

Wednesday, 16 April 2014

Lissa Rowan
Clerk to the Moray Local Review Body
Legal & Demorcratic Services
The Moray Council
High Street,
Elgin
IV30 1BX

Dear Ms Rowan,

**MLRB Case 99 – Planning Application 13/01581/APP
Amendment of 91/0929/FUL to erect Parkmore House Type on Plot 19, Corsemaul Drive, Dufftown, Moray**

Many thanks for your letter of 3rd April giving us the opportunity to respond to the representation from Transportation, Moray Council. This letter and attachments are our response. I have enclosed/attached the following:

1. Point by Point response to Transportation's representation.
2. Plan showing the Surface Water Treatment for the plots concerned within this planning application and that covered by MRLB Case 99 together with their siting and description of the already installed SUDS infrastructure.

Hopefully this covering letter can summarise the situation as the applicant sees it:

The detailed design of SUDS provision is a Building Control Issue, not a Planning Issue (as agreed by the Planning Officer within the Report of Handling).

The installation, or lack of, the three road gullies to the north is not a planning issue – Transportation clearly state, through their representation, that it is a Road Construction Consent issue.

The individual plots in question do not increase the chances of flooding the road adjacent to the property at Mount Street as they are 180m+ away and significantly downhill of Mount Street. Hopefully the members of the LRB will see

Transportation's only concern should be ensuring that Surface Water does not drain onto to the public carriageway as a result of the development of these plots in question. Condition 7 adequately ensures no surface water runoff onto the road is allowed. Therefore Condition 4 is redundant and unnecessary.

An adequate SUDS system is installed that will serve the plots – the description and management of that system is attached. The detail of that SUDS design is a Building Control Issue, not a planning issue and none of the existing live Planning Permissions show any conditions requiring the upgrading of any infrastructure off site.

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In short, the plots and whole site will be (and are) served by a SUDS system designed and built in accordance with all the relevant guidelines and policies. The detailed design of that system is a Building Control Issue, not a planning issue and neither the development nor the individual plots within this application are capable of flooding any of the properties in Mount Street.

These conditions are unnecessary, prohibitive and impossible to purify as not all of the surface water drainage infrastructure needs to be provided to Scottish Water Standards as set out within condition 16 of the original RCC document.

Proper consultation with myself and my clients at the planning application stage would have resolved Transportation's misunderstanding and provided them with the clarification they needed.

Should the Planning condition not be removed, my client will be seeking that the gullies at the entrance to the site be installed (if it is proven they are not) by the Moray Council as it should have done so when calling in the Road Bond and completing the Road to the approved RCC design. The responsibility for their installation lies with the Transportation Department under the Roads (Scotland) Act 1984 once they called in the bond and assumed the responsibility of completing the Road.

Their failure to complete the road as they were legally required to do after the previous developer failed to do so is no justification for making other people undertake the work and has nothing to do with this planning application/consent.

Please let us know if further information is required and if our attendance at a site visit is required.

Many thanks,

Marcus Salter

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Point by Point response to Transportation's representation:

1. No response.
2. No response.
3. Correct as design of surface water infrastructure is a Building Control issue, not a Planning issue as stated by the Planning Officer within the Handling Report.
4. Correct.
5. All the planning applications that have been granted since 2005 were applications to alter parts of the existing live 1991 planning application. Whilst the layout within those recent applications differ from the original 1991 planning application, the 1991 permission remains 'Live in Perpetuity' and as such the conditions attached to it also remain live.
6. The road gullies of the development road do not form part of the planning application under appeal. Both the Surface Water and Foul Water Drainage pipework infrastructure design has been granted Technical Approval by Scottish Water and inspected at the time of construction and will be adopted in due course.
7. Correct, however, they also fall within planning permission 91/0929/FUL as the 05/00315/FUL application was an amendment to the 91 permission.
8. Agreed, however, the development makes adequate provisions for surface water drainage that have been approved previously by Moray Council Building Control and designed in accordance with consultations with Transportation (Moray Council), Planning (Moray Council), SEPA, Scottish Water & Contaminated Land (Moray Council).
9. The sites will be drained by a SUDS system that is already installed.

Transportation is **not** the regulatory authority to ensure SUDS do not impact upon the wider environment.

10. The site is served by a SUDS and its design and suitability will be dealt with at the Building Warrant Stage, as it is on all sites.
11. All the Surface Water from the sites in question will be drained by a SUDS.
12. The SUDS in place was designed in accordance with consultation with all the interested parties including SEPA & Scottish Water. The system, as is described within an attachment to this letter, is a 'hybrid' whereby the pipe work will be adopted by Scottish Water and the soakaway will remain a private system (in accordance with Condition 16 of the previously expired RCC governing the site).
13. Incorrect, the application 13/01569/APP sought to change the planning condition relating to the phasing and this was granted. Accordingly the plot now sits within the 'first phase' of the development.
14. The site does provide adequate provisions for the management of surface water.
15. The Surface Water provisions for the site were designed within the design process for the planning and building warrant stages for the 2005 application.

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16. Correct, but RCC is not a planning issue.

17. Agreed, the RCC shows a new connection to 3 existing gullies on Mount Street at the North of the Site. All surface water pipework will be adopted by Scottish Water.

It is important to note that The Moray Council (Transportation) called in the Road Bond for the development and should have completed the road in accordance with the RCC prior to adoption.

In addition condition 16 of the RCC that Transportation refers to, states 'all surface water drainage gullies shall be connected to a private sewerage system'; contradicting Transportation's assertion that the surface water drainage system should be vested by Scottish Water.

18. WRFU Ltd have no way of knowing if the 3 road gullies have been connected into the Surface Water Infrastructure within Corsemaul Drive.

The only requirement to do so was within the RCC and is not a Planning Condition.

As stated above, The Moray Council completed the road when they called in the bond put in place by the previous developer.

19. It is unclear how Transportation considers this to be incomplete.

RCC is not a Planning Issue and detail designs for the SUDS will be dealt with through the Building Warrant process, as it always is.

20. Road Drainage is part of the RCC and not a Planning Issue.

The roads drainage was designed in accordance with consultations with Transportation, SEPA, Scottish Water, Planning, Building Warrant & Contaminated Land. My clients believe the alternative arrangements for road drainage discharge have been installed as agreed.

21. Irrelevant once the planning conditions are removed, as requested.

22. There is a suitable SUDS system installed that provides the necessary safeguards for the residents of Corsemaul Drive and its neighbours.

It is impossible to see how the development of a property on Corsemaul Drive can cause any surface water flooding on Mount Street given its location 180 metres downhill of Mount Street.

23. Our understanding is the Surface Water Drainage Pipework will be adopted by Scottish Water 12 months after the last property on Corsemaul Drive is occupied, not before.

The soakaway that the pipework feeds into will remain a private soakaway in accordance with the RCC; therefore the evidence they require (that it is upgraded to Scottish Water standards and specification) is unobtainable as their understanding of the SUDS system on site is wrong.

This misunderstanding could have been avoided with proper consultation with myself and my client prior to the unilateral imposition of unnecessary and ill thought out planning conditions.

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24. The pipework will be adopted by Scottish Water, the soakaway will remain private. My client is unaware if the connection in Mount Street has been done or not and was not involved in the road being installed to the RCC standards when the bond was called in.

Regardless of whether or not the gullies have been installed, the planning conditions should be removed as their installation is not a Planning Issue and has never formed part of the existing planning permission. The development of the plots within the planning permission in question will not have any detrimental impact to the alleged flooding on Mount Street.

Transportation seem to be accepting the suitability of a private system, however, whilst this is welcomed unfortunately it would not purify the ill thought out condition which clearly states the infrastructure must be done to SW standards.

25. Irrelevant, not a planning issue that affects this application. It is not known if infrastructure was put in as that was responsibility of Moray Council when completing the installation of the road once the Road Bond had been called in.

In addition, flooding is more likely to have been caused by poorly maintained road gullies struggling to cope with heavy downpours.

26. No comment on attempted communication with Scottish Water. Not a planning issue. Transportation made no effort to communicate with either myself or the applicant during the planning application process.

27. Irrelevant. I am unclear why Transportation are lecturing on the authority of the planning authority to make conditions on planning application as that has not been questioned.

The applicant also has the right to appeal the granting of certain conditions.

28. Irrelevant as the need for the conditions is unnecessary because the plot in question and the site as a whole are served by an adequate SUDS.

29. The conditions are not needed as the SUDS infrastructure is installed and the design of it is a Building Control issue, not a Planning Issue. The provision of the gullies was a RCC issue, not a planning issue.

30. Planning Permission 05/00315/FUL did not show any drainage infrastructure being required outwith the planning application site. The only requirement for provision of drainage infrastructure outwith the site is shown on the RCC drawings and it is agreed that it is unclear if this is provided or not.

However, this is a RCC issue and not a Planning Issue; therefore the provision of the gullies outwith the site is not relevant to these applications.

31. No consultation with the applicant or agent was sought by either the Planner or Transportation on these issues.

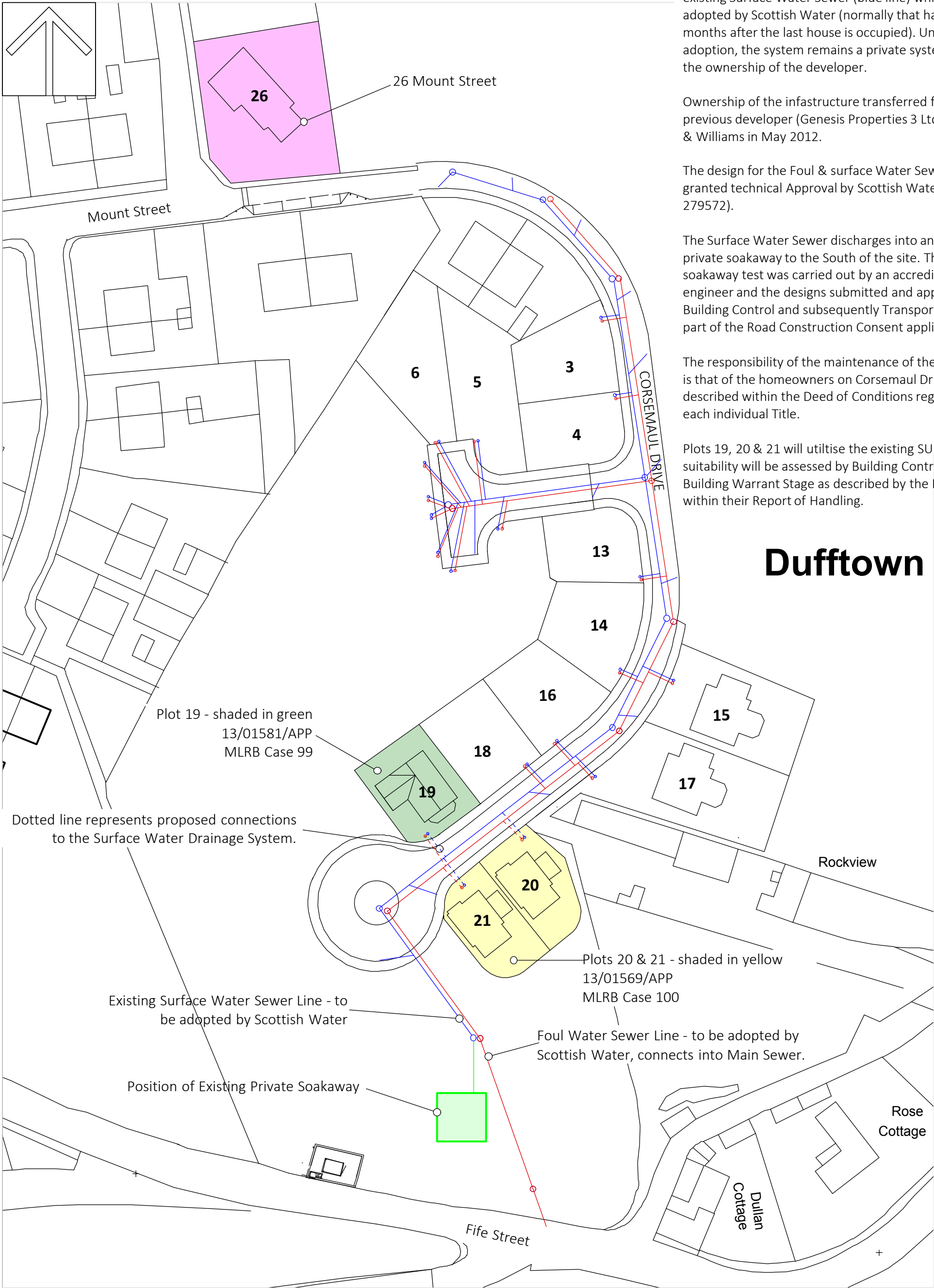
Consultation with the applicant and agent would have provided clarification and done away with the need of these conditions. It should also be noted that the reasons provided in the decision notice for Condition 5 do not make any sense.

32. The surface water systems on site already comply with all the policies described by Transportation.

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33. Response to their salient points:

- Irrelevant.
- Design of development and drainage infrastructure requirements is in line with all relevant policies in place at present.
- No evidence was sought during the consultation process.
 - The detail of design of SUDS will be assessed and approved by Building Control, as it is not a Planning Issue.
- Surface water will be directed into a private soakaway serving the whole site.
- RCC is not a planning issue. No evidence has been provided of the flooding.
- Irrelevant as 'upgrades' sought are not needed.
- Conditions are not needed as existing approved SUDS system is safeguarding existing and future residents of Corsemaul Drive & Mount Street.
 - Any amendments to that SUDS system will be done under Building Control procedures and not Planning as the detail of the design is not a Planning Issue.
- Incorrect as the conditions being appealed do not enable the system to be a private or hybrid system as previously agreed within the RCC and as installed.
 - The conditions must be removed as the only evidence that can be provided is for a private/hybrid system not a SW standards and spec compliant system.
- The Report of Handling provides no justification for the conditions, it appears that transportation have shoehorned an unnecessary and prohibitive conditions into the planning application, without proper consultation.



Description of on site SUDS.
Surface Water from Roofs & Road Gullies is fed into existing Surface Water Sewer (blue line) which shall be adopted by Scottish Water (normally that happens 12 months after the last house is occupied). Until adoption, the system remains a private system under the ownership of the developer.

Ownership of the infrastructure transferred from the previous developer (Genesis Properties 3 Ltd) to Black & Williams in May 2012.

The design for the Foul & surface Water Sewers was granted technical Approval by Scottish Water (ref: 279572).

The Surface Water Sewer discharges into an existing private soakaway to the South of the site. The soakaway test was carried out by an accredited engineer and the designs submitted and approved by Building Control and subsequently Transportation as part of the Road Construction Consent application.

The responsibility of the maintenance of the soakaway is that of the homeowners on Corsemaul Drive, as described within the Deed of Conditions registered on each individual Title.

Plots 19, 20 & 21 will utilise the existing SUDS and its suitability will be assessed by Building Control at the Building Warrant Stage as described by the Planner within their Report of Handling.

Dufftown

SITE PLAN - 1:750

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	Plan showing extent of SUDS at Corsemaul Drive, Dufftown for MRLB Cases 99 & 100.		
	Drawing 1 - Site Plan showing SW Sewer & Soakaway	Marcus Salter (April 2014)	All scales shown correct at A3