

Directorate for Local Government and Communities  
Planning and Architecture Division : Planning Decisions

T: 0131-244 7589  
E: [planning.decisions@gov.scot](mailto:planning.decisions@gov.scot)



Rod Morrison  
Architectural Drawing Services

[Rodslot53@yahoo.com](mailto:Rodslot53@yahoo.com)



Our ref: NA-HLD-082  
7 July 2016

Dear Mr Morrison

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
THE TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS)  
(SCOTLAND) DIRECTION 2009 - ERECTION OF THREE (REDUCED FROM 4)  
HOUSES ON LAND TO NORTH EAST OF GLEN VIEW, HIGH STREET, CONON  
BRIDGE**

1. This letter contains Scottish Ministers' decision on the above application submitted to The Highland Council on behalf of Mr Brian Elias. The application was called in for Scottish Ministers determination on 25 September 2015.
2. It was agreed that the application should be considered by means of written submissions and a site inspection. An accompanied site inspection took place on 13 November 2015 in the presence of Mr Robert Seaton, MA(Hons) LLB DipLP, a reporter appointed for that purpose. A copy of Mr Seaton's report can be found below.

**Consideration by the Reporter**

4. The reporter sets out the background and legislative and planning policy frameworks at Chapters 1 and 2 of the report. Consultation responses and representations and the reporter's consideration of the proposal are at Chapters 3 and 4. The reporter's conclusions and recommendations are set out in Chapter 5.

## **Scottish Ministers' Decision**

5. Scottish Ministers have carefully considered the report. They agree with the reporter's conclusions and adopt them for the purpose of their own decision and, therefore, accept the reporter's recommendation that full planning permission should be refused.

6. Accordingly, Scottish Ministers hereby refuse full planning permission for the erection of 3 (reduced from 4) houses on land North East of Glen View, High Street, Conon Bridge.

7. The foregoing decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date hereof. On any such application the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

8. A copy of this letter and the report has been sent to The Highland Council, SEPA and the residents of Riverbank Road. Those parties who lodged representations will receive a copy of this letter.

Yours sincerely

**IAIN McLEOD**

## Report to the Scottish Ministers



### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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Report by Robert Seaton, a reporter appointed by the Scottish Ministers

- Case reference: NA-HLD-082
- Site Address: Land to the north east of Glen View, High Street, Conon Bridge
- Application by Mr Brian Elias
- Application for planning permission, Highland Council ref. 14/00016/FUL dated 6 January 2014, called-in by notice dated 25 September 2015
- The development proposed: erection of three houses
- Date of site inspection: 13 November 2015

Date of this report and recommendation: 19 May 2016

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**CONTENTS**  
**Page**

Summary Report	3
Abbreviations used in the report	10



**The erection of three houses at Riverbank Road, Conon Bridge**

• Case reference	NA-HLD-082
• Case type	Called-in planning application
• Reporter	Robert Seaton
• Applicant	Mr Brian Elias
• Planning authority	Highland Council
• Other parties	Scottish Environment Protection Agency Residents of 1 to 9 Riverbank Road, Conon Bridge
• Date of application	5 January 2014
• Date case received by DPEA	30 September 2015
• Method of consideration and date	Written submissions and accompanied site inspection on 13 November 2015
• Date of report	19 May 2016
• Reporter's recommendation	Refuse

**Ministers' reasons for call-in**

There was concern, following objection by SEPA and representations from the Highland Council's flood risk management team, that the council proposed to grant permission for a housing development in an area in which there was at medium to high risk of flooding from the River Conon, that flood defences did not provide protection from a 1:200 year flood, that surface water flood risk had not been properly assessed, and that there was a lack of justification for development in the floodplain.

**The site**

The application site is to the north west of Riverbank Road, near the centre of Conon Bridge, Easter Ross. The site is undeveloped and overgrown, though has development on three sides. It is significantly lower than the road and lower than the neighbouring land to the north east (artificially raised with garages belonging to a former retail nursery) and north west (a field). It is within the area protected by the Conon Bridge Flood Protection Scheme from flooding on the River Conon.

**Description of proposed development:**

Three single-storey houses and associated access, parking spaces and other infrastructure.

## Representations and consultation responses:

Scottish Water had no objection to the application. Within the council, the forestry officer and transport planning service indicated that the proposed development would be acceptable subject to conditions. The planning gain negotiator indicated no contribution was required by policy. SEPA, the council's flood risk management team and the residents of 1-9 Riverbank Road objected to the application. They each submitted further written submissions. Their cases are described below.

## The Applicant's submissions

The application site was previously allocated for housing and had planning permission (lapsed) for a single house. Although not brownfield land, it is an orphan site used intermittently for dumping and in an overgrown state. The housing proposed is affordable. The application has the democratic backing of the council's planning applications committee. The application ought not to have been notified to Ministers.

A flood risk assessment and integral drainage statement is provided dealing with flood risk from the River Conon and the Eil Burn. This assessment draws on previous flood risk assessments carried out by professional consultants, including two recent studies, the first by JBA in 2006 (referred to as "JBA 2006" in this report) assessing work required to bring the flood defences up to their design standard of protection for a 1:100 year flood, and the second by Mott Macdonald in 2009 and was submitted in support of an application for mixed-use development of the former Pescanova fish factory site in Conon Bridge, also within the flood protection scheme ("Mott Macdonald 2009").

Mott Macdonald 2009 confirms the flood defences are sufficient to meet a 1:200 year flood (allowing a climate-change contingency) with 550 millimetres of freeboard. Even if this is not the case, on SEPA's account, the flood defences are sufficient to meet a 1:200 year flood with 250 millimetres freeboard. The insistence by SEPA and the council's flood risk management team that there should be 500 to 600 millimetres freeboard is arbitrary and unjustified.

The application was in a low to medium risk area for fluvial flooding in terms of the SPP's flood risk framework (paragraph 263). It is identified as low risk on SEPA's flood map. Even if the application site is in a medium to high risk area, it is within a built-up area and flood protection measures exist that will meet a 1:200 year flood.

If the assumption is made that Eil Burn's culvert at the High Street is two-thirds blocked, there may be a small pluvial flood risk at the application site in a 1:200 year flood (allowing a climate change contingency).

A new rainwater drainage system was installed recently along the west of Riverbank Road. It carries all surface water from the road to the main combined sewer on Conon Bridge High Street. There was some accumulation of rainwater in the deepest depression on the site in January this year. This was hardly surprising following the heavy rains from November, the site contours, and relatively high water table.

The risk of pluvial flooding can be addressed in the course of preparing the site by flattening and raising the overall site level to 100 to 200 millimetres below the level of the adjacent field. The proposed development would not then cause runoff into adjacent land since it would be lower. Any impact in terms of flood displacement would be minimal given the area

of the proposed development as compared with the overall area susceptible to flooding within Conon Bridge. The neighbouring Riverbank Nursery provides a precedent for land raising. The impact in terms of displacement would be minimal compared to that of the Pescanova development.

The treatment of the proposed development must be contrasted with that of the current proposals at the much larger Pescanova site. That site is subject to identical flood-risk considerations, but SEPA has withdrawn its objection to the application, which includes proposals for 72 houses.

### **The planning authority's submissions**

The North Planning Applications Committee proposed to grant the application. It gave the reasons that the proposed development would be protected (in respect of flooding from the River Conon) by flood defences with a standard of protection to meet a 1:100 year flood with 550 millimetres freeboard, and it complies with the existing settlement pattern in Conon Bridge.

In response to the procedure notice, the council made a written submission making a number of comments:

The site is not allocated in the development plan. Since the site is previously undeveloped land in an area in the medium to high risk category for flooding, the proposed development would increase the number of properties at risk of flooding. The applicant has not demonstrated that the proposal will not be subject to an unacceptable flood risk as required by the SPP and Highland Wide Local Development Plan (HWLDP) policy 64.

The applicant has not provided an assessment of the appropriate level of freeboard for the River Conon flood defences to comply with the requirement for freeboard in paragraph 264 of the SPP. The available freeboard is less than was calculated in Mott Macdonald 2009 or was suggested by SEPA. The withdrawal of the flood risk management team's objection to the Pescanova application is subject to improvement of the flood defences to provide an appropriate level of freeboard. Despite the withdrawal of these objections, there is no certainty that the flood defences will be improved: there is no approved scheme or landowner's consent yet.

The applicant's flood risk assessment for the Eil Burn was not carried out by a qualified person. The calculation of 1:200 year flood depths at the site is not made by an acceptable method and does not consider detailed topography or flood routing as required. The latest Mott Macdonald assessment for the Pescanova application (referred to below as "Mott Macdonald 2015") is more robust and shows the site within the burn's floodplain, so unsuitable for development in the flood risk management team's view.

No proper assessment of surface-water flood risk has been provided.

Land raising is not an acceptable solution to address flood risk from the Eil Burn or surface water. It does not comply with the SPP restriction on piecemeal reduction of the functional floodplain or requirement to safeguard storage or conveying capacity.

## SEPA's submissions

The application site falls within a medium to high risk area for flooding and is therefore unsuitable for the proposed development in terms of HWLDP policy 64 or the SPP.

SEPA does not object to redevelopment of brownfield land behind flood protection schemes. It does object to proposals for development of undeveloped land within such schemes because of concerns about residual risk of failure or overtopping of defences, which can lead to serious flood incidents.

There is an exception in the SPP for new development in built-up areas in the medium to high risk category where flood protection measures of the appropriate standard exist, are under construction or are planned in a current flood risk management plan. However, the site is not within a built-up area. Even if it is found that it is within a built up area, defences to the appropriate standard do not exist and are not planned.

The applicant's flood risk assessment is incorrect in its assertion that the flood defences are sufficient to meet an estimated 1:200 year flood with 550 millimetres of freeboard. The assertion arises from a misreading of Mott Macdonald 2009. There is a low point on the flood embankment where there is only 250 millimetres of freeboard in such a flood. This is insufficient. The existing defences at this point would be at risk of collapse if overtopped.

Freeboard provides a margin of error. When JBA assessed the flood defences in its 2006 report, it calculated on the basis of uncertainties in the hydrological data relating to the Conon's catchment that 989 millimetres of freeboard should be allowed. SEPA has reviewed JBA's calculations and considers 500 to 600 millimetres is sufficient. A calculation of appropriate freeboard is one element of determining the standard of protection provided by flood defences.

Mott Macdonald 2015 shows the site to be entirely at risk of flooding in a 1:200 year flood on the Eil Burn. Although not produced specifically in relation to the application site, this is the best information SEPA is aware of for the catchment.

There are no exceptional circumstances to justify land raising to mitigate flood risk, as would be required by the SPP. No assessment has been provided of loss of floodplain capacity in terms of volume as a consequence of land raising. SEPA hold lidar data that suggests some parts of the existing site are lower than claimed by the applicant.

SEPA has withdrawn its objection to the Pescanova application subject to the River Conon flood protection scheme being improved to the appropriate standard. Mott Macdonald 2015 does not show the Pescanova site as being at risk from flooding on the Eil Burn, while the application site is. The Pescanova site is brownfield and allocated in the development plan, unlike the application site.

## Riverbank Road residents' submission

Residents of 1-9 Riverbank Road object to the application on grounds that the site access is not suitable and will cause disruption to householders opposite and the site is a former riverbed, the water table is near the surface and it is often flooded. They have provided evidence of flooding in July 2008 and January 2016.

## Reporter's reasoning

Victoria Quay, Edinburgh EH6 6QQ  
[www.scotland.gov.uk](http://www.scotland.gov.uk)





Having considered the development plan and the SPP, I find the key determining issue is flood risk. There are three potential sources of flood risk: the River Conon, the Eil Burn and surface water.

The application site is within Conon Bridge's settlement boundary, but is not an allocated site. Its development is not expressly restricted by the plan's housing policy, but there is no express support either. The plan's key policy on flood risk is HWLDP policy 64. This requires development proposals to avoid areas susceptible to flooding. Those within or bordering medium to high risk areas are required to demonstrate compliance with the SPP.

The key questions in terms of the SPP are whether the application site is within a medium to high risk area for flooding and, if so, whether the proposed development falls into the policy exception under which development may be permitted in a built-up area where flood defences to the appropriate standard exist, are under construction or are planned in the flood risk management plan.

Insofar as the applicant claims the application site is in a low to medium risk area, the claim appears to be based (a) upon SEPA's flood map (which shows the site as within a low risk area) and (b) upon a claim that the flood defences are to the appropriate standard. I find that the risk category of the area, in terms of the SPP, must be determined by the natural floodplain without regard to existing flood protection measures. This is the most straightforward reading of the SPP, and also deals with the issue of residual risk within flood protection schemes. SEPA's flood map is only indicative of flood risk. The more detailed evidence available in JBA 2006 and Mott Macdonald 2015 shows the application site is within the river's natural 1:200 year floodplain. It is therefore in a medium to high risk area.

The application site is within the village envelope and adjacent on three sides to built development. It is therefore within a built-up area.

Applying the precautionary principle of flood risk management policy, I find that, to meet the appropriate standard, flood defences must be sufficient to meet a 1:200 year flood with a high degree of certainty. Therefore freeboard is to be included in determining whether flood defences meet the appropriate standard. The amount of freeboard required depends on the degree of uncertainty in flood estimation, a matter to be dealt with in flood risk assessment. The applicant's claim that the River Conon flood defences provide a 1:200 year standard of protection including 550 millimetres freeboard is based on a misreading of Mott Macdonald 2009. The applicant has not provided technical evidence to justify freeboard of less than 500 millimetres as recommended by SEPA. The evidence suggests that at least 500 millimetres freeboard is required to address uncertainties in the river's catchment. The existing freeboard at the defences' low point is insufficient, particularly given the likelihood of collapse.

The existing River Conon flood defences are not to the appropriate standard. Flood defences may be improved to allow the Pescanova development to proceed, though it is uncertain if or when this will happen. If flood risk on the River Conon were the sole issue, a negative condition permitting commencement only once flood defences had been improved to an appropriate standard might conceivably bring such permission into compliance with policy. Parties have not proposed such a condition or its detailed wording.

I accept the council flood risk management team's criticisms of the applicant's assessment of flood risk from the Eil Burn. Mott Macdonald 2015 is a study based on flood modelling using detailed topographical information and based on more robust assumptions. Both studies

indicate the application site would be flooded in a 1:200 year flood, though differ in the amount of flooding. Mott Macdonald 2015 indicates a significant level of flooding at the application site in such an event.

Although the site is shown on SEPA's flood map as having a medium to high risk of surface-water flooding, the applicant has provided no systematic surface-water flood risk assessment. There is evidence of surface-water flooding at the application site.

As regards the applicant's suggestion of raising the site level, SPP provides that land raising is only to be considered in exceptional circumstances. Although the applicant claims the impact of land raising would be minimal, the information on the displaced flood volume is insufficient to confirm this. There are, in any case, no exceptional circumstances to justify land raising. The applicant's flood risk assessment is not sufficiently robust to demonstrate that the suggested land raising would in fact mitigate the 1:200 year flood risk to the proposed development. No freeboard provision is made. Any significant engineering works involved in land raising would require planning permission. No mention is made in the application of significant land raising.

Land raising at Riverbank Nursery evidently pre-dates the flood risk management policies of the SPP. SEPA flood maps and Mott Macdonald 2015 indicate the Pescanova site lies generally outside the area with a significant probability of being affected by Eil Burn or surface-water flooding. Neither case establishes a precedent for land raising at the application site.

The applicant's proposals for access ramps to Riverbank Road (the edge of the floodplain) and raising ground floor levels to address flooding suffer from similar difficulties to land raising. The proposal for flood-proof construction on ground floors lacks detail and only mitigates the impact of flooding.

Although the proposed development is small, it is clear that the flood risk framework is intended to apply even to developments of the proposed size.

Although the applicant complains of changes of position by the council's flood risk management team and SEPA and, on that basis, questions their credibility, it is not necessary to rely on their credibility to reach a conclusion on the application.

The application is contrary to the SPP's flood risk management policies and to HWLDP policy 64 since there is a significant probability of its being affected by flooding from the River Conon and Eil Burn. There is insufficient information to establish that it is not at such risk from surface-water flooding. Such evidence as has been provided suggests there is a risk from surface-water flooding. Policy does not support land-raising in this case to address flood risk.

I have not found any matter relating to site access that cannot be dealt with by conditions.

I have considered the application site's planning history, the present condition of the site, the proposal that the development should comprise affordable housing, the decision of the council's planning committee, the evidence that Conon Bridge's development as a settlement is impeded by constraints of flood risk management policy, and the circumstances of the calling in, but have found no material consideration of great weight favouring the proposed development.

My attention has not been drawn to any other policy in the development plan or SPP that provides support for the proposed development. I find that the proposed development is contrary to the plan. There are no material considerations that would outweigh the development plan. Therefore I recommend that the application is refused.



Scottish Government  
Planning and Environmental Appeals Division  
4 The Courtyard  
Callendar Business Park  
Callendar Road  
Falkirk  
FK1 1XR

DPEA case reference: NA-HLD-082  
The Scottish Ministers  
Edinburgh

Ministers

Having received this case on 19 October 2015, I requested and considered further written submissions and conducted an unaccompanied site inspection on 13 November 2015 in connection with an application for planning permission at land to the north east of Glen View, High Street, Conon Bridge.

Highland Council's North Planning Applications Committee proposed to grant the application. However, by notice dated 25 September 2015 the application was called in by the Scottish Ministers. The decision to call in the application related to concerns raised in an objection by SEPA regarding flood risk to the proposed development.

My report, which is arranged on a topic basis, takes account of the applicant's planning application and all other representations and consultation responses submitted to the council's planning officers in respect of the application, the officer's report to the North Planning Applications Committee, the committee's proposed reason for grant of permission and further written submissions requested by me from the applicant, the council, the Scottish Environment Protection Agency, and residents at 1 to 9 Riverside Road, Conon Bridge.

## Abbreviations

AOD	above ordnance datum
JBA 2006	JBA Consulting, Scottish Flood Defence Asset Database: Conon Bridge Village Flood Prevention Scheme 1990, final report 2006
HWLDP	Highland Wide Local Development Plan
Mott Macdonald 2009	Mott Macdonald Preliminary Flood Risk Assessment, former Pescanova Fish Processing Factory site, 2009
Mott Macdonald 2014	Mott Macdonald Flood Risk Assessment, former Pescanova Fish Processing Factory site (update of 2009 study) January 2014
Mott Macdonald 2015	Mott Macdonald, Conon Bridge, Former Pescanova Fish Processing Factor Site Flood Risk Assessment and SUDS outline (study update 2015)
NPF3	The third National Planning Framework
SEPA	Scottish Environment Protection Agency
SPP	Scottish Planning Policy

## CHAPTER 1: BACKGROUND

### *The proposed development*

1.1 The application is for the erection of three single-storey houses along with associated hardstanding for parking and other infrastructure. The applicant originally proposed four houses, but the development was redesigned and reduced by one house following representations from the council's forestry officer in respect of impact on trees. Vehicular access to the development would be by a ramp from Riverbank Road, and each house would have a pedestrian ramp to a new pavement on the north west side of the road.

### *The application site*

1.2 The site is on land to the north east of Glen View, a house on Conon Bridge High Street (the A862), the garden of which bounds the south western end of the site. The site lies along the west side of Riverbank Road. On the opposite side of Riverbank Road is a row of two-storey houses, mainly semi-detached. The road is relatively quiet, and serves other existing residential development, including Henderson Crescent, Sellar Place and Bridge View. There is a former garden centre, now disused, to the north of the site. To the west of the site (the side opposite Riverbank Road), there is a small field, which I understand is known as the Glebe, and which on the day of my site visit was grazed by cattle and sheep. To the north of the Glebe is Garrie View, a street of bungalows.

1.3 The site itself is undeveloped and uncultivated, covered in thigh-length vegetation and a few trees. The site lies significantly below the level of Riverbank Road and also somewhat lower than the neighbouring field to the north west. The part of the nursery site immediately to the north, on which garages presently stand, is also at a higher level than the application site, having been somewhat raised from its natural level.

1.4 The northern part of the village is defended from flooding on the River Conon by a flood protection scheme. The application site falls within the area protected by this scheme. The flood defences to the north east of the village were improved in about 2009 so that the scheme provided a design standard sufficient to meet a 1:100 year flood.

### *Procedural matters*

1.5 The application was put to the council's North Planning Applications Committee on 4 August 2015. The [committee report](#) recommended its refusal on the grounds (in summary) (a) that the site was not protected from a 1:200 year flood event from the River Conon and that the proposed development would put persons and buildings at risk from flooding contrary to Scottish Planning Policy (SPP), PAN69, policies 28, 30 and 64 of the Highland Wide Local Development Plan (HWLDP) and Highland Council's supplementary guidance Flood Risk and Drainage Impact assessment; and (b) that there was insufficient information to demonstrate the site was not at risk of flooding from surface water (and this was also contrary to policy 64 of the HWLDP and to the supplementary guidance). The report did not identify any other matters that could not be dealt with by conditions.

1.6 The committee however decided it was minded to grant the application. It gave the [reason](#) that "the proposal meets the 1 in 100 year flood event with an appropriate standard of freeboard and as such complies with the existing settlement pattern of the area".

1.7 SEPA had objected to the application in respect of the flood risk to the proposed development. Council officers considered that, as a consequence, they were required to

notify the proposed grant of planning permission to the Scottish Ministers. The Scottish Ministers subsequently decided to call the application in. They did so in view of a number of concerns, including that the proposed development would be within the medium to high flood risk category in respect of the River Conon, SEPA regarded the applicant's assessment of the standard of protection provided by the River Conon flood defences was inaccurate, the 250 millimetre freeboard on the defences identified by SEPA and the council flood risk management team was insufficient, information sought by the council's flood risk management team for assessment surface water flood risk had not been provided, and that there was a lack of meaningful justification for building in the floodplain.

1.8 Having received the application, I carried out a site inspection on 13 November 2015. I also received further information from the council comprising a [report](#) recently submitted by another applicant for planning permission on the likelihood of flooding in Conon Bridge (Mott Macdonald, Conon Bridge, Former Pescanova Fish Processing Factor Site Flood Risk Assessment and SUDS outline (study update 2015), referred to below as "Mott Macdonald 2015"). Therefore, in order to ensure the applicant had a fair opportunity to set out a full case, and particularly to respond to the committee report prepared by council officers and to the new information submitted by the council on the probability of flooding at the application site, I issued a [procedure notice](#) in which I requested further written submissions from parties in respect of flooding issues in particular. The applicant made [further submissions](#). The [council](#), [SEPA](#) and the [residents at 1 to 9 Riverbank Road](#) made submissions in response. I gave the applicant a final opportunity to [reply](#), which he took.

#### *Technical evidence provided of flood risk to the proposed development*

1.9 A number of studies assessing flood risk have been carried out for Conon Bridge and form the background to submissions. These studies have a relatively complex interrelationship. For that reason, I set out my understanding of their relationship here.

1.10 The applicant produced a [Flood Risk Assessment and Integral Drainage Study](#), the latest revised version of which was provided to the planning authority in October 2014 (and is submitted as attachment 5 to the applicant's written submissions). This supersedes the [earlier version](#). The revisions in the latest version are shown in red. The applicant's study relies essentially upon a review of earlier flood risk assessments and other studies, particularly:

- the study of the Conon Bridge Village Flood Protection Scheme by consultants JBA dated October 2006 produced for the Scottish Flood Defence Asset Database (provided as an attachment to [SEPA's written submission](#) – starting at the seventeenth page of that submission - and referred to below as "[JBA 2006](#)"), and
- a [Preliminary Flood Risk Assessment](#) by Mott Macdonald, produced in November 2009 in respect of a proposed mixed-use development at the site of the former Pescanova fish factory in the north of the village including a substantial element of housing (I refer to the assessment below as "[Mott Macdonald 2009](#)" and the site for which it was produced as "the Pescanova site").

The applicant's assessment refers to a number of earlier flood risk assessments carried out in respect of nearby sites in Conon Bridge. These have not been produced to me, and I have not found it necessary to refer to them.

1.11 [JBA 2006](#) summarises work undertaken in modelling flood extents and identifying the standard of protection provided by Conon Bridge's flood defences as they existed at that time. I understand from submissions that it was on the basis of recommendations in [JBA 2006](#) that flood defences were improved at Conon Bridge in 2009.

1.12 [Mott Macdonald 2009](#) examines the flood risk to the Pescanova site. It relies upon the flow estimates produced for [JBA 2006](#) both for the River Conon and the Eil Burn. In respect of the River Conon, it relies also upon the flood modelling carried out in [JBA 2006](#), while taking account of the subsequent work carried out by Highland Council to increase the height of the flood embankment to the north east of Conon Bridge. It focused on whether the standard of protection provided by the River Conon flood defences met a one-percent annual exceedance risk (i.e. whether it provided protection against a 1:100 year flood) including climate change contingency (peak flow derived from [JBA 2006](#) increased by twenty percent), which I understand was the policy standard at the time. It also examines a 0.5 percent annual exceedance risk (i.e. 1:200 year return period) but without climate-change contingency.

1.13 In respect of the Eil Burn, [Mott Macdonald 2009](#) sets out to identify flood risk to the Pescanova site by modelling flood events with a one-percent annual probability (1:100 year return period) and 0.5 percent annual probability (1:200 year return period). In order to do so, the study states that it used a two-dimensional hydraulic model constructed using the TUFLOW software package. It applied this to a digital terrain model using a five-metre grid with data compiled from topographical surveys. This modelling showed no flooding at the application site from the Eil Burn (though it did show flooding at the Pescanova site).

1.14 Two further assessments have been submitted in respect of the Pescanova site to update [Mott Macdonald 2009](#):

- Flood Risk Assessment (update of 2009 study) produced in January 2014 (referred to in this report as "[Mott Macdonald 2014](#)"). This updated the assessment of flood risk on the Eil Burn for a 0.5 percent annual probability (1:200 year) flood event, including climate change contingency (peak flow increased by twenty percent). This modelling also showed no flooding at the application site from the Eil Burn.
- the Conon Bridge, Former Pescanova Fish Processing Factory Site Flood Risk Assessment and SUDS Outline (study update 2015) dated September 2015 (referred to below as "[Mott Macdonald 2015](#)"). In respect of the River Conon, this examined works required to bring the flood defences up to a standard that would prevent a flood event with annual probability of 0.5 percent (1:200 year return period). In respect of the Eil Burn, this provided flood modelling using a new digital terrain model using a more accurate (so the report states) one-metre grid compiled using lidar topographical data. Unlike the previous two studies, this modelling showed the application site to be inundated (but the Pescanova site was not).

1.15 SEPA published a flood map in January 2014, which shows areas of flood hazard. Two versions of the flood map have been provided. The [applicant's version](#) shows the fluvial and surface-water layers of the map separately. The [council's version](#) shows three layers together: coastal flooding, fluvial flooding and surface-water flooding.

1.16 The fluvial flood map shows the lower part of Conon Bridge from the north side of Riverbank Road northwards as having a low flood likelihood. The surface-water flood map shows the application site to have a medium flood likelihood, and a small area within it to have a high flood likelihood. I understand SEPA to define the levels of flood likelihood shown on the map as follows:

- low likelihood for fluvial and coastal flooding means an annual exceedance probability of 0.1 percent (a 1:1000 year return period);
- low likelihood for surface-water flooding means an annual exceedance probability of 0.5 percent (a 1:200 year return period) plus climate change contingency (which increases the peak rainfall by 20 percent);



- medium likelihood means being at risk in a flood event with an annual exceedance probability of 0.5 percent (1:200 year return period); and
- high likelihood means an annual exceedance probability of 10 percent (a 1:10 year return period).

### *Scope of Ministers' decision*

1.17 Although the principal issue concerning the application is the flood risk to the proposed development, Ministers must address the application as a whole.

## **CHAPTER 2: LEGISLATIVE FRAMEWORK AND PLANNING POLICY CONTEXT**

2.1. In accordance with the Town and Country Planning (Scotland) Act 1997, a planning application must be determined according to the development plan unless material considerations indicate otherwise. The development plan and its relevant policies are identified below, and then national and local policy and guidance that form material considerations are identified.

2.2 The development plan comprises the Highland-Wide Local Development Plan, which was adopted in 2012 and the Inner Moray Firth Local Development Plan, adopted in 2015. These two local development plans stand alongside each other as the development plan for the area in which the site is located.

2.3 National policy is set out in the third National Planning Framework (NPF3) and in the Scottish Planning Policy (SPP). Both documents date from June 2014 and so are relatively recent expressions of national planning policy, to which significant weight should be given.

2.4 The Scottish Government provides online planning advice in respect of flood risk, the latest version of which has been supplied to me and is dated 22 June 2015.

2.5 Highland Council adopted supplementary guidance on flooding and development, [Flood Risk and Drainage Impact](#), in January 2013. This identifies the key development plan policies on flood risk and drainage and the roles and responsibilities of various groups and organisations in respect of flood risk, provides a list of matters to consider in determining a planning application and guidance on flood risk assessments. It also deals with drainage impact assessments.

### **Flood risk management in planning policy**

2.6 A number of the matters at issue between parties arise from interpretation of policy in relation to flood risk management. I set out below the basic framework, which I understand to be uncontroversial, and will deal with issues in dispute in my discussion of the application below.

## *National policy*

2.7 SPP paragraphs 254 to 268 set out national policy on the acceptability of development in respect of flood risk. The most relevant principles (paragraph 255) include:

- a requirement the planning system should promote a precautionary approach to flood risk from all sources, including coastal, water-course, surface-water and ground-water flooding;
- flood avoidance by safeguarding flood storage and conveying capacity and locating development away from function flood plains in medium to high risk areas.

2.8 To achieve this, the planning system is required (in paragraph 256) to prevent development that would have a significant probability of being affected by flooding or the probability of flooding elsewhere. Piecemeal development of the functional floodplain is to be avoided.

2.9 Paragraph 263 deals with what is to be regarded as acceptable flood risk for particular types of development. This is referred to as “the flood risk framework”. In respect of the proposed development, the key parts of the framework are those dealing with low to medium flood risk and medium to high flood risk.

2.10 “Low to medium risk” is defined (for coastal or water-course flooding) as having an annual probability of between 0.1 percent and 0.5 percent or a 1:1000 to 1:200 year probable return period. Areas of low to medium risk are suitable for most development. Although not expressly stated, this clearly includes housing development. Water resistant materials and construction might need to be included in such development.

2.11 “Medium to high risk” is defined as having an annual probability of greater than 0.5 percent or greater than a 1:200 year return period. Areas of medium to high risk may be suitable for residential development within built-up areas provided flood protection measures to the appropriate standard already exist and are maintained, or under construction or are planned in a current flood risk management plan. This exception is important if I find that the site is in a medium to high risk area.

2.12 Although the risk framework deals separately with surface water flooding, the effect for housing development is similar: it should be designed to be free from surface water flooding in rainfall events where there is an annual probability of 0.5 percent (a 1:200 year return period).

2.13 The flood risk framework is applied to development management decisions by paragraphs 264 and 266 of the SPP. Paragraph 264 however states that it is not possible to plan for development solely according to the calculated probability of flooding. It lists a number of other criteria that are to be taken into account.

## *The development plan*

2.14 The SPP’s flood risk management policy is incorporated into the development plan by policy 64 (Flood Risk) of the Highland-Wide Local Development Plan (HWLDP). This provides that if development is proposed in or bordering medium to high risk areas, then applicants are required to demonstrate the proposal’s compliance with the Scottish Planning Policy (SPP).

2.15 Paragraph 4.132 of the Inner Moray Firth Local Development Plan says the following with regard to flood risk:

“Flood risk has been a constraining factor for development. However, the completion of flood defences on the River Conon offers protection to much of the settlement. With that said, flood risk assessments will still be required to demonstrate the likelihood and extent of flooding in the area.”

## Development plan treatment of housing proposals in Conon Bridge

2.16 The Inner Moray Firth Local Development Plan places Conon Bridge within the Ross-shire growth area (map 6). The village is not expressly identified as one of the settlements in which housing growth is to be focused (see paragraph 3.14). However, the plan does allocate sites with an indicative capacity of just under 450 houses in the village (see allocations CB1 to CB5 after paragraph 4.136). The plan relies on windfall housing sites to supply about 14% of its housing land requirement (see paragraph 2.11).

2.17 The application site is within the settlement boundary of Conon Bridge. Development of the site is to be preferred to development beyond the boundary, on which there is an express restriction. However it is not a site that is presently allocated for development.

2.18 The Inner Moray Firth Local Development Plan allocates two sites within the area protected by the Conon Bridge Flood Protection Scheme: allocation CB3, the Pescanova site, is for mixed use, while allocation CB6 (“the Drouthy Duck”) is for retail. Both allocations include a requirement for a flood risk assessment, and it is said that this “may affect the developable area of the site”.

## CHAPTER 3: CONSULTATION RESPONSES AND REPRESENTATIONS

3.1 [Scottish Water](#) did not object to the planning application.

3.2 Following a re-design of the proposed development, the [council's forestry officer](#) had no objection to the application.

3.3 The [planning gain negotiator](#) identified no policy requirement for provision of any developer contribution or on-site affordable housing or public art.

3.4 The council's [transport planning service](#) indicated that the proposed development would be acceptable subject to conditions relating to the access, and provision of a footway at the site entrance, a suitable bin collection point at the proposed roadside service bay, and secure cycle storage, and suitable road markings at the junction of the access with Riverbank Road. These matters are dealt with in the suggested conditions.

3.5 The council's [flood risk management team](#) objected to the proposed development on account of the lack of freeboard in respect of the River Conon flood defences and the lack of information on surface water flooding. The team also sought further information in respect of flood risk from the Eil Burn.

3.6 SEPA [objected](#) to the proposed development on the basis that it might place buildings and persons at flood risk from flooding on the River Conon. SEPA advises against putting new development on previously undeveloped land behind flood protection schemes, given the residual risks arising from failure or overtopping of defences. It claimed the application was contrary to Scottish Planning Policy (SPP) because the site had a medium to high flood risk; it was located in a sparsely developed area; and the flood defences did not provide a 1:200 year standard of protection, there being a low point in the defences providing

inadequate freeboard commensurate to the uncertainties of flood prediction in the River Conon catchment. They stated that the purpose of flood defences, in any case, is not to enable new development.

3.7 One [representation](#) was received in respect of the application, signed by the residents of numbers 1 to 9 Riverbank Road, the houses opposite the development site. The objection was twofold: first, that the site access was not suitable and would cause disruption to householders opposite, and second, that the site was unsuitable due to flooding (and mentioned that it was the former riverbed and was frequently flooded).

## CHAPTER 4: CONSIDERATION OF THE PROPOSAL

### Sources of flooding

4.1 The evidence before me indicates that three sources of flooding come into contemplation at the site: first, the River Conon; second, the Eil Burn; and third, flooding from surface water. I will deal with each in turn.

#### *River Conon*

*Whether the application site is in a medium to high risk area*

4.2 The applicant acknowledges in his revised [Flood Risk Assessment and Integral Drainage Statement](#) (October 2014) that the application site is on the outer boundary of the area of Conon Bridge village judged to be at risk in a 1:200 year flood event (since the boundary lies along the western edge of Riverbank Road). However, he argues that it cannot be considered as being located within the functional floodplain of the river given the presence of the Conon Bridge Flood Protection Scheme. I understand from this that the applicant does not consider the site to be within a medium to high risk area in terms of the SPP's risk framework.

4.3 SEPA, in its [written submission](#), does not directly address the SPP's risk framework. It points out (paragraphs 2.2 to 2.3) that there is a residual risk in developing land within a flood protection scheme and also refers to paragraph 21 of the Scottish Government's current [online guidance](#) on avoidance of flood risk and the flood risk framework. This states, "On flood protection, it is important to note that protection schemes can reduce flood risk but they cannot eliminate it entirely."

4.4 The Highland Council's [written submission](#) (paragraph 2.4) and also its [committee report](#) (paragraph 8.3.1) refer to the site as being within a medium to high risk area. This appears to be on the basis, first, that the flood defences do not offer a 1:200 year standard of protection, and, second, that SEPA's flood risk maps show the site to be within the area at risk in a 1:200 year flood.

4.5 The SPP's risk framework does not expressly state how an area within the natural floodplain but defended by flood defences is to be treated, i.e. whether the building of appropriate flood defences can move an area that was formerly in the "medium to high risk" category into the "low to medium risk" category. I interpret the policy to mean that it is the area within the natural floodplain that determines the risk category. This runs with the logic of the policy: there can only be an exception to the SPP's restriction on development in medium to high risk areas on the basis of flood defences being provided if it is the natural flood plain that determines the risk category. Otherwise, the question of whether flood defences were an of an appropriate standard would not determine whether the exception

applies, but rather what the risk category was in the first place. Given, as SEPA points out, that there is a residual risk of failure of a flood protection scheme, this interpretation also sits with the precautionary principle set out in SPP paragraph 255.

4.6 [Mott Macdonald 2015](#) map C.1 shows the approximate edge of the River Conon floodplain along the western site of Riverbank Road. Although no specific information is given as to the return period of the flood event depicted, it appears likely that it is either a 1:200 year event or 1:200 year event with climate change contingency. [JBA 2006](#) (paragraph 6.3) suggested that, without the defences, there would be significant flooding in the area of Garrie View, Riverside Nursery and the High Street even in a 1:25 year flood event. The evidence of the site visit and other flood risk evidence before me indicates to me that if those areas were flooded, the application site would also be flooded.

4.7 I therefore find that the application site is in the medium to high risk category in respect of flooding from the River Conon since it is within the 1:200 year natural floodplain of the river.

4.8 There are two further comments to make on this finding:

4.9 First, if my interpretation of the risk framework is incorrect, and flood defences are to be taken into account, then the application site would only fall within a low to medium risk area if the Conon Bridge flood defences provide a standard of protection sufficient to meet a 1:200 year flood. I find below (paragraph 4.41) that they do not.

4.10 Second, [SEPA's flood map](#) shows the application site (and the rest of Conon Bridge within the flood protection scheme) as having a low risk of fluvial flooding (which indicates the site would be protected in a medium-risk event, as the council acknowledges – [council written submission](#) paragraph 3.1). However, SEPA's evidence is that the flood map is indicative. The information from [Mott Macdonald 2015](#) and [JBA 2006](#) is more detailed and specific to Conon Bridge, and so can be regarded as providing more reliable information on the natural flood plain.

4.11 Since I have found that the application site is within the medium to high risk category, my next step in assessing the application is to examine whether the SPP's policy exception applies which provides that housing development may be suitable in such an area. This requires an examination of (a) whether the application site is in a built-up area and (b) whether flood protection measures to the appropriate standard either already exist or are planned. In looking at (a), I will also consider whether it is relevant that the application site is not brownfield.

#### *Whether the application site is in a built-up area*

4.12 There is dispute between the parties as to whether the application site is in a "built-up area" and therefore whether it falls within the policy exception. I described the application site at paragraph 1.2. It is clear to me that the application site is within a built-up area: the site is within the settlement boundary, has developed plots on three sides, and although to the north there is a field, there are houses beyond even in that direction.

#### *Whether it is relevant that the site is not previously developed land*

4.13 SEPA states ([written submission](#) paragraph 2.2), "SEPA ... do not object to redevelopment of previously developed land behind flood protection schemes, recognising the need for such sustainable redevelopment. However, we do object to proposals for new

properties on undeveloped land behind flood protection schemes.” It makes a similar point at paragraph 7.6.

4.14 The council’s written submission also claims ([written submission](#) paragraph 2.4) that it is generally not suitable for residential development to take place other than on brownfield land within a flood protection scheme. The written submission refers to paragraph 40 of the SPP in support of its position. That paragraph requires the spatial strategy of a development plan to promote a sustainable pattern of development by considering re-use or redevelopment of brownfield land before new development takes place on greenfield sites.

4.15 The applicant argues that while the equivalent policy exception in the previous SPP (published in 2010) distinguished between brownfield and non-brownfield sites, the removal of the reference to “brownfield” in the 2014 SPP demonstrates that the policy is not intended to distinguish between brownfield and other sites. It considers instead whether an application site is in a built-up area.

4.16 On this point I agree with the applicant. I am not persuaded that the policy exception applies only to brownfield land within a flood protection scheme and not to greenfield land. If the policy had been intended to apply solely to brownfield sites, it would have said that. The deletion of the reference to “brownfield” in the current SPP confirms this.

4.17 It does appear to me that - in the particular context of intensification of development within a flood protection scheme – whether an application site is brownfield or greenfield can be a material consideration in a planning decision. However, in this particular case it is not a consideration that any great weight should be placed on. There would have to be compelling reasons to depart from policy as expressed in the SPP by applying an additional test, such as the brownfield test SEPA propose. SEPA suggest that a distinction ought to be made since (written submission paragraph 2.6) “flood protection schemes are developed to protect existing properties, not to increase the number of properties on undeveloped land subject to the residual risk”. It may be reasonable as a broad principle not to increase the number of properties that face even a residual flood risk. However, that is not the same as applying a brownfield/greenfield distinction, which would be likely to have crude results. Where a brownfield site previously had an industrial use, but is now cleared and proposed for a residential use, there is no reason policy relating specifically to flood risk management should treat it differently from a greenfield site proposed for residential use. The flood risk profile would appear to be very similar.

4.18 I should add that, in terms of the SPP’s paragraph 40, the policy requirement to give priority to brownfield over greenfield land is set in the context of a more general requirement to promote a sustainable pattern of development. Avoiding flood risk is an aspect of promoting a sustainable pattern of development. However, the policies at paragraphs 254 to 268 of the SPP set out in detail what is required in respect of flood risk management. There is no need to read across an additional policy test from paragraph 40. I discuss the effect of the general rule in paragraph 40 giving priority to brownfield over greenfield land at paragraphs 4.101 to 4.103 below on the condition of the site. No alternative brownfield sites for the proposed development have been suggested to me in evidence.

*Whether the flood defences of the River Conon Flood Protection Scheme are “to the appropriate standard”*

4.19 There are six elements to this issue: what “appropriate standard” means (expressed as a return period), whether the applicant is correct that the River Conon Flood Protection Scheme meets that standard, whether freeboard is to be taken into account in determining



whether the flood protection scheme meets the appropriate standard, how much freeboard is required, what contingency is to be provided for climate change, and the risk of failure of existing defences.

(i) the appropriate standard for flood defences

4.20 The reference in the policy exception to flood defences requiring to be “to the appropriate standard” does not expressly state what that standard is. None of the parties have made the case that “the appropriate standard” should be less than such as is sufficient to meet a 1:200 year flood. I find they are correct in this respect. Since the SPP policy exception relates to a general restriction on residential development in the 1:200 year flood plain, I find that flood defences “to the appropriate standard” must at least be to a 1:200 year standard.

(ii) whether the River Conon Flood Protection Scheme provides a 1:200 year standard of protection

4.21 The [applicant's flood risk assessment](#) took the position (Executive Summary, page 2, fourth paragraph, and page 16, second paragraph) that the Conon Bridge Flood Prevention Scheme (CBFPS) provides protection for the application site from a 1:200 year flood from the River Conon, with 550 millimetres allowance for freeboard. It cites figures said to be from the [Mott Macdonald 2009](#) as evidence for that claim.

4.22 SEPA denies that [Mott Macdonald 2009](#) supports the applicant's claim, which it suggests is based upon a misinterpretation of that report.

4.23 I agree that the applicant's claim appears to be a misinterpretation of [Mott Macdonald 2009](#). Table 3.6 in that report indicates that, while the flood defences adjacent to the Pescanova site are sufficient to meet a 1:200 year flood with 550 millimetres freeboard, the section between the railway bridge and the pipe bridge would not be. That latter section would only provide sufficient defence against a 1:100 year flood (with a five percent allowance for climate change) while still retaining at least 550 millimetres freeboard. This is confirmed in tables 3.3 and 3.4, which show the freeboard at the railway bridge as 250 millimetres in 1:200 year flood. In its conclusions (page 31) [Mott Macdonald 2009](#) states that while the site for which it was commissioned (i.e. the Pescanova site) was protected to a 1:200 year standard (with a 600 millimetre freeboard allowance), “adjacent sections of Conon Bridge” were only protected for a 1:100 year event.

4.24 It follows that there was no clear basis in [Mott Macdonald 2009](#) for the applicant's claim the application site would be protected by the CBFPS from a 1:200 year flood. Furthermore, I have not identified reasoning within [Mott Macdonald 2009](#) by which the consultants preparing that report reached the conclusion that the Pescanova site would be protected from a 1:200 year flood despite the deficiency in the Conon Bridge Flood Protection Scheme in the section between the railway bridge and the pipe bridge. However that may be, it appears that neither SEPA nor the council's flood risk management team agreed with the consultants' conclusion. In Mott Macdonald's latest updated report ([Mott Macdonald 2015](#), paragraph 5.2) there is a concession that the Pescanova site would be potentially at risk from a 1:200 year flood as a consequence of the deficiency (on the basis that a freeboard allowance of 550 millimetres is required).

(iii) Whether the freeboard allowance can be excluded in assessing whether flood defences meet the appropriate standard

4.25 The applicant (third page of his [written submission](#)) claims that, even on the basis of SEPA's calculations, the Conon Bridge Flood Protection Scheme actually meets the SPP criterion of a 1:200 year flood risk with 250 millimetres freeboard at the lowest point on the embankment between the railway bridge and the pipe bridge.

4.26 SEPA argues that freeboard must be taken into account in assessing the standard of protection provided by flood defences, since it provides a margin of error. The amount of freeboard must be calculated depending on the degree of uncertainty in the flood estimate.

4.27 The council's flood risk management team agreed with SEPA's position in respect of freeboard.

4.28 SPP does not expressly require that freeboard is to be included when calculating whether flood defences are "to the appropriate standard", let alone specifying the exact amount of freeboard required or how it is to be calculated. Among the considerations listed in SPP paragraph 264 for development management decisions is an "allowance for freeboard", but this appears to be placed in the context of taking into account the effects of climate change rather than in the context of providing a margin of error in determining the standard of protection provided by existing flood embankments.

4.29 A definition of "freeboard allowance" is provided at the end of the SPP as: "A height added to the predicted level of a flood to take account of the height of waves or turbulence and uncertainty in estimating the probability of flooding."

4.30 [JBA 2006](#) at appendix F provides an explanation of its method for calculating freeboard in an existing flood protection scheme, which it states was based upon the Environment Agency's Fluvial Freeboard Guidance. A diagram is also provided in the appendix, which is repeated in paragraph 4.4 of [SEPA's written submission](#). This illustrates the technical terms "threshold of flooding", "standard of protection" and "freeboard". As they describe it, freeboard makes provision both for physical processes (such as wave overtopping and super-elevation of water at bends) not taken into account in the estimate of the flood level, and also takes account of uncertainties in the estimate itself. Freeboard represents the difference between the "threshold of flooding" (the best estimate of how the defences would respond to floods) and "the standard of protection" (the standard - expressed as a return period - that will be withstood with a high degree of certainty).

4.31 Put in these terms, the applicant's argument is that the SPP envisages as the appropriate standard of flood defences one that provides a 1:200 year threshold of flooding (i.e. the defences must meet a 1:200 year flood as best estimated). SEPA's position, and that of the council's flood risk management team is that the appropriate standard is one that provides a 1:200 year standard of protection (i.e. the defences must meet a 1:200 year flood with a high degree of certainty, which entails including a freeboard allowance).

4.32 The problem with the applicant's position is that it takes little account of the uncertainties inherent in an estimate. Making a freeboard allowance is consistent with the precautionary principle applied to flood policy in the SPP. I therefore find that the appropriate standard of flood defences to be provided in accordance with the SPP includes freeboard (and therefore provides a high degree of certainty the flood will be withstood). I note that this approach is also taken in [Mott Macdonald 2015](#): no suggestion is made that the existing flood defences can meet an appropriate standard for the purpose of the SPP, although they are higher than the 1:200 year threshold of flooding. I therefore reject the applicant's claim that, for the purposes of the SPP, the flood defences can be said to meet a 1:200 year flood before any freeboard allowance is included.



(iv) how much freeboard is required

4.33 The applicant argues that, even on SEPA's account, there is 250 millimetres of freeboard at the lowest point of the defences. The 550 millimetres freeboard recommended by SEPA is an arbitrary additional requirement.

4.34 The council's written submission points out that freeboard of 250 millimetres is far less than the 989 millimetres recommended by [JBA 2006](#) (appendix F) and also less than the 500 to 600 millimetres subsequently recommended by SEPA. It argues it is a matter for the applicant as part of his flood risk assessment to justify that a freeboard allowance is still sufficient although it is less than either of these figures.

4.35 SEPA (paragraphs 4.3 of its [written submission](#)) recommends freeboard of 500 to 600 millimetres, i.e. less than that recommended in [JBA 2006](#). It explains that, having reviewed the calculations in [JBA 2006](#) it considered there were some values where there was less uncertainty than had been attributed by [JBA 2006](#), and mentions the quality of hydrological data in the catchment as an example.

4.36 JBA arrived at its relatively large freeboard allowance as a consequence of the sensitivity of its model to roughness of the river channel and to changes in modelled peak flows of up to twenty percent. Neither the approach nor the calculations was criticised in [Mott Macdonald 2009](#) or any subsequent study. While it cannot be said that SEPA gives any great detail as to its reasoning in arriving at a recommendation of 500 to 600 millimetres of freeboard (beyond simply stating it considers there is less uncertainty than found by JBA), that does not make the recommendation arbitrary or by itself justify a lower freeboard allowance.

4.37 It is a matter primarily for the applicant to assess the flood risk to his proposed development. The evidence suggests that freeboard should be at least as much as SEPA's recommendation. Therefore, if freeboard is proposed to be less than that recommended by SEPA, I find that it is up to the applicant to justify it rather than for the applicant to demand justification from others. In carrying out a flood risk assessment, it was open to the applicant to review the sensitivities taken into account in determining freeboard in [JBA 2006](#) (which are similar to those cited in SEPA's note of 4 June 2014). Having done so, the applicant could have provided reasons (if any were available) as to why less freeboard was required than was estimated by [JBA 2006](#) or recommended by SEPA. However, the applicant has provided no such justification. In the absence of such a justification, I find that the evidence cannot support a finding that the 1:200 year standard of protection for the application site from flooding from the River Conon is met. The evidence before me indicates that that standard of protection is not met.

(v) provision for climate change

4.38 SPP paragraph 264 requires that, in determining a planning application, the effects of climate change must be taken into account. The figures for peak flows in a 1:200 year flood on the River Conon provided in [JBA 2006](#) and relied upon by [Mott Macdonald 2009](#) and in turn by the applicant make no provision for climate change (see [Mott Macdonald 2009](#) paragraph 3.3, table 3.2 and table 3.3 and compare with [JBA 2006](#) table 4-3 and paragraph 4.8). SEPA's general recommendation (according to [Mott Macdonald 2009](#) paragraph 3.3) is that a conservative allowance of 20 percent is made for climate change. I find therefore that, even if the applicant was correct in the points made in respect of freeboard, since the estimate of a 1:200 year flood relied upon by the applicant does not make provision for

climate change, it would appear that climate change has not been taken into account in the application, contrary to SPP paragraph 264.

(vi) risk of failure of defences

4.39 SEPA claims ([SEPA written submission](#), paragraph 8.3; SEPA letter 10 April 2015, paragraph 2.4) that the existing River Conon defences would most likely breach in their lowest section between the pipe bridge and the railway bridge if overtopped in a flood. The defences there are constructed of earth and overtopping at that low point would result in concentration of overtopping over a short section. This would be likely to cause scour, which would put the embankment at risk of collapse. SEPA states that breach would cause rapid inundation of the lowest lying part of Conon Bridge, including the application site, although details of flood velocity and depths are not known. The applicant provides no convincing response. On the basis of this evidence, I find that there is a significant risk of breach if defences are overtopped in a 1:200 year flood.

*Conclusion on whether River Conon flood defences are of “the appropriate standard”*

4.40 I therefore find that the Conon Bridge Flood Protection Scheme is not presently of the “appropriate standard”. It also cannot be said yet that defences of such a standard are planned. It follows that, without improvement in the flood defences, the proposed development would be contrary both to the SPP’s flooding policy and to HWLDP policy 64.

*Proposals for flood defence improvement related to the Pescanova site*

4.41 An estimate was made for improvements of the flood defences between the railway bridge and the pipe bridge in [Mott Macdonald 2015](#) that would provide a 1:200 year standard of protection to Conon Bridge. The cost of the proposal is estimated at £200,000. SEPA has withdrawn its objection to the Pescanova application, subject to a negative condition prohibiting house construction until the works to the flood defences have been completed. The council’s flood risk management team is also apparently satisfied with the proposed improvements.

4.42 The Pescanova site is an allocated site. Since it appears some progress has been made in outlining improvements to the River Conon flood defences that are sufficient to satisfy the relevant council and SEPA experts, this would suggest some likelihood that the improvements in the flood defences will go ahead at some future date. At the date of this report, the council is still considering the Pescanova application and council officers have not yet made a recommendation on the application. The council makes two further points: first, that the consent of the landowner has not been obtained for the flood defence improvement works, and second, that no scheme to implement the works has been put forward. It cannot be known at present how long it might take to resolve these matters – it is conceivable that these obstacles could considerably delay any flood defence improvements even if permission is granted for the Pescanova site subject to a negative condition as suggested by SEPA.

4.43 For the proposed development (the subject of this report), a similar negative condition might be imposed upon planning permission to prevent development until improvements in the River Conon defences had been implemented. Circular 4/1998 paragraph 38 confirms that it is not unlawful for the Scottish Ministers to grant planning permission subject to a negative condition even if there appears to be no reasonable prospect of fulfilment of the condition within the lifetime of the permission. In my view, it is conceivable such a condition could satisfy the requirements of HWLDP policy 64 and the flood risk management policies

of the SPP. However, I have no submissions before me on the desirability of such a condition nor on what its precise form should be. Grant of permission subject to such a condition can lead to an uncertainty that can affect the use or development of land elsewhere. I have not sought further submissions on this matter since I have been able to reach a recommendation without such submissions.

## ***Eil Burn***

4.44 The Eil Burn as it passes through the lower part of Conon Bridge is described in detail with illustrations in paragraph 5.9 of [JBA 2006](#). The route of the Eil Burn and its culverts and valve are shown in map A.2 (page 33) in [Mott Macdonald 2015](#). In brief, the Eil Burn flows from the southern part of Conon Bridge into the area protected by the Conon Bridge Flood Protection Scheme, and is released through a flap valve in the embankment to the north east of Conon Bridge. It then continues north east to its confluence with the River Conon. It has two culverted sections as it flows through Conon Bridge, one by Burnside Lane which is largely outside the area protected by the flood protection scheme, while the other runs from the south western side of the High Street (i.e. the side opposite the application site) to the flap valve. The flap valve allows the burn to discharge but prevents a flood entering through the culvert.

4.45 [JBA 2006](#) carried out flood modelling for the Eil Burn. The model and its output is described at paragraphs 5.10 to 5.13. In brief, two flood scenarios were modelled, the first with the trash screen at the entrance to the High Street culvert two-thirds blocked, and the second with it clear. The study identifies that the playing fields to the west of the High Street form a storage area. On the first scenario (the trash screen two-thirds blocked), the playing fields were just sufficient to accommodate a 1:100 year flood, which was predicted to rise to a level of 4.22 metres above ordnance datum (AOD) in the playing fields. [JBA 2006](#) noted that flooding in the River Conon could cause closure of the flap valve on the flood embankment. It noted seven inundations of the River Conon since 1989 that it estimated would have closed the flap valve. The periods for which the valve would have been closed ranged from 2 hours to 40 hours. The report did not examine the extent of flooding in Conon Bridge that might occur if there were coincident flood events on the Eil Burn and River Conon with a joint probability of 1:200 years.

4.46 [JBA 2006](#) does not mention the possibility of the flap valve being closed by tidal flooding. However [Mott Macdonald 2015](#) notes that the invert (the bottom) of the culvert at the flap valve is thirty centimetres lower than mean high water springs at Dingwall. Therefore closure of the valve as a result of tidal flooding coinciding with a flood event on the Eil Burn is a possibility.

4.47 The applicant has produced an assessment of flood risk on the Eil Burn (the [Supplementary Flood Risk Assessment Information](#)). The assessment adopts the [JBA 2006](#) scenario in which the trash screen is two-thirds blocked. The JBA data provides figures for peak flow in the Eil Burn and flood volume for a 1:200 year flood. The applicant's assessment derives from this a figure for flood volume in a 1:200 year flood with a twenty-percent climate-change contingency. JBA did not provide a figure for the flood level AOD in the playing fields for a 1:200 year flood comparable to the figure of 4.22 metres AOD given for a 1:100 year flood. The applicant seeks to estimate the flood level in the playing fields as follows: first, the applicant calculates a figure for the additional flood volume; and second, the applicant assumes this additional flood volume is spread evenly across the whole area within the boundary of the flood protection scheme (estimated to be an area of 148,000 square metres) less an area (35,500 square metres) that the applicant states is not, according to anecdotal evidence, susceptible to flooding. By this method, the applicant arrives at an

incremental increase in flood level of 3.14 centimetres. This incremental increase is then added to the 4.22 metres AOD flood level in the playing fields predicted by [JBA 2006](#) for a 1:100 year flood to arrive at a flood level of just over 4.25 metres AOD for a 1:200 year flood. This is some twenty-five centimetres higher than the current general ground level (as the applicant claims) at the application site of four metres AOD. It is also higher than the low point of the High Street (at 3.9 metres).

4.48 The applicant therefore appears to acknowledge that (without raising the level of the land post-development or taking some other preventative measure) the application site would flood in the modelled flood event. I say “appears” since, although this is the logic of the applicant’s assessment set out in the [Supplementary Flood Risk Assessment Information](#), he comments in his [reply to SEPA and the council](#) (fifth page, first bullet) that he only offered to raise site levels “to placate SEPA’s expressed perception that the site represents a flood risk”, which suggests he does not agree the application site would flood in a 1:200 year event on the Eil Burn. However, he presents no further case there to suggest that the application site would not flood without land raising.

4.49 The council’s flood risk management team has criticised the applicant’s method in assessing the flood risk from the Eil Burn ([council written submission](#) section 4.4) on the basis that flood risk on and off the application site should be quantified by hydraulic model results and that a topographic site survey should be provided and used to assess flood routing and depths. This the applicant has not done. The council also comments that the assessment has not been carried out by a qualified expert, as it states is required by its supplementary guidance.

4.50 SEPA also rejects the applicant’s assessment. Both SEPA and the council have referred to [Mott Macdonald 2015](#). The assumptions in the flood model for the Eil Burn in that assessment are different in some key respects from those made by the applicant. Like the applicant (and the predecessor reports in 2009 and 2014), [Mott Macdonald 2015](#) draws its data for peak flows from [JBA 2006](#). However, it makes the assumption that the culvert from the High Street is completely blocked (either because the flap valve is closed or for some other reason) for a period of six hours (a period chosen to allow for times when the valve might be blocked by high tide). The report states that the flood was digitally modelled using the TUFLOW software package previously used in 2009 and 2014. However, new lidar topographical data had become available (the report states) so that a digital terrain model could be created using a one-metre grid. This one-metre grid using lidar data is said to be more accurate than the five-metre grid previously used. The report sets out the results of its modelling at paragraph 4.3 and figure 4.1. It predicts that flood water from the Eil Burn would pond in low-lying areas in Conon Bridge. The application site is one such area. The model shows flooding of the application site (of between 50 and 60 centimetres in depths for most of the site, judging by the tint in figure 4.1) and no flooding of the Pescanova site, on which [Mott Macdonald 2015](#) was reporting. This outcome is quite different from the predecessor 2009 and 2014 reports, in which a 1:200 year flood was not predicted to affect the application site, but was predicted to affect the Pescanova site.

4.51 The model assumptions are set out at appendix E of [Mott Macdonald 2015](#). Both SEPA and the council consider [Mott Macdonald 2015](#) used an acceptable method.

4.52 The applicant does not raise any question either with regard to the modelling software or topographical data used (I have no means of looking behind either). However the applicant points out three limitations in relying on [Mott Macdonald 2015](#) in respect of flooding at the application site:





4.57 I therefore find that the flood modelling in [Mott Macdonald 2015](#) provides a reasonably robust assessment of a 1:200 year flood with climate change contingency at the application site, albeit based on some conservative assumptions. I accept the council flood risk management team’s criticisms of the applicant’s assessment. I find [Mott Macdonald 2015](#) to be the more robust study. However, notwithstanding the different methods, assumptions and data employed by the applicant and Mott Macdonald, there is this degree of consistency in outcome between the two assessments: the application site is predicted to be flooded in a 1:200 year flood.

4.58 There is no information before me regarding the flow directions or velocities in a 1:200 year flood on the Eil Burn for floodwater at the application site, which would be a factor in the amount of damage a flood might cause. The model run in [Mott Macdonald 2014](#) stated (paragraph 3.7.5) that “flow velocities for floodwater within Conon Bridge are predicted to be low, around 0.02 m/s, which will limit damage and hazard within the flooded area”, a prediction made on the basis of Mott Macdonald’s previous digital terrain model, which used a five-metre grid, and in respect of land other than the application site. While this might also hold for the revised topographical data used in [Mott Macdonald 2015](#), the evidence is not sufficient for me to make such a finding.

4.59 The applicant has proposed land raising to address the issue of flooding on the Eil Burn. I must consider that proposal before reaching a conclusion on compliance with policy. I consider this at paragraphs 4.71 to 4.84 below, but will first consider the related issue of the surface-water flood risk (for which the applicant’s suggested land raising might also be a solution).

## Surface water

4.60 The applicant has produced in evidence an extract from the [SEPA flood maps](#) (issued 15 January 2014) which indicates most of the application site has a medium flood risk, though there appears also to be a small area of high flood risk in the southern part of the site close to Riverbank Road.

4.61 Despite this, the applicant claims that the map shows the site as “medium to low risk” in terms of the SPP’s risk framework ([applicant’s note of 16 January 2014, accompanying SEPA flood map](#)). This appears to me to be a straightforward misreading of the flood map.

4.62 It follows that the applicant is required by the SPP paragraph 266 to provide a surface-water flood risk assessment. However, the applicant has not carried out a systematic analysis of the various potential sources of surface-water flood risk, their pathways, or their effects on the proposed development. The information provided is partial and not set out systematically.

4.63 Sources of surface-water flooding may include pluvial flooding, sewer flooding, groundwater flooding and flooding from small urban watercourses. In a location such as Conon Bridge, the possibility that drainage systems will not discharge as a consequence of flooding on the River Conon or because of tidal flooding may also be a factor to consider (as has been seen in examining flood risk on the Eil Burn).

4.64 As regards flood risk from small urban water courses, the applicant has examined the potential for flooding from the Eil Burn. This would appear to confirm that there is a medium to high risk of surface-water flooding at the application site from this source alone.

4.65 In respect of rainwater runoff and sewerage, the applicant ([attachment 5 to the applicant’s written submission – Revised Flood Risk Assessment and Integral Drainage Statement – October 2014](#) – page 21) makes a broad claim that the new rainwater drainage system, said to have been installed five years previously along the length of Riverbank Road, intercepts all surface water falling on the road and pavements and delivers it to the main combined sewer under Conon Bridge High Street, and that no flow of surface water from the road to the development site has been observed. No further detail or evidence is provided of the capacity of the sewer or whether it is designed to deal with a 1:200 year rainfall event.

4.66 The applicant has not identified whether there is the potential for groundwater flooding. He refers to the site having a relatively high water table ([attachment 5 to the applicant’s written submission – Revised Flood Risk Assessment and Integral Drainage Statement – October 2014](#) – page 9). So far as I understand, however, groundwater is not a component SEPA assessed in preparing its surface-water flood map.

4.67 There is evidence that the site is prone to surface-water flooding: The residents in Riverbank Road in their [response to the applicant’s written submission](#) produced pictures of what appears to be water lying on the site in July 2008 and January 2016. It was evident on my site visit that the site is low-lying within Conon Bridge. The site is plainly lower than Riverbank Road, and is also lower than the adjacent field to the north, as the applicant acknowledges ([attachment 7 to applicant’s written submission](#) - annotations to SEPA letter of 10 April 2015 – annotation after paragraph 1.8).

4.68 The applicant acknowledges that part of the site was waterlogged following the heavy rains from November 2015 to January 2016 and that there was an “accumulation of rainwater in the deepest depression in the site, which currently acts as something of a sump” ([Applicant’s reply to SEPA, council and Riverbank Road residents](#), sixth page, first paragraph). He notes the contours of the site, run-off from the road embankment and the relatively high water table as contributing factors to this accumulation of rainwater.

4.69 The applicant refers to possible parameters for a sustainable urban drainage system (SUDS) ([attachment 5 to the applicant’s written submission – Revised Flood Risk Assessment and Integral Drainage Statement – October 2014](#) – pages 20 to 22). In the absence of a surface-water flood risk assessment, it cannot be said whether a system of the proposed parameters would be sufficient or would function at all in a 1:200 year flood event.

4.70 In summary, therefore, the application site lies within an area at medium to high risk of surface-water flooding; no systematic assessment of surface-water flood risk has been provided; the evidence before me indicates that the site is prone to surface-water flooding; and there is no evidence that flood protection measures to the appropriate standard already exist.

#### *Raising site levels to address Eil Burn and surface-water flood risk*

4.71 In order to address the risk of flooding on the Eil Burn and also (apparently) the risk of surface-water flooding, the applicant suggests that in the process of levelling the application site for development, the level of the application site can be raised so that post-development it would be 4.2 metres AOD, which (in his account) would be an increase from around 4 metres AOD ([attachment 6 to applicant’s written submission - Supplementary Flood Risk Assessment relating to Eil Burn and SUDS Considerations](#), last page). He also suggests that it is possible to raise the level of the site but for the level still to be 100 to 200 millimetres below that of the adjacent field, so that there is no drainage from the site onto the adjacent land ([attachment 7 to applicant’s written submission](#) - annotations to SEPA letter of 10 April 2015 – annotation after paragraph 1.8).

4.72 Paragraph 265 of the SPP states that land raising should only be considered in exceptional circumstances, where it is shown to have a neutral or better impact on flood risk outside the raised area, and that compensatory storage may be required.

4.73 The applicant has made the case that the impact of raising the site level would be minimal (applicant’s [written submission](#) fourth page, last paragraph) and there would be little consequent displacement of flooding. He makes a calculation that the total area of the application site is only 1.1 percent of the area he estimates is susceptible to flooding within the Conon Bridge Flood Protection Scheme, and the built footprint of the houses would only be 0.19 percent of that area.

4.74 SEPA responds ([SEPA written submission](#), paragraph 5) that there are no exceptional circumstances in terms of paragraph 265 of the SPP to justify land raising. As regards the applicant’s claim that the flood displacement would be minimal, SEPA argues that, in order to be meaningful, a comparison of the application site to the flood plain should be made in terms of volume rather than area (i.e. the volume of flood water displaced by the land raising as a proportion of the volume of the 1:200 year flood plain, rather than the area of flood water displaced as compared with the area of the flood plain). SEPA further claims that the Lidar data in their possession indicates that most of the application site is in a localised depression and is below 3 metres AOD ([objection of 10 April 2015](#), paragraph 1.8). This is



rather lower than the 4 metres AOD suggested by the applicant. If SEPA is correct, there may be a more significant impact in terms of flood displacement than the applicant claims.

4.75 The council flood risk management team's position is broadly the same as SEPA's. Taking surface-water flood risk alone, it appears the flood risk management team would contemplate land raising to address the risk, if it could be shown that mitigation measures would not be detrimental to neighbouring properties ([council written submission](#), paragraph 4). However, given the evidence in [Mott Macdonald 2015](#) that the site is within the Eil Burn's 1:200 year flood plain, the council flood risk management team considers land raising to be unacceptable in terms of paragraph 256 of the SPP, which states, "piecemeal reduction of the floodplain by development should be avoided."

4.76 I find that, in policy terms, SEPA and the council flood risk management team are correct. Land raising would reduce the floodplain, and the applicant has not identified any exceptional circumstances to justify it. The proposed land raising to mitigate flood risk would therefore be contrary to the SPP, particularly paragraphs 256 and 265.

4.77 The degree of impact in terms of the displacement of flooding is undoubtedly a material consideration in the Scottish Ministers' determination of the application. If it could be shown that the displacement was minimal, that would reduce the weight to be placed on the policy restriction on land raising. In the absence of a topographical survey of the site, it is not possible to say what volume of flood water might be displaced from the application site by the suggested land raising. If the applicant is correct about current site levels, the impact may not be very great. However, the applicant has not produced evidence of the volume of flood water displaced by the suggested land raising in a 1:200 year event. SEPA's position in respect of site levels appears to be consistent with [Mott Macdonald 2015](#). The latter's assessment that 50 to 60 centimetres of flood water would pool on the application site suggests that land raising to take the proposed development above the estimated flood level might displace a significant body of floodwater.

4.78 Having already concluded that the suggested land raising is contrary to the SPP, I also conclude that there is not sufficient evidence to support a claim that the impact of flood displacement as a consequence of the suggested land raising at the site would be minimal.

4.79 There are three further difficulties with the applicant's suggested land raising to a final site level of 4.2 metres AOD:

4.80 First, in the absence of a surface-water flood risk assessment, the evidence is not sufficient to demonstrate that land raising to 4.2 metres AOD would remove the proposed development from the area liable to flood in a 1:200 year surface-water flood event. In view of this, the applicant has not demonstrated that in this respect the proposed development meets the requirements of the SPP. Land raising to the level of 4.2 metres AOD is only sufficient to address flooding from the Eil Burn if the applicant's estimate of the flood level at the application site is accepted. I do not find the applicant's estimate to be sufficiently robust to be relied upon in this respect.

4.81 Second, SEPA has also expressed the view that, if land raising were permitted to mitigate flood risk, then finished ground levels and floor levels should be set above the estimated flood level by a suitable margin of freeboard. SEPA's recommendation of 500 to 600 millimetres freeboard represents standard practice as I understand it. Given the precautionary approach of the SPP's flooding policies, I find that the applicant should have made some such provision for uncertainty. Therefore, even if ground level in the proposed development is raised to 4.2 metres AOD and even if the applicant's estimate of flood level is

accepted, the applicant has not demonstrated that the suggested land raising is sufficient by itself to address flood risk on the Eil Burn so as to meet the requirements of the flood risk framework in SPP paragraph 263. The applicant has further suggested that the level of the proposed houses' foundations might be increased to address flood risk. I deal with this at paragraph 4.88 below.

4.82 Third, engineering works to raise the level of the site would themselves be development requiring planning permission, yet no reference is made in the application to a proposal for land raising either in the description of the development or the accompanying plans (the proposed site levels shown in the plans appear to bear no relation to the evidence provided on existing site topography or the applicant's proposals for land raising). Therefore insofar as the proposed land raising goes beyond what can be done in the course of levelling the site, it goes beyond the scope of the application. Even if some non-material variation can be made following a grant of permission, that may not be sufficient to increase the level of the site to 4.2 metres AOD. Substantial works might be required if the present site level is as low as SEPA states that its lidar data indicates. In the absence of a reference to land raising in the application, I find that a condition that might require significant land raising cannot properly be included among the proposed conditions in appendix 1 should Ministers decide to grant permission notwithstanding my recommendation.

#### *Precedent for land-raising established by double garage at Riverbank nursery*

4.83 The applicant refers to the land raising that has previously been carried out just to the north east of his site, for the double garage in the former Riverbank nursery site. He suggests this sets a precedent for grant of permission for land raising on his site. It is evident however that that development was carried out some time ago, most likely before the present SPP's flood risk framework was in place. In any case, the present application must be judged on its own merits and not on the basis of what was done elsewhere. I find therefore that the double garage provides no precedent for land raising as part of the proposed development.

#### *The Pescanova site and surface-water flooding and flooding from the Eil Burn*

4.84 The applicant has contrasted the treatment of the proposed development with that of the proposed Pescanova development. SEPA has not objected to the Pescanova application in respect of surface water flooding and has withdrawn its objection to the Pescanova application in respect of flooding from the Eil Burn. The applicant estimates the Pescanova site comprises some 24.9 percent of the area of the Conon Bridge Flood Protection Scheme, a much greater area than the application site.

4.85 Even if the treatment of the proposed development and proposed Pescanova development had not been even-handed, that would not be a sound argument in favour of the proposed development. What is done elsewhere is only relevant if it can be demonstrated that it is a material consideration. The applicant has not set out a case to me that indicates why the treatment of the Pescanova site is material in respect of flooding from surface water or the Eil Burn.

4.86 However, the SEPA flood maps indicate that the Pescanova site generally lies outside the areas in Conon Bridge subject to surface-water flood risk. The Pescanova applicant provided evidence in [Mott Macdonald 2015](#) dealing with flood risk both from the Eil Burn and surface water. It would appear that SEPA has accepted this evidence. Therefore the case of the Pescanova site is quite different from that of the application site in terms of surface-water flooding.

## ***Other considerations in respect of flooding***

### *Other flood resilience measures*

4.87 The applicant proposes a number of flood resilience measures to mitigate the impact of flooding (attachment 5 to the applicant's written submission – Revised Flood Risk Assessment and Integral Drainage Statement, page 19). These include:

- Providing step-free, shallow-angled ramps and pathways from each dwelling to a pavement on Riverbank Road;
- Raising ground floor levels above the estimated level of the 1:200 year flood event;
- Using flood proof construction measures on ground floors.

4.88 The first and second measures would mitigate the risk of the proposed development being affected by flooding. Since the application site is at the edge of the natural 1:200 year floodplain, a raised ramp from the door of the proposed houses to the road would effectively protect access. However both measures suffer from the similar difficulties to the proposal for land raising: the absence of a surface-water flood risk assessment (so it is not clear what the level of a 1:200 year flood event would be in respect of the houses); the evidence from SEPA – not effectively rebutted by the applicant with a topographic survey – that the site levels are lower than the applicant asserts; the evidence of [Mott Macdonald 2015](#) that a 1:200 year flood event on the Eil Burn would be considerably deeper than the applicant asserts; and the lack of any evidence on flow velocities at the application site. The plans provided with the application do not show how either measure would be implemented.

4.89 The third measure – flood-proof construction measures – would mitigate the impact of flooding, should it occur. The applicant does not specify what these measures would be, though undoubtedly such measures could be used. While the option of using such measures is a material consideration, since the thrust of the SPP and HWLDP policy 64 is to avoid development in areas of significant flood risk, I do not regard the option of developing in such areas with flood-proof construction measures as a consideration of any great weight.

### *Size of development and consequent degree of flood risk*

4.90 The proposed development is relatively small – only three houses. It is arguably a material consideration that permitting the development would only lead to a relatively limited increase in the number of properties at risk of flooding.

4.91 However, it is clear that the SPP flood risk management policies apply even to a development of the size of the proposed development. SPP paragraph 257 indicates that alterations and small-scale extensions to existing buildings fall outwith the scope of the policy. The clear implication is that any more substantial development falls within the policy's scope. Furthermore, the SPP paragraph 256 includes a restriction on piecemeal development of the functional floodplain – a formulation that suggests the effect of even relatively small developments is to be taken into account. Given the clear thrust of the policy, I find the limited size of the development to be a material consideration of little weight.

### *Changes in position of the officers of the council and SEPA*

4.92 The applicant narrates a history of what he regards as “volte-faces” and “moving the goalposts” on the part of council officers and SEPA in respect of flood risk during the processing of the application (see in particular the [applicant's reply to SEPA, the council and](#)

[objectors](#), second to fifth pages). He suggests that this casts doubt on the credibility of their submissions, particularly in respect of flood risk. In reaching my findings on flood risk, I did not find the evidence to be such that I had to rely solely on the credibility of officers either of SEPA or the council. Therefore, even if I had found the applicant's criticisms of SEPA and council officers to be entirely justified (which I have not), that would not have been likely to reverse my substantive findings on flood risk.

### **Conclusions on flood risk management issues**

4.93 I find that the proposed development is contrary to the flood policies in the SPP and to policy 64 of the HWLDP because

- the proposed development would have a significant probability of flooding from the River Conon;
- although the proposed development is in a built-up area, the existing River Conon flood defences are not of an appropriate standard, and so the SPP's exception for residential development in such an area does not apply;
- the application site presently has a significant probability of flooding from the Eil Burn and, without land raising, so would the proposed development;
- no evidence has been provided of any exceptional circumstances that would justify significant land raising within the Eil Burn floodplain;
- the evidence does not support a conclusion that the impact of the suggested land raising in terms of displacement of floodwaters would be minimal;
- in the absence of a topographical survey and, consequently, of a robust flood risk assessment for the proposed development, the evidence does not demonstrate the suggested land raising would be sufficient to mitigate such flood risk;
- the application site is shown in the SEPA flood maps as having a medium to high risk of surface-water flooding, but sufficient evidence has not been provided to demonstrate the proposed development would not have a significant probability of surface-water flooding. The evidence there is suggests that, without land raising, there would be such a probability.

4.94 I have also found that the application does not include a proposal for any significant land raising.

4.95 I have found that there is a prospect that flood defences that SEPA and the council's flood risk management team appear to be satisfied would provide a sufficient standard of protection will be built in future to defend Conon Bridge, including the application site, from flood risk from the River Conon (although the likelihood of such defences being provided cannot presently be quantified). This is a material consideration that weighs in favour of grant. However, given the lack of certainty at this stage, it is a consideration of limited weight.

4.96 No party has proposed grant of planning permission subject to a negative condition preventing development until the improvement in River Conon flood defences is complete, nor has the wording of such a condition been the subject of any submission. Although such a condition might address the compliance of the proposed development with the SPP and HWLDP policy 64 in respect of the flood risk from the River Conon, it would not resolve the issue of flooding from sources other than the River Conon. I have been able to reach a recommendation without seeking further submissions in respect of the use of a negative condition.

4.97 I have considered other matters in respect of flooding raised by the applicant, including the size of the proposed development, any precedent created by the Riverbank Nursery's garages in respect of land raising, the comparative treatment of the Pescanova development, and proposed flood resilience measures, but none have persuaded me that the proposed development can be regarded as compliant with the SPP's flood risk management policies or HWLDP policy 64.

## **Other matters at issue between the parties**

### ***The planning history***

4.98 The applicant makes the point that, although the application site is previously undeveloped, it was previously allocated for residential development in Ross and Cromarty East Local Plan, the plan in force at the time of the application. Furthermore, the site previously had full planning permission for a house and garage, 08/00727/FULRC, granted in February 2010 and lapsed in February 2013.

4.99 Although there is precedent in the planning history suggesting that housing on the application site is likely to be acceptable in other respects, policy on flood risk management and the degree of information available on flood hazard have moved on since then. It is on flood risk that the present application turns.

4.100 Even if the former planning permission had still been extant, the proposed development comprises three houses, and might be regarded as representing a greater flood risk than the single house for which permission was granted, in that the impact of flooding would be greater. No details of the former permission, or the reason it was allowed to lapse (which might conceivably be linked to the issue of flood risk), have been supplied with the present application. It follows that the evidence provided on planning history is only of limited usefulness.

### ***The condition of the site***

4.101 The site has evidently not previously been developed and therefore does not enjoy policy support from the development plan for redevelopment of brownfield sites. The SPP paragraph 40 requires spatial strategies to consider re-use of brownfield sites before new development takes place on greenfield sites.

4.102 The applicant describes the application site as "an 'orphan' site within the village ... in an overgrown and derelict state" and states there is anecdotal evidence it has been used for intermittent unauthorised dumping of soil, rubble and debris (attachment 2 to applicant's written submission, first page). That the site was used for dumping is contested by objectors. I did not observe evidence of substantial informal flytipping at the site on my site visit. The site was overgrown, in the sense that there was a profusion of thigh-length undergrowth, a number of small bushes and some trees. No party has suggested there is any great value aesthetically or in terms of biodiversity or otherwise to what is currently present on the site.

4.103 I therefore find that, notwithstanding the SPP's general approach (in paragraph 40) of prioritising the allocation of brownfield sites, the evidence before me does not suggest a high value must be placed on preserving the application site from development, merely because it has not previously been developed. However, I do not find the site's present condition to be a material consideration of any great weight favouring the application either.

### ***Affordable housing***



4.104 The applicant describes the three proposed houses as “affordable” and suggests they would contribute usefully to the affordable housing stock in Conon Bridge. The applicant proposes that the houses would be let on short assured tenancies at a below-market rent. The applicant has supplied no evidence that there is an unmet housing need that new affordable housing in the particular format proposed would meet. Therefore I find that only limited weight can be placed on the proposed affordable nature of the housing as a material consideration favouring the application.

### ***The decision of the council’s planning committee***

4.105 The applicant argues that Scottish Ministers should take account of the view of the North Planning Applications Committee ([provided](#) with the application documents), which approved a resolution by 10 votes to 6, in favour of granting the application. Since the application is now before the Scottish Ministers for determination, the bare fact that the committee favoured grant is not a material consideration of any great weight.

4.106 However, the committee’s reason for proposing to grant consent does require to be addressed. It stated that, since the proposed development was sufficient to meet a 1:100 year flood event with an appropriate standard of freeboard, it complied with the existing settlement pattern of the area.

4.107 The evidence on surface-water flood risk is not sufficient to confirm the committee’s claim in respect of that flood source. However, it appears that the committee’s main concern was the flood risk from the River Conon. There is existing residential and other development in Conon Bridge that is at risk of flooding from the River Conon (and also several previously developed sites that are presently disused). The council relatively recently carried out works to improve the flood defences so that they could meet a 1:100 year flood event. Nonetheless a significant part of the village centre is at risk of flooding in a 1:200 year flood on either the River Conon or the Eil Burn. The proposed development would represent a relatively limited increase in the existing flood risk. In this limited sense the proposed development could be said to “comply with the existing settlement pattern”. However, the committee made no reference either to HWLDP policy 64 or to the SPP, to which I have found the proposed development to be contrary. I have dealt at paragraphs 4.90 to 4.91 above with the relatively small size of the site as a material consideration.

4.108 The applicant quotes comments of planning committee members from reports of the committee meeting in the North Star and Ross-shire Journal ([attachment 3 to the applicant’s written submission, prospective complaint regarding handling of Highland Council planning application ref 14/00016/FUL](#)). These appear to relate to flood risk from the River Conon, and are along the lines that the issue of flooding, particularly that the standard of flood protection provided by the River Conon defences does not meet the 1:200 year policy standard, is holding back development in Conon Bridge, and that flood defences should be improved. To deal with the issues raised in these comments:

4.109 (a) *Flood protection*: The council has power to improve the standard of flood protection at Conon Bridge. If the council had committed itself to doing so, it would clearly have a bearing on compliance of the proposed development both with the development plan and the SPP. However, there is no such commitment, and I have consequently found that the proposed development does not comply with either.

4.110 (b) *Development in Conon Bridge held back*: There is no evidence before me that there is any shortage of housing land supply in Conon Bridge. There are a number of large

sites allocated for housing in the Inner Moray Firth Local Development Plan, and most are outside the 1:200 year floodplain of the River Conon. Three sites within the Conon Bridge Flood Protection Scheme have been referred to in evidence in addition to the application site as having potential for residential development: the Riverbank Nursery site, the former petrol station site, and the Pescanova site. Only one of these, the Pescanova site, is allocated in the local development plan. There is an application in progress for that site. Some members of the council might regard redevelopment of other vacant sites in the centre of Conon Bridge as desirable. I consider that that is a matter best addressed through the development plan process and through flood risk management planning, rather than piecemeal in the determination of any particular application.

### ***The notification and calling-in of the planning application***

4.111 The applicant argues that the application should not have been notified to Scottish Ministers by council officers. I do not need to go into the reasons he gives. Notification and calling-in are two different processes in law. The Scottish Ministers have power to call in any live planning application, whether or not it has been (or ought to have been) notified to them. Therefore any complaint about the propriety of the application's notification is irrelevant either to the application's call-in or determination. No decision notice had been issued at the time the application was called in, the application was live, and so the Scottish Ministers were entitled to call it in.

### ***Junction of access with Riverbank Road***

4.112 Both in their [original objection](#) and their [representations in respect of the application](#) the residents of 1 to 9 Riverbank Road claim that the proposed site access is not suitable and will cause disruption to householders opposite. The council's transport planning service was consulted upon the application and raised no objection, subject to conditions being imposed. No expert evidence is produced that would cast doubt upon their professional judgement. Therefore I do not find evidence that the proposed site access is unacceptable.

## **Sustainable development**

4.113 Paragraphs 28 and 29 of the SPP provide a presumption in favour of development that contributes to sustainable development. The proposed development would be in the middle of an existing settlement and therefore is likely in most respects to make efficient use of existing infrastructure. However, in view of the flood risk to the proposed development and its encroachment on the floodplain, I find that it is not sustainable. The application therefore does not benefit from the SPP's sustainable development presumption.

## **Other issues**

4.114 The retention of existing trees on the application site and the layout and design of the proposed development are discussed in paragraphs 8.3.14 to 8.3.18 of the committee report. The report recommends conditions to ensure protection and retention of certain trees. It finds the design and layout acceptable. These are not matters that were in contention between the parties. I agree with the committee report's analysis and conclusions in these matters.

## **Compliance with the development plan and other planning policy**

4.115 The application site is not allocated in the development plan, although it is within the settlement boundary of Conon Bridge and so not subject to policies restricting development in the countryside. In terms of flood risk, the application is contrary to HWLDP policy 64 in respect of flooding from each of three sources, the River Conon, the Eil Burn and surface water. Since no other policy in the development plan has been drawn to my attention that would outweigh HWLDP policy 64, I find that the proposed development is contrary to the development plan.

4.116 For similar reasons, the application is also contrary to the SPP: it is contrary to the flood risk management policy and no other policy within the SPP has been drawn to my attention that would outweigh the flood risk management policy.

4.117 I have also considered the Scottish Ministers' online advice on flooding and the council's supplementary planning guidance, Flood Risk and Drainage Impact, and find no significant support for the proposed development in those documents.

## **CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS**

5.1 Based upon the documentation provided with the application and the further written submissions of the parties, and taking into account the development plan and other material considerations, I find that the determining issues in relation to the application for planning permission are flood risk in respect of the River Conon, the Eil Burn and surface water.

5.2 For the reasons set out above, and particularly at paragraphs 4.93 to 4.97 regarding flood risk to the proposed development and 4.115 to 4.117 in respect of compliance with planning policy, I find that the proposed development does not accord with the development plan and is not supported by the SPP.

5.3 As evidence has not been provided of significant material considerations favouring the proposed development that would outweigh the development plan or SPP, I conclude that planning permission should not be granted.



5.4 If Ministers are nonetheless minded to grant permission, I have provided a set of proposed conditions at appendix 1 to my report. These are the conditions proposed by the council subject to the deletion of proposed condition 9 which substantially duplicated proposed condition 8, and with some other very minor changes made with a view to ensuring clarity and consistency. I have also provided a set of advisory notes to be appended to the permission at appendix 2. A list of the key documents to which I have referred in preparing my report is provided in appendix 3.

### **Appendix 1: proposed conditions to be imposed in the event of planning permission being granted**

1. All roads and pavement within the application site shall be formed to base course level prior to the first occupation of any of the houses. Thereafter, the final wearing surface shall be applied concurrently with the construction of the last house within the development, or upon the expiry of a period of three years from the date of first occupation of any house, whichever is the sooner.

Reason: To ensure that an adequate level of access is timeously provided for the development; in the interests of road safety and amenity

2. No other development shall commence until the site access has been constructed in accordance with the Highland Council's Access to Single Houses and Small Housing Developments guidelines and the attached Access Schedule (dated 20 January 2016) with:

- the junction formed to comply with drawing reference SDB 2 of that document; and
- visibility splays of 2.4 metres by 90 metres (the X dimension and Y dimension respectively) in each direction formed from the centre line of the junction.

Within the stated visibility splays, at no time shall anything obscure visibility between a driver's eye height of 1.05 metres positioned at the X dimension and an object height of 0.6 metres anywhere along the Y dimension.

Reason: To ensure that an adequate level of access is timeously provided for the development; in the interests of road safety and amenity.

3. Prior to the first occupation of the development hereby approved, the car parking and access arrangements detailed on approved plan reference C.1.13.03A (amendment 1) shall be completed in full and made available for use. Thereafter all car parking spaces shall be maintained for this use in perpetuity.

Reason: in order to ensure that the level of off-street parking is adequate.

4. No development shall commence until details of footway provision and crossing points at the access bellmouth and alongside the road frontage of the site (to enable pedestrians to safely enter and leave the site and access the footway on the east side of Riverbank Road) have been submitted to and approved in writing by the planning authority. Thereafter the scheme shall be implemented in full before any one of the houses is first occupied.

Reason: to enable pedestrians to keep outwith the public road and the path of oncoming traffic; in the interests of road safety.

5. No development shall commence until full details of a covered and secure communal bicycle storage/racking system for 4 bicycles have been submitted to and approved in writing by the planning authority. Thereafter the storage/racking system shall be installed in

accordance with these approved details prior to the first occupation of the development hereby approved and thereafter shall be maintained for this use in perpetuity.

Reason: in order to facilitate the use of a variety of modes of transport

6. The roofs of the development shall be finished in flat grey roofing tiles or natural slate

Reason: to ensure that the development is sensitive to and compatible with its context and local architectural styles

7. The external walls of the development shall be finished in white or off-white wet-dash harl.

Reason: to ensure that the development is sensitive to and compatible with its context and local architectural styles

8. No development shall commence until details of a scheme of hard and soft landscaping works and maintenance programme have been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i. All earthworks and existing and finished ground levels in relation to an identified fixed datum point;
- ii. A plan showing existing landscaping features and vegetation to be retained;
- iii. The location and design, including materials, of any existing or proposed walls, fences and gates;
- iv. All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities; and
- v. a programme for preparation, completion, and subsequent on-going maintenance and protection of all landscaping works.

Landscaping works shall be carried out in accordance with the approved scheme before the first occupation of any one of the dwellings. All planting, seeding, or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the commencement of development, unless otherwise stated in the approved scheme.

Any trees or plants that within a period of five years from the completion of development die or for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: in order to ensure that a high standard of landscaping is achieved appropriate to the location of the site.

9. No development shall commence until a scheme for the maintenance in perpetuity of all on-site green spaces, facilities, features or parts of the development that are not the exclusive propriety of any identifiable individual home owner (such as communal parking areas and estate lighting and those elements of the surface water drainage regimes not maintained either by the council or Scottish Water) has been submitted to and approved in writing by the planning authority. Thereafter the approved scheme shall be implemented in full and operated in accordance with the timescales contained therein.

Reason: to ensure that all communal spaces, facilities and landscaping areas are properly managed and maintained

10. No development, site excavation or groundwork shall commence until all retained trees have been protected against construction damage using protective barriers located beyond the Root Protection Area (in accordance with BS5837:2012 Trees in relation to Design, Demolition & Construction, or any superseding guidance prevailing at that time). These barriers shall remain in place throughout the construction period and must not be moved or removed during the construction period without the prior written approval of the planning authority.

Reason: in order to ensure the protection of retained trees (which are important amenity assets) both during construction and thereafter.

11. No development shall commence until full details of a communal wheelie / kerbside recycling bin storage area, capable of accommodating bins for up to three properties, located outwith any visibility splay, have been submitted to and approved in writing by the planning authority. The communal storage area shall be constructed in accordance with these approved details prior to the first occupation of the development and thereafter maintained in perpetuity.

Reason: to ensure that suitable provision is made for the storage of communal waste and recycling bins.

12. No development shall commence until full details of all surface water drainage provision within the application site (which should accord with the principles of Sustainable Urban Drainage Systems (SUDS) and be designed to the standards outlined in Sewers for Scotland Second Edition, or any superseding guidance prevailing at the time) have been submitted to and approved in writing by the planning authority. Thereafter all surface water drainage provision shall be completed prior to the first occupation of any part of the development in accordance with the approved details only.

Reason: to ensure that surface water drainage is provided timeously and in compliance with the principles of SUDS; in order to protect the water environment.

13. No development shall commence until percolation tests have been carried out to confirm the suitability of the underlying ground conditions to accommodate SUDS. The subsequent design of the surface-water drainage system shall take full account of these percolation test results to ensure that the site can be adequately drained.

Reason: to ensure the site is adequately drained

14. No development shall commence until full details, including supporting calculations, have been submitted to and approved in writing by the planning authority to demonstrate how the 1:200 year rainfall event, including an allowance of 20 percent for climate change, can be contained within the site boundary. Thereafter all development shall be carried out fully in accordance with these details.

Reason: To protect people and the environment from the impact of surface water and flooding and in order to protect the water environment

15. No development shall commence until full details of existing and proposed ground and finished floor levels in relation to an identified fixed point have been submitted to and

approved in writing by the planning authority. Thereafter the development shall be carried out fully in accordance with the approved details.

Reason: in the interests of visual amenity and in the interests of health and safety given the location of the site within the area identified as being at risk of flooding should a 1:200 year flood event occur.

## Appendix 2: advisory notes to be attached to planning permission

1. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

2. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)

## Appendix 3: list of documents

Application form and supporting documents
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[Applic form](#)

[Photc applic](#)

[Revis](#)



*Robert Seaton*  
Reporter

Policy  
parag

[Attac](#)  
Scotti  
Gove  
online

Victoria Quay, Edinburgh EH6 6QQ  
[www.scotland.gov.uk](http://www.scotland.gov.uk)

