



## Report to the Scottish Ministers

# TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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Report by Christopher Warren, a reporter appointed by the Scottish Ministers

- Case reference: NA-ABC-025
- Site Address: site west of Taigh Solais, Ledaig, Tobermory, PA75 6QZ
- Application by Argyll Properties Ltd
- Application for planning permission, ref. 17/01205/PP dated 3 May 2017, called-in by notice dated 5 May 2020
- The development proposed: erection of retail unit, visitor centre and self-catering accommodation
- Date of site visit: 22 July 2020

Date of this report and recommendation: 27 August 2020

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### Abbreviations used in this report:

AFA	Area for Action
AOD	above ordnance datum
LDP	local development plan
m	metres
SEPA	Scottish Environment Protection Agency
SPP	Scottish Planning Policy



**The erection of a retail unit, visitor centre and self-catering accommodation at a site west of Taigh Solais, Ledaig, Tobermory, PA75 6QZ**

• Case reference	NA-ABC-025
• Case type	Called-in planning application
• Reporter	Christopher Warren
• Applicant	Argyll Properties Ltd
• Planning authority	Argyll and Bute Council
• Other parties	Scottish Environment Protection Agency
• Date of application	3 May 2017
• Date case received by DPEA	5 May 2020
• Methods of consideration and dates	Written submissions and unaccompanied site inspection on 22 July 2020.
• Date of report	27 August 2020
• Reporter's recommendation	Grant planning permission subject to conditions listed in appendix

## Background

This application is for the proposed erection of a retail unit, visitor centre and self-catering accommodation. The site is within the delineated town centre in Tobermory, on the Isle of Mull. It would adjoin the existing harbour building 'Taigh Solais'. The site is within the Tobermory Conservation Area. It is also in an area at medium to high risk of coastal flooding.

The Scottish Environment Protection Agency (SEPA) objects in principle to the development due to the coastal flood risk. As Argyll and Bute Council were minded to grant planning permission, Scottish Ministers were required to be notified. A direction was given to refer the application to Scottish Ministers for determination.

## Policy

The adopted development plan is comprised of the Argyll and Bute Local Development Plan (2015) and associated supplementary guidance document, adopted in 2016. Having regard to its provisions, the main issues in this application relate to the principle of development; design considerations including the impact upon the conservation area; and flood risk.

Scottish Planning Policy is a significant material consideration, and is of particular relevance to the matter of flood risk. It establishes the flood avoidance principle and other considerations for development management decisions in areas at risk of flooding.

## **Principle of development**

If the issue of flood risk is set aside, there is no question that the principle of a mixed use development of the nature proposed would be acceptable in principle. The development plan supports development in key settlements, and in town centres where proposed uses would be compatible with the location. In the supplementary guidance there is a presumption in favour of tourist facilities and accommodation. Tobermory (and the whole of Mull) is identified as a tourism development area. The supplementary guidance promotes high quality tourism development intended to add to the appeal of the area to tourists in these areas.

Tobermory town centre is also identified as an 'Area for Action', the focus of which is to support investment opportunities, and to reinforce the "very important role" of Tobermory in regard to tourism development.

As the only obvious undeveloped site in the town centre, the site can reasonably be regarded as offering unique potential for a development that supports the Area for Action and which is compatible with the town centre location more widely. It would also be compatible with the purpose of tourism development areas.

## **Design considerations**

As the only obvious significant gap between buildings fronting onto Tobermory harbour, there is some merit in this site also being developed, in the interests of further enhancing the waterfront streetscape. Given the strong and distinctive character of Tobermory's waterfront, the site is inevitably sensitive, requiring a carefully considered and appropriate design. The site does however lend itself well to accommodating a more contemporary design approach than may be appropriate elsewhere in the conservation area.

Whilst there would be contemporary elements to the design, the overall scale, massing and proportions of the development would be sympathetic to its surroundings. The development would provide a further enhancement to the conservation area as a whole.

## **Flood risk**

The development plan and Scottish planning Policy both stipulate that residential, institutional and commercial development may be suitable uses in medium to high flood risk areas, but only where flood protection measures already exist, or are under construction or planned. Submissions confirm that there are no such existing or proposed measures in Tobermory.

SEPA objects to the proposal in principle, on the grounds that it may place buildings and persons at flood risk, contrary to Scottish Planning Policy. In SEPA's opinion, the location is not essential for operational reasons and nor would it constitute an exceptional circumstance; SPP promotes the adoption of a precautionary approach to flood risk management, and avoidance rather than mitigation is the most sustainable solution. The council's flood officer has also objected to the development.

In the absence of existing or planned flood management measures, the development's location in an area of medium to high flood risk would be contrary to the applicable

provisions the development plan and SPP, in terms of the overarching presumption against development in areas at risk of flooding.

The application proposes a number of mitigation measures, in order to reduce the potential effects of flooding and associated risks. This policy conflict cannot be avoided or addressed through proposed mitigation measures, although the weight which ought to be given to this policy conflict, relative to the benefits of the development which accord with other policy aims, may be affected by the precise nature of the flood risk and mitigation proposed.

## **Overall conclusions**

The development plan sets out an intention to support further investment into Tobermory town centre and waterfront, to enhance and reinforce its important role for the local visitor economy. The proposed development would align strongly with these aims. The convenience retail unit would potentially also directly benefit the local community depending on the precise nature of its end use.

The site is in a prominent position on the waterfront, which is within the Tobermory Conservation Area. The site's development as proposed would further enhance the character and appearance of the conservation area, which is of intrinsic value as well as contributing to the attractiveness of Tobermory (and the Isle of Mull more widely) as a visitor destination.

The site's position, on land at medium to high risk of coastal flooding, is significantly to the detriment of what would otherwise be an eminently desirable and sustainable development. Weight should be given to SEPA's objection to the proposed development, as well as the resultant policy conflict arising from this flood risk.

The benefits of the development would provide a locally important and unique opportunity for the town centre's enhancement, its attractiveness to visitors and economic prosperity. Due to the nature of the flood risk affecting the site, the acceptability of this proposal is finely balanced. Given that public safety is very unlikely to be compromised by the development however, the proposal's benefits are considered to outweigh the principle of flood avoidance. In these specific circumstances, it is considered that a departure from the development plan's provisions, and national policy, in regard to flood avoidance can be justified.

## **Recommendation**

It is recommended that planning permission should be granted, subject to conditions listed in the appendix.

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DPEA case reference: NA-ABC-025

The Scottish Ministers  
Edinburgh

Ministers

I have prepared a report with recommendations in connection with the proposed erection of a retail unit, visitor centre and self-catering accommodation on land west of Taigh Solais, Ledaig, Tobermory.

On 28 January 2020, Argyll and Bute Council notified the application to Scottish Ministers. This was because the council was minded to grant planning permission for this development against the advice of the Scottish Environment Protection Agency (SEPA).

On 5 May 2020, a Direction was given to require the council to refer the application to Scottish Ministers for determination. This direction was given in view of the proposed development's potential conflict with national policy on flooding. It was considered that the issues raised would benefit from further scrutiny by Ministers.

Due to Covid-19 restrictions I was unable to make an unaccompanied site inspection until 22 July 2020, which led to some delays in completing this report.

Chapter 1 of my report describes the proposal and outlines the council's position, and the comments expressed in consultation responses and representations. It also provides an overview of relevant policy and guidance. In chapter 2, I have set out the position of the applicant, SEPA and the council's flood officer in detail. In chapter 3 I have set out my conclusions and recommendation.

## CHAPTER 1: BACKGROUND

### The application site

1.1 The application site is located in Tobermory on the Isle of Mull. The site is currently undeveloped, positioned between the 'Taigh Solais' building immediately to the east (which is the harbour building of Tobermory Harbour Association, accommodating a visitor centre, aquarium, offices and other facilities) and MacGochan's bar and restaurant to the west. There is currently a cabin positioned on the site, which is used to provide visitor information. There is a large public car park (Ledaig) immediately adjacent to the site, to the north, which is bound by the harbour/bay to the north and east. To the south, the land rises steeply above the proposal site, physically containing the site.

1.2 The site lies within the 1 in 200 coastal flood zone (0.5% annual probability) on the Scottish Environment Protection Agency (SEPA) flood map. It is therefore classified as being at medium to high risk of coastal flooding.

1.3 The site is within the Tobermory Conservation Area.

### The proposed development

1.4 The proposed building would adjoin the Taigh Solais building, and would be connected internally at ground floor level to provide a 56 square metre extension to the visitor centre. The applicant has indicated that this would be used as a tourist information office. Additionally at ground floor level, there would be a self-contained retail unit. An existing external fire escape stairway would be realigned at the rear of Taigh Solais.

1.5 On the first floor, the development would provide visitor accommodation, comprised of three two-bedroom apartments, accessed via external stairs.

1.6 The building would have an eaves and ridge height slightly lower than that of the Harbour Association building to which it would adjoin. The roof would be a duo-pitched arrangement, with zinc or similar finish. The building would adopt a more contemporary design than neighbouring buildings, but with similar massing and proportions.

1.7 During the course of the application process, amendments to the proposal have been made to incorporate a covered refuge area to the rear of the building, accessed via approximately 9 steps. This would be to provide a safe area for persons not able to otherwise escape the immediate area during a flood event. In order to provide sufficient space for the refuge area, the banking behind the proposed building would require to be re-graded.

### Consultations received by the council

1.8 The Scottish Environment Protection Agency (SEPA) objects in principle to the development, on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy. Several responses have been made by SEPA during the course of the application process and in response to additional submissions being made by the applicant. These were dated [31 May 2017](#); [08 November 2017](#); [06 December 2017](#); [16 January 2018](#); [13 February 2018](#); [08 May 2019](#); and finally [11 September 2019](#). In each response, SEPA has consistently objected to the proposal.

1.9 The matters and concerns raised by SEPA are summarised in greater detail in chapter 2 of this report.

1.10 A response by JBA Consulting, on behalf of [Argyll and Bute Council's flood risk management](#) function, recommended refusal of the application in a response dated 24 September 2019. There is significant overlap in the flood risk issues identified in this response and the position of SEPA. The detailed comments by JBA Consulting are therefore also summarised in chapter 2. The above response superseded two earlier consultation responses. The first of these was on [10 January 2018](#) which raised no objection subject to conditions. This was followed by a response of [17 May 2019](#) which requested that the applicant should take account of the scenarios provided by the United Kingdom Climate Change Projections 2018.

1.11 [Argyll and Bute Council's Roads Service](#) has no objections to the proposal, subject to conditions relating to visibility splays, surface water drainage, provision of car parking spaces and bin store provision.

1.12 [Mull Community Council](#) supports the proposal, but no further reasoning was given in its consultation response of 10 October 2018.

### **Representations received by the council**

1.13 A total of 51 [representations](#) were received from members of the public, all of which expressed support for the proposed development. The majority of these representations were based on a pro-forma. The main points raised in these representations can be summarised as follows:

- The provision of a convenience retail unit would provide additional choice for the local community and visitors;
- the retail unit's position adjacent to the public car park would alleviate congestion on Main Street and would be safer for families;
- the site is within the settlement boundary and designated town centre and is a 'gap site';
- the site within a designated 'area for action' where the council wishes to promote regeneration and enhancement of the waterfront;
- the development would provide a significant enhancement and provide much-needed visitor accommodation in Tobermory;
- it is possible that the proposed visitor centre extension could be used to expand the aquarium; and
- the proposal would provide facilities for adjacent pontoons, strengthening the town's role as a key contributor to Mull's economy and the wider area through the continued development of the 'hub port' of Tobermory Harbour.

### **Consideration by Argyll and Bute Council**

1.14 On 29 January 2020 the application was considered by the council's Planning, Protective Services and Licencing [Committee](#).

1.15 Contrary to officer recommendation, the committee reached a unanimous finding that there is an exceptional case for the approval of the development. The reasoning given was that:



- It is an existing gap site that is visually harmful and harmful to the character and appearance of the conservation area.
- It is the only remaining development opportunity within the harbour-front and without development here, the harbour-front remains incomplete and as such is a unique opportunity to complete the harbour-front development.
- The development includes an opportunity to include permanent tourist information provision, currently lacking in Tobermory and development is vital to secure the tourism growth strategy of the council.

1.16 The council therefore concluded that these considerations represent a clear and overriding locational and operational need for the development sufficient to warrant departure from national and local flood risk policy.

1.17 Given the council's decision that the planning application should be approved contrary to the recommendation of SEPA, the application was required to be referred to Scottish Ministers in accordance with the provisions of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

### **Development plan policies and guidance**

1.18 As required by section 25 of the Town and Country Planning (Scotland) Act 1997, this application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

1.19 The adopted development plan is comprised of the [Argyll and Bute Local Development Plan](#) (LDP) 2015 and associated [supplementary guidance](#) document, adopted in March 2016.

1.20 LDP policy STRAT 1 ('Sustainable Development') establishes principles applicable to all development. Of relevance to this application, these principles include maximising the opportunity for local community benefit; making efficient use of vacant land; supporting existing communities; maximising opportunities for sustainable design; conserving and enhancing the built environment and the setting and character of settlements; and avoiding places with significant risk of flooding and tidal inundation.

1.21 LDP policy DM 1 ('Development within the Development Management Zones') states that encouragement shall be given to sustainable forms of development, which includes development within the 'main towns' and 'key settlements' up to and including large scale on appropriate sites. The site falls within the settlement boundary for Tobermory, which is one of six key settlements identified by the plan. Paragraph 2.6.3 of the LDP states that "...where specific proposals such as ... Areas for Action are defined these would override the general stance towards development for a particular development management zone".

1.22 The site is within one such Area for Action identified by the LDP, under reference AFA 6/1. The LDP [action programme](#) states that the focus of this area is (amongst other aims) to support investment opportunities identified for Tobermory town centre and waterfront areas, and to reinforce the very important role which Tobermory plays within the 'tourism development area' as identified in the LDP proposals map. Town centre and waterfront enhancement is a focus of AFA 6/1.

1.23 Policy LDP 5 ('Supporting the Sustainable Growth of Our Economy') gives support to development of new industry and business. It requires factors including economic benefit,

spatial needs and locational requirements, and the focussing of regeneration activity and environmental enhancement, to be taken into account in decision-making.

1.24 Policy LDP 7 ('Supporting our Town Centres and Retailing') gives support to compatible uses in defined town centres, as the preferred locations for retail, commercial and leisure uses. The proposal site is within Tobermory's delineated town centre boundary.

1.25 Policy LDP 9 ('Development Setting, Layout and Design') provides criteria to ensure development is of a high standard of appropriate design.

1.26 Policy LDP 10 ('Maximising our Resources and Reducing our Consumption') includes an expectation that development should avoid areas subject to flood risk.

1.27 There are various other policies in the LDP which are of some relevance to the proposed development. These include:

- LDP 3 ('Supporting the Protection, Conservation and Enhancement of our Environment');
- LDP 4 ('Supporting the Sustainable Growth of Our Coastal Zone');
- LDP 8 ('Supporting the Strength of Our Communities'); and
- LDP 11 ('Improving our Connectivity and Infrastructure').

1.28 The adopted supplementary guidance contains extensive provisions and policies, elaborating upon policies in the LDP. Of particular relevance to this case, policy SG LDP SERV 7 ('Flooding and Land Erosion – The Risk Framework for Development') provides additional detail to support the application of policy LDP 10.

1.29 SG LDP SERV 7 states that development on the functional flood plain will be considered contrary to the objectives of the plan. Where redevelopment of existing sites within built-up areas at risk from flooding is proposed, the impact on flood risk elsewhere and proposed mitigation measures should be taken into account. The policy provides guidance on the type of development that will generally be permissible within specific flood risk areas, but states that development will be refused which does not comply with the criteria, or if so advised by the Scottish Environment Protection Agency.

1.30 Criterion (C) states that only certain specified categories of development may be acceptable in medium to high risk areas (1:200 annual probability of flooding). This includes (i) residential, commercial and industrial development within built-up areas, providing flood prevention measures to the appropriate standard already exist or are under construction; (ii) development of certain specified types on undeveloped and sparsely developed areas within the functional flood plain; or (iii) development which accords with flood prevention or management measures as specified by an LDP allocation or development brief.

1.31 SG LDP TOUR 1 ('Tourist Facilities and Accommodation, including Static and Touring Caravans') provides additional detail to accompany policy LDP 5. It makes clear that there is a presumption in favour of new or improved tourism facilities, subject to considerations relating to form, location, scales, character, appearance and accessibility.

1.32 SG LDP TOUR 3 ('Promoting Tourism Development Areas') also relates to policy LDP 5. This states that the tourism development areas shown on in the LDP (in the diagram on page 38 entitled 'Growing our economy together') contain significant

opportunities for the sustainable growth of the Argyll and Bute tourism industry. It states that these areas will be promoted to encourage the further development of new high quality tourism developments that are intended to add to the appeal of Argyll and Bute as a compelling destination for tourists and also as a better place to live for local residents.

1.33 The entirety of the Isle of Mull is identified as a tourism development area by the LDP diagram.

### **National planning policy**

1.34 [Scottish Planning Policy](#) (2014) provides a range of policy principles in relation to managing flood risk, set in the context that climate change will increase the risk of flooding in some parts of the country, and that planning can play an important part in reducing vulnerability of development to flooding.

1.35 The policy principles outlined in paragraph 255 of SPP include an expectation that the planning system should promote a precautionary approach to flood risk from all sources, taking into account the predicted effects of climate change. Another of the principles is that there should be flood avoidance by locating development away from functional flood plains and medium to high risk areas.

1.36 SPP paragraph 263 provides a flood risk framework to be used in local development plans, to guide development. For locations that are at medium to high risk of coastal flooding, SPP states the following in relation to development potential:

“– May be suitable for:

- residential, institutional, commercial and industrial development within built-up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan;
- essential infrastructure within built-up areas, designed and constructed to remain operational during floods and not impede water flow;
- some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place; and
- job-related accommodation, e.g. for caretakers or operational staff.

– Generally not suitable for:

- civil infrastructure and the most vulnerable uses;
- additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons, e.g. for navigation and water-based recreation, agriculture, transport or utilities infrastructure (which should be designed and constructed to be operational during floods and not impede water flow), and an alternative, lower risk location is not available; and
- new caravan and camping sites.”

1.37 The same paragraph goes on to state that “Where built development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome”; and “Water-resistant materials and construction should be used where appropriate”.

1.38 Paragraph 263 lists a wide range of factors relating to flood risk, which should be taken into account in development management decisions. This recognises that development cannot be planned for solely based on the probability of flooding.

### **Other relevant guidance**

1.39 The SEPA non-statutory publication ‘[Development Management Guidance: Flood Risk](#)’ (July 2018) outlines SEPA’s requirements and recommendations for development management relating to flood risk. It highlights that if the requirements outlined are not met, SEPA are likely to object in principle to the proposed development.

1.40 The requirements and recommendations for proposed developments in fluvial and coastal flood risk areas have been written and designed as a hierarchy of considerations, to help implement the flood risk policy provisions in Scottish Planning Policy. It is based upon the risk framework in SPP.

1.41 The hierarchy of development management requirements set out in the guidance can be summarised as:

- 1. Flood risk context: is the development appropriate for the location and degree of flood risk?
- 2. Flood impacts: is the functionality of the features/processes maintained?
- 3. Access and egress: is the access and egress provision acceptable?
- 4. Freeboard: has adequate freeboard been provided?

1.42 The guidance expects proposals to satisfy each of the above requirements, having regard to whether a climate change allowance has been included in flood level estimations and the resilience of the development’s design to minimise flood water damage.

1.43 Separate to the above, SEPA has also published ‘[Flood Risk and Land Use Vulnerability Guidance](#)’ (version 4: July 2018). The purpose of this guidance (which is also non-statutory) is to aid understanding of the relative vulnerability to flooding of different land uses, and to assist in the interpretation of the foregoing development management guidance.

1.44 The vulnerability guidance categorises different types of development as one of five possible classifications: most vulnerable uses; highly vulnerable uses; least vulnerable uses; essential infrastructure; and water compatible uses.

1.45 SEPA’s publication ‘[Planning Background Paper – Flood Risk](#)’ (version 3: July 2018) provides detailed contextual information and justification for the guidance contained in the foregoing SEPA publications.

## **CHAPTER 2: SUMMARIES OF CASE**

### **The applicant**

2.1 The application site is within the defined settlement boundary of Tobermory in the adopted LDP. The LDP classifies Tobermory as a key settlement. It is a location where the council wishes to focus employment-led investment. The proposal supports this aim.

2.2 The site is also within the defined town centre boundary of Tobermory, and is therefore a preferred location for retail, commercial and leisure uses. The council supports development proposals that seek to maintain and enhance the vitality and viability of established town centres. The proposal accords with this objective.

2.3 The site is within an area identified by the council as a priority for regeneration, focused on town centre and harbour improvement and development. Relevant actions include support for investment opportunities in Tobermory town centre and waterfront, and reinforcing Tobermory's important role in tourism. The proposal directly supports the council's regeneration aspirations as set out in its LDP Area for Action (AFA) 6/1. The proposal represents economic investment in a key location on the village's waterfront, supporting increased economic activity, enhancing the streetscape. It will provide much-needed additional visitor accommodation in the heart of Tobermory, strengthening the village's role as a key contributor to the tourism economy of Mull and the wider area.

2.4 The site is a visually prominent 'gap site' in a key location within the Tobermory conservation area. The proposal for infill development will provide a significant enhancement of visual amenity and streetscape character. In its current form it does not contribute positively to the visual amenity and streetscape in this key waterfront location within the conservation area. The design of the proposal responds appropriately to its context between two existing buildings.

2.5 The proposal will also provide road safety benefits by locating an additional convenience retail unit in an appropriate location off the Main Street and with car parking available, reducing congestion and accident risk associated with the existing Co-op. The location of the Co-op on Main Street is poorly suited to the level of traffic and parking demand it generates. This is due to the on-street parking arrangement and narrowness of the road at this location. The introduction of an additional convenience retail unit in a location off the Main Street, with ample car parking normally available, will reduce congestion on Main Street and reduce the risk of accidents.

2.6 The site is within the 1 in 200 year coastal flood zone (classified as medium to high risk), as identified on SEPA's flood mapping. The proposal incorporates a number of design and mitigation measures to address flood risk. These include finished floor levels (FFL) of 3.92 metres above ordnance datum (AOD), which is above the current 1 in 200 year coastal floodplain.

2.7 This is the highest level practicable in design terms, taking account of the requirement for ramped access to the ground floor retail unit. Increasing floor levels further would also present issues of potential adverse visual impact, as well as commercial viability issues. This would render the proposal undeliverable. The upper floor self-catering accommodation is well above all relevant flood levels at 7.32 metres AOD.

2.8 The proposed ground floor finished floor level (3.92 metres AOD) does not allow for a freeboard allowance to be included. However, this is consistent with SEPA's guidance as set out in Planning Background Paper: Flood Risk (July 2018) which makes clear that freeboard is not an absolute requirement for development to be acceptable. In terms of the potential risk from wave action, based on a water depth of around 0.6 metres in the car park during a 1 in 200 year flood event, it is reasonable to assume a total wave height (from trough to crest) of around 0.36 metres. This represents a combined water level of 4.09 metres AOD (3.91 metres + half the wave height, i.e. 0.18 metres). This is only 0.17 metres above the proposed ground floor level.

2.9 Flood mitigation measures include emergency access, flood resilient design measures, and a flood emergency plan. Safe emergency access/egress and a refuge area will be provided at 5.4 metres AOD. This takes into account the coastal flood level plus climate change allowance, freeboard and wave action. Emergency access and egress will be to higher ground to the rear of the building, where there is an established path to higher ground. Flood resilient design measures are proposed, including water resilient design, and demountable flood gates equivalent to +0.6 metres of additional property-level protection. The provision of an emergency boat/dinghy fixed to the wall of a nearby property is also proposed.

2.10 The flood emergency plan will utilise the SEPA flood warning scheme in Oban. This is appropriate to use for Tobermory. The Oban flood warning scheme includes coastal flooding, and high water at Tobermory occurs around 10-25 minutes after high water at Oban (as confirmed in 2017 admiralty tide tables). Coastal flooding can be predicted and warnings issued 3 hours in advance. This is ample warning for the proposed ground floor retail and visitor centre use, ensuring the premises can be evacuated and property level protection activated.

2.11 The flood emergency plan will address risk to any vehicles parked on the seaward side of property. There is no direct vehicle access to the rear of the property. No formal parking spaces are included in the proposal as existing parking in Tobermory is to be used.

2.12 The proposed mitigation measures will provide protection levels for the development to the 200 year plus climate change extreme sea level until the year 2080, and until 2065 including an additional 0.2 metres allowance for waves. Flooding-related issues in Tobermory are not restricted to this development only but will impact all shorefront development within the town, including existing buildings with lower floor levels than proposed in this development. Topographical survey information demonstrates that the levels at the proposal site are higher than the base of clock tower on Main Street, which has previously been used as a reference point for previous flood events in the town.

2.13 SEPA's objection in principle does not give weight to the site's location within the settlement boundary and town centre of Tobermory. SEPA will not accept any proposal for built development within the 'undeveloped' flood plain, notwithstanding the specific locational characteristics of the site and its context, or the wider benefits of the proposal. If the site was previously developed with built form, SEPA advises it would accept development of an equal or less vulnerable use. There is an existing cabin on the site, but the council previously determined that this was not 'development' and therefore regarded the site as having not been developed. SEPA has therefore not considered the presence of this cabin as sufficient to regard the site as previously developed and remove its

objection. There is, however, case law to support the classification of such structures as 'development'.

2.14 SEPA's objection in principle also does not give weight to the fact that the 'highly vulnerable' use (self-catering accommodation) is proposed to be located on the first floor of the building, with the ground floor to be occupied by a 'least vulnerable' use (retail and visitor centre).

2.15 In summary, the proposal accords with the council's adopted development strategy of locating additional retail, commercial and leisure uses within designated key settlements and defined town centres (LDP policies DM 1 and LDP 7). It supports the council's regeneration and economic investment objectives for Tobermory waterfront (LDP Area for Action 6/1). The design of the proposal represents a significant visual and streetscape enhancement of a prominent 'gap site' in a key location within the conservation area, in accord with policy (policy LDP 3 and policy SG LDP ENV 17). The location of the proposal also provides road safety benefits by providing an additional convenience retail unit in a more appropriate location, off the Main Street and with parking available.

2.16 This proposed development does not materially increase the risk of flooding to other properties. Flood risk will increasingly impact on Tobermory irrespective of whether this development goes ahead. However, the proposed mitigation measures, including proactive assessment of flood warnings, provision of an evacuation area and emergency boat, will be of benefit to coastal flood risk management in the wider area. Approval of this development and associated mitigation therefore has the potential to provide net benefit to Tobermory overall.

2.17 Tobermory Harbour Association has further development aspirations on its landholding in this area. While these other development proposals will be subject to separate planning applications as appropriate, they are important context in considering the extent to which consideration of flood risk impacts is consistent with the council's regeneration objectives for Tobermory. Significantly, there is also a proposal by the Harbour Association to provide improved flood defences to increase protection to the Ledaig car park area. The Harbour Association is actively seeking to secure funding to deliver this flood mitigation proposal. This proposal will further reduce flood risk to the car park area and to the site itself.

2.18 There are significant policy provisions and material considerations in favour of approving this proposal. Accordingly, the application should be supported.

### **The Scottish Environment Protection Agency (SEPA)**

2.19 SEPA objects in principle to the proposed development on the grounds that it may place buildings and persons at flood risk, contrary to Scottish Planning Policy.

2.20 Given the location of the proposed development within the undeveloped/sparsely developed functional floodplain, SEPA does not consider that it meets the requirements of Scottish Planning Policy. SEPA have a shared duty with Scottish Ministers and other responsible authorities under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and promote sustainable flood risk management. The cornerstone of sustainable flood risk management is the avoidance of flood risk in the first instance. Alternative locations for the development should be considered.

2.21 Notwithstanding the foregoing position, SEPA has reviewed the information supplied by the applicant. This review does not imply that SEPA considers there to be a technical solution to managing flood risk at this site which would meet with Scottish Planning Policy.

2.22 The applicant's supporting statement confirms that the proposal site is located within the coastal floodplain. The council has previously confirmed that the temporary structure on the site does not constitute built development and that the land is not considered to be developed. On this basis, and the associated flooding issues, this location is considered to be undeveloped/sparsely developed floodplain. Taking this into account SPP promotes the adoption of a precautionary approach to flood risk management, and avoidance rather than mitigation is the most sustainable solution. In SEPA's opinion, the location is not essential for operational reasons and nor would it constitute an exceptional circumstance.

2.23 The applicant's supporting statement provides details on the proposed flood management measures for the proposed development. Given the sparsely developed nature of the site and as there has been no previous development at the site, SEPA will not support the use of mitigation. Flood avoidance is the most sustainable flood management approach.

2.24 Where a proposed development is comprised of a mix of uses, it should be placed in the higher of the relevant classes in terms of flood risk vulnerability. In this case, the development is viewed as a highly vulnerable use due to the residential element.

2.25 In terms of mitigation, the 0.5% annual exceedance probability (AEP) extreme still water level is approximately 3.86 metres above ordnance datum (AOD). However, this does not take into account the potential effects of wave action, funnelling or local bathymetry at this location. Furthermore, no climate change allowance or freeboard allowance has been provided. A review of the recent United Kingdom Climate Projections 2018 (UKCP 18) suggest a fairly significant sea level rise for the Argyll region, which should also be considered.

2.26 The applicant has proposed to implement a flood resilient design, and a flood emergency plan linked to SEPA's flood warning scheme. The flood warning scheme is a non-structural measure that will not physically prevent flooding and in addition flood warning has associated uncertainties; it should not be used to enable new development. It is acknowledged that access/egress should be available, however the potential impact of climate change implications are reiterated.

2.27 SEPA acknowledge that flooding and various other material considerations have to be considered when determining a planning application. The applicant's supporting statement significantly over-simplifies SEPA's approach to development management with the statement that SEPA are effectively opposed to any new development within established settlements where there is a flood risk. SEPA is supportive of appropriate development in line with the principles of sustainable flood management.

### **Argyll and Bute Council flood risk management**

2.28 JBA Consulting (acting as the council flood officer) provided an updated planning response following the submission of a range of additional documents by the applicant.



The recommendation was to refuse planning permission based on its assessment as summarised below.

2.29 The applicant has not provided any information demonstrating that a flood prevention measure to a 1 in 100 year standard is already present. It is therefore concluded that section (C)(i) of policy SG LDP SERV 7 has not been satisfied.

2.30 The council ordinarily requires development in coastal areas to be protected from the 1 in 200 year still water level, plus an allowance for wave action, plus an allowance for climate change plus a 0.6 metres freeboard. The protection level for the proposed development would therefore be calculated as 5.27 metres AOD.

2.31 With respect to incorporating this level into the design, in a previous consultation response it was suggested that an appropriate level for the ground floor should be a minimum of 4.7 metres AOD, with an allowance for 0.6 metres freeboard achieved by flood resilient construction to 5.3 metres AOD. It was also advised that the proposed emergency access level be set at a minimum of 5.3 metres AOD. However, the proposed ground floor finished floor level of 3.92 metres AOD is 0.78 metres lower than the minimum recommended finished floor level of 4.7 metres AOD. This technical recommendation has not therefore been met.

2.32 It is concluded that the application does not meet the requirements of SG LDP SERV 7. In addition, the technical proposals do not appear to be sufficient to promote a departure from that policy. It is therefore recommended that the application be refused.

## **CHAPTER 3: REPORTER'S CONCLUSIONS AND RECOMMENDATIONS**

3.1 As required by section 25 of the Town and Country Planning (Scotland) Act 1997, this application must be determined in accordance with the development plan, unless material considerations indicate otherwise. As the site falls within Tobermory Conservation Area, special regard must also be had to the preservation or enhancement of the conservation area.

3.2 Having regard to the provisions of the development plan the main issues in the determination of this application are the principle of development; design considerations including the impact upon the conservation area; and flood risk.

### **Principle of development**

3.3 Tobermory is identified as a key settlement by the local development plan, with the site also falling within the town centre boundary as delineated on the proposals map. Noting the provisions of policies DM 1, LDP 5 and LDP 7 in particular, aside from the flood risk affecting the site (which I return to and consider in detail below), there is no question that the principle of a mixed use development of the nature proposed would be acceptable in principle. This is because the thrust of these policies support development in key settlements, and in town centres where proposed uses would be compatible with the location. In the supplementary guidance, SG LDP TOUR 1 provides a presumption in favour of tourist facilities an accommodation. SG LDP TOUR 3 applies to tourism development areas (which applies to Tobermory), and promotes high quality tourism development intended to add to the appeal of the area to tourists.

3.4 The town centre boundary shown on the proposals map is linear, drawn tightly to only include development which fronts onto the harbour. This comprises buildings located on Main Street, together with the public car park and buildings and land immediately adjacent to it. This includes the application site and Taigh Solais, which represents the southernmost limit of the town centre boundary. During my site inspection I noted that the application site is the only obvious gap in the building line in the town centre.

3.5 Whilst the policies identified in paragraph 3.3 above provide support in principle to the proposed development (noting again the significant caveat regarding flood risk), these policies are generic in that they would apply to all development proposals of this nature in town centre locations across Argyll and Bute. This generic policy conformity is not the same as where a proposal aligns with a site-specific allocation, where the suitability of a site for a specific type of development or use is established by the plan, having already taken account of any potential constraints to development. Although the application site is within the town centre boundary of a key settlement, it is not allocated for a particular use and so its suitability for development has not therefore been confirmed.

3.6 In this regard, although it is not a specific allocation I find the LDP's identification of an 'Area for Action' for Tobermory town centre and bay (under reference AFA 6/1) to be of relevance to this assessment. The proposals map delineates the precise area to which AFA 6/1 applies. It includes the entirety of the town centre designation plus some additional areas of undeveloped shoreline to the northeast and south of Tobermory. The boundary is otherwise then drawn to include the bay itself, but not any other land.

3.7 Given how AFA 6/1 has been drawn, and when viewed alongside the town centre boundary, the purposes of AFA 6/1 that relate to landward development and enhancement

must logically and principally apply to Tobermory town centre. The purposes of AFA 6/1 are outlined in the LDP action programme. This sets out the intention to pursue an area for action to support investment opportunities, and to reinforce the “very important role” of Tobermory in regard to tourism development.

3.8 It would appear from the wording of the action plan that the council’s intention is to formulate a plan or programme for the town centre and bay, rather than it representing a clear action plan in its own right; the identified actions are strategic in nature and lack specific detail. Nevertheless, the strategic intentions of AFA 6/1 are sufficiently clear to enable the compatibility of development to be considered.

3.9 The proposed development would represent a relatively significant additional investment in Tobermory town centre, which would align with the overarching thrust of AFA 6/1. An extension to the existing visitor centre in the Taigh Solais building, and visitor accommodation, would both be uses consistent with the intention to reinforce the role of Tobermory for tourism.

3.10 The proposed convenience retail unit offers the potential to benefit both visitors and the local community, depending on the precise nature of the business. In any event, additional retail provision within the town centre is a favourable aspect of the proposed development, particularly as any other expansion or further development of the town centre would be physically constrained by the harbour and bay, the steeply rising topography and surrounding development.

3.11 Although AFA 6/1 is not an allocation and it does not directly provide site-specific support for the proposed development, it is evident from the tightly drawn nature of this area and town centre boundary that opportunities for further investments and enhancements, in line with the area for action, may be limited. I have noted the wider aspirations for [developments](#) in the vicinity of Taigh Solais, but planning permission has not been sought for these proposals and I have not considered the potential merits or policy alignment of any wider development. Despite this, the proposal is the only obvious undeveloped site in the designated town centre, and I consider that the site can reasonably be regarded as offering unique potential for a development that supports AFA 6/1 and which is compatible with the town centre location more widely. The proposal would align with policies DM 1, LDP 5, LDP 7 and in particular the support for compatible developments in tourism development areas, outlined in the supplementary guidance in SG LDP TOUR 3. It was the unique nature of the opportunity provided by the site which led the council to the view that planning permission should be granted, despite the flood risk and the consequent objection from SEPA.

### **Design considerations**

3.12 On the date of my site inspection, there was a portable cabin / trailer positioned on the site, being used as a visitor information point (although it was not open at the time of my visit). Submissions confirm that this was granted temporary planning permission which has now lapsed, as that permission required the removal of the trailer by 31 October 2014.

3.13 Setting aside the fact that the siting and use of the trailer on the site is now unauthorised, I found the appearance of the site to currently slightly detract from the otherwise distinctive character and appearance of Tobermory’s harbour front and town centre. I found the site to have a somewhat unkempt appearance, although this was apparent only in its immediate vicinity. The site’s current use for the siting of the

cabin/trailer (whether or not lawful) does not, in my opinion, have any meaningful bearing on the weight to be given to the proposed development. Given the proposal's permanence, scale and intended range of uses, it would clearly be of a materially different character.

3.14 As the only obvious significant gap between buildings fronting onto Tobermory harbour, I consider there is some merit in this site also being developed, in the interests of further enhancing the waterfront streetscape. Given the strong and distinctive character of Tobermory's waterfront, the site is inevitably sensitive, requiring a carefully considered and appropriate design. The site does however lend itself well to accommodating a more contemporary design approach than may be appropriate on Main Street for example, as there is already a mix of architectural styles and types of building facing onto the car park and its access road.

3.15 Taigh Solais, to which the new building would be attached, is a relatively modern building. Whilst there are differences in fenestration detail and use of materials, the overall proportions and massing are similar. The new building would adopt a slightly lower eaves and ridge level to that of Taigh Solais, which also enables the new building to relate well to the lower height and smaller scale MacGochan's building. I noted during my site inspection that the MacGochan's building has recently been subject to external alterations, and it has a more contemporary appearance which the proposed development would complement.

3.16 Overall, I consider that the proposed design would be appropriate for its context. Whilst there are a number of contemporary elements to the design, the overall scale, massing and proportions of the development would be sympathetic to its surroundings. In my view, the development would provide a further enhancement to the conservation area as a whole, without attracting particular individual attention, which could occur if a more strongly contrasting contemporary design had been proposed.

3.17 In my experience, the quality of the final materials and finish of a development can also have a significant bearing on whether or not it makes a positive contribution to the area. Given the sensitivity of this location, if Scottish Ministers are minded to grant planning permission I would recommend that conditions requiring precise finishes to be agreed by the planning authority should be imposed, as suggested by the council. These are set out in the appendix to this report. Subject to those safeguards, I consider the development would protect and enhance the character and appearance of Tobermory Conservation Area.

3.18 In regard to accessibility for all, the retail unit on the ground floor would have a ramped access, whilst the visitor centre extension would be accessed internally via the Taigh Solais building. As the development would be located directly adjacent to the main public car park in Tobermory, this would further improve the site's accessibility, particularly for those with limited mobility. Its town centre location also facilitates its accessibility more widely, without placing greater reliance on private car use.

3.19 The accommodation on the first floor would be accessible via an external staircase, so would not provide a suitable option for visitors with limited mobility. The proposed external refuge area (which would provide a safe area during extreme flood events) would also be accessed via a small flight of steps. However, I recognise that there are practical limitations to the extent to which easy access can be provided to every part of a development. I consider that the parts of the development which would be in regular use by the public (the retail unit and visitor centre extension) would be accessible for all.

3.20 All told, I find the development's design would accord with the relevant provisions of policy LDP 9 in the local development plan and the supporting provisions in the supplementary guidance, and would enhance the character and appearance of the conservation area within which it would be situated.

### **Flood risk**

3.21 The site falls within the 1 in 200 coastal flood zone (0.5% annual probability) on the Scottish Environment Protection Agency (SEPA) flood map. The site is therefore classed as being at medium to high risk of coastal flooding.

3.22 The development plan establishes a presumption against development in locations at risk of flooding in LDP policies STRAT 1 and LDP 10. This is elaborated upon further in the supplementary guidance, in SG LDP SERV 7, which amongst its provisions sets out the basis for when some types of development may be acceptable in areas of medium to high flood risk. In this regard the terms of the supplementary guidance closely align to the provisions of Scottish Planning Policy (SPP) paragraph 263.

3.23 The supplementary guidance and SPP both stipulate that residential, institutional and commercial development (which reflects the proposed development's mix of uses) may be suitable uses in medium to high flood risk areas, but only where flood protection measures already exist, or are under construction or planned. Submissions confirm that there are no such existing or proposed measures in Tobermory. The applicant has intimated that the Harbour Association is seeking funding to progress plans to increase flood protection to the car park, which could in turn benefit the proposal site. However, in the absence of a firmer commitment and/or consent for such works, and as no evidence has been provided to demonstrate that this would reduce flood risk at the site, I do not consider this aspiration can be given weight currently.

3.24 I note that the council had previously advised SEPA that the cabin sited on the land did not constitute existing development of the site. The applicant has suggested that the site could be considered as previously developed, although there is no substantive evidence before me to question the council's position. SEPA's policy on flood risk in its publication 'Development Management Guidance: Flood Risk' would make greater allowances for developments in locations at risk of flooding on previously developed sites. In its objection, SEPA's consideration of the site as falling within undeveloped/sparsely developed floodplain appears to be derived from the council's confirmation of the site's 'undeveloped' status, and its comments were framed accordingly.

3.25 The precise wording of SPP paragraph 263 sets the parameters for additional development "in undeveloped and sparsely developed areas" (emphasis added) within medium to high risk areas. The wording of SG LDP SERV 7 (C)(ii) differs slightly by setting parameters for development within the functional flood plain "on undeveloped and sparsely developed areas" (again with emphasis added). I am not aware whether there was a deliberate decision by the council to deviate from the wording used by SPP. I refer to this difference however because the council's use of 'on areas' rather than 'in areas' introduces a slight ambiguity over whether this part of the policy may apply to individual undeveloped sites, rather than having regard to the characteristics of a site's context more widely. As both SPP and SG LDP SERV 7 (C)(ii) refer to the 'area' rather than 'site' or 'land', I do not consider the application site could fairly be described as falling within an undeveloped or sparsely developed area. Indeed I find the opposite is true, given its position in the town centre.

3.26 This is important to clarify because SPP, SG LDP SERV 7 and SEPA guidance effectively set even more stringent limits on the types of development that may be permissible in undeveloped or sparsely developed areas, with the implication being that even greater weight should potentially be afforded to the flood avoidance principle. I do not find these more stringent restrictions should be applied to this site, for the reasons outlined in the previous paragraph. Whilst the site may itself be undeveloped, in my view this is a separate consideration to whether or not the site is within an undeveloped or sparsely developed area.

3.27 Furthermore, I am not convinced that the site should be considered as 'functional flood plain', as referred to by SEPA. The glossary of SPP provides separate definitions for 'flood plain' and 'functional flood plain', highlighting that the former is not simply shorthand for the latter. 'Flood plain' is defined as "The generally flat areas adjacent to a watercourse or the sea where water flows in time of flood or would flow but for the presence of flood prevention measures ...". In contrast, 'functional flood plain' is defined in the glossary as "The areas of land where water flows in times of flood which should be safeguarded from further development because of their function as flood water storage areas. For planning purposes the functional floodplain will generally have a greater than 0.5% (1:200) probability of flooding in any year."

3.28 Given the nature of coastal flood risk, where the volume of water during tidal inundation is effectively infinite, the application site is not required to serve any water storage function, because there is no evidence to indicate that development of the site would displace flood waters and increase the flood risk elsewhere. There has not been any suggestion by SEPA that the site should remain undeveloped for flood water storage purposes. In my view, the site does not therefore fall into the functional flood plain category, although it does clearly fit the definition of 'flood plain'. This distinction is again important because SG LDP SERV 7 approaches development proposals in the functional floodplain differently (i.e. more restrictively) to those in medium to high risk areas, and again there could fairly be assumed to be an even stronger presumption against development on a functional floodplain.

3.29 All told, I find the site falls within the coastal floodplain but not the 'functional floodplain'. The council considers the site itself to be undeveloped, and there is no evidence before me to question that view, but I find the site is not in an undeveloped or sparsely developed area more widely. However, in the absence of existing or planned flood management measures, the development's location in an area of medium to high flood risk would still be contrary to the applicable provisions of LDP policy STRAT 1, LDP 10 and SG SERV 7(C)(i), in terms of the overarching presumption against development in areas at risk of flooding.

3.30 As paragraph 264 of SPP acknowledges however, and as reflected in the SEPA development management guidance, there are a range of site-specific factors which must be taken into account in development management decisions, in order to more fully understand the nature of the flood risk, and its implications for the proposed development. This is necessary before an overall finding on the development's acceptability can be reached.

3.31 As already identified above, the application site is the only notable gap in development within Tobermory town centre. Whilst not in itself a mitigating factor, it is relevant to note that the medium to high coastal flood risk applies to most of the town centre. Submissions confirm (with reference to topographical survey information and

photographic evidence during flood events) that the site and the finished floor level of the proposed development would be equal to or higher than many other existing properties within the town centre.

3.32 In terms of the design and use of the proposed development, having regard to SEPA's land use vulnerability guidance, the retail unit and visitor centre extension located on the ground floor would both be classed as 'least vulnerable uses'. The self-catering accommodation on the first floor would be classed as a 'highly vulnerable' use. The guidance advises that where a mix of uses are proposed, the higher of the relevant vulnerability classes should be applied. This approach has accordingly been followed by SEPA in its objection.

3.33 However, I find it is a material consideration that the highly vulnerable residential component of the development would not be at any direct risk of flooding, with its finished floor level being substantially higher than predicted flood events, including allowances for freeboard and climate change.

3.34 The extent to which the ground floor uses may flood has been calculated in the applicant's flood risk assessments (versions [1](#), [2](#) and [3](#)) and in the consultation responses from SEPA and the council's flood officer. The 1 in 200 year still water flood level is 3.86 metres above ordnance datum (AOD). The finished floor level would be marginally above this level, at 3.92 metres AOD.

3.35 The SEPA development management guidance on flood risk states that an adequate freeboard allowance (normally 0.6 metres above the design flood level) must be provided where new buildings would be in the highly and most vulnerable use categories. This is to take account of the height of waves or turbulence, and the uncertainty in estimating the probability of flooding. The proposed ground floor uses fall with the 'least vulnerable' use category, and so if the self-catering units are discounted because they would be at first floor level, SEPA guidance suggests that a freeboard allowance would not be essential for the ground floor uses. Despite this, the proposed use of demountable flood gates would effectively provide an additional informal defence equivalent to a 0.6 metre freeboard, which should in practice lessen the impact of a flood event upon the ground floor of the building. I note the council's flood officer response has recommended a separate 0.2 metre allowance for wave action, but without explanation for why this should be included in addition to the freeboard allowance, given that the freeboard allowance is already specifically to take account of wave action.

3.36 Climate change predictions indicate that in this location, still water flood levels could increase by a further 0.56 metres by the year 2080, and 0.86 metres by 2100. With wave action, it is probable that during an extreme coastal flood event, water levels would exceed the height of the demountable flood gates (which would offer flood defence to a height equivalent to the recommended freeboard based on current 1 in 200 year flood levels). In the longer-term therefore, despite the proposed provision of demountable flood gates and whilst acknowledging the inherent uncertainties over future sea level predictions, it appears inevitable that the ground floor of the building may flood during extreme high tides. Even though the ground floor uses would be within the 'least vulnerable' category, this flood risk does conflict with the flood avoidance principle in SPP, the development plan and SEPA guidance referred to above.

3.37 The application proposes a number of mitigation measures, in order to reduce the potential effects of flooding and associated risks. Flood-resilient construction would aim to

minimise any damage caused to the ground floor of the building, but I consider a more significant issue is how any potential risk to public safety would be addressed. The applicants propose to adopt a flood emergency plan, which would come into force when a flood event may be imminent. One 'advantage' of being within an area at risk of coastal flooding, rather than risk from a watercourse, is that flood events are tidal and therefore predictable. SEPA already operate a flood warning scheme in Oban, and I agree with the applicants that this would also offer appropriate warnings for Tobermory, where high tide occurs approximately 10 to 25 minutes later than Oban. With effective emergency plan procedures in place, this would enable the evacuation of the building and installation of flood gates well ahead of any flood event affecting the site. This is however reliant on the emergency plan being followed promptly and in full, which cannot be guaranteed.

3.38 An external flood refuge area is proposed to be installed to the rear of the building, which would include a small covered area. This would be available for wider public use, rather than just serving the development itself. It would be at a level above any potential flood risk, including allowances for freeboard and climate change. It would provide a means of escape from rising water, although I consider its use would also very much be a last resort, as it would provide minimal shelter and would be an uncomfortable, unpleasant experience to spend any extended amount of time. In my view, the refuge would nevertheless be fit for purpose given that tidal flood events have a short duration of approximately 2 hours.

3.39 However, given the encroachment of flood waters across the car park and towards the building would be predictable (unlike potential flash flooding which can occur with some watercourses) I consider it unlikely that this refuge area would need to be used in practice. In my view it is much more likely that individuals would have ample time to evacuate the car park and adjacent buildings ahead of these potentially becoming cut off, without reliance on the refuge area. I note there is an unmade footpath which follows the slope to higher ground to the rear of the proposed building and refuge area, providing a further potential means of escape, although its use would only be a realistic option for the able-bodied. It would also be particularly hazardous to negotiate in the dark, and I do not consider that any reliance should be placed on this route as a means of escape.

3.40 It is also possible that an extreme flood event could temporarily affect access to or egress from the self-catering accommodation, as the external access steps may be surrounded by flood water. The accommodation would not itself be at risk of flooding so would continue to be safe for occupants to remain in the accommodation during a flood event, although I recognise that this could be an unpleasant and frightening experience. The proposed flood emergency plan could however require evacuation of the self-catering accommodation when an extreme flood event is predicted, to eliminate any residual risk to its occupiers.

3.41 Finally, the provision of an emergency boat/dingy has been proposed, to be fixed to the wall of a nearby building also within the applicant's control. This is described as providing a further means of egress or rescue for anyone trapped by the flood, whether in the proposed development, in the proposed refuge area, or in another existing building within the harbour area. I consider that any reliance or need for a boat to be provided for the development to safely function would be a strong indication that the development should not be permitted. That said, based on my above assessment I do not consider a boat would need to be relied upon, but I accept that it would offer a further supplementary safeguard which (depending on the specific details of how the boat could be used and who would be permitted to use it) could offer wider benefit to Tobermory and the response to



any flood event across the harbour area as a whole. I consider the provision of a boat to be peripheral to the question of the development's acceptability however.

3.42 To conclude on the issue of flood risk, I have identified in paragraph 3.29 above that the development would be contrary to applicable development plan policies, SPP and SEPA's development management guidance which all seek to avoid development of the type proposed being located in an area at medium to high risk of flooding. This policy conflict cannot be avoided or addressed through proposed mitigation measures, although the weight which ought to be given to this policy conflict, relative to the benefits of the development which accord with other policy aims, may be affected by the precise nature of the flood risk and mitigation proposed. I return to this matter in my overall conclusions below.

### **Other matters**

3.43 The consultation response from the council's roads officer requests conditions to require two parking spaces (with a turning area) and visibility splays. The proposal does not include any private parking provision, by virtue of its location in the town centre adjacent to the main public car park. I do not consider that it would be necessary to provide additional private spaces on this basis. As no new access point is proposed, the request for a condition relating to visibility splays is also superfluous.

3.44 The applicant, supported by a number of comments in representations, considers that the development would help to reduce congestion on Main Street, where the current main convenience shop (the Co-op) is located. Whilst there is some logic to this assertion, there is no evidence to demonstrate that there would be any material improvement in the traffic situation on Main Street arising from an additional convenience retail unit being provided by the proposed development. For this reason, I have not attached weight to this matter.

3.45 It has been asserted in a representation that the proposed Argyll and Bute Local Development Plan 2 (LDP2) should be treated as a material consideration. However, this has not yet been submitted for examination and its contents could be subject to significant change. On this basis, I do not consider that the provisions of LDP2 should have any influence over the assessment of this proposal.

### **Overall conclusions**

3.46 With the exception of the site being located within an area at medium to high coastal flood risk, the development accords with the development plan in all regards. The site is the only obvious vacant land with development potential within Tobermory's designated but modest town centre, all of which fronts onto the harbour and bay.

3.47 The thrust of the local development plan is to support retail and other commercial uses in town centres generally. Area for Action 6/1 explicitly sets out an intention to support further investment into Tobermory town centre and waterfront, to enhance and reinforce its important role for the local visitor economy. I consider the proposed development would align strongly with these aims, with the provision of additional visitor centre floorspace, additional retail space, and three additional self-catering units providing visitor accommodation. The convenience retail unit would potentially also directly benefit the local community depending on the precise nature of its end use.

3.48 The site is in a prominent position on the waterfront, which is within the Tobermory Conservation Area. I consider the site's development as proposed would further enhance the character and appearance of the conservation area, which is of intrinsic value as well as contributing to the attractiveness of Tobermory (and the Isle of Mull more widely) as a visitor destination.

3.49 The site's position, on land at medium to high risk of coastal flooding, is significantly to the detriment of what I consider would otherwise be an eminently desirable and sustainable development. I consider that weight must be given to SEPA's objection to the proposed development, as well as the resultant policy conflict arising from this flood risk.

3.50 Whilst the applicant has been critical of SEPA's position on this proposal, I find that SEPA's position is clearly justified in this case. In my view, SEPA's position has not been compromised by my finding that the site is not within the functional flood plain or in a sparsely developed / undeveloped area, as the development would nevertheless be at risk of flooding and the proposed development would not align with any of the permissible forms of development identified in SPP, the development plan or SEPA's own development management guidance given the nature of the flood risk and uses proposed. It is not for SEPA to consider flood risk in a wider context; this planning balance is a matter for the development management process. I consider it would have been surprising if SEPA had not objected to this development proposal.

3.51 The fundamental question in this case is therefore whether the benefits of allowing the development would outweigh the principle of flood avoidance which would be breached. In paragraph 3.30 onwards, I have considered the precise nature of the flood risk and measures proposed by the applicant to minimise the effects. I am satisfied that there would be no significant likelihood of public safety being put at risk, principally because of the predictability and nature of coastal flood events and the ability to evacuate the development in good time, using an already established warning system operated by SEPA. Should the site not be evacuated ahead of a flood event, the development would provide a safe refuge area if egress to Main Street and higher ground became impossible. The (least vulnerable) ground floor uses may flood in extreme events, but flood resilient design and construction would minimise damage should this occur.

3.52 Taking all of the above into account, I find the acceptability of this proposal to be finely balanced. The proposed development would accord with a number of policies in the development plan, and it would directly further the delivery of the policy ambitions relating to tourism development areas and the Tobermory town centre and bay area for action. Specifically, the proposal is supported by LDP policies STRAT 1 (except in relation to flood risk); DM 1; LDP 5 (and associated supplementary guidance provisions in SG LD TOUR 1 and SG LDP TOUR 3); LDP 7 and LDP 9. Due to the site's location at medium to high risk of coastal flooding, the development would be contrary to LDP policies STRAT 1 (in relation to flood risk) and LDP 10, and also to SG LDP SERV 7 in the supplementary guidance. As the supplementary guidance is almost identical to Scottish Planning Policy's position on flood risk, the development would also be contrary to national planning policy in this regard, and the principle of flood avoidance.

3.53 However, given that public safety is very unlikely to be compromised by the development, and having regard to the significant benefits of the proposal, I agree with the council's view (reinforced by representations) that this development represents a locally important and unique opportunity for the town centre's enhancement, its attractiveness to visitors and economic prosperity. In these specific circumstances, I consider that these

benefits outweigh the principle of flood avoidance, and a departure from the development plan's provisions, and national policy, in regard to flood avoidance is justified.

### **Recommendation**

3.54 For the reasons explained above, I recommend that planning permission should be granted, subject to the conditions listed in the appendix. The conditions largely reflect those [requested](#) by the council, with a small number of minor amendments in the interests of clarity.

3.55 I have recommended that one substantive change should be made to condition 6 as drafted by the council. The council's suggested condition had sought details of a route for a pedestrian link between the flooding refuge area and the town. The applicant has [clarified](#) that it would not be possible to provide a link between the site and Main Street outwith the area at risk of flooding, and my assessment above has been made on this basis. I agree with the applicant that it would be unable to comply with this aspect of the suggested condition, and I have amended the condition to remove this requirement. The applicant has indicated agreement to all other conditions.

*Christopher Warren*  
Reporter

## **APPENDIX – SCHEDULE OF CONDITIONS**

### **General**

1. The proposed development shall be carried out in accordance with the details specified in the application form dated 2nd May 2017 and the approved drawings numbered 1 of 4 to 4 of 4; these being:

Drawing No. 1667 04 rev. e – ‘Ground Floor Plan (Draft)’

Drawing No. 1667 06 rev. a – ‘First Floor Plan, Elevations (Draft)’

Drawing No. 1667 05 rev. b – ‘First Floor Plan, Elevations (Draft)’

Drawing No. 1667 06 – ‘Elevations – refuge area’

*Reason: In order to ensure that the proposed development is carried out in accordance with the details submitted and the approved drawings.*

Standard Note: In terms of condition 1 above, the Council can approve minor variations to the approved plans in terms of Section 64 of the Town and Country Planning (Scotland) Act 1997 although no variations should be undertaken without obtaining the prior written approval of the Planning Authority. If you wish to seek any minor variation of the application, an application for a non-material amendment (NMA) should be made in writing which should list all the proposed changes, enclosing a copy of a plan(s) detailing these changes together with a copy of the original approved plans. Any amendments deemed by the Council to be material, would require the submission of a further application for planning permission.

### **Design and materials**

2. Notwithstanding the effect of Condition 1, no development shall commence until written details of the type and colour of external materials to be used in the construction of the building and the flooding refuge area, including render details, cladding and roofing details, window and door details, guttering details, external stair, balustrading and hand rail details, have been submitted to and approved in writing by the Planning Authority. The development shall thereafter be completed using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

*Reason: In order to integrate the development into its surroundings and having appropriate regard to the location of the development within a conservation area.*

3. Notwithstanding the effect of Condition 1, no development shall commence until detailed sections and a written specification showing the existing and the proposed levels of the site have been submitted to and approved in writing by the Planning Authority. These details shall clearly show the extent and method of the proposed site recontouring required to accommodate the development and, specifically, the approved ‘flooding refuge area’ and shall include a detailed specification of any required retaining wall or other means of slope stabilisation/retention. The development shall thereafter be completed in accordance with the approved details and methodology or such alternatives as may be agreed in writing with the Planning Authority.

*Reason: In order to allow for a detailed assessment of these elements of the proposed development and, in particular, their impact upon the character and appearance of the site*

*and its wider surroundings and no such detailed information having been submitted with this planning application.*

#### **Flood risk mitigation, strategy and details**

4. Notwithstanding the provisions of Condition 1, the development shall incorporate a surface water drainage system which is consistent with the principles of Sustainable urban Drainage Systems (SuDS) compliant with the guidance set out in CIRIA's SuDS Manual C753. The requisite surface water drainage shall be operational prior to the development being brought into use and shall be maintained as such thereafter.

*Reason: To ensure the provision of an adequate surface water drainage system and to prevent flooding in accordance with Policy LDP DM 10 of the adopted Argyll and Bute Local Development Plan 2015.*

Note to Applicant: Further advice on SuDS can be found in SEPA's Standing Advice for Small Scale Development – [www.sepa.org.uk](http://www.sepa.org.uk)

5. Notwithstanding the effect of Condition 1, the finished ground floor level of the approved tourist information, retail and self-catering holiday residential units building shall be 3.92 metres AOD and the approved 'flooding refuge area' shall have a finished floor level of 5.4 metres AOD, in accordance with the developer's specification and proposed flood risk mitigation strategy as contained within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).

*Reason: In order to ensure that the development is constructed in accordance with the specific flood risk mitigation strategy proposed by the developer and subsequently approved; such a strategy being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

6. No development shall commence until full details of the following flood risk mitigation strategies and 'protection by design' techniques have been submitted to and approved in writing by the Planning Authority:

- Full written details of the proposed 'flood warning' scheme, including how such a scheme will operate and who will be responsible for its implementation and continued operation; such a scheme as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).
- Full written details of the proposed 'briefing and guidance for guests' flood management system for the approved first floor self-catering holiday accommodation, including how such a scheme will operate and who will be responsible for its implementation and continued operation; such a scheme as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706). These required details shall also include the proposed means of recording and maintaining a detailed written log of these 'briefings'; the resulting log to be made available, at all reasonable times, for inspection by the planning authority if so required.
- Full written details of the proposed 'property level flood protection measures' for the approved ground floor tourist information facility and shop(s). These details shall include a full specification of any proposed 'stop logs', 'demountable barriers', 'flood

proof doors' and any other proposed 'protection by design' measures to be incorporated into the development, as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).

- Full written details of the size, type and precise permanent location of the 'emergency boat/dinghy fixed to the wall of a nearby building' as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706). These details shall also detail how such a scheme will operate and who will be responsible for its implementation and continued operation together with the responsibility for any required maintenance/replacement of the proposed emergency boat/dinghy.

All of the subsequently approved details shall be implemented in full and shall be operational before the development hereby approved is first brought into use and in perpetuity thereafter.

*Reason: In order to ensure that the development is constructed and operated in accordance with the specific flood risk mitigation strategy proposed by the developer and subsequently approved; such a strategy being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

### **Implementation, phasing and restriction**

7. The approved 'flooding refuge area' shall be implemented in full and shall be operational before any part of the remainder of the development hereby approved is first brought into use/occupied. The 'flooding refuge area' shall, thence after, remain available for its designated purpose.

*Reason: In order to secure an appropriate phasing of development and to ensure that the development is constructed and operated in accordance with the specific flood risk mitigation strategy proposed by the developer and subsequently approved; such a strategy being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

8. The 'visitor centre' as annotated upon the approved drawings shall provide a tourist information resource which shall be operational within three months of the first occupation/use of any other part of the development hereby approved and shall thereafter be retained in perpetuity unless otherwise agreed in writing by the Planning Authority.

*Reason: In order to secure and maintain the provision of a permanent tourist information centre for Tobermory and its surrounding area, such provision being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

9. Notwithstanding the provisions of Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 the residential accommodation hereby approved shall be used for short term holiday occupancy only and not as a main residence and shall not be occupied by any family, group or individual for a cumulative period of more than three calendar months in any one year. A register showing dates of arrivals and departures shall

be maintained at the premises and shall be available at all reasonable times for inspection by the Planning Authority.

*Reason: In order to define and control the permitted occupancy and use of this part of the approved development, having regard to the fact that the premises are unsuitable for occupation as a permanent dwelling due to their location within the 1 in 200 year (0.5%) coastal floodplain and an area of medium to high flood risk. The specific short-term holiday occupation of the approved residential accommodation was assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

## **NOTE TO APPLICANT**

- The length of the permission: This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).
- In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.