

MORAY COUNCIL (LOSSIEMOUTH TO EAST BEACH REPLACEMENT FOOTBRIDGE)
COMPULSORY PURCHASE ORDER 2022

STATEMENT OF REASONS

1 Introduction

- 1.1 This is the Statement of Reasons prepared by Moray Council ("the Council") in support of the making of a compulsory purchase order known as "Moray Council (Lossiemouth to East Beach Replacement Footbridge) Compulsory Purchase Order 2022" ("the Order").
- 1.2 On 12 May 2021 the Council resolved to make the Order to acquire by compulsory purchase the areas of land around Lossiemouth and East Beach referred to in paragraph 2 below.
- 1.3 Since making the resolution and in the course of making the Order, the Council has entered into talks with the Crown Estates Scotland for the entering into of a lease of part of the area which was originally resolved to be acquired (referred to as the "replacement bridge area"). It is considered that the replacement bridge area no longer requires to form part of the Order Land.
- 1.4 The purpose of acquiring the Order Land is to create new footpaths and upgrade existing footpaths from the esplanade area (defined in paragraph 2 below) to the proposed new footbridge as well as the creation of a ramp at the beach connection point (defined in paragraph 2 below). These works are all in support of the new footbridge linking the town of Lossiemouth to East Beach to replace the existing footbridge which is in a state of disrepair and requires to be demolished ("the existing footbridge").
- 1.5 The statutory power being exercised by the Council to acquire the Order Land compulsorily is section 189 of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act").
- 1.6 This Statement of Reasons sets out in full the Council's purpose for making the Order, in accordance with Scottish Planning Circular 6/2011: Compulsory Purchase Orders ("Circular 6/2011") and the Scottish Government's Compulsory Purchase in Scotland: Guidance for Acquiring Authorities published April 2018.

2 The Order Land

- 2.1 The Order Land comprises the following areas:
- 2.1.1 The area of esplanade beginning at Clifton Road (A941) and fronting the River Lossie where the seawall currently protrudes out towards the River Lossie and continuing south along Seatown Road at the junction between Clifton Road and Seatown Road which is made up of the areas numbered 1 and 2 on the Map ("the esplanade area"); and
- 2.1.2 The area of land on the western side of the dunes closest to the River Lossie and the esplanade area and numbered 3 on the Map ("the beach connection point").
- 2.2 The extent of the Order Land is fully described in the Schedule to the Order and shown delineated in red and shaded pink on the Map annexed to the Order.

3 The purpose of the Order

- 3.1 The existing footbridge was originally constructed 1906 by Lossiemouth Town Council, connecting the town of Lossiemouth to East Beach. In 1918, it was relocated to its current position by the Old Harbour Commission to make it easier for boats to come in and out of the old harbour. The Lossiemouth Old Harbour Commission ceased to exist when the harbour closed, at which point the bridge became ownerless.

- 3.2 In recent years, concern has been raised about the condition of the existing footbridge. On 24 July 2019 a span of the bridge failed causing it to become dangerous and the bridge was closed by the Council's Building Control Section. Since this time, there has been no safe access from the town to East Beach.
- 3.3 The bridge linking the town to East Beach is an important amenity asset to the Lossiemouth community. On 14 November 2019 a workshop was held in Lossiemouth Town Hall to discuss the need for a replacement bridge and how this could be delivered. The workshop was facilitated by Architect Design Scotland and was attended by a number of stakeholders, including Moray Council, Scottish Government, Highlands and Islands Enterprise, Lossiemouth Community Development Trust, Lossiemouth Business Association, Friendly Access, Surf School, Moray Speyside Tourism, Visit Scotland, SEPA and Scotland Town Partnership.
- 3.4 The workshop showed strong support for a replacement footbridge and it was agreed that the Council would carry out an appraisal of options to provide a replacement bridge. Once an option had been agreed, a business case would be prepared in support of the project.
- 3.5 The business case was completed and this is enclosed in Appendix A. This assessed the impact of not having a replacement bridge. The estimated difference in visitor spend would be £1,500,000 each year. Based on this amount, it is estimated that at least 30 full time equivalent jobs could be lost if the bridge is not replaced.
- 3.6 A survey undertaken as part of the Economic Impact Assessment indicates that 72% of the local businesses that responded have experienced a loss in trade since the closure of the bridge. The survey also indicates that the closer a business is to the existing East Beach bridge, the greater their anticipated risk should there be no replacement bridge. Out of the 21 businesses within 5 minutes' walk of the bridge, 19 expected risk of closure, reduction in staffing, and/or reduction in opening hours or season.
- 3.7 Without access to the East Beach, many local residents, particularly those living in close proximity to the beach, have lost a part of their daily life and routine and access to activities which improve health and wellbeing, including: walking or running along the beach, dog walking, water sports, wildlife, and birdwatching from the beach and dunes.
- 3.8 The existing footbridge linking Lossiemouth to East Beach is an important asset and if it is not replaced the economic and amenity impact on the town is likely to be significant. It is therefore considered that a replacement footbridge to re-establish a safe means of access between Lossiemouth and East Beach is necessary. The Order Land is required for the wider project of creating new footpaths and upgrading the existing as well as the creation of an access ramp on the beach side of the replacement bridge.

4 Proposals for use of the Order Land

- 4.1 It is proposed that the Order Land be used for a means of access to both sides of the bridge as well as general landscaping improvements.
- 4.2 Once completed, the new bridge and extent of the Order Land will be open to the public as an area of open space.
- 4.3 The Order Land will be owned and managed by the Council with the replacement bridge being located on land owned by Crown Estate Scotland but leased to and managed by the Council.

5 Description of any new rights

- 5.1 It is not proposed to create any new rights as a consequence of making the Order.

6 Title Conditions

- 6.1 No existing title conditions are to be either preserved or extinguished by confirmation of the Order.

7 Minerals

- 7.1 All rights to the minerals are being acquired under the Order. We have not seen anything of relevance regarding the reservation of minerals. However, due to the historic nature of the titles it is impossible to say definitively that ownership of the minerals haven't been reserved.

8 Use of the enabling Act

- 8.1 It is considered that the powers in terms of section 189 of the 1997 Act are the most appropriate powers for the Council to rely on to acquire the Order Land. There are no other more specific or appropriate powers which ought to be used and the Council considers that the making of the Order complies with the terms of the powers contained in the 1997 Act.
- 8.2 The Option Appraisal identified the Order Land as being one option for the location of the replacement bridge and the business case confirmed this as being the best value option. The Order Land has been specifically chosen as being a suitable area for development and is the most appropriate location for the replacement footbridge.
- 8.3 In considering whether the land is suitable for development the Council must have regard to the provisions of the development plan, whether planning permission for development is in place and any other material planning considerations.
- 8.4 The proposed bridge would be sited and designated appropriate for its location, and would not have a detrimental impact on the character and amenity of the surrounding area. Suitable upgrades are proposed in order to ensure local footpaths and road infrastructure can safely serve the proposed bridge. The proposal complies with policies PP2 – Sustainable Economic Growth in support of the Moray Economic Strategy, DP1 – Development Principles and EP5 – Open Space. As a whole, the proposal is in accordance with the provisions of the Moray Local Development Plan adopted 27 July 2020 (the MLDP).
- 8.5 The Council granted planning permission for the proposed replacement footbridge and associated works (reference 21/00809/APP) on 3 August 2021. A copy of the planning permission is enclosed in Appendix B.
- 8.6 The purpose for obtaining the Order Land is for the proper planning of the area.

9 Engagement

- 9.1 The title position is historic and has required extensive investigation into the identity of the owners. It has not been possible to determine with complete certainty the owners of any of the three titles which make up the Order Land despite exhausting all reasonable enquiries. Further details on ownership is set out in paragraph 13.
- 9.2 Despite the uncertainty on the ownership of the areas to be acquired, area 3 (the beach connection point) is thought to be owned by the successors to the Innes Estate. The Council has been in contact with the parties who purport to be the successors to the Innes Estate who are prepared to voluntarily transfer title in the beach connection point for no consideration. However, these successors require the Council to meet their legal costs – given the uncertainty of the title position, the estimated legal costs are significant and could also result in a transfer being granted without warrandice. It is therefore more cost effective and safer from a legal prospective to acquire the beach connection point under the compulsory purchase order procedure.
- 9.3 As noted above, the Council has engaged with Crown Estate Scotland regarding the replacement bridge area and it is intended that a lease be entered into which has led to this area being removed from the remit of the Order.

- 9.4 In September 2019 Architecture and Design Scotland (ADS) were asked to assist Moray Council to facilitate a community conversation regarding the future of the recently closed Lossiemouth Seatown Bridge. As noted above, a community engagement workshop was held in November 2019 which involved several key stakeholders as well as involving the local community.
- 9.5 As part of the planning process in determining the planning permission for the replacement bridge the Council engaged with statutory consultees and other relevant stakeholders, as well as consulting the public. The consultee responses were considered in the determination of the planning permission. Only one public representation was received which was neutral to the proposed development.

10 Justification for making the Order

- 10.1 The existing footbridge is a key local asset which benefits the residents of Lossiemouth. The bridge was closed by the Council due to concerns about the stability of the structure and a potential impact on public safety. Subsequent investigations found the bridge to be unsafe and it has remain closed since.
- 10.2 The proposed replacement bridge will re-establish the link between Lossiemouth to East Beach which will benefit the public as well as local businesses.
- 10.3 Based on bridge count data from early summer in 2019, it is estimated that 200,000 users would cross the bridge in a typical year. Anecdotal evidence indicates that of the 200,000 users 50,000 are local and the remaining 150,000 are visitors.
- 10.4 The replacement bridge will create an easier and direct access from Lossiemouth to the beach, supporting active lifestyles (walking and water sports) with a subsequent benefit to physical and mental health.
- 10.5 The figures above indicate that the existing footbridge was a key attraction for visitors to Lossiemouth. The closure of the bridge resulted in a mainly negative economic impact on local businesses. The Economic Impact Assessment carried out as part of the business case for the creation of a replacement footbridge estimates the visitor spend associated with the proposed bridge is in the region of £1.5 million, equating to 30 full time equivalent jobs.
- 10.6 To support access to the bridge by pedestrians and cyclists as well as increased numbers of these, the Esplanade area at Clifton Road will be re-designed with the provision of new and/or widened paths, circulation areas and planted areas. There will also be improvements to pedestrian and cycle access from the south and the Gregory Place car park.
- 10.7 The existing bridge and path along the Esplanade are designated a core path and form part of the Moray Coastal Trail. Following the closure of the existing bridge, the core path access along the bridge has stopped. The creation of a replacement bridge will allow for the core path to be diverted to the new bridge and re-connected.
- 10.8 The Council has assessed the identified owners' interests in the Order Land as against the public benefit in making the Order and it is considered that the public interest in obtaining the Order Land for the creation of the replacement footbridge overrides the owners' interests in the Order Land and justifies the making of the Order. The extent of third party ownership of the Order Land is minimal and it currently serves no practical or financial benefit to the owners. It is considered that the purposes for which the Order Land is to be acquired are sufficiently important to justify the deprivation of Order Land.

11 The Planning Position

- 11.1 As noted above, the Council has progressed and obtained a planning permission to develop the proposed replacement footbridge.

- 11.2 The application was considered against the relevant policies of the MLDP and held to be in compliance of these. No objections were made to the planning application.

12 Funding

- 12.1 The funding required to design and construct the replacement footbridge is £1,800,000. This forms £1,631,000 capital cost, £214,729 risk allowance and £60,000 site supervision costs. The Scottish Government has agreed to fund these costs. The improvement of footpaths around the esplanade and at Gregory Place car park has been grant funded by Scottish Government for Cycling Walking and Safer Routes (CWSR) at a cost of £150,000.
- 12.2 The funding required for the preparation of the Order and purchase of the Order will be met by the risk allowance, which forms part of the Scottish Government grant funding.

13 Unknown/Unidentifiable Owners

- 13.1 An investigation into the title position was carried out and the ownership position cannot be conclusively determined for any of the areas. The ownership position of the three areas to be acquired is as follows:

13.1.1 Area 1 – the title investigation suggests that the most likely owner of this area is Moray Council by virtue of a Notice of Title recorded 5 May 2003 to the lands comprehending the Village of Lossiemouth as described in a Charter of Novodamus by David May Dunbar Brander of Pitgaveny and Kinneddar to The Magistrates and Town Council of Elgin recorded 27 May 1859 under exception of areas excepted by statute or feued or disposed by Moray Council. However, due to the historic nature of the title position and the 1859 Charter of Novodamus not being accompanied by a plan, this cannot be said with certainty.

13.1.2 Area 2 – it is probable that these subjects were last owned by Lossiemouth Old Harbour Commissioners in accordance with a Feu Disposition granted in their favour by the Elgin and Lossiemouth Harbour Company recorded 18 December 1914. However, the Lossiemouth Old Harbour Commissioners is now defunct and a Notice of Disclaimer of Bona Vacantia was published in The Gazette on 3 October 2017 in which the Queen's and Lord Treasurer's Remembrancer waived and disclaimed the Crown's whole right and title (if any) to the property. Therefore these subjects have no identifiable owner.

In addition, it is not possible to conclusively state that the bounding description in the 1914 Feu Disposition covers the full extent of Area 2. It is possible that remnants of the land may still be in the ownership of the Elgin and Lossiemouth Harbour Company which is understood to no longer exist.

13.1.3 Area 3 – the beach connection point was originally part of the property owned by a company called the Innes Estate by virtue of a Disposition in their favour recorded 10 April 1931. Since that date there have been a number of title transfers but we cannot with certainty determine whether any of those transfers have included the beach connection point or if it still remains in the historic 1931 title granted to the Innes Estate. The Innes Estate company no longer exists and our searches would suggest that title has subsequently been transferred. Listed below are parties who title may have passed to. We have discussed with the successors to the Innes Estate and they have provided some comments on the status of these parties. We also cannot rule out the possibility that title to the beach connection point has never been disposed of since the original 1931 grant to the (now defunct) Innes Estate and consequently has fallen to the Crown as bona vacantia. In early discussions with the Crown Estate, they provided a plan of the areas under their ownership and the beach connection point was not included. However, this does not preclude the possibility that they are otherwise entitled.

13.1.4 The parties who may have title to the beach connection point:

Innes Estate (the original company – now defunct);

(Sir) Iain Mark Tennant (deceased);

(Sir) Iain Mark Tennant's Trustees (trust dissolved);

Mark Edward Tennant;

Edward Iain Tennant; and

The Trustees of the Innes Estate Trust (dissolved).

14 Special Considerations

- 14.1 Part of the Order Land lies within the Lossiemouth to Portgordon Coast Special Landscape Area as designated in the MLDP.
- 14.2 The impact of the proposed development of the replacement footbridge was considered by the Council's planning officer as part of the determination of the planning application.
- 14.3 Policy EP3 of the MLDP deals specifically with proposed developments affecting designated areas. The policy applies separately to areas within settlement boundaries and to rural areas not within a settlement boundary. In this instance, the replacement footbridge will be located partly within the settlement boundary of Lossiemouth and partly outwith. The planning officer considered that the replacement footbridge would comply in part with this policy as it applies to development within settlement boundaries. However for development in rural areas policy EP3 only permits development for certain specified uses and the proposed bridge is not covered by any of the specified uses.
- 14.4 The planning officer considered the importance of the replacement bridge against the terms of the policy as it applies to rural areas and determined that a departure from policy EP3 was considered acceptable in this instance.

15 List of Documents

- 15.1 A copy of the Order and the map referred to therein have been deposited Lossiemouth Library, Lossiemouth High School, Coularbank Road, IV31 6JU and may be seen there without payment of fee during the following days and times:

Tuesday 10am – 1pm 2pm – 5pm	Wednesday 5pm – 8pm	Thursday 10am – 1pm	Friday 2pm – 4pm	Saturday 10am – 12pm
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- 15.2 The following documentation are also available for inspection online at:
<http://www.moray.gov.uk/lossiemouthbridgeCPO>.

- 15.2.1 Moray Council (Lossiemouth to East Beach Replacement Footbridge) Compulsory Purchase Order 2022
- 15.2.2 Moray Council (Lossiemouth to East Beach Replacement Footbridge) Compulsory Purchase Order 2022 – Map
- 15.2.3 Moray Council (Lossiemouth to East Beach Replacement Footbridge) Compulsory Purchase Order 2022 Statement of Reasons
- 15.2.4 "Compulsory Purchase in Scotland: A guide for Order Land owners and occupiers" (2019)

Appendix A

Business Case



REPORT TO: MORAY COUNCIL ON 12 MAY 2021

SUBJECT: LOSSIEMOUTH EAST BEACH FOOTBRIDGE REPLACEMENT

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 To inform the Council of the outcome of the Option Appraisal to replace the footbridge from Lossiemouth to East Beach and Scottish Government's decision with regard to funding the design and construction of the new bridge.
- 1.2 This report is submitted to the Council in terms of Section II (20) of the Council's Scheme of Administration relating to matters which currently do not fall within the terms of reference of any Committee.

2. RECOMMENDATION

2.1 It is recommended that the Council:

- (i) note that Scottish Government has agreed to fund the preferred option to construct a new footbridge from the esplanade in Lossiemouth to East Beach;**
- (ii) agree to providing staff resources to progress delivery of the design and construction of the replacement footbridge from Lossiemouth to East Beach. Costs included in Scottish Government funding package, see paragraph 3.7;**
- (iii) give delegated authority to the Legal Services Manager to prepare and sign all Compulsory Purchase Order documentation and to take all necessary steps, including publication of all statutory notices, to secure conformation of the Order by Scottish Ministers and the vesting of the land in the Council, if required;**
- (iv) agree that the Council take ownership of the new bridge on completion of construction; and**
- (v) agree to use section 20 of the Local Government in Scotland Act 2003 to demolish the old bridge at the same time as building the new one at a cost of £69k with the cost to be met from reserves.**

Or

- (vi) agree to the ongoing inspection and maintenance of the bridge to remove defective parts, and ultimately at some point in the future the demolition of the bridge under the Building Standards (Scotland) Act 2003 at a point when it is considered “dangerous” to protect public safety.

3. **BACKGROUND**

- 3.1 On 17 December 2019, the Council agreed in principle to take ownership of the new bridge on completion of construction; commit staff resources to progress the Option Appraisal for a replacement bridge; and submit a report to Council on the outcome of the Option Appraisal (paragraph 4 of the minute refers).
- 3.2 A two stage contract for this work was tendered in April 2020. Stage 1 is the development of an Option Appraisal to inform the business case required to secure funding for the design and construction of the bridge. Stage 2 is the design and construction of the bridge. The Contract includes a clause that if funding is not secured at the end of Stage 1, the works will not be progressed. This Contract was awarded to Beaver Bridges in September 2020. The tender process was longer than originally anticipated due to COVID related working restrictions.
- 3.3 The five options assessed as part of the Option Appraisal are listed below and the location of options 3, 4 and 5 are provided in the Appendix.
1. Do Nothing
 2. Do Minimum
 3. New Footbridge Local to the Existing
 4. New Footbridge at the Esplanade
 5. New Footbridge at Seatown Road
- 3.4 Each option was assessed on cost, environmental impact, flood risk and ground conditions. The environmental impact, flood risk and ground conditions were very similar for all of the options, however, the costs for each option were significantly different. The cost of each option is provided in the table below.

Options	Capital Cost	Maintenance	Whole Life Cost
Do Nothing	£0	£0	£0
Do Minimum	£900,000	£1,800,000	£2,700,000
Option 3 – New bridge local to existing	£2,225,000.	£550,000	£2,775,000
Option 4 – New bridge at the Esplanade	£1,375,000.	£165,000	£1,540,000
Option 5 – New bridge at Seatown Road	£1,750,000.	£400,000	£2,150,000

The Option Appraisal identified Option 4, a New Footbridge at the Esplanade as the preferred option as this has the lowest cost and as such provides best

value. Full details of the Option Appraisal have been uploaded to CMIS as additional meeting documents along with the agenda.

3.5 In November 2020 the Lossiemouth Community Development Trust appointed an economist to undertake an Economic Impact Assessment (EIA). This assessment looked at the impact on the local economy with and without direct access to East Beach. The EIA found that since the East Beach bridge closure, 72% of local businesses have experienced a negative impact on trade. 76% of local businesses advised that a high quality bridge replacement would influence their plans for future investment or expansion. Based on bridge count data from early summer in 2019, it is estimated that 200,000 users would cross the bridge in a typical year. Anecdotal evidence indicates that of the 200,000 users 50,000 are local and the remaining 150,000 are visitors. Based on this data the EIA found that with direct access to East Beach the town would benefit from an additional £1,500,000 in visitor spend and 30 FTE jobs. In addition to the economic benefits direct access to East Beach would provide health and wellbeing benefits, including: walking or running along the beach, dog walking, water sports, and wildlife and birdwatching from the beach and the dunes behind the beach. The benefits achieved are the same for all of the options to replace the bridge. Full details of the EIA have been uploaded to CMIS as additional meeting documents along with the agenda.

3.6 Information from each of these documents was used to draft the business case required to secure funding to design and construct the bridge. The business case was drafted in line with government guidance, which requires any bid for funding to demonstrate best social value for money. This is achieved by assessing the costs and benefits that apply to each option. The Option Appraisal identified that the preferred option was Option 4, a new bridge at the esplanade, as this has the lowest cost. The benefits for each option are generally the same, as each option for reinstating the bridge is within 250m of the original bridge starting point and all have the same landing point. The table below sets out the costs and benefits for each option.

Options	Costs					Benefits	
	Capital	Maint	Risk	Construction Supervision	Net Present Value	Economic	Social
Option 1 – Do Nothing	£0	£0	£0	£0	£0	There are no economic benefits associated with this option.	There are no social benefits associated with this option.
Option 2 – Do Minimum	£0.9m	£1.8m	£1.115m	£60,000	£3.875m	-£1.5m increase in visitor spend each year. -30 FTE jobs.	-Access to activities that improve health and wellbeing including: Walking and running Dog walking Watersports

							Wildlife and bird watching. -Safe and reliable access to the beach.
Option 3 – New bridge local to existing	£2.225 m	£0.55m	£0.365m	£60,000	£3.2m	-£1.5m increase in visitor spend each year. -30 FTE jobs.	-Access to activities that improve health and wellbeing including: Walking and running Dog walking Watersports Wildlife and bird watching. -Safe and reliable access to the beach. -Fully compliant bridge will access for all including wheelchair users.
Option 4 – New bridge at the Esplanade	£1.375	£0.165m	£0.365m	£60,000	£1.965m	-£1.5m increase in visitor spend each year. -30 FTE jobs.	-Access to activities that improve health and wellbeing including: Walking and running Dog walking Watersports Wildlife and bird watching. -Safe and reliable access to the beach. -Fully compliant bridge will access for all including wheelchair users.
Option 5 – New bridge at Seatown Road	£1.75m	£0.4m	£0.365m	£60,000	£2,575m	-£1.5m increase in visitor spend each year. -30 FTE jobs.	-Access to activities that improve health and wellbeing including:

							Walking and running Dog walking Watersports Wildlife and bird watching. -Safe and reliable access to the beach. -Fully compliant bridge will access for all including wheelchair users.
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The option that provides best social value for money is to construct a new footbridge at the esplanade and this was identified as the preferred option in the business case. It is noted that some members of the local community expressed a preference for a replacement bridge at the same location as the existing bridge. However, as the benefits identified in the Economic Impact Assessment are the same for each option, the only differing factor between each option is cost and this was used in selecting the preferred option that was presented, for agreement with Scottish Government, in the business case. The business case was submitted to Scottish Government on 11 March 2021. Full details of the business case have been uploaded to CMIS as additional meeting documents along with the agenda.

- 3.7 The funding required to design and construct the bridge is £1,800,000, which includes £1,375,000 capital cost, £365,000 risk allowance and £60,000 site supervision costs.
- 3.8 Scottish Government agreed the preferred option to construct a new bridge at the esplanade and on 24 March 2021 announced that it would fund the replacement bridge.
- 3.9 Subject to agreement at this meeting, the Council will award Stage 2 of the contract to design and build a new footbridge at the esplanade. A full programme will be submitted by the contractor when Stage 2 of the contract is awarded. An indicative timeline is provided below but this may be subject to change.
 - May - submit applications for statutory consents.
 - May – start detailed design.
 - September – bridge fabrication (subject to obtaining statutory consents).
 - January – start construction.
 - March / April – open bridge.
- 3.10 The Council's Legal Services Section is investigating land acquisition required to construct the new bridge. This involves negotiation on land purchase and/or progress of Compulsory Purchase Orders as appropriate. If Compulsory Purchase Orders are required members are asked to provide delegated

authority to the Legal Services Manager to prepare and sign all Compulsory Purchase Order documentation and to take all necessary steps, including publication of all statutory notices, to secure conformation of the Order by Scottish Ministers and the vesting of the land in the Council.

Existing Bridge

- 3.11 Funding for the replacement bridge does not include an allowance for demolition of the existing bridge. Although the existing bridge has no owner the Council has a duty to ensure public safety and so will ultimately have to remove the structure at its own cost. The bridge will continue to deteriorate and will become an increasing risk to public safety that will require the Council to take action. If in the future the Council decides to demolish this bridge in the interest of public safety it would cost in the region of £77,000.
- 3.12 At this point in time the Bridge is considered safe because we have prevented public access to it, however, there will come a point when the risk of items falling from the bridge will become a risk to river users.
- 3.13 Until the point when the structure can no longer be classed as safe the Council could not use its powers under the Building (Scotland) Act 2003 to progress with demolition. In complying with our duties we will have to carry out annual inspections of the old bridge and will have to maintain or remove dangerous parts of the bridge as they become unsafe or present a risk to river users. The process would be one of direct action under the legislation as there is no owner and the cost of inspection and any maintenance or demolition would fall to the Council. The annual costs associated with inspection and essential maintenance of the bridge are approximately £1,500.
- 3.14 In the absence of any other legislative powers, and in the knowledge that demolition or partial demolition is inevitable and the associated ongoing costs to inspect and maintain the bridge, the Council could use section 20 of the Local Government in Scotland Act 2003, which enables a local authority to do anything it considers likely to promote or improve the well-being of its area.
- 3.15 Although the community has a fond connection to the old bridge, the building of a new bridge, means it has served its function and will continue to deteriorate to the point where it becomes an eyesore and a danger to public safety. The option of using the power of wellbeing to remove the bridge as part of the contract to build the new one provides better value for money and removes risk to the public.
- 3.16 As part of enacting the power of well-being it would be appropriate to consult with neighbouring land owners.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

A thriving and well connected place, where more people live well in their communities.

(b) Policy and Legal

The land required to construct the bridge will be acquired by the Council and we may have to use Compulsory Purchase powers, however, the land will be acquired through negotiation where possible, subject to agreement of the recommendations in this report.

The Council has a duty to protect public safety from dangerous buildings and structures under the Building (Scotland) Act 2003. At present the old bridge is viewed as safe because of restricted access.

The Council can use section 20 of the Local Government in Scotland Act 2003 for the purpose of removing the old bridge.

(c) Financial implications

Funding for the design and build of the new bridge will be provided by Scottish Government. The future maintenance of the bridge will be the responsibility of Moray Council at an estimated cost of £165,000 for the whole life of the bridge. The bridge has a design life of 100 years. Routine maintenance such as sweeping and vegetation clearance can be accommodated within the existing bridge maintenance budget, however, major maintenance works will require capital funding. As the bridge is new and will have a Fluoropolymer paint system, which has a design life of 60 years, major maintenance works should not be required within 40 to 60 years. This estimate does not allow for repairs to damage caused by vandalism.

Members should note that responsibility for the cost of demolition or making the old bridge safe will remain with the Council. At present the bridge is not at a point where demolition is justified under the Building (Scotland) act 2003, however, it will require annual surveys which will be carried out by the Council's consultancy team in discussion with Building Standards and ongoing costs associated with removing or making good parts of the bridge until it is ultimately demolished.

The Council can use the power of wellbeing to take action now to remove the old bridge by included it in the contract for the new build at of cost estimate of £69k saving £8k and would need to be funded from reserves.

(d) Risk Implications

A risk register has been developed and the risks quantified and included in the funding secured from Scottish Government.

Planning permission is required for the new bridge. Some members of the community have expressed disappointment that the new bridge will not be located at Seatown and may object to the planning application. Consultation with statutory consultees is underway to identify any material considerations and potential mitigation required to address this.

Removal of the old bridge may not be popular due to the iconic status of the bridge, however demolition will be the only option that will ensure public safety in the long term.

The Compulsory Purchase process will be progressed in parallel with landowner negotiations, to ensure the Council can acquire the land required to start construction of the new bridge by January 2022. There is a risk that this process could take longer than seven months but starting the process early will reduce this risk.

(e) Staffing Implications

The cost of supervising the works on site has been included in the funding secured from Scottish Government. There will be a requirement for additional staff time for Project Management but this can be accommodated within available staff resources.

(f) Property

Land required to construct the bridge will be acquired subject to agreement of the recommendations in this report. An allowance has been made in the risk register for the cost of any land acquisition required.

(g) Equalities/Socio Economic Impact

An equality impact assessment will be carried out as part of the design phase in order to ensure that the impact on groups protected under the Equality Act 2012 are minimal and where feasible can be mitigated..

(h) Consultations

Depute Chief Executive (Economy Environment and Finance), Head of Environmental and Commercial Services; Head of Economic Growth and Development, Chief Financial Officer, Legal Services Manager, Equalities Officer and Lissa Rowan, Committee Services Officer have been consulted and their comments incorporated into the report.

5. CONCLUSION

5.1 An Option Appraisal and Economic Impact Assessment have been undertaken and the findings used to inform the business case required to support the request for funding to design and build a replacement footbridge from Lossiemouth to East Beach.

5.2 The preferred option identified in the Option Appraisal is to construct a new footbridge located at the esplanade.

5.3 Scottish Government has agreed the preferred option to construct a new bridge at the esplanade and will fund the design and construction of the bridge.

5.4 Moray Council will need to acquire the land on which the bridge will be constructed, either by negotiation or through Compulsory Purchase.

5.5 Following on the previous, agreement in principle, Moray Council is asked to take ownership of the bridge on completion of construction to avoid any repetition of the previous issues.

5.6 The old bridge will continue to deteriorate and it is a duty of the Council to ensure public safety. While this does not yet require its demolition, this will ultimately be necessary and the Council can use the Power of Wellbeing to remove it at the same time the new bridge is built.

Author of Report: Debbie Halliday – Consultancy Manager

Background Papers:

1. Report to Special Meeting of Moray Council on 17 December 2019 – Replacement of the bridge from Lossiemouth to East Beach
2. Lossiemouth East Beach Bridge Replacement Options Report
3. Lossiemouth East Beach Bridge Replacement Economic Impact Assessment
4. Lossiemouth East Beach Bridge Replacement Business Case

Ref: SPMAN-524642768-347

Appendix B

Planning permission 21/00809/APP



**MORAY COUNCIL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,
as amended**

PERMISSION FOR DEVELOPMENT

**[Heldon And Laich]
Application for Planning Permission**

TO



With reference to your application for planning permission under the above-mentioned Act as amended, Moray Council in exercise of its powers hereby **GRANT** planning permission for the following development:-

Erection of new footbridge over River Lossie between Esplanade and East Beach to replace existing footbridge between Seatown and East Beach on Site Opposite 17C Clifton Road Lossiemouth Moray

in accordance with the plan(s) docquetted as relative hereto and the particulars given in the application, and where appropriate, subject to the condition(s) and reason(s) as set out in the attached schedule.

This permission does not carry with it any necessary consent or approval to the proposed development under the building regulations or other statutory enactments and the development should not be commenced until all consents have been obtained.

Date of Notice: **4 August 2021**



Head Economic Growth and Development Services

Economy, Environment and Finance
Moray Council
Council Office
High Street
ELGIN
Moray
IV30 1BX

IMPORTANT NOTE

YOU ARE OBLIGED TO COMPLY WITH THESE CONDITIONS AND NOTES

SCHEDULE OF CONDITIONS

By this Notice the Moray Council has **GRANTED PLANNING PERMISSION** for this proposal subject to conditions as appropriate to ensure implementation of the proposal under the Town & Country Planning (Scotland) Act 1997, as amended. **It is important that these conditions are adhered to and failure to comply may result in enforcement action being taken.**

CONDITION(S)

Permission is granted subject to the following conditions: -

- 1 No works in connection with the development hereby approved shall commence unless an archaeological Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the Council, as Planning Authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the WSI will be provided throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be brought into use unless a Post-Excavation Research Design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the Council, as Planning Authority. The PERD shall be carried out in complete accordance with the approved details.

Reason: To safeguard and record the archaeological potential of the area.

- 2 Notwithstanding the submitted details, no works in connection with the development hereby approved shall commence unless the following has been submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority:
 - a) Detailed drawings (Scale 1:500 minimum) showing the location, design specifications, materials and timescale for the provision of pedestrian and cycle routes from the south of The Esplanade side of the new bridge, including the provision of new paths and the widening of existing paths, to ensure minimum widths of 3.0 metres for any routes to be used by cyclists, and an enhanced circulatory area where the new bridge meets The Esplanade at Clifton Road. Dropped kerbs and tactile paving are to be provided at all locations where the route(s) meet with or cross the public road and 'Ladder'/'Tramline' paving is to be provided at all locations where pedestrian only routes meet with shared pedestrian/cycle routes. (Note: On existing routes which are to be utilised by cyclists and/or wheelchair users, 'cobble' and other uneven surfaces must be reviewed and, if necessary, replaced with a surface suitable for wheeled users).
 - b) Detailed drawings (Scale 1:200 minimum) showing the longitudinal sections of all new and widened paths connecting to the existing paths

- and to the circulatory area at The Esplanade end of the new bridge to demonstrate that gradients are compliant with mobility standards. Cross Section drawings (Scale 1:100 minimum) showing any required re-grading of slopes adjacent to the new/widened paths and the location and design specification for any required ground retaining features.
- c) Detailed drawings (Scale 1:500 minimum) showing the location, design specifications and timescale for the provision of a cycle route utilising Clifton Road and the adjacent improved paths to provide access for cyclists travelling from the A941 to the new bridge, including all signage, road markings and dropped kerbs to direct and aid cyclists travelling to the bridge and nearby cycle parking.
 - d) Detailed drawings (Scale 1:500 minimum) showing the location, design specifications and timescale for the provision of wayfinding signage for pedestrians and cyclists from the northern and southern approaches to the new bridge, in particular from the Gregory Place and Station Car Parks and from the A941 (Clifton Road).
 - e) Detailed drawings (Scale 1:500 minimum) showing the location, design specifications and timescale for the provision of additional signage directing road users from the A941 Elgin Road to the Public Car Parks within Lossiemouth and the relocation of the existing road signage on the southern side of Seatown Ring Road/Church Street to the rear of the proposed new footway at the Gregory Place Car Park.
 - f) Detailed drawings (Scale 1:500 minimum) showing the design specifications, materials and timescale for the provision of a new footway connecting the Gregory Place Car Park to Seatown Ring Road/Church Street on either the eastern or western side of the existing vehicular access.

Thereafter the improvements to pedestrian and cycle access and signage shall be provided in accordance with the approved details and agreed timescales.

Reason: To ensure provision of safe and suitable access to the bridge for pedestrians (including those with mobility impairments) and cyclists in the interest of road safety.

- 3 No works in connection with the development hereby approved shall commence unless the following has been submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority regarding:
 - a) A Construction Traffic Management Plan which shall include the following information:
 - i) Construction Programme, including start date and duration of works;
 - ii) Details of the location of a site compound for the storage of materials, equipment, staff parking, deliveries and the provision of welfare facilities;
 - iii) Measures to be put in place to prevent material being deposited on the public road;
 - iv) Measures to be put in place to safeguard the movements of pedestrians and cyclists;
 - v) Traffic management measures to be put in place during the works, including any specific instructions to drivers, including delivery drivers.

And

- b) Details of any required/proposed temporary construction access which shall include the following information:
- i) A drawing (scale 1:500 minimum) regarding the location and design specifications of the proposed access(es);
 - ii) Specification of the materials used for the construction access(es);
 - iii) All traffic management measures required to ensure safe operation of the construction access(es);
 - iv) Details, including materials, for the reinstatement of any temporary construction access(es); and
 - v) Details regarding the timescale for the opening up and closure of any temporary access(es) together with the time period over which the temporary access(es) will be used.

Thereafter the development shall be implemented in accordance with the approved details.

Reason: To ensure an acceptable form of development in terms of the arrangements to manage traffic and construction vehicles during construction works at the site, and in the interests of road safety and the amenity of the area/adjacent properties.

- 4 The development hereby approved shall be carried out in accordance with the mitigation measures specified in section 5 of the Preliminary Ecological Survey by Walking the Talk dated 21 October 2020 approved as part of this application.

Reason: In order to ensure the development is carried out with minimal impact on species that may potentially be present in and around the development site.

- 5 Within one month of completion of works or first use of the bridge (whichever is the soonest) evidence shall be submitted to the Council, as Planning Authority, that shows as built drawings of the bridge have been submitted to the UK Hydrographic Office (Admiralty Way, Taunton, Somerset, TA1 2DN) for their records.

Reason: To ensure the UK Hydrographic Office charts can be updated timeously, in the interests of navigational safety of mariners.

- 6 No development shall commence until details of the colour of finishes for all steel work (bridge decking and legs) of the bridge hereby approved shall be submitted to and approved in writing by the Council, as Planning Authority. Thereafter the development shall be implemented in accordance with the approved details.

Reason: To ensure the finishes of the bridge are appropriate details of which are lacking and in the interests of the character of the surrounding area.

REASON(S) FOR DECISION

The Council's reason(s) for making this decision are:-

The proposed bridge would be sited and designated appropriate for its location, and would not have a detrimental impact on the character and amenity of the surrounding area. Suitable upgrades are proposed in order to ensure local footpaths and road infrastructure can safely serve the proposed bridge. In this regard, the proposal is in accordance with the provisions of the Moray Local Development Plan 2020 (MLDP).

Half of the bridge would fall outwith the settlement boundary of Lossiemouth, as defined in the MLDP and also sits within the Lossiemouth to Portgordon Coast Special Landscape Area designation. Policy EP3 - Special Landscape Areas only permits development outwith defined settlements in certain circumstances, and the proposal is not covered under any of the permitted uses specified in the policy for rural areas (i.e. those outwith defined settlement boundaries). Policy EP6 - Settlement Boundaries does not permit any development immediately outwith the settlement. However, the supporting information provided with the application demonstrates the significant benefits the proposal will have for the local economy. The proposal will also improve public access to a valued amenity, with subsequent benefits for health and wellbeing. The proposal is considered to be an acceptable departure from these policies in unique circumstances and is unlikely to set a precedence for development elsewhere that would be contrary to these policies.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title
BB2020-PL-001	00	Location plan
BB2020-PL-003	00	Constraints plan
BB2020-PL-008	P01	Landscape plan
BB2020-PL-005	00	Proposed drainage layout and details
BB2020-PL-004	P01	Proposed fencing
BB2020-PL-002	P02	Proposed footbridge general arrangement
BB2020-PL-006	P02	Proposed kerbs footways paved areas and signs
BB2020-PL-007	P03	Proposed kerbs footways paved areas and signs

IMPORTANT NOTES ABOUT THIS DECISION

DURATION OF THIS PERMISSION

In accordance with Section 58 (i) of the Town and Country Planning (Scotland) Act 1997 as amended, the development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.

If the development has not commenced within this period then this permission shall lapse unless there is a specific condition attached to this permission which varies the stated timescale.

COMMENCEMENT AND COMPLETION OF THE DEVELOPMENT

The following are statutory requirements of the Town & Country Planning (Scotland) Act 1997, as amended. Failure to meet their respective terms represents a breach of planning control and may result in formal enforcement action. Copies of the notices referred to below are attached to this permission for your use.

NOTIFICATION OF INITIATION OF DEVELOPMENT

S.27A of the 1997 Act, as amended requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, as soon as practicable after deciding the date they will start work on the development, give notice to the planning authority of that date. This ensures that the planning authority is aware that the development is underway and can follow up on any suspensive conditions attached to the permission. Therefore, prior to any work commencing on site, the applicant/developer must complete and submit to the Moray Council, as planning authority, the attached Notification of Initiation of Development.

NOTIFICATION OF COMPLETION OF DEVELOPMENT

S.27B of the 1997 Act, as amended requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. This will ensure that the planning authority is aware that the development is complete and can follow up any planning conditions. Therefore, on completion of the development or as soon as practicable after doing so, the applicant/developer must complete and submit to the Moray Council, as planning authority the attached Notification of Completion of Development.

NOTIFICATION OF COMPLETION OF PHASED DEVELOPMENT

Under S.27B(2) of the 1997 Act, as amended where permission is granted for phased development, the permission is subject to a condition (see Schedule of Conditions above) requiring the applicant/developer as soon as practicable after each phase to give notice of that completion to the planning authority. This will allow the planning authority to be aware that particular phase(s) of the development is/are complete.

When the last phase is completed the applicant/developer must also complete and submit a Notification of Completion of Development.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

The following notes are provided for your information including comments received from consultees:-

THE NORTHERN LIGHTHOUSE BOARD have commented that:-

Marine safety information and a local Notice to Mariners must be issued to water users and a copy provided to the Northern Lighthouse Board prior to and during the course of works in the construction of the bridge.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Planning consent does not carry with it the right to carry out works within the public road boundary.

Before commencing development the applicant is obliged to provide all technical information, including drawings and drainage calculations, to be reviewed. Upon completion of the development the application is obliged to provide As Built drawings to enable the inclusion of the works on the asset management database and GIS layers. Advice on this matter can be obtained by emailing transport.develop@moray.gov.uk

Before starting any work on the existing public road the applicant is obliged to apply for a road opening permit in accordance with Section 56 of the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road. Advice on these matters can be obtained by emailing roadspermits@moray.gov.uk

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The applicant shall free and relieve the Roads authority from any claims arising out of their operations on the road or extension to the road.

No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority.

**DETAILS OF ANY VARIATION MADE TO ORIGINAL PROPOSAL,
AS AGREED WITH APPLICANT (S.32A of 1997 ACT)**

None

**DETAILS WHERE DIFFERENT TIME-PERIOD(S) FOR DURATION OF PLANNING
PERMISSION IMPOSED (S.58/59 of 1997 ACT)**

None

TERMS OF S.75 AGREEMENT RELATING TO THIS APPLICATION

The terms, or summary of terms of the Agreement can be inspected at:-

None

NOTICE OF APPEAL

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may appeal to the Scottish Ministers under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of appeal should be addressed to the Planning and Environmental Appeals Division, Scottish Government, Ground Floor, Hadrian House, Falkirk, Callendar Business Park, Callendar Road, FK1 1XR. This form can be obtained and may also be downloaded and/or submitted online from www.eplanning.scotland.gov.uk

If permission to develop land is refused or granted subject to conditions whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



MORAY COUNCIL

NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number **21/00809/APP**

Date Decision Issued

Location and Description of Development

Erection of new footbridge over River Lossie between Esplanade and East Beach to replace existing footbridge between Seatown and East Beach on Site Opposite 17C Clifton Road Lossiemouth Moray

Please note that all suspensive conditions must be discharged prior to commencement of development

Date works are to Commence	
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Name, Address and contact details of developer

The Full name and Address and contact details of the landowner, if a different person

Where an agent is appointed, their full name and contact details

Signed

Name (Print)

Date

Please complete and return this form to:

Development Management & Building Standards Manager, Moray Council, PO Box 6760, Elgin, Moray, IV30 1BX

OR

E-mail: development.control@moray.gov.uk



MORAY COUNCIL

NOTIFICATION OF COMPLETION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number **21/00809/APP**

Date Decision Issued

Location and Description of Development Erection of new footbridge over River Lossie between Esplanade and East Beach to replace existing footbridge between Seatown and East Beach on Site Opposite 17C Clifton Road Lossiemouth Moray

Date of completion of works	
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Name, Address and contact details of developer

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The Full name and Address and contact details of the landowner, if a different person

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Where an agent is appointed, their full name and contact details

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.....
.....

Signed

Name (Print)

Date

Please complete and return this form to:

Development Management & Building Standards Manager, Moray Council, PO Box 6760, Elgin, Moray IV30 1BX

E-mail: development.control@moray.gov.uk