

APPENDIX 4

SUMMARY OF REPRESENTATIONS

a) Application as submitted, May 2008

Letters received from

- Mr & Mrs B Neilson, The Steading, Newton of Dalvey, Forres IV36 2TB
- Major McLeod per P Graham, (by email)
- MacKenzie & Cruickshank, (107 –111 High Street Forres and 1 Greshop Estate, Forres) per J Whittle, R&R Urquhart, 2 Ardross Street, Inverness IV3 5NN *
- Scott Ferguson, per J Whittle, R&R Urquhart, 2 Ardross Street, Inverness IV3 5NN
- George Alexander, Waterford Farm, Forres
- Graeme Proctor (owner Balnageith Farm, tenant of Monklands Farm) per A D Newlands, Bowlts, Barnhill, Pluscarden by Elgin IV30 8TZ**
- Andrew Dunlop (Dunlop Motor Factors, West Road Greshop) per R&R Urquhart, Royal Bank of Scotland Buildings, 20 High Street, Nairn IV12 4AX
- D McConnell, per Moray Estates, Estate Office, Berryley, Darnaway Forres ***

b) Application as amended, July 2009

Letters received from

- Mrs M Greenaway, Genista, Broom of Moy Forres IV36 2SR
- Stephen Allen, Tanglin, Broom Of May, Forres IV36 2SR
- A G Laings 1961 Settlement, per J Wright, Strutt and Parker, 28 Melville Street, Edinburgh EH3 7HA
- MacKenzie & Cruickshank, (107 –111 High Street Forres and 1 Greshop Estate, Forres) per J Whittle, R&R Urquhart, 2 Ardross Street Inverness IV3 5NN ****

** indicates holding objection, where not opposed to principle of scheme and supportive of the concept behind this initiative.*

***indicates supportive of concept of increased flood protection for Forres but concerned over scheme design.*

**** refers to previous concerns about scheme and that objection still valid but no grounds of objection stated.*

***** letter sustains current objection to application and to objections lodged in June 2008 on behalf of James Hay Pension Trustees Limited. (NOTE: objections were submitted by, or on behalf of this party to the FPO but not to the planning application).*

The main points of the letters are:

GRAVEL STORAGE AREA, TO SOUTH OF NEWTON OF DALVEY

- Road safety implications of heavy lorries using narrow, single track tarmac/grass lane, also used by children walking to A95 (*sic*) to catch school bus (Neilson)
- Quiet rural area now facing prospect of noise and dust (Neilson)
- How long will work take, what times can lorry traffic be expected each day, what type and volume of traffic will visit the gravel storage area, what measures will be in place to ensure pedestrian safety, will Council make good all damage done to lane once work is complete and if so, how long will this take, and what is long term plan for this area e.g. will it be returned to its current state or remain a gravel store? (Neilson)

- Indication of gravel storage area to south of A96 yet further clarification required as storage implies removal. It is understood this is not the plan and the intention is to re-contour for permanent storage. The exact location and profile is not detailed. (Graham)

Comment: The original and amended plans identify a “possible gravel storage area” south of Newton of Dalvey. No other details for the area are provided in the application or the ES. It is understood this area is no longer required and is to be omitted from the application.

LACK OF DETAIL, LEFT HAND BANK (OPERATION 7)

- Concern over lack of detail on works to take place on left hand bank (Operation7) and the route of the haulage roads are not determined, hence more accurate details are required (Graham)

Comment: Details of the haulage route, including construction/surfacing of the route along the crest of an embankment formed along the south side of the railway line are included on the drawings (see 9T3505/9610 P2, 9611 P2 and 9621 P2). Additional details for the access junctions onto the public road are required.

Along the left hand bank, between Findhorn road bridge and Findhorn Viaduct, the existing vegetation is dense precluding identification of individual trees, hence ‘blocks’ of vegetation are identified where various works will be carried out including retention or removal of scrub, under-storey vegetation and trees, the latter to remove obstructions and once the gravel has been re-profiled (but not removed), allow flows over the area. Details indicating the extent of re-profiling here and at Back Run are required.

IMPACT ON MACKENZIE & CRUICKSHANK GARDEN CENTRE

current design of scheme

- Scheme in current design will create unacceptable level of adverse impact on interests, leading to a fundamental loss of business, loss of significant number of jobs in Forres, adverse impact on tourism, unacceptable risk to health and safety and unnecessary land take, all to detriment of economic sustainability of Forres. (M&C)
- Mackenzie & Cruickshank (M&C) reserve position and in absence of concrete alternative, no option but to lodge holding objection. (M&C)
- Flood scheme should protect key business such as M&C, yet it faces real closure if the scheme goes ahead. Designed properly, both should be allowed to flourish. (M&C)
- Little evidence despite discussion, to demonstrate that M&C’s concerns have been properly considered and incorporated into the scheme design. (M&C)
- Business rendered unviable by current design; hence M&C have no option but to lodge objection. (M&C)
- The ES (par 6.82) states the scheme will have minor adverse residual impact and moderate beneficial impact on industrial designated land. These conclusions are disputed and not accurate once impacts on M&C are properly assessed. (M&C)

Comment: Adverse and beneficial impacts arising from the construction and operation of the Findhorn/Pilmuir FAS are identified in the ES, including the major beneficial impact to the local community in terms of the alleviation of flooding to residential and business property and community and recreational facilities, etc. This includes the M&C Garden Centre. The environmental impacts in the ES tend to address land-uses e.g. industrial designations rather than the impacts of specific premises.

Detailed consideration of the impact of the Findhorn/Pilmuir FAS on the Garden Centre will be considered as part of the FPO Inquiry. However, during development of the scheme changes have been made to minimise disturbance including land take, for example by replacing a 3.5m high concrete wall with a lower crib wall and using retaining walls rather than embankments. The new roundabout access on the A96 will afford improved access and egress to Greshop Industrial Estate. The programme for construction and preparation of risk assessments and method statements will seek to minimise any impact upon this business.

economic impact and sustainability

- No clear economic analysis within the ES to consider economic impact on business and by rendering business unviable.
- Loss to M&C compounded when considered along with High Street operations with both premises being linked and customers moving between premises. A 15% reduction in turnover at the High Street premises would render that business unviable. Closure of Garden Centre would be sufficient to create that reduction, thus rendering the entire M&C operation unviable. (M&C)
- M&C employ 72 people and is one of, if not the biggest employer of Forres residents and with jobs removed and the workforce potentially forced to seek work further afield, the economic stability and growth of Forres is affected. As a keystone business M&C must be protected at all costs if Forres is to develop a sustainable economy. (M&C)
- The scheme in its current design fails to meet sustainability criteria. A key local business will be forced to close and in failing to design scheme sensitively, to observe health and safety measures, the scheme fails to comply with Structure Plan policy 2 (f) and (j).
- The ES (Chapter 7) makes no mention of the tourism draw of M&C, some 1000 persons a day on average to the garden centre and 500 persons to High Street, an attraction significantly busier than Logie Steading and the three tourist attractions in Forres. (M&C)
- Customers to Garden Centre are drawn from not just Forres but outwith the immediate area, making repeat visits. With this trade draw, economic growth to other business in Forres is stimulated and as there is no close season, M&C offers a unique and pleasurable shopping experience that is rare to find. The absence of any dedicated analysis of the positive economic effect of M&C upon the economy by drawing in customers to the town is a major omission. (M&C)

Comment: The ES considers only environmental impacts (Appendix 6). The scheme itself does not require a retail impact assessment and no specific economic appraisal or assessment on the Garden Centre is included in the planning application. The Council will lead evidence at the FPO Inquiry about the effects of the physical impact of the Findhorn/Pilmuir FAS upon the retail business operated by M&C. This acknowledges that there will be a significant impact during the expected 14-month period of works around the Garden Centre, primarily on the external display area rather than the internal area. Without provision of alternative external display areas it is estimated that turnover for the Garden Centre would reduce by approx. 10 – 20% (average 15%) over that 14-month period (or reduce by approx. 8.75%, or to 17% for the business (Garden Centre and High Street) as a whole. However, once works are complete and allowing for a transition period for the business to recover there would be no adverse impact on trading levels.

Relative to the assumption (by M&C) that the Garden Centre loses 30% of trade and the High Street shop would lose 15%, the proposed evidence indicates that this assertion is not supported by evidence provided by M&C and in the absence of strong linkages between the two shops, trade loss and impact on the High Street would be marginal, hence it is not considered that there will be any long-term adverse impacts on the business as a whole. Following a review of Profitability and Impact reports submitted on M&C's behalf, the evidence to the Inquiry considers the assumptions in the former result in a substantial over-estimate of the potential impact on the viability of the business and the latter over-states the linkages between the two M&C locations and under-estimates displacement effects where trade would divert elsewhere if the M&C business were to close. The Findhorn/Pilmuir FAS does not require closure of the Garden Centre: any closure would be an M&C decision alone.

loss of land

- Existing experience and ambience of garden centre is incompatible with proposed major civil engineering project lasting two years with work both on boundary of premises and on ground that is part of the centre and required by the scheme. (M&C)
- Customers will not wish to visit centre if repeatedly filled with noise from construction works, traffic and dust. (M&C)
- Three areas of M&C land will be lost, and area over 25% of the existing outside retail area to the south east and south west of the centre, and to the north, an area of 12 parking spaces (out of 90 spaces) is required. (M&C)
- Limits of lateral deviation (drawing 9S4465/8200 on FPO submission) lead to possibility of garden centre losing further amounts of land once contractors commence work. (M&C)
- Temporary access required by contractors to complete the works, hence whole site affected by operations and of land to which entry is required to carry out operations and execute temporary works. (M&C)
- From inspection, the garden centre is already using the land available to its maximum and loss of land in itself makes operation of the business unworkable. (M&C)
- Land to south might be available once works complete but this area is not suitable and with elevated road adjoining this land, it will be affected by over-spray of salt and other vehicle pollutants. (M&C)
- Principal negative effects of the works on the garden centre during construction include lack of visibility of centre, unattractiveness of centre as leisure and retail destination, and significant downturn in trading. (M&C)
- Principal negative effects after construction will be isolation within elevated boundaries created by works to south, east and west, restricted views from outlook from café onto retaining wall, urbanisation of south and east elevation due to raised road level, increased noise level from A96, oppressive presence of elevated A96 road no longer screened from garden centre, over-spray of road salt affecting stock and plant, inability to recover from downturn in trade anticipated during construction and with permanent change to setting of garden centre for the worst, failure of business to recover to pre-construction trading position on the site. (M&C)
- The ES (par 6.80) notes impact on land designated for industry at Greshop. Two works (raising of A96 and new flood wall behind garden centre directly affect M&C, the most adversely affected business in Forres by the scheme. (M&C)

Comment: The Construction period for the scheme as a whole is approx. 2½ years, whereas works affecting the Garden Centre are expected to take approx. 14 months. ‘Limits of Deviation’ apply to FPO submission drawings whereas the planning drawings define the actual extent of footprint of each work element. The site boundary as defined also includes adjoining land where access for construction may be required.

The West Forres Embankment with grout curtain and the raising of the A96 road will affect the Garden Centre. The former is located mainly outwith the Garden Centre, although a crib wall will be constructed along the western boundary. The embankment will encroach into the north west corner of the site (146 sq. m, part used for external/storage/part unused), to allow the embankment to tie into the railway embankment (approx. 146 sq. m, part external storage/part unused). Part of the West Forres Embankment /Drainage Channel and Outfall, will be located over the south-western corner of the site (approx. 415 sq. m, used for external display of stock). In the south-east corner, land will be lost to connect the up-graded estate road to the new roundabout formed on the proposed road raising of the A96 road (approx. 279 sq. m, mainly landscaped but part used for display of stock). Whilst the total land take is approx. 814 sq. m, only the 694 sq. m is used for display or landscaping i.e. approx. 20 - 25% of the external area to the south of the Garden Centre premises. If approx. 646 sq. m of other land available is provided, as proposed, to compensate for this then, the 30 sq. m net loss is not significant. Evidence to the FPO Inquiry (as noted above) considers that the extent of land take claimed is over-stated.

Whilst there may be a significant impact during construction on visibility, for example from temporary hoardings restricting views, and loss of amenity from tree removal to south and west, the evidence to the Inquiry considers that any loss of attractiveness is not so severe as to deter those seeking to purchase goods from the Garden Centre. In addition, existing visibility (and signage) from the A96 is restricted, although access through Greshop Industrial Estate to the Garden Centre will be maintained. With operation of the scheme, there will be a slight loss of amenity affecting external areas of the Garden Centre arising from its proximity to the embankment, a retaining wall in the south west corner of the site and limited replacement planting. However, from the elevated A96 road, visibility of the centre will be significantly improved, with a beneficial impact on trading levels and with a new roundabout affording both access and egress to this site and other premises on the estate, accessibility will be improved.

health & safety considerations

- A number of health and safety factors (and additional negative effects) are relevant to the works at this garden centre premises. (Detailed report (not included) but to be made available to Moray Flood Alleviation during any negotiations) (M&C)
- Principal hazards from construction to centre staff, customers and stock include individual and combined nuisances of dust, noise and disruption to traffic. (M&C)
- Principal hazards and difficulties created for a contractor by presence of garden centre are compliance with CDM Regulations, where public access to business with footfall of 1000 persons per day plus staff, and for working around M&C staff and customers whilst putting in place and maintaining traffic management, noise attenuation and dust suppression systems. (M&C)

Comment: The ES covers a range of environmental issues including noise vibration and dust. A range of measures are identified to mitigate environmental effects, including best practicable means, methods of working, provision for enclosure and screening, planned working hours, monitoring site conditions (Appendix 7). Planning conditions are also recommended by the Environmental Health Manager to address noise and vibration (Appendix 5).

For the Garden Centre, traffic will be disrupted and diverted on the A96 whilst the road is raised and the new roundabout is formed, but access will be maintained from another route through the Estate. During up-grading of the existing access to the Centre, as part of the accommodation works for the new roundabout, temporary closure of the existing access may be required and an alternative access to the car park provided. In terms of salt spray affecting external display areas and damaging stock, the evidence to the Inquiry indicates there will be no change in risk, no data has been provided to demonstrate that there is a risk nor does it appear that salt spray has damaged existing vegetation. The raised section of A96 road will not be any closer to the Garden Centre than the existing road. In addition, traffic speeds will be slower as a result of the roundabout, thus reducing the spread of any potential spray. New landscaping between the road and the Garden Centre will intercept any spray.

cost of compensation

- Whilst claims are dealt with through a separate process, but by rendering the business unviable, both the Garden Centre and by separation, the High Street operation, considerable compensation will be sought for complete loss of a business with a turnover in excess of £2.5M per annum caused as a direct result of the scheme. (Detailed breakdown not included but M&C prepared to provide this during negotiation with the Council). This value has not been considered properly by MFA and as such re-appraisal of the scheme is required. (M&C)
- When considered with the development plan, the only way to allow the scheme to be carried out as designed, without the need for compensation, would be for Moray Council to provide an alternative location to re-establish the Garden Centre business. M&C are willing and open to discuss. (M&C)

Comment: The issue of compensation is not a material planning consideration and will require to be considered separately. It is understood that if parties consider they have suffered a loss as a result of the scheme then, without prejudice, a claim for compensation could be made.

alternative solution

- The ES (par 6.81) states that other (limited) industrial sites are available in Moray which can compensate for the industrial land affected by the scheme. If the scheme goes ahead as submitted and the Council is to avoid compensating M&C, the only viable solution to accommodate interests is for the Council to provide an alternative location for M&C. (No details of what required for alternative site but M&C hope the Council would be forthcoming in looking at this solution in earnest). (M&C)
- An alternative site solution is the most sensible way forward and provides principal benefits with cost of relocation 50% less than providing compensation, protection of 72 jobs and local suppliers, vitality and viability of Forres town centre not diminished and MFA able to complete project without unnecessary delay. (M&C)
- Alternative solution would allow (M&C) scheme to proceed in current design and remove requirement for compensation i.e. provision of a new site for garden centre, a win-win scenario. (M&C)

Comment: The application as submitted is solely for the Findhorn/Pilmuir FAS (Appendix 1). It does not include any alternative site(s) being provided or advanced for the relocation of any business affected before during or after construction and/or operation of the scheme. Without prejudice, any new site would require planning permission and would require to be considered on its individual merits in accordance with the development plan.

It is understood that M&C is to propose a modification to the FPO Inquiry, essentially to move the West Forres Embankment/Drainage Channel from the east (as proposed here) to the western side of the Greshop Farm Scheduled Ancient Monument (SAM) site (to reflect an option considered earlier but not agreed by the Council during development of the scheme). This 'alternative' is not before the Council, as planning authority, or part of the amended plans. The Council is required to determine the application as submitted. If the modification to the FPO is confirmed, the planning implications of any such change will need to be assessed, including the requirements for any further formal application(s) for planning permission.

IMPACT ON DUNLOP MOTOR FACTORS PREMISES

- Proposed development and consequent construction works will have negative impact on client's business, including loss of access for public to premises and loss of land for car parking at these premises. (Dunlop)
- Whist endeavouring to expand business, the proposal if allowed is incompatible with this business expansion. (Dunlop)
- Construction works will result in noise pollution, dirt, dust and health and safety concerns for client, staff and the public. (Dunlop)
- Proposals detrimental to client's business and impact on access to premises and loss of land with affect on profitability of operation. (Dunlop)

Comment: The concerns here are similar but less detailed than those expressed for the Garden Centre. Planning conditions are recommended regarding noise, etc. The ES indicates as range of mitigation measures to address matters raised in the representation. This site is affected by the raising of the A96 road, in particular the formation of the roundabout and works to up-grade the estate road to connect to the roundabout. Access from within the site may also be required during construction. The required land take is approx. 150 sq. m in the south western corner of the site to accommodate a retaining wall and replacement planting on the north east radii of the roundabout. The loss of this area would not prejudice a recent consent for business expansion with additional units proposed at the eastern end of the existing building (application 08/01730/FUL refers). That proposal includes a retaining wall in a similar location as that now proposed in this application, although the parking layout may require adjustment the longer alignment of the wall now proposed. During construction, access will be maintained through the Estate using another access although a short-term access arrangement may be required when works are undertaken to up-grade the existing access and connect to the new roundabout. Once complete, views from the raised road will enhance the visibility of the premises pending establishment of planting and the new roundabout will improve its accessibility in terms of access and egress from the estate.

WEST FORRES EMBANKMENT AND PILMUIR DRAINAGE CHANNEL

- Southern end of embankment severs field with limited access at southern end making management and cropping of field problematic and time consuming, creating a significant amount of extra expenditure in undertaking agricultural operations. (Proctor)
- The statement that disruption to land use has been minimised is disputed. The embankments cut diagonally over fields, increasing disruption to farming practices. (Proctor)

- Maintenance of the embankment is a concern, as it requires to be kept weed and pest free to protect crops and land from infestations. (Proctor)
- Application boundary extended around area allocated for residential use (emerging local plan refers R5), with proposed planting to screen new development from the embankment. The inclusion of screen planting is welcomed but the boundary should be entirely outwith the R5 land, to ensure no development land is affected. The red line should run along fenceline not the R5 allocation. (Proctor)
- The western end of the drainage channel severs field and leaves a small paddock isolated from rest of farm. The paddock is too small to be of agricultural value and would end up lying to waste. The drainage channel should be moved further west to ensure fields of a usable size are maintained. (Proctor)

Comment: The residential designation for Pilmuir Road West Rifle Range (Forres R5 in the Emerging MLP2008) has been withdrawn. This site is not specifically designated in the MLP2008, other than as a ‘previous designation’ (Appendix 2). Tree planting is proposed along the designation boundary to act as a screen between the site and the embankment works, thus minimising disruption and land take from the agricultural land beyond.

The West Forres Embankment will protect flooding in Forres from the River Findhorn and will sever three fields (Class 3.1 quality). The impact on agricultural land is unavoidable and the embankment including its location, length and alignment was informed by earlier investigations of alignments where criteria to minimise disruption to agricultural land and practices, where possible, were balanced against other criteria including economics, environmental impact and constructability in order to maximise protection to Forres and not make the risk of flooding to any outlying properties any worse off. The alignment formed part of the Option agreed by the Council in 2006 to develop the Findhorn/Pilmuir Scheme. At its northern end, the embankment is located to the east of the SAM, to allow a greater area of the floodplain to be used, thus reducing the height of the embankment. The southern ‘tail’ of the embankment does not run parallel or close to any field boundary along the western edge of Forres but bends to the south west in order to tie into higher ground and prevent water flowing around the end of the embankment. This optimal position as submitted was determined after other alignments did not offer a robust solution to alleviate flooding and were more expensive to construct.

It is understood that the Council’s agent has undertaken further assessment of agricultural impacts, including land take, severance, access and drainage considerations. Land may be permanently restricted or severed, but taking account of the nature and scale of farming operations, the assessment does not consider that the future viability of individual farms would be compromised and landowners who suffer damage as a result of the scheme or whose land is depreciated in value would, without prejudice be entitled to submit a claim for compensation. Together with a programme to maintain the embankments including grass cutting, the embankment incorporates ramps (and bridges across the Pilmuir Drainage Channel) to enable access to land on both sides of the embankment.

NORTH FORRES EMBANKMENT

- Field (part of Monkland Farm) will be severed by proposed embankment. Working the field from north to south will no longer be possible due to position of embankment, thus leading to significant amount of expenditure for extra work involved. Has the impact of agricultural business been fully taken into account? (Proctor)
- Despite comment made that embankments run parallel to field boundaries to minimise disruption this is not the case as the embankment runs diagonally through the field. (Proctor)

- The purpose of flood prevention powers is to prevent or mitigate flooding in non-agricultural land. However, as a material consideration, Structure Plan Policy 2 (m) and Moray Local Plan 2000 Policy L/ED12 presumes against irreversible development on prime agricultural land, as is the case here (Class 2.1. and 3.1). The irreversible damage to prime agricultural land would be a departure from the plan including the emerging local plan (Proctor)
- Flood embankments are proposed across fields on Grange Estate, which do not follow fence lines and cut directly across fields. The embankments are unnecessary and lack proper consideration to farming business on prime agricultural land. (Ferguson)
- Whilst fully supportive of the concept of the alleviation scheme, its design fails to consider agricultural interests which could easily be accommodated and willing to discuss this with MFA. (Ferguson)
- Proposed bank and elevated Waterford Road will create a dam of water on south side of Waterford Road which can only discharge through a relatively narrow channel between house and high ground at the Council's Transfer Station, resulting inevitable in the damage of Waterford Farm. (Alexander)
- Proposal provides no protection in event of a flood for the highly contaminated land at the Moray Council's Transfer Station. (Alexander)

Comment: This embankment is located on prime agricultural land (Class 2 and 3.1). Reasons to support a departure from policy ER6 (formerly L/ED12 (MLP2000)) are indicated in Appendix 3. This embankment will protect flooding in Forres from the River Findhorn to the north. Initially it runs parallel with the railway embankment and then cuts across four fields heading towards Greshop House and thereafter towards Waterford Road and beyond. The alignment of the embankment was agreed by the Council's Flood Alleviation Sub-Committee in 2008, although in the amended plans, the northern end or 'tail' has been modified to accommodate agricultural practices i.e. to run parallel with a field boundary and align with the direction of ploughing. This is achieved without detriment to the scheme.

As with the West Forres Embankment, the impact on agricultural land is unavoidable and its location, length and alignment was informed by earlier investigations of alignments where criteria to minimise disruption to agricultural land and practices where possible were balanced against other criteria including economics, environmental impact and constructability in order to maximise protection to Forres and not make the risk of flooding to any outlying properties any worse off. The conclusions of the assessment on agricultural impact as noted above, also apply here.

Both Monkland Farm and Waterford Farm are not considered to be worse off as a result of the Scheme. Both remain located within the area liable to flood but will no longer flood up to 1 in 50 year flood levels. The depth of flooding at the former (at 1 in 200 year event) is reduced by 1 mm and a 4mm increase at the latter is not considered to be a significant or material increase. Pipes will be laid through and under the raised section of Waterford Road to preclude any build-up of water located between the embankment and the raised road.

The Waste Transfer Station will be no worse off as a result of the scheme as the site is above the estimated flood level. Access to/from the site will be disrupted during and immediately after periods of inundation in this area. The Council's agent considers that the need to address contamination issues at the Station require to be addressed separately from the current proposal. During works to raise Waterford Road waste treatment arrangements will be transferred elsewhere (Appendix 5).

BROOM OF MOY including land opposite

- Proposal planned with no respect for Broom of Moy, this hamlet being considered not financially worth any greater level of protection. (Greenway)
- Work estimated to take two and a half years and at end, no greater level of protection than exists at present. (Greenway)
- Proposals remove considerable woodland with resultant loss of bird and wildlife. This area providing pleasure for people will disappear. (Greenway)
- Access road will remove privacy, outlook and peace of mind. Closure of bridge and accompanying work will cause major upheaval, given the restricted access to Broom of Moy. (Greenway)
- Removal of approx. 16 acres of community woodland on opposite side of river to Broom of Moy is not necessary in interests of the scheme, nor is it a cost-effective use of taxpayers' or Scottish Executive funds. (Allen)
- No agreement in place for removal of large quantities of aggregate on east bank opposite Broom of Moy on ground that forms amenity woodland. (Ferguson)

Comment: Removal of vegetation approx. 33,540 sq. m and excavation of gravel (63,000 sq. m or 126,000 tonnes) is proposed on the right hand bank of the River Findhorn opposite Broom of Moy, to increase the capacity of the river to convey high flows and generally restore the river to its former natural regime. Whilst a grant of planning permission would authorise the excavation, in accordance with the approved plans for this work, additional requirements including agreement from any owners is a separate matter. A grant of permission does not over-ride any rights of owners to retain or dispose of their property.

During the development of the Findhorn/Pilmuir FAS, consideration was given to the possibility of works to protect outlying areas, to the same standard of defence as that to Forres e.g. to Broom of Moy and Mains of Moy, etc. However, with reference to Scottish Government guidance and criteria, there was no economic justification to undertake such works, hence the scheme has progressed without such works and on the basis of making the situation no worse for these properties. The FRA indicates that there is no material increase in risk to these outlying properties and communities as a result of the Findhorn/Pilmuir FAS, as position also accepted by SEPA (Appendix 5 and 6).

Access across the area opposite Broom of Moy will be closed for 3-4 months. Once excavation works are complete and an 'extension' to the existing bridge is in place across the excavated area, access connections to existing footpaths and the Sustrans cycle route to/from the south will be restored albeit routes may be re-aligned and the area over the excavated gravel will be substantially altered and not replanted with trees. Although the existing area may support a range of wildlife, there is sufficient habitat available in the area into which species could migrate to and/or use for foraging/nesting, etc. SNH has not objected to the resultant loss of habitat caused here or elsewhere by the scheme (Appendix 5)

Closure of the bridge and formation and construction traffic noise and vibration associated with the creation and use of the haulage route will have a major adverse impact at Broom of Moy (Appendix 7). Mitigation measures include a diversion route over the A96 road bridge for a limited, approx. 4 month period, and temporary noise screen fencing along the edge of the track, which will also visually screen any construction activity.

SHORTCOMINGS OF FLOOD ALLEVIATION SCHEME – MAINS OF MOY

- The impact of old flood embankments at Mains of Moy has not been properly considered. With the current flood plain cut by one-third of area by proposed scheme, compensatory flood plains are required for flood alleviation. Without these existing flood banks being removed from or re-sited at Mains of Moy, flood alleviation is inhibited. (Ferguson)
- Shortfalls should not be accepted by the Council as client on this project, nor as planning authority, in line with guidance set out in SPP7, including consideration given to possibility of flooding from all sources. (Laing)
- Scheme will contain flood flows from Findhorn in an extreme event from inundating the north western corner of Forres, but these flood waters will be pushed downstream to exacerbate flooding downstream of Forres. (Laing)
- Extraction of gravel in gravel bars and removal of vegetation at railway bridge and Broom of Moy will essentially straighten the watercourse by removing the meanders, increasing flow and velocity progressively downstream, meaning greater flows impacting downstream more rapidly than previously the case. (Laing)
- No information is provided to back up statement that river channel works take into consideration the wider geomorphological and ecological conditions of the river. The changes as proposed are significant. The excavation/removal of gravel bars has the potential to increase erosion and increase sediment transfer downstream, hence the potential for sediment deposition in the downstream area, reducing channel capacity and increase flood risk. (Laing)
- Re-profiling of entrance to Moy Back Run and removal of vegetation will have effect of allowing Findhorn to route flows down this route more frequently during extreme events, resulting in flows closer to Mains of Moy. (Laing)
- The Back Run appears to discharge into the Muckle Burn but no modelling has been carried out on this watercourse, despite the Burn and the Findhorn joining close to Findhorn Bay. The effect will be to increase flows joining the Burn via the Back Run and increase flows entering Findhorn Bay from the River Findhorn, leading to back up of flows in the Burn and River, thus potentially increasing flood inundation from these sources adjacent to Mains of Moy and the surrounding land. (Laing)
- Given the inter-connectivity of the River, Burn, Back Run and Bay it is not possible to disaggregate the Muckle Burn from the modelling for the Scheme in the way provided in statements i.e. that Mains of Moy is principally prone to flooding from the Muckle Burn and that separate investigation of the existing flooding problem from the Muckle Burn is required. (Laing)
- If Mains of Moy and other smaller communities in the vicinity cannot be included in the scheme, then undertaking to try and ensure that flood risk is unchanged or reduced even if the full standard cannot be met or assured by the proposed scheme. (Laing)
- There is a discrepancy in the information provided as the 1 in 100 year event flood plan indicated a small section of flood inundation onto the western bank of the Muckle Burn close to Earnhill Farm yet another shows flood inundation extending to the eastern side of the Muckle Burn. (Laing)
- Given the shortcomings and associated negative impacts to surrounding land/buildings, the current proposals would not be accepted in a scheme promoted by a private sector developer, hence they should not be accepted by the Council, as client or promoter of the scheme. (Laing)
- The application should be deferred pending a comprehensive review of the additional area required and addressing points that remain unaddressed. (Laing)

Comment: The FRA considers flooding from various sources (Appendix 6). SEPA has not objected on the basis that all flooding sources have not been considered (Appendix 5). The FRA includes consideration of downstream effects, including greater flows (approx. 0.2 m higher in the Mains of Moy area) as a result of the embankments and gravel extraction: all areas benefit and none are worse off (Appendix 6). The ES includes an assessment of the environmental effects of the scheme on geomorphological and ecological conditions (see Chapters 10 – 13 and Appendix 3).

For reasons indicated above, flood alleviation works for smaller communities such as Mains of Moy are not included in this Findhorn/Pilmuir FAS and the scheme has progressed on the basis that none are made worse off. The FRA acknowledges that Mains of Moy has a higher flood risk from the Muckle Burn than from the River Findhorn but assessing and mitigating this (separate) risk is outside the scope of the current scheme (Appendix 6), hence there are also no proposals to address the old flood banks. That said, a supplementary investigation by the Council's agent assesses what effect, if any, implementation of the Findhorn/Pilmuir FAS would have on flood flows from the Muckle Burn which joins the River Findhorn downstream of Mains of Moy. This concludes that although peak flows are slightly higher (300 mm max.) and the flood extent would be slightly increased, the difference in extent at Back Run and Muckle Burn is not significant. In addition, water levels on the River Findhorn are below the level of properties at Mains of Moy hence the former would not have any effect on the extent of frequent flooding caused by the Muckle Burn. Furthermore, at the confluence of the Muckle Burn and Back Run some minor increases in local water levels during extreme events of the River Findhorn will not exacerbate any flooding caused by a Muckle Burn event.

REQUEST FOR INQUIRY

- The Scottish Government should hold a full and impartial Public Inquiry/Examination in Public to ensure transparency and accuracy of the scheme. (Laing)

Comment: This is a matter for Scottish Ministers to consider. With this application, the Council, as planning authority, should consider the application first and if minded to approve, they should consider whether notification to Scottish Ministers is required (see Circular 3/2009 and associated Direction). For reasons indicated elsewhere in the report, notification is not required.