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<b>Report To:</b>	<b>Environment and Regeneration Committee</b>	<b>Date:</b>	<b>27 August 2020</b>
<b>Report By:</b>	<b>Corporate Director Environment, Regeneration and Resources</b>	<b>Report No:</b>	<b>E+R/20/08/01/SJ/</b>
<b>Contact Officer:</b>	<b>Stuart Jamieson</b>	<b>Contact No:</b>	<b>Ext. 2402</b>
<b>Subject:</b>	<b>Local Development Plan - Update</b>		

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## 1.0 PURPOSE

- 1.1 The purpose of this report is to provide Members with an update on the Local Development Plan (LDP) following the recent decision by the Court of Session, as well as provide a proposed timetable to address the current situation.

## 2.0 SUMMARY

- 2.1 Inverclyde Council commenced the preparation work for our new Local Development Plan in 2016. The preparation carried out over a number of years, is heavily focussed on consultation with community engagement, involves a number of key elements and culminates with the Proposed Plan.
- 2.2 Scrutiny of the LDP is provided the Scottish Government with the Proposed Plan being subject to examination by Scottish Ministers. An adopted Local Development Plan provides the highest level of certainty for both the Council and any interested party. The Inverclyde Local Development Plan was adopted on 26<sup>th</sup> August 2019.
- 2.3 At the October meeting of the Committee, Members were advised in a verbal update as part of the Development Plan and Participation Statement report that the LDP had been challenged by a group of housebuilders.
- 2.4 The focus of the appeal related to chapter seven "Homes and Communities", specifically Housing Land Supply, Housing Supply Targets in respect of the methodology used for determining a five year effective land supply.
- 2.5 On 22nd July the Court upheld the appeal and quashed chapter seven of the LDP stating that it was materially flawed. This decision places the Council in a difficult position in respect of planning applications for housing.

## 3.0 RECOMMENDATION

It is recommended that Committee:-

- 3.1 A) Note the outcome of the Court of Session decision; and
- 3.2 B) Remit to the Corporate Director- Environment Regeneration and Resources to provide an interim housing policy statement by the October meeting of the Committee and pursue a review of the 2019 LDP in line with the timetable set out in Para 4.23.

## 4.0 BACKGROUND

4.1 The principal legislation for preparation of development plans in Scotland was the Town and Country Planning (Scotland) 1997, which was subsequently amended by the Planning etc. (Scotland) Act 2006. The Inverclyde Local Development Plan (2019) was prepared under the process for preparing a Local Development Plan as set out in the Planning etc.(Scotland) Act 2006. (Note: The Planning (Scotland) Act 2019 came into effect last year however will not feature in the processes under consideration within this report.)

4.2 Under the 2006 Act, the planning system in Scotland is hierarchal and comprises the following documents:

**National Planning Framework** (NPF3, 2014) (ref section 3 of the 1997 Act) – provides a statutory framework for Scotland’s long-term spatial development.

**Scottish Planning Policy** (2014) – sets out policy that will help to deliver the objectives of the NPF.

**Creating Places and Designing Street** – government policy statements on architecture and place, and street design respectively.

**Circulars** – contain policy on the implementation of legislation or procedures. Planning Circular 6/2013 covers development planning.

**Strategic Development Plans** (ref Sections 4-14 of the 1997 Act, now replaced with reference to Regional Spatial Strategies) – to be prepared for the 4 main city regions (of Glasgow - ClydePlan, Aberdeen, Dundee and Edinburgh), these set the regional framework for Local Development Plans and deal with regional and cross-boundary issues. Local developments plans are required to comply with Strategic Development Plans.

**Local Development Plans** (ref Sections 15-20 of the 1997 Act) – are required for each planning authority area in Scotland, and set out the local spatial strategy and polices for the determination of planning applications.

4.3 Preparation of an LDP takes place over a number of years and involves key stages namely:-

- Call for sites (non statutory)
- Main Issues Report (published March 2017) (ref Section 17 of the 1997 Act)
- Proposed plan (published April 2018) (ref Section 18 of the 1997 Act)
- Examination by the Scottish Ministers (December 2018-April 2019) (ref Section 19 of the 1997 Act)

4.4 The process is heavily focussed on consultation with community engagement and is subject to scrutiny by the Scottish Government with the proposed plan being subject to examination by Scottish Ministers. An adopted Local Development Plan provides the highest level of certainty for both the Council and any interested party.

4.5 Inverclyde began the process for its current Local Development Plan in 2016. As well as reports to the Environment and Regeneration Committee, Member engagement was carried out through All Member briefings as well as having a sounding board with the Member Officer working group.

4.6 The plan provides guidance and policy in relation to:-

CREATING SUCCESSFUL PLACES  
TACKLING CLIMATE CHANGE  
CONNECTING PEOPLE AND PLACES  
OUR TOWNS, VILLAGES AND COUNTRYSIDE  
OUR HOMES AND COMMUNITIES

OUR TOWN AND LOCAL CENTRES  
 OUR JOBS AND BUSINESSES  
 OUR HISTORIC BUILDINGS AND PLACES  
 OUR NATURAL AND OPEN SPACES

- 4.7 Following receipt of the Examination Report, the Environment and Regeneration Committee of the Council agreed to accept the recommendations of the Reporter on 2 May 2019. Thereafter the plan was submitted to the Scottish Ministers for clearance to adopt the Plan, and once this was in place the plan was adopted on 26 August 2019.
- 4.8 With regard to housing land, Scottish Planning Policy (2014), plans are to be informed by a robust and credible Housing Need and Demand Assessment (HNDA). Plans are to set out a Housing Supply Target based on evidence from the HNDA.
- 4.9 The Housing Supply Target is a policy view of the number of homes the authority has agreed will be delivered in each housing market area over the periods of the development plan. The Housing Supply Target figure is increased by a margin of 10 to 20% to establish the Housing Land Requirement, in order to ensure that a generous supply of land for housing is provided. Strategic Development Plans set out the Housing Supply Target for the plan area, each local authority area and each Housing Market Area. They also set out the amount of land which should be allocated in local development plans to meet the Housing Land Requirement. Local Development Plans in city regions are to allocate housing sites which are effective or expected to become effective to meet the Housing Land Requirement up to year 10 from the expected year of adoption, and provide for a minimum of 5 years effective land supply at all times.
- 4.10 In compliance with Scottish Planning Policy, a Housing Needs and demand Assessment was prepared for the Clydeplan area. Whilst this indicated a projected decline in the number of households in Inverclyde, a positive and ambitious Housing Supply Target, reflective of the Council's repopulation agenda, was set in Clydeplan. A generosity allowance of 15% was added to this to establish the Housing Land Requirement. The relevant figures, agreed by the Council, are identified below.

**Inverclyde authority area Housing Supply Target and Housing Land Requirement**

	2012-2024			2024-2029			2012-2029		
	Social	Private	Total	Social	Private	Total	Social	Private	Total
Housing Supply Target	1,100	2,050	3,150	400	850	1,250	1,500	2,900	4,400
Housing Land Requirement (HST+15%)	1,270	2,360	3,630	460	980	1,440	1,730	3,340	5,070

- 4.11 Clydeplan also set out a private Housing Land Requirement for the Inverclyde Housing Market Area, which is the main urban area of Greenock, Gourock and Port Glasgow, and Inverkip and Wemyss Bay.

**Inverclyde Housing Market Area Private Housing Land Requirement**

	2012-2024	2024-2029	2012-29
Housing Land Requirement	2,220	920	3,140

- 4.12 Kilmacolm and Quarriers Village sit within the Renfrewshire Housing Sub Market Area. The Housing Land Requirement for the Inverclyde part of this area can be established from figures presented in Clydeplan, although in practice the Housing Land Requirement can be met from anywhere within the Housing Sub Market Area, which includes Renfrewshire and East Renfrewshire.
- 4.13 When the Proposed Inverclyde Local Development Plan was published in 2018, the Housing Supply Target and Housing Land Requirement were 're-based' to 2017. There are different methodologies for doing this, known as (1) the 'annualised' method, in which the Housing Supply Target is divided into equal annual targets and the Local Development Plan only has to provide for

the years covered by the Plan, and (2) the 'compound' (or 'residual') method, in which full Housing Land Requirement set out in the Strategic Development Plan has to be met, net of any completions occurring between the HNDA base year (2012) and the Local Development Plan base year (2017). There are further different methodologies relating to how you calculate the compound/residual method.

- 4.14 A further layer of complexity is added in Inverclyde by the Plan having to look at numbers at both the authority level and the Housing Market Areas, made more complex again by part of Inverclyde being in the Renfrewshire Housing Sub Market Area, and the Local Development Plans for Renfrewshire and East Renfrewshire Councils not being, at that time, as advanced a stage in plan preparation as Inverclyde Council.
- 4.15 The Council attempted to be as transparent as possible in the Housing Land Technical Note published alongside the Proposed Local Development Plan in 2018, by providing housing land calculations using both the annualised and compound/residual methodologies. Depending on the methodology used and the geography considered, different conclusions could be reached on whether there was a housing land shortfall for private sector development in both the Inverclyde Housing Market Area and the Renfrewshire Housing Sub Market Area, with the annualised approach indicating no shortfall and the compound/residual approach indicating a shortfall. It was on that basis that the Plan was published, objections received and the Plan was submitted for Examination.
- 4.16 At the 31 October 2019 meeting of the Environment and Regeneration Committee, Officers advised Members that following examination by Scottish Ministers our Local Development Plan had been adopted on 26 August 2019. At the same meeting a verbal update was provided that an appeal had been made to the Court of Session under section 238 of the Town and Country Planning (Scotland) Act 1997 by MacTaggart and Mickel Homes Ltd and four other housebuilders against the Council and Scottish Ministers.
- 4.17 The focus of the appeal related to chapter seven "Homes and Communities", specifically Housing Land Supply, Housing Supply Targets in respect of the methodology used for determining a five year effective land supply; was proper account taken in respect of the generosity allowance; did the LDP make sufficient provision for private tenure housing; did the LDP identify sufficient Housing Land Supply for the different market areas for the two periods in the Strategic Development Plan; did the Reporter use the correct figures from the 2018 Housing Land Audit; and, overall, were these errors which resulted in the LDP failing to comply with SPP and the SDP?
- 4.18 On 22nd July the Court upheld the appeal and quashed chapter seven of the LDP stating that it was materially flawed. "In terms of section 238(1) and (2) of the Town and Country Planning (Scotland) Act 1997, this results in the LDP being outwith the powers of the Act. The prejudice to the appellants in not having sufficient sites for house building in terms of SPP and the SDP is self-evident."
- 4.19 Scottish Ministers do not intend to appeal the decision of the Court to the Supreme Court.
- 4.20 The appeal places the Council in a difficult position in respect of planning applications for housing. We do have an adopted Local Development Plan which now has no housing policy. In the Court of Session decision for Gladman at Carsemeadow the Court suggested that if the appellant's housing shortfall figures are correct, the weight of the 'tilted balance' in favour of development "may well be very substantial".
- 4.21 A number of applications for residential developments are subject of determination in the Renfrewshire sub market area. Carsemeadow is under re-examination and Planetreeyetts is under application and subject to a Pre-determination hearing.
- 4.22 Whilst our current adopted LDP, with no Homes and Communities chapter, should be in place for five years, the Council could carry out a review of the LDP. This process will require further engagement with Senior Counsel, Scottish Government and the DPEA however this is our preferred route, with an interim housing policy developed in the meantime. In view of the present position, legal advice will require to be sought in relation to any planning applications for residential development which have housing land supply issues.

4.23 In order to achieve this review of the LDP, the following timetable has been developed:-

Dates	Tasks
28/08/20 - 30/09/20	Pre-MIR engagement
01/10/20 – 30/10/20	Preparation of MIR documents
November 2020	Special E&R Committee Prepare of MIR consultation
01/12/20 – 31/1/20	MIR consultation
February-March 2021	Prep Proposed Plan and associated documents
April 2021	Special E&R Committee Prepare Proposed Plan consultation
30/04/21-11/06/21	Proposed Plan consultation
14/6/21 – 31/07/21	Schedule 4 preparation
August 2021	E&R Committee to agree Schedule 4s and submission for Examination.
End August 2021	Submit Schedule 4s for examination
End September 2021	Examination commences
January 2022	Receive examination report
March 2022	E&R Committee to agree Examination Report and adoption of Plan
March 2022	Submission of Plan to SG to approve adoption
April 2022	Adoption of Plan

## 5.0 IMPLICATIONS

### Finance

#### 5.1 Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report £000	Virement From	Other Comments
TBC		2020-22	25		

It is likely that further legal costs will be incurred as part of this process, these are unknown at this stage, but will be reported in due course.

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact £000	Virement From (If Applicable)	Other Comments

### Legal

5.2 The opinion of the Court raises complex legal questions (including the role of a Council upon receiving the Examination Report from the Reporter) and that the Council will have to work through the issues which arise from it with the Planning and Architecture Division of the Scottish Government and Senior Counsel.

### Human Resources

5.3 There are no HR implications arising from this report.

## **Equalities**

5.4 There are no equalities implications arising from this report.

## **Repopulation**

5.5 There are no equalities implications arising from this report.

## **6.0 CONSULTATIONS**

6.1 None

## **7.0 LIST OF BACKGROUND PAPERS**

7.1 None.