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**Local Review**  
**MLRB Case 100**

**Planning Application Ref: 13/01569/APP Plots 20 & 21, R1 Corsemaul Drive, Dufftown**

**Response from Transportation, Moray Council**

1. This document is in response to the Notice of Review and the Statement of Case submitted by the appellant and sets out observations by Transportation on the application and the grounds for seeking a review.
2. The review concerns planning conditions attached to the following planning permission at Corsemaul Drive, Dufftown:

MLRB Case No.	Planning Permission	Conditions	Plot No.
MLRB 100	13/01569/APP	5 i) and 5 ii)	20, 21

3. The appellant is seeking to remove the above planning conditions which relate to the provision of provision of the surface water infrastructure for the development.

Planning History and Regulatory Bodies

4. The Corsemaul Drive development site is allocated in the Moray Local Plan 2008 (R1 Corsemaul Drive). The site has been allocated in previous Local Plans. Over the years there have been a number of planning permissions granted for the development:

Planning Permission	Description	Applicant
91/00929/FUL	Erection of 36 semi-detached houses and garages	Mr Stephen Strathdee
05/00315/FUL	Erection of 16 detached and semi-detached houses and garages (northern part of site)	Genesis Properties 3 Ltd
07/02655/FUL	Plot 17 detach property and re-position, erect sun room to rear	Genesis Properties 3 Ltd
08/00355/FUL	Plot 15 detach property and re-position, erect sun room to rear	Genesis Properties 3 Ltd
09/01213/FUL	Erect sun room at 26 Corsemaul Drive, Dufftown	Mr Gordon Lowe
11/00444/APP	Plot 3 erect three bedroom linked bungalow	Genesis Properties (2 Fat Men)
11/00445/APP	Plot 4 erect three bedroom linked bungalow	Genesis Properties 3 Ltd
13/01708/APP	Plot 10 amend house type	WRFU Ltd
13/02306/APP	Plot 11 amend house type	WRFU Ltd

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There have also been a series of planning applications for the Corsemaul Drive development which have been withdrawn. A further planning permission has been granted, 13/01581/APP, which relates to Plot 19 and is the subject of MLRB Case 99.

5. Although planning permission may have been granted for housing in 1991 on this site, this differs substantially from the current housing which has been constructed and the permissions recently granted in terms of plot layout and design (and phasing) and does not preclude the consideration, and provision, of infrastructure under the terms of the current development plan, Scottish Planning Policy (SPP) and Planning Advice Notice (PAN) Guidance.
6. In 1991, when the first planning permission was submitted, the regulatory body for both roads and surface/foul water drainage provision was the Grampian Regional Council. However by the time that the first of the subsequent applications was submitted (2005) the regulatory body for drainage provision was, and continues to be, Scottish Water. This is a material change in circumstances. The Moray Council (TMC), in its role as Roads Authority, retains an interest where road gullies are connected to surface water drainage networks.
7. To date only 8 dwellings have been completed, all of which lie within the northern part of the development falling within planning permission 05/00315/FUL.

Surface Water Drainage – Policy and Legislation

8. Provisions to accommodate surface water are an important part of all developments, be it a single house plot in the countryside or a larger urban development. By ensuring appropriate provisions for the management of surface water, which includes water from roads and from housing plots, any impact of the development on surrounding property in terms of contamination or flooding can be managed.
9. Moray Local Plan 2008 policy EP5: Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS) states that:

*‘Surface water for development should be dealt with in a sustainable manner that avoids flooding and pollution ... All sites should be drained by a SUDS system or equivalent.’*

*‘SUDS must be implemented to the satisfaction of the regulatory authorities to ensure that they do not adversely impact on the wider environment.’*

10. Moray Local Plan 2008 policy IMP1 parts d) and e) also relate to the provision of drainage:

*‘New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It must meet the following criteria:*

...

- d. *adequate water, drainage and power provision must be made,*
- e. *sustainable urban drainage systems should be used where appropriate, in all new developments’*

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11. There is now a legislative requirement, through the introduction of The Water Environment (Controlled Activities) (Scotland) Regulations 2011, that surface water runoff from areas constructed after 1 April 2007 must be drained by Sustainable Urban Drainage Systems (SUDS) so that all reasonable steps are taken to ensure the discharge will not result in the pollution of the receiving water environment. This is a material change in circumstances.
12. SUDS must be an integral component of the design of any development, with connections into the wider network identified. All parts of a shared surface water system for road and curtilage water must be designed and constructed to allow future adoption/vesting by an in perpetuity regulatory body.
13. Plots 20 and 21 are sited outside the area of the development covered by planning permission 05/00315/FUL and are considered to be part of a 'second phase' of the overall Corsemaul Drive development. It is understood that the provision of on-plot soakaways is not suitable at this development due to the ground formation and rock which is close to the surface. Furthermore it is understood that a capping layer is required to remediate contaminated land. As such all surface water from impermeable areas on the undeveloped plots would be directed into the surface water drainage network as each plot was developed.
14. If a development does not provide adequate provisions for the management of surface water then the ramifications of that can be experienced by those sited some distance from the development. The conditions are to ensure compliance with Moray Local Plan policies EP5: Surface Water Drainage Sustainable Urban Drainage (SUDS) and IMP1 Development Requirements.

Background R1 Corsemaul Drive Designated Site

15. The R1 Corsemaul Drive site has been developed on a piecemeal basis, with the layout of the roads and plot boundaries evolving over the years since the original planning permission in 1991. The current layout differs significantly from that approved as part of planning permission 91/0929/FUL and relates more closely to the layout permitted under permission 05/00315/FUL, which was for 16 houses on the northern part of the site. This is a material change in circumstances. Copies of the layout plans for permissions 91/0929/FUL and 05/00315/FUL are attached as TMC01.
16. Road Construction Consent was granted subsequent to planning permission 05/00315/FUL which covered roads infrastructure for the 16 houses on the northern part of the site and a turning circle on the southern part of the site. A copy of the layout plan for the Road Construction Consent is attached as TMC02.
17. Proposals for drainage provisions for the Corsemaul Drive development were submitted as part of the application for Road Construction Consent. Drawing No. 04/0278 D01 Rev A shows a new connection made from the surface water sewer on Mount Street to the north of the site to the surface water drainage network serving the development. The drawing presupposes that the drainage infrastructure is to be vested to Scottish Water. An extract from drawing no. 04/0278 D01 Rev A is attached as TMC03. It should be noted that three existing road gullies on Mount Street are shown as being diverted to this new connection.

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18. To date there is no evidence that the pipe connecting the development drainage network to existing Scottish Water infrastructure has been installed. Photographs taken of Mount Street during the construction of Corsemaul Drive prior to the completion of the development access road are attached as TMC 04. There is no evidence of road opening, and subsequent reinstatement, at this location that would indicate that the connection pipe had been laid.
19. The Road Construction Consent Drawing No. 04/0278 D01 Rev A also shows the provision of SUDS infrastructure in the south-west corner of the Corsemaul Drive development. An extract from drawing no. 04/0278 D01 Rev A is attached as TMC05. When comparing this drawing to the infrastructure which has currently been provided on site it appears that the proposed SUDS infrastructure is currently incomplete.
20. Where connection of the road drainage to a public sewer is not possible alternative arrangements for road drainage should be agreed with the Roads Authority, Water Authority and Scottish Environmental Protection Agency (SEPA). There is no evidence of such an agreement.
21. The Road Construction Consent issued to Genesis Properties Limited for the Corsemaul Drive development has expired. TMC Transportation has confirmed through the planning consultation that a new Road Construction Consent is required. It should be noted that Road Construction Consent is granted to a named party and is not transferrable.  
  
13/01569/APP Conditions 5 i) and 5 ii)
22. Conditions 5 i) and 5 ii) have been attached to planning permission 13/01569/APP to ensure that the infrastructure previously indicated, and that usually required as part of a SUDS system, is provided as part of the on-going development of the Corsemaul Drive site. The intention is to safeguard the existing and future residents of Corsemaul Drive and Mount Street against surface water flooding. The conditions are considered to be necessary, relevant and reasonable.
23. If the drainage and SUDS infrastructure has been provided to the satisfaction of an appropriate vesting body then the appellant can submit evidence to that effect and thus purify both planning conditions.
24. If, as the appellant states, the drainage system is private and will remain as such then the connection in Mount Street and the SUDS infrastructure is still required to alleviate any impact of the on-going development on the surrounding properties. The legal document referred to in the appellant's statement of review is a Deed of Conditions between Genesis Properties 3 Limited and the householders of the plots related to planning permission 05/00315/FUL.
25. The most recent incidence of flooding on Mount Street, which was reported to The Moray Council Roads Maintenance in May 2012, involved standing water covering the full width of the road in the vicinity of 26 Mount Street. Had the new surface water connection in Mount Street been provided, this incident is unlikely to have occurred.

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26. Transportation sought an update from Scottish Water regarding the status of the surface drainage infrastructure for the Corsemal Drive development after the above flooding incident. Despite follow up correspondence, to date Scottish Water has not provided the requested information.
27. Section 37(1) of the Town and Country Planning (Scotland) Act 1997 enables the planning authority to grant planning permission “either unconditionally or subject to such conditions as they think fit.” Section 41(1) amplifies the general power in Section 37(1) by making it clear that the planning authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject to the application.
28. In the case of planning permission 13/01569/APP the SUDS soakaways and associated infrastructure are located within the planning application boundary. The connection required to drainage infrastructure in Mount Street is within the public road. The location of the planning permission, SUDS and drainage infrastructure along with an indication of the land under the control of the applicant is shown on the plan attached as TMC06.
29. Planning Circular 04/1998 The Use of Conditions in Planning Permissions states that:  
  
*‘Conditions may be needed, however, to secure that a particular element in a scheme is provided by a particular stage or before the scheme is brought into use, or to secure the provision of an element of a kind a developer might otherwise be tempted to defer or omit.’*
30. Conditions 5 i) and 5 ii) of planning permission 13/01569/APP seek to ensure that drainage infrastructure indicated as being required for the northern part of the Corsemal Drive development (planning permission 05/00315/FUL) is provided prior to any work commencing on housing within the remainder of the overall site.
31. During the consultation period for the planning application, there was on-going dialogue between TMC Transportation and the appointed planning officer, as apparent from the Report of Handling. The appointed planning officer approved conditions for drainage details and incorporated them into the Decision Notice. Input into the conditions was also sought and received from Legal Services.
32. Transportation, respectfully, requests the MLRB to uphold the decision by the appointed officer and retain planning conditions 5 i) and 5 ii) of planning permission 13/01589/APP which relate to the provision of the surface water infrastructure for the development to ensure that Moray Local Plan Policies EP5: Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS) and IMP1: Development Requirements parts d) and e) are complied with and not omitted.

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##### Summary

33. The following is a summary of the salient points relating to this case and the conditions attached to planning permission 13/01569/APP:

- The current proposals for the Corsemaul Drive development site, along with the housing provided to date, differ substantially in terms of plot layout, design and phasing from that approved under planning permission 91/0929/FUL.
- Planning policy, drainage infrastructure requirements and the vesting bodies for the infrastructure to manage surface water have all changed since permission 91/0929/FUL was granted.
- The planning conditions have been applied in the absence of evidence that the drainage and SUDS infrastructure associated with the more recent planning permission 05/00315/FUL for the northern part of the Corsemaul Drive development has been provided.
- It is understood that on-plot soakaways cannot be provided for this particular plot and that surface water would be directed to the existing (incomplete) drainage infrastructure.
- Flooding has occurred on Mount Street at a location where additional surface water drainage infrastructure was indicated on the original Road Construction Consent for the northern part of the Corsemaul Drive development.
- The drainage and SUDS infrastructure lie within land under the control of the appellant or within the public road.
- The intention of the planning conditions attached to permission 13/01569/APP is to safeguard the existing and future residents of Corsemaul Drive and Mount Street against surface water flooding.
- The appellant is encouraged to submit evidence that the drainage and SUDS infrastructure has been provided. If this is the case, then this would satisfy the planning conditions.
- MLRB is respectfully requested to uphold the decision by the appointed officer.

Transportation  
01 April 2014

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#### Documents

TMC01	Layout Plans for Planning Permissions 91/0929/FUL and 05/00315/FUL (2 pages)
TMC02	Layout Plan for Road Construction Consent
TMC03	Extract from Drawing no. 04/0278 D01 Rev A – Mount Street
TMC04	Photographs of Mount Street (4 pages)
TMC05	Extract from Drawing no. 04/0278 D01 Rev A – SUDS Infrastructure
TMC06	Planning Application 13/01569/APP and Land Ownership Boundaries

#### Local Plan Policies EP5 and IMP1

### **POLICY EP5: SURFACE WATER DRAINAGE: SUSTAINABLE URBAN DRAINAGE SYSTEMS (SUDS)**

Surface water from development should be dealt with in a sustainable manner that avoids flooding and pollution and promotes habitat enhancement and amenity. All sites should be drained by a SUDS system or equivalent. A Drainage Assessment will be required for developments of 10 houses, or greater than 100 sq metres for non residential proposals.

Applicants must agree provisions for long term maintenance to the satisfaction of the Council, SEPA and Scottish Water.

#### **JUSTIFICATION:**

The aim of the policy is to encourage the use of SUDS to deal with surface water run-off. SUDS must be implemented to the satisfaction of the regulatory authorities to ensure that they do not adversely impact on the wider environment. SUDS also provide an opportunity to encourage the creation of new habitats for wildlife.

#### **CONFORMS TO:**

The policy conforms to PAN61 on Planning and Sustainable Urban Drainage Systems

#### **POLICY CROSS REFERENCE/ADDITIONAL GUIDANCE:**

Policy IMP1: Development Requirements; SUDS Design Manual for Scotland and Northern Ireland.

### **POLICY IMP1: DEVELOPMENT REQUIREMENTS**

New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It must meet the following criteria:

- a. the scale, density and character must be appropriate to the surrounding area,
- b. the development must be integrated into the surrounding landscape,
- c. adequate roads, public transport, and cycling and footpath provision must be available, at a level appropriate to the development,
- d. adequate water, drainage and power provision must be made,
- e. sustainable urban drainage systems should be used where appropriate, in all new developments
- f. there must be adequate availability of social, educational, healthcare and community facilities,
- g. the development should, where appropriate, demonstrate how it will incorporate renewable energy systems and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria,
- h. provision for the long term maintenance of public landscape and amenity areas must be made,
- i. conservation of natural and built environment resources must be demonstrated,
- j. appropriate provision to deal with flood related issues must be made, including the possibility of coastal flooding from rising sea levels and coastal erosion,
- k. pollution, including ground water must be avoided,
- l. appropriate provision to deal with contamination issues must be made, and
- m. the development must not sterilise significant workable reserves of minerals, prime quality agricultural land, or preferred areas for forestry planting.
- n. where appropriate, arrangements for waste management should be provided.

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The quality of development in terms of its siting, design and servicing is a priority consideration within the Plan. In the first instance development needs to be suitable to the surrounding built and natural environment. Development should be adequately serviced in terms of transport, water, drainage, power, facilities. Particular emphasis is placed on providing pedestrian, cycle and public transport access to the development, and the use of sustainable urban drainage systems and the incorporation of renewable energy equipment and systems, and sustainable design and construction into the development in order to promote sustainability within Moray. Flooding is an important consideration particularly within the Laich of Moray and needs to be adequately addressed. Similarly, pollution issues in relation to air, noise, ground water and ground contamination must be adequately addressed to provide proper development standards.

**CONFORMS TO:**

The policy conforms to SPP1 on the Planning System and to national planning guidance and advice generally

**POLICY CROSS REFERENCE/ADDITIONAL GUIDANCE:**

Other policy requirements generally.