

Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 19/02300/PP

Planning Hierarchy: Local Development

Applicant: MacKenzie Welding

Proposal: Erection of storage shed (part retrospective)

Site Address: Plot 1, Nant Park, Taynult, Argyll and Bute

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of storage shed
- Construction of vehicular access
- Formation of earth bunds (part retrospective)
- Erection of 1200mm high timber fence

(ii) Other specified operations

- Installation of disconnecting chamber and soakaway for surface water
- Provision of landscaping

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission be refused for the reasons appended to this report.

(C) HISTORY (Application Site & Adjacent Land):

18/02587/PP

Erection of storage shed (part retrospective), withdrawn 22.02.2019.

17/00199/ENOTH3

Alleged change of use of land, case opened 21.09.2017. Enforcement Notice served on 1st of October 2018 which took effect on 7th of November 2018 with a 3 month time period for compliance. Notice required to be complied with by 7th of February 2019.

Notice requirements:

1. Cease the use of the land affected by permanently removing any unlawful stored materials and / or plant equipment from the plot of ground.
2. Remove the engineered earth bunds from the land affected. The reinstatement of land shall comprise the following actions:
 - The earth bunds located along the south east, north east, and south western boundaries of the land affected shall be removed from the land affected. The area of ground formally occupied by those earth bunds shall then be scraped and or raked to achieve an approximately even profile. At the conclusion of works, the finished ground level within any part of the land affected shall be no greater than 400 millimetres above the surface of the road carriageway located immediately to the south east of the plot of ground.
 - The plot or areas of ground where material has been removed and/or disturbed shall be sown with grass seed to encourage soil stabilization.

This Enforcement Notice has never been complied with and remains live.

17/02683/PP

Erection of dwellinghouse, (plot 3), granted 01.03.2018

16/01946/PP

Erection of dwellinghouse, garage and formation of vehicular access, (plot 4), granted 13.09.2016

15/01651/PP

Erection of dwellinghouse and detached garage (plot 5), granted 23.09.2015

15/01442/PP

Erection of dwellinghouse and detached garage (plot 5), withdrawn 11.06.2015

15/01033/PP

Erection of dwellinghouse and formation of vehicular access (plot 2), granted 23.09.2018

13/02865/PP

Demolition of Blacksmiths workshop and erection of new workshop, Weldmech Services Workshop site, granted 31.03.2014.

11/01842/PPP

Site for the erection of 5 dwellinghouses, granted 16.11.2011 (current application site is known as plot 1)

(D) CONSULTATIONS:

Area Roads Authority

22.01.2020 – No objection subject to conditions: Access to the site from existing private access to be in accordance with SD08/001a; Turning head required within site boundaries to prevent HGV and other associated vehicles from reversing onto the public road; A

pedestrian drop kerb crossing point would be required to be installed opposite Nant Park and a pedestrian rail would be required to be installed on footpath from junction with Achnaferna to the pedestrian bridge crossing the River Nant.

(Case officer note: Following the receipt of third party objection and a detailed site inspection, concern was raised with the Council's roads engineer on the 9th December 2020 that it might be very difficult to provide the required turning head within the application site boundary due to the scale of the proposed storage shed building and the consequent lack of available space.

The roads engineer informally responded to this by email dated 10th December 2020 and stated, "If a HGV turning and loading/unloading area cannot be achieved within the site boundary Roads will recommend refusal, we will not allow the public road to be used for parking, loading/unloading operations. Any vehicles entering and exiting the site should do so in a forward gear". This was followed up by a revised formal consultation response dated 31st August 2021).

31.08.2021 – Due to the concerns raised, the Roads Engineer recognises that the required turning head via condition would be problematic to achieve therefore causing difficulties for the applicant to contain all of their business activities within the application site without spilling out onto the public road corridor. Requires the submission of a Traffic Management Plan (TMP) to show the ability of vehicles using the site to do so in a safe and legal manner.

(Case officer note: The required TMP is requested from the developer on the 31st August 2021 upon receipt of the revised Roads comments. This request is reiterated on 16th February 2022

On 2nd March 2022, the agent acting for the developer states that he will review the request for a TMP and will provide the relevant information asked for.

To date, no such information has been received).

30.05.2022 – The roads engineer, in the absence of the required TMP, recommends refusal on road safety grounds but omits to detail the reasoning for this.

09.06.2022 – The roads engineer has submitted a further response detailing the reason for refusal which is as follows:

1) Without the provision of a turning and loading area within the curtilage of the industrial unit, safety issues will continue to arise due to the unsafe manoeuvres to and from the public road. These movements will include;

(i) Reversing large and other vehicles HGV's on and off the public road, the public road where there are many users, vehicular, pedestrian and cyclists included. By definition, pedestrians and cyclists can be classed as vulnerable users due to lack of protection afforded to motor vehicle drivers. Furthermore, children of primary school age, potentially unaccompanied older children also use this route.

(ii) Loading and unloading of vehicles within the public road corridor using forklift trucks or similar. Due to the nature of the business, these deliveries will include heavy steel items that have the potential to be unstable when in transit to and from delivery vehicles serving the business. This has the potential to cause injury and damage to road users and their property. There also has been unsubstantiated reports that the carriageway has been blocked on numerous occasion as these practices have taken place resulting in vehicles having to mount the footway to get past. Within current legislation, it is an offence to drive onto a footway.

(iii) The transfer of goods and materials between the two separated units may involve unstable, unsafe loads transiting over a short section of the public road using vehicles not suitable for use on a public road.

With the close proximity of the existing unit, (along with the existing site relevant to this application), to the public road corridor,(footway included) Roads have legitimate safety concerns that potential unsafe working practices could be exacerbated due to the proposed expansion. The above concerns may have been addressed and mitigated by providing a TMP, (Traffic Management Plan) to provide details on how the business owners propose to address Roads safety concerns but as this has not been forthcoming, Roads recommend refusal on the above road safety concerns.

SEPA

10.02.2020 – Objection in Principle. The proposed development may put buildings and persons at flood risk, contrary to Scottish Planning Policy (SPP).

Given the location of the proposed development within the undeveloped/sparsely developed functional floodplain we do not consider that it meets the requirements of SPP. We consider the proposal to represent an increase in land use vulnerability and we would not be supportive of development within the functional floodplain.

As there is currently no built development on site, the construction of a large storage shed (which is a Least Vulnerable Use) constitutes an increase in land use vulnerability. The topographic survey provided demonstrates that the entire site sits below 4.2m AOD and is therefore situated within the 200-year coastal floodplain. As such we object to this proposed development. We also have concerns that the site is situated within the 200-year fluvial floodplain.

We note that the proposal contains the construction of a bund. We acknowledge that this has not been designed to offer any kind of flood protection and we agree that the bund offers no protection to the site. As the bund has been constructed in the floodplain, it constitutes land raising within the floodplain. This is contrary to SPP unless it can be demonstrated that there are exceptional circumstances.

We acknowledge that some aspects of this application are retrospective. Had we been formally consulted on these prior to their construction we would have objected in principle to these aspects.

In the event that the planning authority proposes to grant planning permission contrary to this advice on flood risk, the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 would require the application to be referred to Scottish Ministers.

(Case officer note: Following the receipt of this objection, the developer on 19th February 2020 requested that the consideration of the planning application be put on hold to enable them to engage a specialist consultant in order to negotiate directly with SEPA. This request was agreed by officers.

Due to a range of factors, primarily the COVID emergency, the developer eventually contacted SEPA on the 3rd December 2020 but only, at this time, to query the 4.2m AOD coastal flood risk levels stated by SEPA in their initial consultation response. The developer suggests at this time that the actual coastal flood risk levels at the proposed development site are 3.1m AOD, not 4.2, the inference being that the proposed development does not fall within the 200-year coastal flood risk zone.

SEPA responded to the information supplied by the developer on 28th July 2021 (the long delay being due to the consequences of the widely reported SEPA 'cyber-attack')

28.07.2021 - Holding Objection. It is acknowledged that the previously quoted coastal flood risk level has been recently revised to take account of a submarine rock ledge (the Falls of Lora) located at the mouth of Loch Etive to the west of the site. The updated coastal flood risk level is now lower at 3.1m AOD and, as such, the proposed development site may not be at risk from coastal flooding.

However, a review of our flood risk data shows that the proposed development remains at risk from the 200-year fluvial flood risk event from the River Nant.

Request for submission by the developer of a Flood Risk Assessment (FRA) to allow the fluvial flood risk to be investigated in more detail.

SEPA also require the actual level of the specific development site to be submitted by the developer.

(Case officer note: The agent acting for the developer contacted SEPA directly on 29th July 2021 to state that the actual level of the development site has already been submitted to SEPA by way of a topographical survey that demonstrates that the development site ranges in levels from approximately 3.5m AOD to approximately 3.8m AOD and is therefore above the coastal flood risk level of 3.1m AOD. The agent also, at this time, suggests that the required FRA may not be necessary and that he will discuss it with his client's specialist consultant. SEPA responded to this on 27th August 2021).

27.08.2021 – Maintain Holding Objection. SEPA acknowledge the receipt of the topographic information and agree that the proposed development is not within the coastal flood risk area. However, they reiterate the need for a detailed FRA to inform a detailed assessment of the fluvial flood risk from the River Nant and request that the application is held in abeyance until this information is received and investigated.

(Case officer note: The agent acting for the developer is asked to provide a timescale for the submission of the required FRA by email on the 8th September 2021. This request is reiterated by the case officer in an email dated 16th February 2022 and a response is received on the same day stating that the agent will press his specialist consultant for a response. This coincides with SEPA reaffirming their position in a further consultation response, also dated 16th February 2022).

16.02.2022 – SEPA have not received the FRA required in their response of 28.07.21 and, in the absence of this, they reaffirm their objection to the proposed development on the previously stated grounds that they are not persuaded that the proposal is consistent with the principles set out in Paragraph 256 of Scottish Planning Policy or the Risk Framework set out in Paragraph 263.

(Case officer note: On the 2nd March 2022, the agent acting for the developer submits a copy of a flood risk assessment that had been produced in December 2007 in support of a proposed residential development in Achlonan, Taynuilt. Whilst including, within its wider scope, the land the subject of the currently proposed development, this FRA was produced nearly 15 years ago. This information is forwarded to SEPA who respond on the 20th April 2022).

20.04.2022 - Maintain Objection, A FRA was submitted by the applicant which SEPA considers not to be a robust assessment of the potential flood risk at the site for the following reasons:

- It is dated December 2007 and as such may not use current and up-to-date flow estimation and modelling methods. The hydrologist data underpinning it also is 14 years old and out-of-date.
- Insufficient detail of the modelling methods has been provided. There is only one modelled cross section whereas typically we require submission of all cross sections as well as the long section and confirmation of the modelled reach.
- The one modelled cross section provided in Figure 3.2 includes glass walling. This is not appropriate. The surveyed cross section of the main channel and floodplain need to be comprehensive, i.e. not include 'glass walls' in the model. A more extensive topographic survey is required.
- The SEPA flood maps indicate that out of the bank flows may travel towards the site from the south due to insufficient capacity of the B845 road bridge. The modelled reach does not appear to extend far enough upstream to capture the potential flood risk of flooding from this mechanism.

No additional information is submitted by the applicant in response to this and SEPA are asked to provide their final written comments to include reasons for the refusal of the application.

09.06.2022 – SEPA maintain their objection in principle as their final position. The site is completely overlain by the 1 in 200-year fluvial flood event. SEPA do not believe that new 'least vulnerable' development in the fluvial floodplain can be reconciled with either the principle of flood avoidance or the risk framework set out in Paragraph 263 of SPP. SEPA understands that the Council's Flood Risk Officer is satisfied with the development subject to the inclusion of flood resilient measures. However, whilst SEPA are generally supportive of the adoption of such measures, they do not consider them to be a satisfactory means of enabling development that would otherwise be contrary to SPP. SEPA maintain their objection in the absence of an updated robust FRA.

The applicant has been advised of SEPA's objection and has recently suggested that they are likely to be unwilling to commission an updated FRA. Instead, they intend again to try to persuade SEPA to lift their objection. Officers consider that SEPA have maintained consistent and robust advice throughout and that any further approach to SEPA is extremely unlikely to succeed.

Council Flood Risk Officer

11.11.2019 - No objection. The site is located in Achlonan, north of Taynult, and is bounded by the B845 road to the east, the access road to the south and sewage works site to the west. From the available LiDAR data, the elevations across the site lie at approximately 4 metres above Ordnance Datum (m AOD). The River Nant lies circa 70 metres to the south west of the site. The site is completely overlain by the 1 in 200 year fluvial and coastal flood extents as shown on the SEPA Flood Map (2014). The fluvial flood extent demonstrates that water depth would likely be greater than 0.3m if the 1 in 200 year event were to occur. No raised floor level is proposed. It is recommended that, as far as is practicable, flood resilient materials be used in the construction of the shed. It is recommended that any surface water drainage be designed according to CIRIA C753.

(Case officer note: The FRA submitted in response to the concerns raised by SEPA (see above) were forwarded to the Council's flood risk officer on 8th March 2022. This resulted in the following revised consultation response):

14.03.2022 – Reiterates no objection response but points out the failings of the submitted FRA in a similar manner to SEPA .

Environmental Health Unit

11.11.2019 - No objections subject to conditions with regards to noise mitigation measures, hours of operation, site lighting and the existing fencing and bunding.

10.12.2021 - Further comments received expressing concerns regarding the current and ongoing unlawful use of the site for open storage.

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 procedures, closing 5th December 2019.

(F) REPRESENTATIONS:

There have been a total of 34 representations submitted in response to the planning application, 25 in support and 9 objections which are listed below:

Objectors

Dr Elzbieta Tolloczko, 5 Nant Park, Taynuilt, PA35 1LA, (e-mail 23.11.2019)
Anna Daalman, 2 Nant Park, Taynuilt, PA35 1LA, (letter 24.11.2019)
Ann Judge, 2 Nant Park, Taynuilt, PA35 1LA, (letter 24.11.2019)
Dr Jean Butterfield, 4 Nant Park, Taynuilt, PA35 1JH, (letter 25.11.2019)
Rev John Butterfield, 4 Nant Park, Taynuilt, PA35 1JH, (letter 25.11.2019)
Colin Boden, Heather Brae, No 3 Nant Par, Taynuilt, (letter 30.11.2019), (letter 28.11.2019)
June B Boden, Heather Brae, No 3 Nant Par, Taynuilt, (letter 30.11.2019), (letter 28.11.2019)
Alison Pringle, Polverie, Hall Road, Taynuilt, (letter 02.12.2019)
Mrs Isabel Blyth, Carnoch, Taynuilt, PA35 1HP, (e-mail 03.12.2019)

Supporters

Mr Peter McCracken, Keepers Cottage, Taynuilt, PA35 1HY (e-mail 13.11.2019)
Mr Neil Jordan, Duncairn, Moss Road Ledaig, Oban, PA37 1RX (letter 11.11.2019)
Mrs Ann Wilson, Fasnakyle, Taynuilt, PA35 1JN, (e-mail 22.11.2019)
Mr Jonathan MacKenzie, Cullnadalloch Bungalow Achnacloich, Oban, PA37 1PR, (e-mail 22.11.2019)
Mr Christopher MacKenzie, 2 Brenva Cottages, Taynuilt, PA35 1JW, (e-mail 22.11.2019)
Mr Roderick MacEachen, Drimnin, Kilchrenan, PA35 1HF, (e-mail 22.11.2019)
Mr Jamie Beamish, Craigloiste, Kilchrenan, PA35 1HG, (e-mail 24.11.2019)
Mr Gordon Turnbull, Achadh Beul Na H'Uide, Penmore, Dervaig, Isle of Mull, PA75 6QS, (e-mail 24.11.2019)
Mrs Isobel Silkowski, Cruachan, Appin, PA38 4BA, (e-mail 23.11.2019)
Mr William Reilly, 35 Killermont Road, Bearsden, Glasgow, G61 2JB, (e-mail 25.11.2019)
Mr Huert Julka, Flat 1/1, 2 Buchanan Terrace, Hill Street, Oban, PA34 5DF, (e-mail 26.11.2019)
Miss Amy Underwood, 2 Ferryfield Drive, Connel, Oban, PA37 1SP, (e-mail 26.11.2019)

Mr John Underwood, Errigal, Stronmilchan, Dalmally, PA33 1JJ, (e-mail 26.11.2019)
Mr William MacKenzie, 18 Achlonan, Taynuilt, PA36 1JJ, (e-mail 26.11.2019)
Miss Kimberley Reilly, 3 Cleveden Crescent Lane, Kelvinside, Glasgow G12 0NZ, (e-mail 26.11.2019)
Craig Donald, 1 Achferna, Taynuilt, PA35 1JP, (e-mail 27.11.2019)
Kirsten R MacMillan, 1 Achferna, Taynuilt, PA35 1JP, (e-mail 27.11.2019)
John MacAlister, No 6 South Pier, Oban, PA34 4LS, (letter 20.11.2019)
Mr Peter Campbell, 9 Islay Road, Oban, PA34 4YG, (e-mail 27.11.2019)
Mr Donald MacLennan, Fassraig, Benvoullin Road, Oban, PA34 5EF, (e-mail 27.11.2019)
Mr Jamie Turner, 48 marine Court, Dunbeg, PA37 1NU, (e-mail 27.11.2019)
Mr Donald McNeill, Kilespikeral, Taynuilt, PA35 1HW, (e-mail 03.12.2019)
John Barrington, Creran Oysters, Failte, Benderloch, PA37 1QU, (letter 02.12.2019)
Mrs Taeko Mackenzie, 18 Achlonan, Taynuilt, PA35 1JJ, (e-mail 26.11.2019)
Ian MacKenzie, Achalic House, Taynuilt, PA35 1JQ, (e-mail 26.11.2019)

Summary of issues raised from objectors

- Proposed development is for a large shed which is out of keeping with the Nant Park development.

Officer Comment: The proposed building is of a suitable form, scale and design for its context within a Key Settlement which accommodates a mixture of land uses which would ensure that it will not detract from the overall appearance of the wider area consistent with the terms of the policies set out below. It is considered that the design, the overall scale, massing and proportions of the proposed development would be sympathetic to its surroundings and that the existing unauthorised bunding which has been formed at the site in conjunction with the proposed landscaping will ensure that the proposed development successfully integrates with its surroundings.

- Adjacent plots purchased in the belief that there would be no business conducted on any of the 5 plots as stipulated in the deposition held at the Scottish Land Registry and as stated by the developer Lonan Properties.

Officer Comment: The contents of any legal depositions are not a material planning consideration and are a private civil legal matter between affected parties.

- Concerns with regards to impact on dwellinghouse at plot 2. The 1.8m high screen fence along the boundary is not sufficient to mitigate the impact of the proposed 4m eaves/6.4m ridge height building set just 6-8m away from the boundary and running its full length of 18m adjacent to plot 2.

Officer Comment: The proposed shed would be sited approximately 14 metres away from the dwellinghouse at plot 2 to the north of the site. A cross section has been submitted which illustrates that the proposed shed would sit at a lower level than both the existing commercial building and the dwellinghouse at plot 2. The proposed shed would be set back within the site in keeping with the existing spacing which would be reflective of the existing building line at this part of the settlement. The proposed shed would not, in the opinion of officers, have any materially harmful privacy or daylighting impacts on the nearest dwellinghouse at plot 2 to the north.

- Noise emissions

Officer Comment: Environmental Health have been consulted and have raised no objections subject to conditions with regards to noise mitigation measures, hours of

operation, site lighting and the existing fencing and retention of unauthorised bunds. Environmental Health have subsequently received complaints from neighbouring residents with regards to the current unauthorised use of the site for the external storage of materials and/ or plant equipment. Environmental Health have subsequently submitted a further response to this planning application raising an objection to the current unlawful use of the site. The unauthorised change of use which has occurred at the site which is ongoing differs substantially from the proposed development which is the subject of this application. The site is currently an unlawful outdoor storage area whereas the proposed development is a storage shed which would result in the materials which are currently being stored at the site being stored in a purpose designed building which can be required by planning condition to meet necessary sound insulation standards and conditions designed to appropriately control the use of the site. The original consultation response from Environmental Health has provided an assessment on the proposed development which is the subject of the current planning application. The additional response submitted from Environmental Health has been based on complaints having been made with regards to the current unauthorised change of use which has occurred at the site which differs substantially to the proposed development. It is considered that the original consultation is the relevant response in the determination of the current application.

- The proposed shed is unlikely to reduce the level of noise as the forklift truck used by MacKenzie Welding would have to shuttle between their work shed or lorry/trailer to the proposed development site for loading and unloading materials.

Officer Comment: See comment above re noise. The shed will have its access point at the south western side of the site where the entrance door to the shed will be located, looking out to the private access to the south which serves the sewage works site. The applicant can currently operate a forklift on the private access to the south west of the site and it is considered that the placement of the shed with its entrance door directly overlooking the access point onto this track will ensure that there will be no additional impacts from noise over and above what could currently legitimately take place.

- Road safety concerns in particular the use of the public road by forklift.
- Existing access arrangements are dangerous with the public road being blocked on a number of occasions.
- Deliveries of metal to the site and the subsequent movement of those materials to and from the workshop would all generate additional traffic movement on the existing private access.

Officer Comment: The Area Roads Engineer has been consulted and has recommended that the application be refused on roads safety grounds. The applicant has been requested by Roads to provide details of a turning head within the site and a TMP. The Roads Engineer has advised that conditions would be required with regards to the provision of: Access to the site from the existing private road to be in accordance with SD08/001a; Turning head required within site boundaries to prevent HGV and other associated vehicles from reversing onto the public road; A pedestrian drop kerb crossing point would be required to be installed opposite Nant Park and a pedestrian rail would be required to be installed on footpath from junction with Achnaferna to the pedestrian bridge crossing the River Nant. The Roads Engineer subsequently revisited the site in response to concerns raised by officers and by third parties. The Roads Engineer now recognises that the required turning head via condition would be problematic to achieve therefore causing difficulties for the applicant to contain all of their business activities within the application site without

spilling out onto the public road corridor. The Roads Engineer then advised that details of the turning head within the site and a TMP would be required in order to demonstrate safe and legal use of the public road corridor in order for the required turning head condition to be applied and be achievable. These outstanding information requirements have been relayed to the applicant a number of times. This information has not been submitted and the Area Roads Engineer has submitted a final response recommending refusal on roads safety grounds as the information requested by Roads to provide details of the turning head within the site and for a Traffic Management Plan have not been submitted for consideration. The proposed development is considered to be contrary to SG LDP TRAN 4, SG LDP TRAN 5 and SG LDP TRAN 6 in the absence of the requested Traffic Management Plan.

- Concerns that external storage of materials would continue even if a storage building were to be provided within the site.

Officer Comment: Planning conditions can be attached to any grant of planning permission in order to control external storage at the site.

- The building is not being advanced as a stand-alone development, where it could legitimately be deemed as small scale under LDP Policy. The proposed development is being advanced to facilitate the expansion of an existing Class 5 General Industrial operation resulting in an expanded development footprint of 372 square metres. The proposed development would therefore constitute medium scale development as defined in the Local Development Plan. Such expansion runs contrary to LDP DM 1, LDP 5 and SG LDP BUS 1.

Officer Comment: The proposed development is required to facilitate the business operations of the welding business on the land to the south of the site by providing an incidental enclosed storage facility. The proposed development is considered to constitute small scale business and industry development as defined by the Local Development Plan as the proposed floor area of the proposed new storage building would be less than 200 square metres. Schedule B1 sets out the business and industry scales of development and SG LDP BUS 1 sets out provisions for the development of new or extensions to existing business and industrial enterprises within existing settlements. The proposed development is small scale business and industry development which would be incidental to an existing business and industry operation immediately adjacent to the site and it is considered that the principle of the development would largely accord with LDP DM 1, LDP 5 and LDP BUS 1.

- The proposed development is contrary to SG LDP BUS 1 as it would erode the residential character of the area and adversely affect local residents, through an increase in traffic, noise, fumes, or hours of operation.

Officer Comment: The proposed development is for an incidental storage facility and is considered to constitute small scale business and industry development as defined by the Local Development Plan as the proposed floor area would be less than 200 square metres. Schedule B1 sets out the business and industry scales of development and SG LDP BUS 1 sets out provisions for the development of new or extensions to existing business and industrial enterprises within existing settlements. The proposed development is small scale business and industry development which would be incidental to an existing business and industry operation immediately adjacent to the site and it is considered that the principle of the development would largely accord with LDP DM 1, LDP 5 and LDP BUS 1. Environmental Health have been consulted and have raised no objections to the proposed development subject to mitigation conditions. The Area Roads Engineer has however recommended that planning permission be refused on road safety grounds.

- The proposed development is contrary to SG LDP BAD 1 as it would affect residential property by means of noise and potentially artificial lighting and vibration, and could arguably alter the character of an area of established amenity.

Officer Comment: Environmental Health have been consulted and have raised no objections subject to conditions with regards to noise mitigation measures, hours of operation, site lighting and the existing fencing and bunding. Environmental Health have subsequently received complaints from neighbouring residents with regards to the current unauthorised use of the site for the external storage of materials and/ or plant equipment. Environmental Health have subsequently submitted a further response this planning application raising an objection. The unauthorised change of use which has occurred at the site which is ongoing differs substantially from the proposed development. The site is currently an outdoor storage area whereas the proposed development is a storage shed which would result in the materials which are currently being stored at the site being stored in a covered enclosure. The original consultation response from Environmental Health has provided an assessment on the proposed development which is the subject of the current planning application. The additional response submitted from Environmental Health has been based on complaints having been made with regards to the current unauthorised change of use which has occurred at the site which differs substantially to the proposed development. It is considered that the original consultation is the relevant response in the determination of the current application.

- The applicant's supporting statement concedes that the proposal represents a departure from the LDP and is therefore in accordance with SG LDP DEP - Departures to the Local development Plan – which confirms that the council will seek to minimise the occurrence of departures and that departure will only be granted when material considerations so justify.

Officer Comment: The proposed development is not considered to represent a departure to the local development plan. The specific nature of the proposed development is, however, contrary to the interests of road safety and to flood risk and whilst every attempt has been made by officers to find an appropriate solution to these issues, these attempts have been stymied, largely by the failure of the developer, either through unwillingness or some other reason, to provide the necessary information required by both SEPA and Roads; information which might otherwise have overcome these concerns.

- It is entirely inappropriate to seek to justify the current application based on recent unauthorised use of the site which has occurred for over two years and is the subject of a live enforcement notice.

Officer Comment: The proposed development is required to be assessed against Local Development Plan policy and all other material planning considerations unless overriding factors indicate otherwise. The current use of the site is unlawful and is being pursued through ongoing planning enforcement action. The current unlawful use of the site is causing difficulties to local residents and will not be supported by the planning authority. The proposed development the subject of this planning application, however, is materially different to the current unlawful position and is considered capable of being assessed as acceptable if the technical obstacles could be overcome.

- Flood risk concerns. The ground levels at the site have been lowered to win material for use in the new bunding around the eastern and northern boundaries which has made the site more susceptible to flooding.

Officer Comment: SEPA have been consulted and have objected to the proposed development on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy. SEPA have raised concerns that the site lies within the 200-year fluvial floodplain. SEPA have requested the submission of a Flood Risk Assessment to investigate the potential flood risk from the River Nant. The applicant has subsequently submitted a 15 year old Flood Risk Assessment which includes the site of the current proposed development. SEPA have maintained their objection and have requested the submission of an updated Flood Risk Assessment which should be undertaken in accordance with technical and reporting requirements set out by SEPA. The proposed development is considered to be considered contrary to SG LDP SERV 7 in the absence of a robust Flood Risk Assessment. SEPA have been asked to provide a final consultation response in the absence of a Flood Risk Assessment. It is considered that the applicant has been given an abundance of time in which to submit a robust Flood Risk Assessment and SEPA have been asked to provide concise reasons for their objection to the proposed development. SEPA's final response is summarised in Section D above.

- Raising the site and building levels to address the issue of flood risk would increase the dominance of the building within the vicinity.

Officer Comment: Officers concur with this statement. The proposed shed does not incorporate any underbuild and is not proposed to be sited on a raised platform. The shed in its current form being set at ground level is considered to be acceptable visually and would have no impacts on the streetscene in this part of the settlement. There has been no request from either SEPA or the Councils Flood Risk Assessor to raise the site and building levels in order to mitigate any potential flooding concerns.

- The business is clearly outgrowing its operational base and business relocation appears to be the answer if such growth is to be sustained.

Officer Comment: These comments are noted.

- The proprietor of the site, by carrying on a commercial business on the plot is in breach of the planning permission at the site which was granted for the erection of a dwellinghouse.

Officer Comment: Detailed planning permission has never been granted for a dwellinghouse at the plot albeit that the plot obtained the grant of Planning permission in principle as part of a 5 plot development by virtue of 11/01842/PP. The site has been the subject of a breach of planning control which is detailed in this report.

Summary of comments raised from supporters

- Mackenzie Welding provide an excellent high quality service to local businesses. They are a highly skilled employer, rooted at the heart of the community, serving local needs and the wider Argyll and Bute area. They offer much needed local employment and apprenticeships to young people enabling them to remain in the community.
- The proposed shed will offer a partial screen to the sewage treatment plant located to the rear of the site.
- The proposed shed would provide an acoustic barrier to the existing welder's workshop facilities and the surrounding the residential area.

- The proposed shed has been amended to address the concerns of immediate neighbours.

Officer Comment: These comments are noted.

The above represents a summary of the issues raised. Full details of the letters of representation are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- | | | |
|--------------|--|------------|
| (i) | Environmental Statement: | No |
| (ii) | An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: | No |
| (iii) | A design or design/access statement: | Yes |

This statement is available to view in full at the Council's website via the following link:

<https://portal360.argyll-bute.gov.uk/my-requests/document-viewer?DocNo=22136444>

- | | | |
|-------------|--|------------|
| (iv) | A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc: | Yes |
|-------------|--|------------|

Flood risk assessment submitted 2nd March 2022. This statement is available to view in full at the Council's website via the following link:

[Microsoft Word - Rep3271.doc \(argyll-bute.gov.uk\)](#)

(H) PLANNING OBLIGATIONS

- | | | |
|------------|---|-----------|
| (i) | Is a Section 75 obligation required: | No |
|------------|---|-----------|

- | | | |
|------------|---|-----------|
| (I) | Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: | No |
|------------|---|-----------|

- (J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

- | | |
|------------|--|
| (i) | List of all Development Plan Policy considerations taken into account in assessment of the application. |
|------------|--|

Argyll and Bute Local Development Plan, 2015

LDP STRAT 1 – Sustainable Development
LDP DM 1 – Development within the Development Management Zones
LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
LDP 5 – Supporting the Sustainable Growth of our Economy
LDP 9 – Development Setting, Layout and Design
LDP 10 – Maximising Our Resources and Reducing our Consumption
LDP 11 – Improving our Connectivity and Infrastructure

Supplementary Guidance

SG LDP ENV 14 – Landscape
SG LDP BUS 1 – Business and Industry Proposals in Existing Settlements and Identified Business and Industry Areas
SG LDP ENF 1 – Enforcement Action
SG LDP BAD 1 – Bad Neighbour Development
SG LDP SERV 2 - Incorporation of Natural Features / Sustainable Drainage Systems (SuDS)
SG LDP SERV 7 - Flooding and Land Erosion – The Risk Framework for Development
SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes
SG LDP TRAN 6 – Vehicle Parking Provision

(i) List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.

Argyll and Bute Sustainable Design Guidance 2006
Scottish Planning Policy (SPP) 2014
Consultee Responses
Third Party Representations
SEPA Development Management Guidance: Flood Risk
SEPA Flood Risk and Land Use Vulnerability Guidance

Argyll and Bute proposed Local Development Plan 2 (November 2019) – The unchallenged policies and proposals within pLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the pLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time. The provisions of pLDP2 that may be afforded significant weighting in the determination of this application are listed below:

- Policy 14 – Bad Neighbour Development
- Policy 37 – Development Utilising an Existing Private Access or Existing Private Road
- Policy 39 – Construction Standards for Private Access

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:

No

(L) Has the application been the subject of statutory pre-application consultation (PAC): **No**

(M) Has a sustainability check list been submitted: **No**

(N) Does the Council have an interest in the site: **No**

(O) Requirement for a hearing: **No**

The determining factor in the assessment of this planning application rests on two separate technical issues, one of which is a matter of national and local planning policy with respect of flood risk. In this case SEPA, as the national agency tasked with the interpretation and enforcement of Scottish Government planning policy has raised, and strenuously maintained, an overriding objection to the development. This objection cannot be set-aside without the prior notification of this application to Scottish Ministers and this report of handling explains to Members why, in the considered opinion of the officers, this option should not be followed.

Secondly, the Roads Engineer has advised that details of a turning head within the site and a Traffic Management Plan (TMP) would be required in order to demonstrate safe and legal use of the public road corridor in order for the required turning head condition to be applied and be achievable. These outstanding information requirements have been relayed to the applicant a number of times. This information has not been submitted and is not forthcoming and the Area Roads Engineer has submitted a final response recommending refusal on roads safety grounds as the information requested by Roads to provide details of the turning head within the site and for a Traffic Management Plan have not been submitted for consideration.

Whilst it is acknowledged that this application has generated a significant level of third party representation, both for and against the development, it is considered that the comments raised by third parties have been properly addressed within this report of handling and neither of the two technical reasons for refusal are capable of being resolved through further public debate.

(P) Assessment and summary of determining issues and material considerations

This is an application seeking planning permission for the erection of a storage shed and associated works (part retrospective) at plot 1 Nant Park, Taynuilt.

The site is a plot of ground which has previously had the benefit of Planning Permission in Principle (PPP) for the erection of a dwellinghouse as part of a linear row of 5 dwellinghouses. This plot of ground is known as 'plot 1' and is the southernmost plot of the 5 plots. The dwellinghouses on plots 2-5 have all been built and are occupied but the PPP insofar as it relates to Plot 1 has long expired.

In terms of the adopted Argyll and Bute Local Development Plan (LDP) the application site is located within the Key Rural Settlement of Taynuilt where Policy LDP DM 1 gives encouragement to sustainable forms of development on appropriate sites subject to compliance with other relevant policies and supplementary guidance.

Supplementary Guidance (SG) policy SG LDP BUS 1 also gives encouragement to the development of extensions to existing business and industrial enterprises within existing

settlements, provided that in residential locations, the proposed development would not erode the residential character of the area, or adversely affect local residents, through an increase in traffic levels, noise, fumes or hours of operation.

The site is located to the immediate north of the existing McKenzie Welding Ltd business operation. There is an access track which separates the application site from the Welding site which serves an existing sewage works site which serves Taynuilt.

An enforcement case was opened in September 2017 for an alleged change of use of the site after a complaint was received by a neighbour. It was alleged that the site was being used for the storage of material, equipment and/or repaired materials in direct connection with the welder's business operation to the immediate south west of the site. At this time it was considered that use of land for the storage of material, equipment and / or repaired materials, conflicted directly with SG policy LDP BUS 1, by adversely impacting the local residential character and amenity. It was considered that the expansion of the welder's business operation, (being within Use Class 5 in Town and Country Planning (Use Classes) (Scotland) Order 1997), into an area of the housing development would create an increase in noise and fumes from machinery, as well as potentially further impacting any amenity due to the hours of operation of this business. The site is the subject of an enforcement notice which was served by the Council on 1st of October 2018 which took effect on 7th of November 2018 with a 3 month time period for compliance. The time period for compliance has long since expired and the site is currently still in use for the unauthorised storage of material, equipment and/or repaired materials in direct connection with the business operation.

This application has been submitted in response to the enforcement notice and aims to resolve the issues caused by open storage by containing the use within a purpose-designed building.

The determining factor in the assessment of this application is whether or not the proposed siting of a storage shed for general industrial purposes in connection with the existing welder's business operation is acceptable at this location.

Whilst the proposed use of the site for a small scale industrial development ancillary to the adjacent and long-established business site is considered to be broadly acceptable in accordance with Policy LDP 3, Policy LDP 5, and Policy LDP DM 1 of the LDP (subject to appropriate safeguarding measures concerning the construction of the building and controls over the specific use of the site), the development has been assessed as contrary to local and national flood risk policy and harmful to the interests of highway safety. Officers have tried to resolve these outstanding issues but have been unable to at this time, largely due to a failure on behalf of the developer to properly address the technical issues raised by both SEPA and the Council as Roads Authority (the issues raised and associated timeline are summarised in Section D of this Report).

SEPA have objected to the proposed development on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy. SEPA have raised concerns that the site lies within the 200-year fluvial floodplain and the construction of a large storage shed (which is a Least Vulnerable Use) constitutes an increase in land use vulnerability contrary to both local and national planning policy. In order to add clarity to any specific flood risk liability and to better inform their assessment of the proposal, SEPA have requested the submission of a detailed and site specific Flood Risk Assessment (FRA). To date, no suitable FRA has been submitted and SEPA have maintained their objection. The proposed development is therefore considered to be contrary to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7, and contrary to Scottish Planning Policy (SPP).

In addition, the Area Roads Engineer has attached weight to concerns raised by both officers and third parties that the site may not be large enough to appropriately accommodate the proposed built development whilst allowing for an appropriate level of on-site parking and turning in order to prevent the development from 'spilling out' onto the public road corridor and thus causing road safety concerns. In order to properly assess this aspect of the proposed development the area roads manager requires the submission of an appropriate Traffic Management Plan (TMP) in order to demonstrate that safe and legal use of the public road corridor is achievable. To date, no TMP or other appropriate information sufficient to allay these concerns has been submitted and the roads engineer has recommended that planning permission be refused. In this regard, the proposed development is considered contrary to Local Development Plan Policy LDP 11 and SG LDP TRAN 4 and SG LDP TRAN 6.

The application has elicited approximately 34 representations in response to the planning application; 25 in support and 9 objections. The support which has been offered views the proposed development as being acceptable largely on the basis that it is of economic benefit to the area. Objections have been raised with regards to the proposed development not being compatible with the adjacent dwellinghouses in terms of siting, design, detrimental impacts on amenity from noise and hours of operation, flood risk grounds and the increase on traffic and usage of the public road.

Whilst the amenity concerns are considered capable of being appropriately resolved through the use of planning conditions, and whilst the economic benefits of the proposal are acknowledged, officers have been unable to resolve the flood risk and highway safety issues associated with the development and it is therefore considered that planning permission should be refused.

(Q) Is the proposal consistent with the Development Plan: No

(R) Reasons why planning permission should be refused

See reasons for refusal below.

(S) Reasoned justification for a departure to the provisions of the Development Plan

N/A

(T) Need for notification to Scottish Ministers or Historic Environment Scotland:

No

Author of Report: Lesley Cuthbertson **Date:** 01.08.2022

Reviewing Officer: Tim Williams **Date:** 01.08.2022

Fergus Murray
Head of Development and Economic Growth

REASONS FOR REFUSAL RELATIVE TO APPLICATION 19/02300/PP

1. SEPA have objected to the proposed development on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy. SEPA have raised concerns that the site lies within the 200-year fluvial floodplain and the construction of a large storage shed (which is a Least Vulnerable Use) constitutes an increase in land use vulnerability contrary to both local and national planning policy. In order to add clarity to any specific flood risk liability and to better inform their assessment of the proposal, SEPA have requested the submission of a detailed and site specific Flood Risk Assessment (FRA). To date, no suitable FRA has been submitted and SEPA have maintained their objection. The proposed development is therefore considered to be contrary to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7, and contrary to Scottish Planning Policy (SPP).
2. Policy LDP 11 and SG LDP TRAN 4 of the adopted 'Argyll and Bute Local Development Plan' 2015 state that the use of an existing private access will only be accepted if that access is either safe and appropriate in its current form or else is capable of commensurate improvements considered by the Roads Authority to be appropriate and necessary to the scale and nature of the proposed new development, and that it takes into account any current access issues (informed by an assessment of usage).

The proposed development would result in the intensification in vehicular use of a private access regime where it has not been demonstrated, through lack of the submission of details of a turning head within the site and a Traffic Management Plan, that the application site and access track is capable of serving the proposed development, either in its current state or else by any reasonable and necessary commensurate improvements to that access as informed by the submission and assessment of information necessary for the planning authority to properly assess this part of the proposed development. Details of a turning head within the site and a full Traffic Management Plan has been requested to demonstrate the ability of vehicles serving the site to do so in a safe and legal matter. The requested details have not been submitted.

In this regard, and in the absence of the submission and professional assessment of this necessary information, the proposal is considered contrary to Local Development Plan Policy LDP 11 and SG LDP TRAN 4 and SG LDP TRAN 6.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 19/02300/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A Settlement Strategy

Detailed planning permission is sought for the erection of a storage shed (part retrospective) at plot 1 Nant Park, Taynuilt.

In terms of the adopted Argyll and Bute Local Development Plan (LDP) the application site is located within the Key Rural Settlement of Taynuilt where Policy LDP DM 1 gives encouragement to sustainable forms of development on appropriate sites and subject to compliance with other relevant policies and supplementary guidance.

Policy LDP 3 assesses applications for their impact on the natural, human and built environment with Policy LDP 9 seeking developers to produce and execute a high standard of appropriate design and to ensure that development is sited and positioned so as to pay regard to the context within which it is located. The Sustainable Siting and Design Principles expands on this policy seeking development layouts to be compatible with, and consolidate the existing settlement and take into account the relationship with neighbouring properties to ensure no adverse privacy or amenity issues.

Policy LDP 5 aims to support the development of new industry and business which helps deliver sustainable economic growth throughout Argyll and Bute by taking full account of the economic benefits of any proposed development. In particular integration between transportation and land use will be fundamental to delivering economic growth in a sustainable manner which would help improve accessibility to new employment opportunities.

SG LDP BUS 1 aims to promote well ordered, sustainable industrial and business development in all existing settlements with the preferred location being within identified Business and Industry Areas. Other locations within settlements may also be appropriate for small-scale developments, particularly office type developments. SG LDP BUS 1 also gives encouragement to the development of extensions to existing business and industrial enterprises within existing settlements, provided that in residential locations, the proposed development would not erode the residential character of the area, or adversely affect local residents, through an increase in traffic levels, noise, fumes or hours of operation.

Schedule B1 sets out the scales of Business and Industry development with small scale being defined as buildings not exceeding 200 square metres footprint. Schedule B2 sets out the preferred locations for business and industry. In the settlements Strategic and Business Locations (SIBL) are preferred locations for all scales of business and industry development. Business and Industry Locations (outwith SIBL) and Potential Development Areas (PDAs) designated for Business and /or industry and Established Business and Industry Areas are the preferred locations for all scales of business and industry development, subject to the constraints of and appropriate capacity within the specific sites. Other locations in the settlements are the preferred locations for small scale business development; and for small scale industry development.

The proposed development site is a plot of ground which has previously had the benefit of Planning Permission in Principle for the erection of a dwellinghouse as part of a linear row of 5 dwellinghouses. This plot of ground is known as 'plot 1' and is the southernmost plot of the 5 plots. The dwellinghouses on plots 2 to 5 have all been built and are occupied but the PPP insofar as it relates to Plot 1 has long expired.

The site is separated from the existing welder's yard by a private access which serves the sewage works site to the immediate west. Prior to undergoing an unauthorised change of use with earth bunds being formed along the northern and eastern boundaries, the site was an area of flat ground which formed part of the residential site to the immediate north which has since been developed with a linear row of four detached dwellinghouses. The proposed shed would be sited approximately 14 metres away from the gable end of the dwellinghouse at plot 2. The proposed development is small scale business and industry development which could potentially be sited within a site within a designated settlement subject to compatibility with surrounding land uses.

The proposed use of the site for small scale industrial purposes ancillary to the adjacent welder's site, including a storage shed with a footprint of under 200 square metres, is considered to be largely in accordance with Policy LDP 3, Policy LDP 5 and Policy LDP DM 1.

It is deemed that this extra storage and workshop space may be a contributor to the local economy and the proposal is deemed to comply with policies LDP STRAT 1, LDP 3, LDP 10 and SG LDP BUS 1. The proposal is intended to increase the capacity of the applicant's business and thereby help to safeguard the business and is, in this regard, supported by policy LDP 5.

The proposed development falls short of complying with all the criteria set out by SG LDP BUS 1 in that the applicant has not demonstrated that technical standards in terms of traffic circulation and vehicular access and servicing can be met in full.

B. Location, Nature and Design of Proposed Development

The proposal site is set against the public road which runs through the village of Taynult. The site is an infill plot of ground which is bounded by a private access and the existing welder's yard to the immediate south and a linear row of dwellinghouses to the immediate north. The site is currently being used unlawfully as a storage yard in connection with the existing welder's yard. Two earth bunds have been formed unlawfully along the northern and eastern boundaries of the site. An unauthorised access has also been formed at the southern side of the site which is currently being used by vehicles to deliver and store materials unlawfully at the site.

This planning application seeks planning permission for the erection of a storage shed which would be sited centrally within the site. This shed would measure approximately 18 metres in length, 10 metres in width and would have a height of 6.4 metres. The shed would have a shallow roof pitch and gables. The southern facing gable end would incorporate a large roller shutter door to allow vehicular access. The storage shed would be clad with a 'Vandyke brown' colour cladding. The unauthorised earth bund along the northern boundary is shown to be retained on the supporting site plan as is an existing 1.8m high timber fence. A new 1.2 metre high timber fence would be erected along the eastern facing boundary of the site. New native tree planting/screening would be provided within the eastern side of the site. The proposed shed would be sited approximately 14 metres away from the dwellinghouse at plot 2 to the north of the site. A cross section has been submitted which illustrates that the proposed shed would sit at a lower level than the existing welder's yard building and the dwellinghouse at plot 2. The proposed shed would be set back within the site in keeping with the existing spacing which would be reflective of the existing building line at this part of the settlement. The proposed shed would not, in the opinion of officers, have any materially harmful privacy or daylighting impacts on the nearest dwellinghouse at plot 2 to the north.

The proposed building is of a suitable form, scale and design for its context within a Key Settlement which accommodates a mixture of land uses which would ensure that it will not detract from the overall appearance of the wider area consistent with the terms of the

policies set out above. It is considered that the design, the overall scale, massing and proportions of the proposed development would be sympathetic to its surroundings and that the existing unauthorised bunding which has been formed at the site in conjunction with the proposed landscaping will ensure that the proposed development successfully integrates with its surroundings.

C. Road Network and Parking

Policy LDP 11 supports all development proposals that seek to maintain and improve internal and external connectivity by ensuring that suitable infrastructure is delivered to serve new developments. Supplementary Guidance SG LDP TRAN 4 and SG LDP TRAN 6 expands on this policy seeking to ensure that developments are served by a safe means of vehicular access and have an adequate on-site parking and turning area.

The Area Roads Engineer has been consulted and has recommended that the application be refused on roads safety grounds. The applicant has been requested by Roads to provide details of a turning head within the site and a TMP. The Roads Engineer had originally advised that conditions would be required with regards to the provision of: Access to the site from existing private to be in accordance with SD08/001a; Turning head required within site boundaries to prevent HGVs and other associated vehicles from reversing onto the public road; A pedestrian drop kerb crossing point would be required to be installed opposite Nant Park and a pedestrian rail would be required to be installed on footpath from junction with Achnaferna to the pedestrian bridge crossing the River Nant. The Roads Engineer had originally recommended approval subject to the required conditions outlined above. The Roads Engineer was requested by this Service to review these comments in light of the objections having been received raising road safety issues and given the limited size of the site to incorporate a turning head. The Roads Engineer revisited the site and reviewed third party comments. The Roads Engineer then advised that details of the turning head within the site and a TMP would be required in order to demonstrate safe and legal use of the public road corridor in order for the required turning head condition to be applied and be achievable. These outstanding information requirements have been relayed to the applicant a number of times. This information has not been submitted and the Area Roads Engineer has submitted a final response recommending refusal on road safety grounds as the information requested by Roads to provide details of the turning head within the site and for a Traffic Management Plan have not been submitted for consideration. The proposed development is considered to be contrary to Local Development Plan Policy LDP 11 and SG LDP TRAN 4 and SG LDP TRAN 6 in the absence of the requested details.

D. Impacts on amenity

The proposed development is considered to represent a potential 'bad neighbour development' in accordance with Schedule 7 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992. SG policy LDP BAD 1 provides that such development will only be considered where there are no unacceptable adverse effects on the amenity of neighbouring residents.

Environmental Health have been consulted and have raised no objections subject to conditions with regards to noise mitigation measures, hours of operation, site lighting and the existing fencing and retention of unauthorised bunds. Environmental Health have subsequently received complaints from neighbouring residents with regards to the current unauthorised use of the site for the external storage of materials and/ or plant equipment. Environmental Health have subsequently submitted a further response to this planning application raising an objection to the current unlawful use of the site. The unauthorised change of use which has occurred at the site which is ongoing differs substantially from the proposed development which is the subject of this application. The site is currently an unlawful outdoor storage area whereas the proposed development is a storage shed which

would result in the materials which are currently being stored at the site being stored in a purpose designed building which can be required by planning condition to meet necessary sound insulation standards and conditions designed to appropriately control the use of the site. The original consultation response from Environmental Health has provided an assessment on the proposed development which is the subject of the current planning application. The additional response submitted from Environmental Health has been based on complaints having been made with regards to the current unauthorised change of use which has occurred at the site which differs substantially to the proposed development. It is considered that the original consultation is the relevant response in the determination of the current application.

The proposed development is, therefore, not considered to constitute a 'bad neighbour development'.

F. Flooding

The site has been identified as having the potential to flood and therefore consultation has been undertaken with SEPA and the Council's Flood Risk Advisors, JBA Consulting Ltd (JBA).

SEPA has categorised the proposed development as introducing a new 'least vulnerable land use' but one within a previously undeveloped site and has objected to the development in principle on the basis that it represents an increase in land use vulnerability and may place buildings and persons at risk of flooding, contrary to Scottish Planning Policy (SPP).

The application site is within the fluvial flood plain of the River Nant as per the SEPA Fluvial Flood Maps (2014). These flood maps show that the application site and its wider surroundings lies within the medium likelihood (1 in 200 year) fluvial flood extent of the SEPA Flood Map and may, therefore, be at medium to high risk of fluvial flooding.

In addition, SEPA note that the proposal contains the construction of a bund. They acknowledge that this has not been designed to offer any kind of flood protection and they agree that the bund offers no protection to the site. As the bund has been constructed in the floodplain, SEPA comment that it constitutes land raising within the floodplain. This is contrary to SPP unless it can be demonstrated that there are exceptional circumstances.

SEPA advise that Paragraph 255 of the SPP states that "the planning system should promote a precautionary approach to flood risk from all sources", as well as flood avoidance and flood reduction, where appropriate. Paragraph 256 stipulates that, "the planning system should prevent development which would have significant probability of being affected by flooding".

SEPA's 'Development Management Guidance on Flood Risk' (July 2018) states that,

"Proposed developments should not be located in areas at medium to high risk from fluvial or coastal flooding (or low to medium areas for civil infrastructure).

Where this is not possible, some types of development may be acceptable if they meet the requirements of the risk framework (SPP, paragraph 263). The risk framework should be applied within the context of the issues listed in paragraph 264 of SPP and our Land Use Vulnerability Guidance should be used to inform the vulnerability classification of the proposed land use and ensure that it is suitable for the location and degree of flood risk. In general, the following types of development may be acceptable in areas that are at risk of fluvial or coastal flooding:

- a) Developments classed as water compatible or that are considered to be essential infrastructure which require a flood risk location for operational reasons. The operational need for the development is for the planning authority to determine.
- b) Redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.
- c) Redevelopment of a previously developed site where it involves the demolition of existing buildings and/or erection of additional buildings within a development site, and the proposed land use is equal or less vulnerable than the existing land use.
- d) Where the principle of development on the site has been established in an up-to-date, adopted development plan or the National Planning Framework and flood risk issues were given due consideration as part of the plan preparation process and our assessment of risk has not changed in the interim.
- e) Development in built up areas protected by an existing or planned flood protection scheme, where the standard of protection is appropriate for the vulnerability of the land use. “

The SEPA Land Use Vulnerability Guidance seeks to classify developments into a series of five specific land use types which range from ‘Most Vulnerable Uses’ (at the most vulnerable end of the scale) down to ‘Water Compatible Uses’ (at the least vulnerable end). The development the subject of this application has been categorised by SEPA as a ‘Least Vulnerable Land Use’ (the third most vulnerable to flood risk) because it proposes development comprising buildings for industry and/or for storage and distribution.

SEPA's guidance states that development falling within the ‘Least Vulnerable Land Use’ category will only be acceptable within the medium to high flood risk area if one of the following exceptions apply:

- Redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.
- Redevelopment of a previously developed site where it involves the demolition of existing buildings and/or erection of additional buildings within a development site, and the proposed land use is equal or less vulnerable than the existing land use.
- Where the principle of development on the site has been established in an up-to-date, adopted development plan or the National Planning Framework and flood risk issues were given due consideration as part of the plan preparation process and our assessment of risk has not changed in the interim.
- The site is protected by a flood protection scheme of the appropriate standard that is already in existence and maintained, is under construction, or is planned for in a current flood risk management plan.

The proposed development does not conform with the methodology summarised above and SEPA have suggested that a detailed and site specific flood risk assessment (FRA) for the site might enable them to consider whether there are any as yet unforeseen factors that might enable them to lift their objection in principle. To date, however, no such FRA has been submitted and SEPA have, therefore, reiterated their objection in principle.

The proposed development is therefore considered to be contrary to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7, and contrary to Scottish Planning Policy (SPP).

It is acknowledged that the Council's own flood risk advisor has not raised any objection to the proposed development. However, in the opinion of officers, this internal consultation response has been made without the necessary regard to both national and local flood risk policy and guidance, and officers are not persuaded, and certainly not in the absence of any site specific and up to date FRA, that there is any overriding reason to set aside specific flooding policy in this case.

In the event that Members are minded to approve the application contrary to the recommendation by officers and having regard to National and Local Planning Policy with an outstanding objection from SEPA, this must be notified to Scottish Ministers. This requirement is set out in the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 ('the Direction').

Planning Circular 3/2009: Notification of Planning Applications sets out the process that will be followed in such notification cases under the Direction:

"Where a planning authority notifies Scottish Ministers of its intention to grant planning permission, Ministers consider whether to call in the application or clear it back to the authority to decide the matter as it thinks fit. Scottish Government officials should usually be able to tell the authority within the 28-day period set out in the direction whether Ministers propose to take any action. Scottish Ministers do not need to wait until the end of that 28-day period, and will issue their decision as soon as they are ready to do so. The Scottish Government is committed to efficient decision-making, but in exceptional circumstances it may take a little longer to reach a conclusion, in which case Ministers will issue a further direction, extending the period for their consideration of the matter."

In respect of the current planning application and in the absence of any site specific and up to date FRA, Members are strongly advised to accept the recommendation and not to trigger the notification procedure.

G. Economic Benefit

A Statement has been submitted in support of the proposed development which sets out details of the existing welding business operation on the land to the south of the application site. This statement provides the following comments:

"MacKenzie Welding Ltd is a family run engineering business based in Taynuilt. Formally known as Weldmech Services which started in 1972, they have been providing welding, fabrication & blacksmith services throughout Argyll for 45 years. In 2013 they constructed a new purpose-built workshop to help grow and expand their business. Since 2013 they have steadily grown and now employ a total of 10 local full-time members of staff including several self-employed workers along with an apprentice enrolled with the Scottish Training Federation scheme following success with their previous apprentice winning the prestigious 2018 'apprentice of the year' award for Scotland. Their modern workshop facility provides a key platform for the younger generation to learn welding and fabrication skills. MacKenzie Welding work throughout Argyll and the Islands and has recently been working toward and achieved CE accreditation for structural steel fabrication. Their current workshop facility is limited in external storage space which is a fundamental requirement to the business operations. In order to continue growing and expanding the business, whilst enhancing the long-term sustainability of the village, they have been using the ground to the north east of the workshop know as Plot 1, Nant Park which is in ownership of MacKenzie Welding to address their storage needs".

This statement further outlines the proposed design principles and sets out the methodology of the existing welding business and the proposed expansion into the proposed application site.

This statement is available to view in full at the Council's website via the following link:

<https://portal360.argyll-bute.gov.uk/my-requests/document-viewer?DocNo=22136444>

Officers are sympathetic to the business needs of the developer and have been working with stakeholders to try to facilitate an acceptable development for this site. However, as detailed above, the flood risk and highway safety issues cannot be overcome; certainly not at the present time without the submission and appropriate assessment of the necessary flood risk assessment or traffic management plan and access/turning details. None of these elements can be required by suspensive planning condition as both issues are fundamental to the acceptability or otherwise of the proposed development.