Burn. No buildings or landraising shall be permitted within this functional floodplain area.
- j) a Street Engineering Review (SER); Stage 2 quality audit; public transport strategy and parking strategy for the proposed layout and road network. The SER and Stage 2 Quality Audit shall be in accordance with A Policy Statement for Scotland: Designing Streets. The SER shall include details of the street layout; vehicle tracking of the layout; key visibility splays; speed control; drainage discharge rates and selection of sustainable drainage systems techniques; schematic drainage layout for foul and surface water; key materials palette and a utilities strategy. The Stage 2 Quality Audit shall include an audit of visual quality, a review of how the street will be used by the community, a Road Safety Audit, an inclusive access audit, a walking audit and a cycling audit.

Reason: Permission for the development has been granted in principle only, and subsequent approval of these matters is required in accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 and to allow for a reasonable period of time to plan and implement the development.

03. Notwithstanding the provisions of Section 59 of the Town and Country Planning (Scotland) Act 1997, and unless otherwise agreed in writing by the Planning Authority, details of the specified matters listed below for each individual phase of the development (as detailed in the phasing scheme submitted and approved in relation to Condition 1 of this permission) shall be submitted for consideration by the Planning Authority before the expiration of 7 years from the date of the grant of the permission [this 7 year period substitutes the 3 year period referred to in Subsections (2)(a)(i) and (3) of Section 59 of the Town and Country Planning (Scotland) Act 1997].

No individual phase of the development shall begin until all of the details listed in this condition for that phase of the development have been submitted and approved by the Planning Authority, and the phase of the development shall be carried out fully in accordance with the approved details:

- a) full details of the layout, siting, design, external appearance and finishing materials of all dwellinghouses and buildings in the proposed phase of development;

- b) full details of the means of access to the relevant phase of the development and all internal roads within the phase which shall be designed in accordance with Aberdeenshire Council Standards; the agreed Street Engineering Review and the Public Transport Strategy;
- c) a scheme of landscaping for the relevant phase of the development, in accordance with that approved under condition 2a of this permission, detailing existing landscape features and vegetation to be retained; the locations of new trees, shrubs, hedges, grassed areas and water features; a schedule of plants including species, plant sizes and proposed numbers and density; the layout, design and materials of all hard landscaping works including walls, fences, gates and street furniture; the extent and distribution of public open space within the phase; and a programme for the completion and subsequent maintenance of the proposed landscaping; Thereafter, all management and maintenance of the landscaped and open space areas shall be implemented, in perpetuity, in accordance with the approved programme for that phase;
- d) a detailed levels survey of the site and cross sections showing proposed finished ground and floor levels relative to existing ground levels. This shall be referenced to Ordnance Datum;
- e) a design statement for the phase of the development demonstrating that the phase of development broadly accords with the principles and indicative layout set out in the approved masterplan (Kintore East Masterplan 2014);
- f) full details of the location and extent of all water bodies (including watercourses and field drains) within and bordering the site and details of the provision and maintenance of a buffer strip for all such water bodies, and full design details of and a construction method statement for any proposed engineering works (e.g. re-routing) to those water bodies within the relevant phase of development;
- g) a tree survey (fully in accordance with BS 5837:2012) of all trees within the relevant phase of development and within 30 metres of the boundary of that site, including a plan showing the root protection zones of those trees and full details of the position and design of tree protection fencing for trees to be retained; and a sunpath analysis plan showing the predicted extent of shadow caused by the trees to be retained;
- h) the report of a badger survey and a badger protection and mitigation plan, if the relevant phase of development covers those areas identified as showing badger foraging or setts. The badger survey report shall identify the location(s) of all setts within the site and the vicinity and shall be undertaken by an experienced badger surveyor, and the protection and mitigation plan shall include full details of mitigation measures to safeguard all badger setts identified, to ensure access to fields for foraging and the retention of an adequate foraging area on completion of the development;
- i) the report of a water vole, otter and red squirrel survey and assessment of bat roost potential of any trees proposed to be removed within the relevant phase of development as identified in the tree survey also required by this condition, and associated mitigation and enhancement schemes in relation to water voles, otters, red squirrels and bats;

- j) full details of the proposed means of disposal of foul and surface water from the relevant phase of development which shall be in accordance with the scheme of surface water treatment for the entire site as submitted and approved in relation to Condition 2(d).
- k) full details of the proposed car parking and vehicle turning areas within the relevant phase of development. Car parking provision shall be in accordance with the Aberdeenshire Council parking standards applicable at the time of the application for approval of matters specified in conditions;
- l) full details of footpaths and cycleways, bus stops and bus shelters within and serving the relevant phase of development. These must comply with the site-wide Street Engineering Review; Aberdeenshire Council Standards and all dwellings shall be within 400m walking distance of a bus stop or bus shelter;
- m) full details of cycle parking provision within the relevant phase of development. Cycle parking provision must be conveniently located; sheltered and secure; and
- n) Provision of an Energy Statement applicable to each housetype and buildings within the relevant phase of the development including the following items:
  - o Full details of the proposed energy efficiency measures and/or renewable technologies to be incorporated into the development;
  - o Calculations using the SAP or SBEM methods which demonstrate that the reduction in carbon dioxide emissions rates for the development, arising from the measures proposed, will enable the development to comply with Policy C1 of the Aberdeenshire Local Development Plan 2017.
  - o o) Within the phase containing the neighbourhood Centre, details of the proposed use classes for each of the commercial units shall be provided. These should be a mix of uses within Classes 1, 2, 3, 4, 10, 11 and sale of hot food for consumption off the premises.
  - o p) a flood risk assessment to demonstrate that:
  - o No development, including any roads or groundwork (landraising) takes place within the functional floodplain; and
  - o Finished floor levels incorporate an adequate level of freeboard above design flood levels.

Reason: Permission for the development has been granted in principle only, and subsequent approval of these matters is required in accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 and to allow for a reasonable period of time to plan and implement the development.

04. No individual building hereby approved shall be occupied unless an Energy Statement applicable to that housetype/building has been submitted to and approved in writing by the planning authority. The Energy Statement shall include the following items:
- a) Full details of the proposed energy efficiency measures and/or renewable technologies to be incorporated into the development;

b) Calculations using the SAP or SBEM methods, which demonstrate that the reduction in carbon dioxide emissions rates for the development, arising from the measures proposed, will enable the development to comply with Policy C1 of the Aberdeenshire Local Development Plan 2017. The development shall not be occupied unless it has been constructed in full accordance with the approved details in the Energy Statement. The carbon reduction measures shall be retained in place and fully operational thereafter.

Reason: To ensure this development complies with the on-site carbon reductions required in Scottish Planning Policy and Policy C1 of the Aberdeenshire Local Development Plan 2017 approved details in the Energy Statement. The carbon reduction measures shall be retained in place and fully operational thereafter.

05. That no works in connection with the permission hereby approved (other than the agreed demolition works) shall commence on any relevant phase of the development unless all the remediation works has been undertaken for that phase in accordance with the report "Proposed Development at Kintore, Aberdeenshire Geo-environmental Desk Study Report, Issue 2", dated February 2014, prepared by Fairhurst unless otherwise agreed in writing by the Planning Authority. In reference to the report:

- a) a targeted investigation of the site as recommended in the above report shall be undertaken in accordance with BS 10175:2011+A2:2017- 'Investigation of Potentially Contaminated Sites - Code of Practice' and a report shall be submitted for the consideration and written approval of the Planning Authority.
- b) areas identified within the above report as requiring investigation should those areas be subject to development; shall be investigated in accordance with BS 10175:2011+A2:2017- 'Investigation of Potentially Contaminated Sites - Code of Practice' and a report shall be submitted for the consideration and written approval of the Planning Authority should those areas undergo development.
- c) where it is determined by the site investigation report that remediation of the site is required an appropriate remedial scheme shall also be submitted and approved in writing by the Planning Authority. The approved scheme of remediation for each phase shall be carried out in its entirety, before the development in that phase is occupied.

Reason: To ensure any potential contamination of the site is dealt with appropriately.

06. All soft and hard landscaping proposals submitted pursuant to condition 3(c) within each approved phase of development shall be carried out in accordance with the approved scheme and shall be completed during the planting season immediately following the completion of that phase or such other date as may be agreed in writing with the Planning Authority. Any planting which, within a period of 5 years from the completion of the development, in the opinion of the Planning Authority is dying, being severely damaged or becoming seriously diseased, shall

be replaced by plants of similar size and species to those originally required to be planted.

Reason: To ensure the implementation of a satisfactory scheme of landscaping which will help to integrate the proposed development into the local landscape in the interests of the visual amenity of the area and to ensure that the landscaping is managed and maintained in perpetuity.

07. No works in connection with the development hereby approved shall commence unless an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the written scheme of investigation will be provided throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be brought into use unless a post[1]excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the planning authority. The PERD shall be carried out in complete accordance with the approved details.

Reason: To safeguard and record the archaeological potential of the area.

08. Prior to the commencement of development within any phase (including demolition, ground works and vegetation clearance), a site specific Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Planning Authority in consultation with SEPA for that relevant phase. All works on site must be undertaken in accordance with the approved CEMP unless otherwise agreed in writing with the Planning Authority. The CEMP should include the following details:

- Risk assessment of potentially damaging construction activities
- Site Waste Management Plan
- Dust Management Plan
- Drainage management Plan including specification of wheel/vehicle wash plant and monitoring
- Construction Communications Plan
- Spill Response Plan
- Noise and Vibration Management Plan
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements)
- Responsible persons and lines of communication
- Use of protective fences, exclusion barriers and warning signs
- Proposed haul routes, temporary construction access, construction traffic routes on public road and associate mitigation.
- Tree Protection Plans
- Construction mitigation measures from Ecological Management Plan.

Reason: In order to minimise the impacts of necessary construction works on the environment.

09. That prior to the occupation of the first dwellinghouse a residential Travel Plan shall be submitted and agreed with the Planning Authority. Each respective phase of development shall be developed in accordance with the approved Travel Plan.

Reason: To encourage sustainable transport.

10. That notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) or the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended) the premises within the neighbourhood centre / community facilities shall not be used for a purpose within Use Classes 5 and 6. The buildings shall not be used for any other purpose, other than that approved within condition 3o), without an express grant of planning permission from the Planning Authority.

Reason: To enable the Planning Authority to consider the implications of any subsequent change of use on the amenities of the area.

11. Foul sewerage from the development shall be disposed of to the public sewerage system in accordance with the scheme submitted and approved in relation to Condition 2(e) of this permission, and no private foul sewage treatment shall be permitted.

Reason: To protect people and the environment from the impact of waste water and ensure the development of the public sewerage network.

12. Prior to the occupation of any of the consented development, the proposed alterations to the following junctions, or such other mitigation detailed as part of an updated Transport Assessment, shall be implemented to the satisfaction of the Planning Authority,

a) A96 / B987 Broomhill Roundabout, generally as illustrated in Jacobs Drawing No. KU049800\_001; b) B987 / B994 Tumulus Way Signalised Junction, generally as illustrated in Figure 7.2 of Jacob's Transport Assessment, dated September 2014.

Reason: To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished.

13. Prior to the commencement of development, full details of all proposed watercourse crossings and engineering works in the water environment shall be submitted to, and approved in writing by, the Local Authority. Thereafter, the crossings and engineering works shall be carried out in full accordance with the agreed details, unless otherwise agreed in writing.

Reason: To protect the water environment and to protect people and property from flooding.

## 10.2 Reason for Decision

The presumption in favour of sustainable development is a significant material consideration, this must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits.

The proposed development accords with the Scottish Planning Policy principles of sustainable development. This carries significant material weight lending itself to an approval.

In assessing the proposed development there were no adverse impacts which would significantly and demonstrably outweigh the benefits of the proposal.

The Planning Authority considers that the application is for a development that is in accordance with the Aberdeenshire Local Development Plan 2017. The delivery of the Kintore East development is supported by Policy H1 (Housing land) and the proposed phasing and submission of information captured in the varied conditions comply with the requirements of Policy RD1 (Providing suitable services).

### **For noting:-**

Part 2C (Planning Delegations) states at Section C.2.2 for Major Development, that following consultation with the Chair and Vice-Chair of the determining Committee for applications initially dealt with by the Area Committee, the Head of Planning and Economy can refuse planning applications for which Section 75 Agreements are not completed or Developer Obligations are not paid within six months from the date of the Committee at which the application is determined. Local Ward Members shall be notified of any such refusal.

Please note that this power may be exercised in respect of the application which is the subject of this report if the application is approved by the Committee.

**Alan Wood**  
**Director of Environment and Infrastructure Services**  
**Author of Report: Helen Atkinson (Senior Planner)**  
**Report Date: 12/09/2022**