

# Caol and Lochyside Flood Protection Scheme

## Statement of Case by The Highland Council

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## 1 Introduction

- 1.1 This statement of case has been prepared by The Highland Council (“the Council”) in advance of a planned hearing in respect of the proposed Caol and Lochyside Flood Protection Scheme (“the Scheme”) **[THC 01]**. This statement sets out The Highland Council’s reasons for promoting the Scheme and its response to the objection received.
- 1.2 The Caol and Lochyside area, north of Fort William, has a history of flooding. The last tidal surge event to occur was in 2005 when 20 homes were flooded. The flood risk analysis has identified that 296 properties are at risk from a 1 in 200 year flood event. At current prices, the potential cost of damages of such an event to the families and businesses in the area is estimated to be £12.2M. The cost estimate of the Scheme is £9.7M. The Scheme represents a positive cost to benefit ratio of 1.26 (see Section 3.3 below).
- 1.3 In SEPA’s national Flood Risk Strategy (2015) Caol/Lochyside is listed as 1 of 42 targeted areas in Scotland which are most vulnerable to flooding. The project is 1 of 3 priority schemes in the Highland area. The Scottish Government has included Caol/Lochyside in its spending programme 2016 – 2022 and will provide an 80% grant in partnership with the Council to deliver the Scheme.
- 1.4 One representation **[THC 02]** was received opposing the Scheme (the Objection).

## 2 Timeline of Scheme

- 2.1 The Council is proposing to construct a Flood Protection Scheme at Caol and Lochyside, Fort William, under the powers of the Flood Risk Management (Scotland) Act 2009. The need for the Scheme is summarised in Section 3 of this statement of case.
- 2.2 The Council published notice of the Scheme in the Lochaber and Oban Times on 26<sup>th</sup> April 2018 and in the Edinburgh Gazette on 27<sup>th</sup> April 2018 **[THC 03]**. Public notices were placed on the site and all parties known to have an interest in the Scheme including all landowners, statutory consultees and the community council were notified by recorded delivery. In addition all residents in the area received a hand delivered notice and a general press release was issued. All of the relevant information on the Scheme was made available on the Council’s website.
- 2.3 The Council held a public drop in session on 16<sup>th</sup> May 2018 to further publicise the Scheme.
- 2.4 The single objection to the Scheme was dated 26<sup>th</sup> May 2018. The Objection was received from a land owner on whose land part of the Scheme is proposed to be built.
- 2.5 A meeting was held between Garry Smith of the Council and the Objector, on 5<sup>th</sup> July 2018 in Fort William to discuss the Objection. No agreement could be reached regarding the withdrawal of the Objection and therefore the Council proceeded with the statutory process.
- 2.6 On 16th August 2018, a preliminary decision to confirm the Scheme without modification was made by the Council at a meeting of its Environment, Development and Infrastructure Committee **[THC 04]**.
- 2.7 On 5<sup>th</sup> September 2018, the Council notified Scottish Ministers of its preliminary decision to confirm the Scheme without modification.

- 2.8 On 27<sup>th</sup> September 2018, Scottish Ministers advised the Council that they did not wish to call in the Scheme for consideration. In addition the Scottish Ministers confirmed that the Council required to hold a hearing to consider the Scheme.

### 3 The Highland Council Case

#### General Duty

- 3.1 The Council has a general duty under Section 1 of the Flood Risk Management (Scotland) Act 2009 to exercise its flood risk related functions with a view to reducing overall flood risk.
- 3.2 The Council, as part of the general duty to reduce overall flood risk, has prepared the Highland and Argyll Local Flood Risk Management Plan (2016-2021) **[THC 05]**. The Scheme is included as an action for the Council to implement within the plan as 'Potentially Vulnerable Area 01/24' and the Scheme is identified as 'action ID' 1024010006. The Local Flood Risk Management Plan was prepared by the Council following the publication of SEPA's Flood Risk Management Strategy (2015) **[THC 06]** which prioritised potentially vulnerable areas throughout Scotland.

#### The Need for a Flood Scheme

- 3.3 The JBA Design Justification Report (2017) **[THC 07]** sets out the need for the flood scheme. The key points are as follows:
1. The area has a history of flooding, as described in section 2.1 of the JBA report.
  2. The need for the flood scheme has long been recognised in historical reports and studies, as summarised in section 1.5 of the JBA report.
  3. Hydraulic modelling has established that, without a flood scheme, a large number of existing properties remain at risk of flooding, as summarised in section 2.7 of the JBA report.

Cost benefit analysis has concluded that the Scheme offers a good benefit-cost ratio of 1.26 (£12.2M damages saved to £9.7M scheme cost), as summarised in the Executive Summary of the JBA report.

### 4 Council Responses to Objection

#### Clarifications Relating to Objection

- 4.1 The Objection was received from the owners of a former sewage works, one of 11 plots of land on which the Scheme would be built. For clarification, the intersection of the Scheme and the land concerned is shown on the sketch titled 'SK\_1 – Former Sewage Works Site'. **[THC 08]**
- 4.2 There has been correspondence between the Council and the Objector. Some of this correspondence is referred to in the Objection, and is appended to the Objection. A list of the correspondence related to the Scheme between the Council and the objector is given in the following table:

**Table 1 List of correspondence between the Council and the Objector [THC 17].**

	Item	From	To	Date	Content
1	Letter	Mr Michie	THC - G Smith	05/06/2015	Letter of concern regarding Scheme alignment

2	Letter	THC - G Smith	Mr Michie	08/07/2015	Offer of face to face meeting to discuss the Scheme
3	Letter	THC - A Tryon	Mr Michie	23/07/2015	Confirmation of face to face meeting to be held on 6th August 2015
4	Letter	THC - G Smith	Mr Michie	08/09/2015	Council's Standard terms and conditions for negotiation
5	Letter	Mr Michie	THC - G Smith	08/10/2015	Various points regarding the flood Scheme location - offer to sell the land to the Council
6	Letter	THC - G Smith	Mr Michie	15/10/2015	Response to No. 5.
7	Letter	THC - F Scott	Mr Michie	09/03/2016	Letter of Interest from the Council re. land purchase, Response to No. 5.
8	Letter	Mr Michie	THC - G Smith	14/03/2016	Caol Link Road Request to re-locate the proposed flood defence
9	Letter	THC - G Smith	Mr Michie	04/10/2017	Pre-publication advance notice that the Scheme is proceeding
10	Letter	Mr Michie	THC - G Smith	16/10/2017	Details relating to the local plan and objection to Scheme
11	Letter	THC - G Smith	Mr Michie	26/04/2018	Notice of publication of Scheme details
12	Letter	THC - G Smith	Mr Michie	22/10/2018	Notice of a Preliminary Decision
13	Letter	THC - G Smith	Mr Michie	22/10/2018	Notice of intention to hold a Hearing

### Council Responses to Objection

- 4.3 The following points 1 to 9 (using the Objector's numbering) are the Council's responses to the points contained in the Objection letter of 26<sup>th</sup> May 2018:

#### Point 1

The Council accepts that the Scheme does cross the Objector's land and that compensation as detailed within section 82(2) of the Flood Risk Management (Scotland) Act 2009 would apply if the Scheme is confirmed. The land hatched red as shown on SK\_1 was purchased by the Objector in 2006 for the sum of £42,000. The land has no planning permission associated with it and is not allocated for development in the adopted and proposed Local Development Plans (see below). The presence of the Scheme of itself would not prevent the remainder of the Objector's land from being developed in the future. Therefore the claim that the Scheme sterilises the land from future development is not considered to be correct. In order to provide, to the hearing, an illustrative example of how the Objector might protect the site from flooding, the Council has prepared a drawing 'SK\_2 – Former Sewage Works Site - Embankment' [THC 09]. The embankment, shown in green on the plan, could connect to the Scheme as it passes through the Objector's land.

#### Point 2

The Objector claims that the land is suitable for housing and has a potential capacity of up to 20 houses or flats. The Council's response to this is:

- (i) The land is not allocated for housing in the adopted West Highland and Islands Local Plan (as continued in force) 2012 (“adopted local plan”) **[THC 10]**. Whilst the Objector made a representation to the Council in July 2017 to have the land allocated for housing in the proposed West Highland and Islands Local Development Plan (abbreviated to WestPlan) (“proposed LDP”), this representation was not taken forward in the proposed LDP submitted by the Council to Scottish Ministers for examination in July 2018. Therefore, unless a change results from the WestPlan Examination process, the approved development plan position will remain that the land is not allocated for housing development.
- (ii) Planning permission for 10 houses (10 less than claimed in the Objection) on the site was refused in 2009 (application ref. 08/00285/OUTLO **[THC 11]**). The reasons for refusal included the Caol Link Road, flood risk at the site, and incompatibility of the development with adjacent development patterns. A review of the decision was dismissed in 2010 **[Section F of THC 11]**.
- (iii) Aside from the acceptability or otherwise of the development in terms of Development Plan Policy, there appears to be several issues with the housing development site layout plan submitted with the objection. ‘SK\_3 – Former Sewage Works Site – Housing Layout’ **[THC 13]** has been prepared to illustrate the issues:
- a. The plan produced by J Corbett does not appear to include any allowance for protecting against flood risk by raising the level of the land to a suitable level to protect against flood risk. SK\_3 shows the 20 house layout superimposed on the site. The space for potential development is reduced as a result of raising the site levels to reduce flood risk. The earthworks overlap the housing blocks in a number of areas.
  - b. The plan does not appear to allow space for storage and disposal of surface water generated within the site (SuDS) because construction is close to the boundaries on all sides of the site.
  - c. Part of the proposed development sits on land not owned by the Objector. The part referred to is the small square plot of land enclosed within the Objector’s plot, indicated by a dashed line on the plan. Unless the Objector was to acquire the additional land, or reach agreement with the land owner, the development shown on the submitted plan is not achievable.
  - d. The size of the development shown would require the access to be constructed to the Councils ‘Roads and Transport Guidelines for new Developments’ **[THC 14]**. The space allowed for a turning head appears to be underestimated on the J Corbett plan. SK\_3 shows the size of a turning head for an adopted road within a residential development. In addition the layout shows parking within the adopted 2m wide service strip around the access road, all parking is required to be within the plot curtilage. There is no allowance for visitor parking. The geometry of the access road is also below adoptive standards. All of these factors on the J Corbett plan combine to overestimate the number of properties which could be physically accommodated on the site.

**Point 3**

The Objector's assertion that the Scottish Government has sought removal of the Caol Link Road safeguard from the proposed LDP does not fully reflect the current situation regarding this issue. Whilst it is correct that the Scottish Government made representations in 2017 for the removal of road safeguards, the Council is not compelled to remove those safeguards. Therefore, unless a change results from the WestPlan Examination process, the approved development plan position will remain that a corridor of land is safeguarded from other development for the construction of a Caol Link Road.

**Point 4**

The Objector's request that the flood Scheme be re-aligned around the perimeter of the affected land is not considered reasonable for the following reasons:

- (i) Re-aligning the Scheme around the Objector's land would unfairly favour the Objector's land over neighbouring land that is already affected.
- (ii) Re-aligning the Scheme would incur additional construction cost for the Council, without providing any additional benefit in terms of increasing the number of properties protected. The Scheme, as designed, crosses the Objector's land for a distance of approximately 40m. An alternative route around the Objector's land would be approximately 233m as shown on plan [THC 09]. Agreeing to the Objector's request to alter the Scheme would increase the length of the Scheme by approximately 193m.
- (iii) Re-aligning the Scheme would be contrary to SEPA planning policy Planning Information Note 4 v.2 -3 July 2018' [THC 15], which states that the primary purpose of a Flood Protection Scheme is to protect existing development from flood risk rather than to facilitate new development. The reason for this policy is that flood schemes only reduce flood risk, but do not eliminate flood risk. Therefore, whilst existing development should be protected, new development should be avoided in flood risk areas.
- (iv) Re-aligning the Scheme would be hampered by physical constraints that are much greater than the Objector acknowledges. Any realignment to the south would require a larger embankment because the ground level falls to the south. Because there is only limited space between the south east boundary of "the objector's" land and high water line, in which a defence could be built, it is likely that a re-aligned embankment would still occupy at least as much of "the objector's" land, as well as more neighbouring land.
- (v) Re-aligning the Scheme would not guarantee that the site could be developed due to the other constraints preventing development, including the Caol Link Road safeguard, and the reasons given in the refused planning application, 2009.

**Point 5**

During the WestPlan process, the Objector lodged representations seeking a housing development allocation on his land at this location. His Proposed Plan representation was unresolved and therefore referred to the WestPlan Examination. This Examination (DPEA Case Reference LDP-270-6) is scheduled to conclude in 6<sup>th</sup> April 2019 with the submission of the Reporters' Report to the Council. The WestPlan Examination Reporters have been asked to consider very similar issues to those raised by the Objector in his objection to the Scheme such as flood risk, the adequacy of the local housing land supply and the suitability of the site itself for housing development. The Council suggests that the Scheme Reporter takes account of the outcome of the WestPlan Examination in respect of these matters. The Objector and the Council's cases at Examination are summarised in the supplied Fort William "Schedule 4" document [THC 16]. The Council asserts that there is no shortfall over the immediate 5 year Plan period, in housing land supply across Fort William or the wider Lochaber Housing Market Area and therefore there is no exceptional justification to support housing development on a site such as that owned by the Objector that is subject to several constraints including flood risk.

**Point 6**

The Objector claims that the additional cost of constructing the Scheme on an alternative alignment around the land affected would be less than the cost of compensating the Objector for loss of development potential. The figure of £450,000 is mentioned by the Objector a number of times, the basis for this figure was quoted by Garry Smith to represent a typical overall "Scheme" cost related to construction of a flood defence during the public consultation for the Scheme. This estimate was £4,500 per metre of finished construction. For example an additional 100m of Flood Protection Scheme would typically cost £450,000. The Scheme document, 2013s7413 Caol FP Scheme Document v3 [THC 01] estimates that the Scheme costs are £9.650M for just over 2km of Scheme works. This equates to £4,684.46 per metre, similar to the original figure used in the public consultation. This typical cost per metre of the Scheme is unrelated to compensation or the actual cost of any particular section of flood defence construction, it is an average cost. Any claim for compensation will be dealt with by the Council and referred to the Lands Tribunal for Scotland if agreement cannot be reached. The letter from the Council to the Objector dated 9<sup>th</sup> of March 2016 (letter 7 in item 4.2 above) invites the Objector to enter discussion regarding the cost of a potential purchase, to date the Council have received no reply from the Objector.

**Point 7**

The Objector claims that they would be due a substantial amount of compensation. The Council acknowledges that a right to compensation in respect of the proposed Scheme exists in law, as set out in section 82(2) of the Flood Risk Management (Scotland) Act 2009. The Act does not set out the amount of any compensation that might be due, this will be a matter for the Lands Tribunal for Scotland to determine if agreement cannot be reached. Furthermore, the Council does not consider it the purpose of the hearing for which this

statement is prepared to determine the amount of any compensation as it is not a matter for the Reporter either to determine or to take into consideration. Therefore it is considered sufficient for the purposes of the hearing to make only the following statements regarding compensation:

- (i) The objector's right to compensation is set out in law. Proceeding with the Scheme will not diminish that right.
- (ii) The Council has already taken reasonable steps to try and resolve the issues with the Objector. In particular, the Objector intimated in his correspondence of 8th October 2015 that he would be prepared to sell the land to the Council. An approach to agree a sale was made by the Council's Estates Officer, in a letter dated 9th of March 2016, but no response was received.
- (iii) In the absence of agreement with the Objector, the Scheme would proceed with land entry under Section 79 of the Act. Compensation can either be agreed through negotiation or, if agreement cannot be reached, the matter can be referred to the Lands Tribunal for Scotland.

**Point 8**

The objector's inference that the Scheme is somehow incompatible with the Caol Link Road is not correct. It has always been the case that the two schemes intersect each other and that a crossing point would therefore be required. Any future road would be designed to bisect the Scheme, and could be easily achieved with earthworks - something that is not out of the ordinary for a road scheme. As an important piece of infrastructure, the Caol Link Road would be designed to be resilient to flooding. The road level would therefore be at least equivalent to the 1:200 year value of the Scheme and therefore the embankment height would be the equal to or above the height of the Scheme. The Scheme is therefore compatible with the future development of the Caol Link Road.

**Point 9**

The Objector proposed that consideration of the Scheme should be delayed until the outcome of the 'STAG' appraisal is known. In August 2018, the Fort William Strategic Transport Study: Pre-Appraisal: The Case for Change was completed [THC 12]. It considered Caol Link Road and many other transport interventions options as possible solutions to congestion issues across Fort William and the wider area. The Study (in chapter 7) included option sifting which ruled out certain transport interventions as undeliverable. The Study did not determine that the Caol Link Road was undeliverable, did not rule it out and indeed recommended it for further appraisal work. This further appraisal work is likely to be taken forward through the Scottish Government's (Transport Scotland's) second Strategic Transport Projects Review (STPR2). However, this Review is not scheduled to be completed until 2021 and therefore it would be unreasonable to delay a decision on a Scheme that can deliver a shorter term public benefit in terms of a reduction in flood risk to many existing properties. In any event a Caol Link Road and the Scheme are not mutually exclusive. The Scheme does not inhibit, in any way, the technical and financial feasibility of progressing a future Caol Link Road.



## 5 Conclusion

- 5.1 The only claim that the Objector makes against the Scheme itself is that the Scheme sterilises the Objector's site from future development. However, as has already been indicated, the presence of the Scheme would not of itself prevent the site from being developed. Therefore, in the view of the Council, the objector's case against the Scheme is unfounded and should be rejected by the Reporter.
- 5.2 Regardless of whether the Scheme is progressed or not, the Objector's land has been determined to be unsuitable for housing development because of flood risk, the desirability of safeguarding a suitable corridor of land for construction of a future Caol Link Road and its poor physical relationship to the pattern of existing development at Caol.
- 5.3 Given that the case for the Scheme has already been established, and that there is a mechanism in place to compensate landowners, the Council respectfully submits that the Reporter recommends that the Scheme be confirmed.

## 6 Documents for Hearing

- 6.1 The following table lists the documents which the Council intends to submit in support of its Statement of Case.

**Table 2 List of Documents**

Ref	Document
THC 01	The Caol and Loyside Flood Protection Scheme Document
THC 02	The Objection dated 26/05/18
THC 03	Public Notices published
THC 04	Minutes of EDI Committee Meeting held on 16-8-18, Item 15
THC 05	Highland and Argyll Local Flood Risk Management Plan (2016-2021) (Highland Council)
THC 06	Flood Risk Management Strategy (2015)(SEPA)
THC 07	JBA Design Justification Report (2017)
THC 08	SK_1 Former Sewage Works Site
THC 09	SK_2 – Former Sewage Works Site – Embankment
THC 10	Adopted Local Plan + drawing showing Caol Link Road
THC 11	Planning permissions refused, and appeal, decision notice
THC 12	Fort William Strategic Transport Study Pre-Appraisal, the Case for Change
THC 13	SK_3 – Former Sewage Works Site – Housing Layout
THC 14	Roads and Transport Guidelines for New Developments
THC 15	Planning Information Note 4, 3 July 2018 (SEPA)
THC 16	WestPlan objection and response
THC 17	Correspondence listed in Table 1

THC 18	Land title for old sewage works
THC 19	The Scheme Drawings 1001, 1010 and 2006

## 7 Preliminary Witness list

Garry Smith	THC	Principal Engineer, Development and Infrastructure responsible for promotion of the flood scheme
Tim Stott	THC	Principal Planner, Development and Infrastructure responsible for the local plan issues
Susan Macmillan	THC	Team Leader, Development and Infrastructure based in the Fort William planning office
Alan Fraser	THC	Senior Engineer, Development and Infrastructure responsible for local flood management plan.
Angus Pettit / David Bassett	JBA	Consultant Engineer responsible for the flood modelling for the scheme (provisional – no issues regarding the flood modelling have been raised by the objector)

While the Council does not intend to be legally represented at the hearing, it reserves the right to be so.