

## The Highland Council

### Planning, Development and Infrastructure Committee

2 November 2016

Agenda Item	<b>16</b>
Report No	<b>PDI/ 71/16</b>

### Confirmation of the Smithton/ Culloden Flood Protection Scheme

#### Report by Director of Development and Infrastructure

#### Summary

This report seeks Member approval to confirm the Smithton/ Culloden Flood Protection Scheme (FPS).

#### 1. Background

- 1.1 In August 2016, the Planning Development and Infrastructure Committee were advised on the outcome of the formal notification process for the above scheme (PDI 52/16).
- 1.2 A full description of the works (or Operations as they are known) are summarised in the Smithton & Culloden Flood Protection Scheme Documents and Drawings. The can be viewed on the Council's web-site:  
[http://www.highland.gov.uk/info/1210/environment/80/flood alleviation schemes/3](http://www.highland.gov.uk/info/1210/environment/80/flood_alleviation_schemes/3)
- 1.3 One objection was received to the scheme, which, following discussion and agreement with officers was subsequently removed.
- 1.4 Members were advised that the project team was seeking internal legal advice as well as clarification from Scottish Government on the correct procedure to follow (under the Flood Risk Management (Scotland) Act 2009).
- 1.5 Members are now advised that with no objections to the Flood Protection Scheme as advertised in April 2016, and in accordance with paragraph 5 of the said Act, they must make one of the following 'preliminary decisions':
  - a) confirm the proposed scheme without modification;
  - b) confirm the proposed scheme with modifications; or
  - c) reject the proposed scheme.
- 1.6 Since the objection has been removed (subject to the suggested planning conditions in **Appendix 1** being recommended), the scheme requires no modification. The committee is therefore recommended that its 'preliminary decision' in accordance with paragraph 5 (1), should be to:
  - a) confirm the proposed scheme without modification.

- 1.7 The Committee is also recommended to approve the recommended planning conditions in **Appendix 1** be issued to Scottish Ministers on confirmation of the scheme.
- 1.8 Should the above be approved, it is understood that Scottish Ministers will not need to 'call-in' the scheme (paragraph 6), nor will The Highland Council be required to hold a hearing (paragraph 8). It therefore follows that this Committee must also make a 'final decision following preliminary decision' in accordance with paragraph 9 of the Act.
- 1.9 The final decision can be to either:
- a) confirm the proposed scheme without modification;
  - b) confirm the proposed scheme with modifications; or
  - c) reject the proposed scheme.
- 1.10 The committee is recommended that its 'final decision' in accordance with paragraph 9 (1), is to:
- a) confirm the proposed scheme without modification.
- 1.11 If confirmation of the scheme without modification, and of the planning conditions relating to the scheme is given, Scottish Ministers will be notified and must '*direct that planning permission for that development shall be deemed to be granted, subject to any such (planning) conditions as may be specified in that direction*' (paragraph 65).

## **2. Implications**

- 2.1 **Resource**  
The Capital Programme, approved by Council on 17 December 2015, is fully funded and the above studies/ schemes are budgeted for. The Scottish Government confirmed on the 18 July 2016, that an additional £2.297m would be allocated to The Highland Council in the general capital grant allocation for 2016/17. This equates to 80% of the sunk and present financial year scheme costs for Smithton/ Culloden, Caol and Drumnadrochit. Further contributions from Scottish Government are expected in future financial years as per the funding profile of these schemes.
- 2.2 **Legal**  
Legal advice has been sought in the process of confirming the Smithton & Culloden Flood Protection Scheme.
- 2.3 **Equalities**  
No related issues.
- 2.4 **Climate Change/Carbon Clever**  
All flood schemes make an allowance for the predicted impact of climate change on flood flows and sea level rises.
- 2.5 **Risk**  
No related issues.

2.6 Gaelic  
No related issues.

2.7 Rural  
No related issues.

### **Recommendation**

Members are asked to:

- make its 'preliminary decision' on the Smithton & Culloden Flood Protection Scheme to be to 'confirm the scheme without modification';
- make its 'final decision' on the Smithton & Culloden Flood Protection Scheme to be to 'confirm the scheme without modification'; and
- approve the planning conditions to be applied to the Smithton & Culloden Flood Protection Scheme (set out in Appendix 1) to be recommended to Scottish Ministers.

Designation: Head of Infrastructure

Date: 14 October 2016

Author: C Howell/ M Smith

Background Papers: PDI 52/16

**APPENDIX 1-**  
**RECOMMENDED CONDITIONS TO SCOTTISH MINISTERS FOR THE**  
**SMITHTON/ CULLODEN FLOOD PROTECTION SCHEME**

## RECOMMENDED CONDITIONS

**Following the assessment of the proposed Smithton & Culloden Flood Protection Scheme by the Planning Authority, and incorporating items raised at pre-notification consultation stage, it is recommended that the following conditions be considered by the Scottish Ministers:**

1. No development shall commence until a programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation, has been submitted to and received the approval in writing of the Planning Authority. All arrangements thereby approved shall be implemented by the developer at his expense in accordance with the approved timetable for investigation.

**Reason:** In order to preserve the archaeological and historical interest of the site.

2. At least three months prior to the proposed commencement of development a full site specific Environmental Management (Construction Stage) Plan shall be submitted to and approved in writing by the Planning Authority, in consultation with relevant authorities. All agreed measures thereafter shall be implemented in full. The plan should incorporate detailed pollution avoidance and mitigation measures for all construction elements potentially capable of giving rise to pollution/environmental damage. The following matters are especially highlighted for attention:-
  - a) Arrangements for the appointment of an on-site Environmental Clerk of Works to supervise operations on site during construction ensuring best environmental practice is adhered to throughout;
  - b) Monitoring proposals, contingency and emergency plans. This should include the establishment of an environmental checklist to monitor and plan construction activities, specifically:
    - Proposals for daily visual inspections and the recording of required environmental actions (for example, in relation to silt management);
    - Proposals for planning activities in light of the weather (up to 3 day forecast), particularly in relation to heavy rain. Various commercial companies and the Met Office can provide (at a cost) three to five day forecasts tailor made for an individual site;
    - Details of temporary soil and vegetation storage areas and management to prevent environmental impact; and
    - Aspects relating to soil and vegetation storage stability mitigation and pollution control contingency plans;
  - c) Specific measures to address silt-laden run-off from the engineering operations. This should also include detailed measures to prevent erosion, sedimentation or discolouration;
  - d) Proposals and mitigation measures for the dewatering of excavations. Of specific relevance is demonstration that there is sufficient area to allow

settlement of silty water and if not other appropriate means for treating the dirty water;

- e) Specific measures to prevent entry of cement materials to the water environment during on-site construction and proposed mitigation related to this;
- f) The location and design of bulk storage of fuel or oils and its subsequent use. Any oil or fuel stores should have impervious bases and be placed within a secure bund. The use of drip trays and the like are also required. All vehicles and plant should be regularly inspected, with particular emphasis on hydraulic hoses, for fuel and oil leaks. Bunding to be in accordance with SEPA's guidelines for Above Ground Oil Storage Tanks - PPG2;
- g) Proposals for the protection of neighbouring properties from dust, noise and vibration. This should incorporate a condition survey of properties/ structures at risk from the proposed works, including photographic evidence, to allow "before and after" comparisons to be made in the event of any complaints/ claims. In addition neighbour notification on the scheduling of works, including timescales;
- i) Details of any dust sprays and measures to control the emission of dust and dirt during construction should be included in the EMP;
- j) A Site Waste Management Plan (SWMP) which identifies all of the waste streams (such as soil and other material excavated) associated with the works and measures utilised for dealing with these should be included in the EMP;
- k) A policy of no dumping of rubbish, food, oil, or chemicals should be strictly enforced.
- l) Details of on-site welfare facilities including foul drainage and waste facilities;
- m) Details of mitigation measures in terms of noise for adjacent premises;
- n) Location and lighting of site compounds.

**Reason:** To safeguard the local environment and amenity of neighbouring properties during the construction of the approved development.

3. Prior to the commencement of construction a Tree Protection Plan, in accordance with BS5837:2012 (Trees in Relation to Design, Demolition and Construction) shall be submitted to and subsequently approved in writing by the planning authority.

**Reason:** To ensure the protection of retained trees during construction and thereafter.

4. For the avoidance of doubt, trees tagged 298, 305 and 306 are to be retained unless otherwise agreed with the Planning Authority, and mitigation planting of at least seven new trees, in the vicinity of trees 298, 305 and 306, shall be provided for additional screening.

**Reason:** To maintain existing levels of natural screening between Keppoch Road and Alltan Place.

5. No development shall commence until a detailed Tree Planting Plan and maintenance programme has been submitted to and approved in writing by the Planning Authority. The Tree Planting Plan shall be implemented in full during the first planting season following commencement of development or as otherwise agreed in writing by the Planning Authority.

**Reason:** In the interests of amenity.

6. No construction works associated with the development shall commence until a construction phase Traffic Management Plan (including a routing plan for construction vehicles and on-site parking for construction workers) and detailed Access Management Plan is submitted to and approved in writing by the Planning Authority. The purpose of the Access Management Plan is to ensure that public access routes are maintained during construction and to agree any temporary diversions which may be required. The approved Traffic Management Plan and Access Management Plan shall be implemented prior to development commencing and measures remain in place until the development is complete.

**Reason:** To ensure the safety and free flow of traffic on the public road and maintain public access within the vicinity of the development.

7. No development shall commence until materials for the external face of any concrete control structure or retaining wall has been approved in writing by the Planning Authority. These materials shall thereafter be implemented as approved before the development is completed.

**Reason:** In the interest of visual amenity.

8. No work shall start on site until a scheme for hard and soft landscape works has been submitted to and agreed in writing by the Planning Authority. The scheme shall include:

1. A layout plan showing the location of all proposed elements including any existing items or features to be retained.
2. Details of the following:
  - a. pathworks, including materials and construction;
  - b. fencing and walling;
  - c. planting works including schedule of plant species, sizes and planting density, preparation and protection and identification of all existing vegetation to be removed;
  - d. earthworks, including existing and proposed levels in relation to retained vegetation and landform.
3. Proposals for future maintenance of scheme.

The agreed landscaping scheme shall be fully implemented within six months of the completion of the development.

**Reason:** In order to ensure that the approved landscaping works are properly established on site.

## **FOOTNOTE TO APPLICANT**

### **Initiation and Completion Notices**

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a *Notice of Initiation of Development* in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a *Notice of Completion* in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are available from the Planning Authority.

### **Accordance with Approved Plans & Conditions**

You are advised that development must progress in accordance with the 'Smithton & Culloden Flood Protection Scheme' drawings and documents as notified in April 2016 and confirmed by The Highland Council in November 2016 and any conditions recommended by Scottish Ministers. You must not deviate from these drawings, documents and conditions without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

### **Flood Risk**

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (p.259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

### **Local Roads Authority Consent**

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from Community Services prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Community Services office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in



enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport/roads/Applicationformforroadoccupation.htm>

### **Mud & Debris on Road**

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

**Construction Hours and Noise-Generating Activities:** You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact [env.health@highland.gov.uk](mailto:env.health@highland.gov.uk) for more information.

**Building Regulations:** Please note that Building Regulations and/or a Building Warrant may be applicable to some or all of the works described in this decision notice. You must check with the Council's Building Standards service prior to work commencing to establish what compliance or approval is necessary. If a warrant is required, you must not commence work until one has been applied for and issued. For more information, please contact Building Standards at [BuildingStandards@highland.gov.uk](mailto:BuildingStandards@highland.gov.uk) or on 01349 886606.

**Protected Species - Halting of Work:** You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the

course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: [www.snh.gov.uk/protecting-scotlands-nature/protected-species](http://www.snh.gov.uk/protecting-scotlands-nature/protected-species).

**Protected Species - Tree Felling:** Any mature trees within the application site which are to be felled, lopped or topped must be surveyed for bats prior to the works being carried out. If a bat roost is identified work must stop and further advice sought from SNH's area office. It is an offence to interfere with bats and/or their roosts without a license and strict penalties will be applied through the courts where a license has not been obtained.

**Protected Species - Ground Nesting Birds**

Construction/demolition works have the potential to disturb nesting birds or damage their nest sites, and as such, checks for ground nesting birds should be made prior to the commencement of development if this coincides with the main bird breeding season (April - July inclusive). All wild bird nests are protected from damage, destruction, interference and obstruction under the Wildlife and Countryside Act 1981 (as amended). Some birds (listed on schedule 1 of the Wildlife and Countryside Act) have heightened protection where it is also an offence to disturb these birds while they are in or around the nest. For information please see: [www.snh.org.uk/publications/online/wildlife/law/birdseggs.asp](http://www.snh.org.uk/publications/online/wildlife/law/birdseggs.asp).