

CAOL AND LOCHYSIDE FLOOD PROTECTION SCHEME

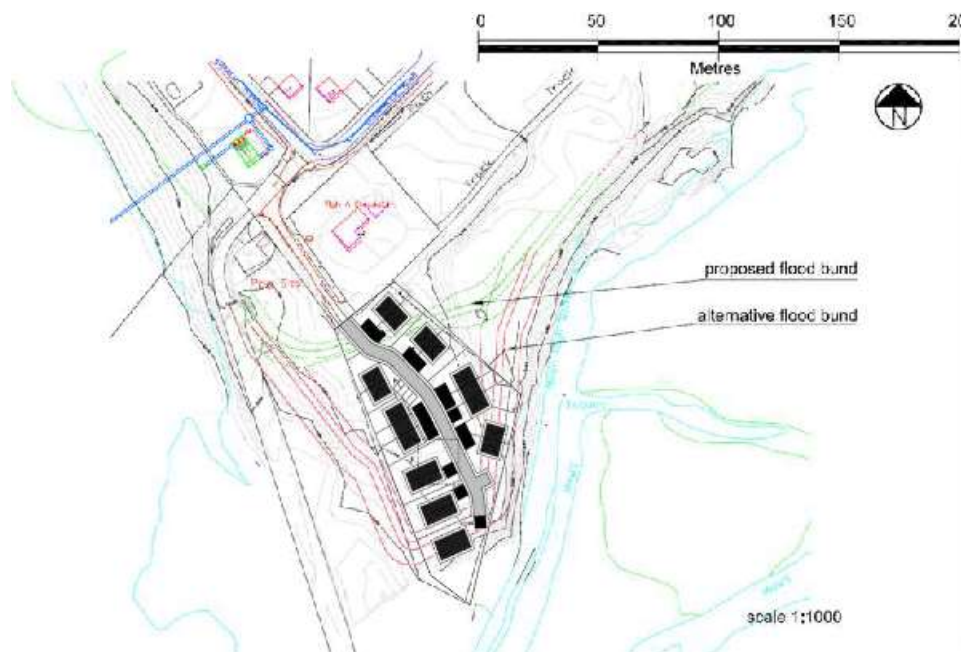
DPEA REF: FPS-270-1

STATEMENT OF CASE ON BEHALF OF MR & MRS D MICHIE

1 Introduction

1.1 We are fully supportive of the plan to put a Flood Prevention/Protection Scheme in place. As owners of land with a potentially high development value, we have been deprived of the use of that land by the Council proposing to build the flood bund across the entrance to our site, and through part of the area we propose to build low-cost housing on, and failing to erect a protective bund round, rather than across our land. No provision has been made in the design of the scheme for granting us access to our land other than a restricted access road which is not capable of being upgraded to adoptable standard, which will be necessary for the proposed housing development.

The land we own (with the potential 17 housing units included) is shown in shown below:



Grounds of objection to the Flood Protection Scheme

2 Grounds of objection to the Flood Protection Scheme

2.1 Our principal grounds for objection are set out in our letter to Garry Smith, Principal Engineer with Highland Council, dated 26th May 2018.

2.2 In addition to the grounds set out in that letter, we have concerns that we have been denied the opportunity to make effective representations to the local Council Member who sits on Highland Council's Environment, Development and Infrastructure Committee, as set out in documents which will be lodged.

3 The Council's position

3.1 The Council are refusing to address our concerns because:

- a) They estimate that the additional cost of putting a protective bund round our land will be £450,000. (this cost is disputed by us) and that this cost is excessive.
- b) They Council have stated, "that the purpose of the scheme is to protect 300 properties in the community of Caol and Lochyside and that the scheme, as it was presented in the public meeting in May (2015), illustrates an alignment which seeks to reduce the risk of flooding to existing houses and commercial properties.". Accordingly, the Council maintain, they are not obliged to provide protection to our land.
- c) The Council continue to ignore/ misunderstand the medium to long-term development potential of the site for housing, which is complicated by the significant question mark over the future of the long-standing proposal for the Caol Link Relief Road.

4 Response to the Council's position

4.1 We dispute the Council's projected additional cost of £450,000. We have prepared preliminary costings of extending the bund round our site. We estimate that the cost of our alternative bund will be considerably less than the amount estimated by the Council. The exact amount will depend on options the Council may have on where they route the protective bund. We would like our property to be protected in full, but there could be scope for the proposed bund encroaching on our land to a slight extent in the marginal and estuarial areas, if this option ameliorates any design difficulties. From these costs will have to be deducted the cost of the length of bund which will no longer be required (that stretch which crosses our land) and the amount of compensation which the Council will be obliged to pay us (which will also be less as the limitation on development potential would be substantially reduced). We would also highlight the powers afforded to the Council under the Flood Risk Management (Scotland) Act 2009 to enter into agreements with landowners to carry out flood protection works – we would be open to discussion with the Council about the most efficient way to construct the bund around, or marginally through, our land.

4.2 We dispute that the Council is only obliged to protect "existing houses and commercial properties" and maintain that our land ought to be protected. We have presented a viable alternative that could be incorporated into the scheme as a modification so as to preserve the development potential of our land and deliver equivalent flood protection to those existing houses and commercial properties.

4.3 No test is established under the Flood Risk Management (Scotland) Act 2009 or the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 for assessing and, ultimately, determining to what extent any objection to the Flood Protection Scheme and/or proposed modifications should be taken into account in the final confirmed scheme.

- 4.4 The Scottish Government guidance on Flood Risk Management (Scotland) Act 2009 – Local Authority Functions under Part 4 indicates that it is for the local authority to consider the **most appropriate arrangement** for carrying out any flood protection works (emphasis added). While the local authority is clearly afforded a degree of discretion, it is implicit that there is a requirement to consider and account for why alternative arrangements for flood protection works have been discounted. We are not aware of such comparative analysis having been undertaken in respect of our land, notwithstanding the submission of our objection.
- 4.5 In the absence of a specific test within the Flood Risk Management legislation and guidance, we consider that it is also relevant to look at the tests for a compulsory purchase order on account of the comparable interference with the rights of land owners. On account of the potential impacts of the proposed Flood Protection Scheme, our rights under Article 1 Protocol 1 and Article 8 of the European Convention on Human Rights are engaged.
- 4.6 The CPO framework emphasises the need for proportionality and that the means used by local authorities have to be **reasonably necessary** for the interference with private land rights to be considered as being in the public interest.
- 4.7 The Council has not demonstrated that it is reasonably necessary for the Flood Protection Scheme to go directly through our land rather than around its perimeter, particularly if the development potential of our land is increasingly less likely to be inhibited by the proposed Caol Link Road.

5 Hearing

- 5.1 At the hearing due to take place on 28 March 2019, we believe it would assist discussions between the parties if the undernoted points were addressed by the Council.
- 5.2 We would respectfully ask the Reporter to request a response from the Council in relation to the following points:
- 5.2.1 Provide evidence to demonstrate that our objection and the proposed modification have been taken into account in relation to the proposed Flood Protection Scheme;
 - 5.2.2 Explain why to date the Council has not incorporated our modification into the proposed Flood Protection Scheme;
 - 5.2.3 Provide details of any other modifications that have been incorporated into the proposed Flood Protection Scheme;
 - 5.2.4 Provide any comparative analysis (including financial appraisals) carried out by the Council in relation to the proposed Flood Protection Scheme as compared with any alternative options for works on our land and/ or the modification outlined in our letter of objection; and

5.2.5 Provide details of any arrangements made with other land owners to take account of the impacts of the works under the proposed Flood Protection Scheme.

6 List of Hearing Documents

6.1 See Appendix 1 to this Statement of Case.