

## APPENDIX 5

### SUMMARY OF CONSULTATIONS

**Building Standards** – works of civil engineering construction are exempt under Schedule 1 of the Building Standards, except a bridge or a tunnel forming part of an escape route, or an access route, and a private sewage treatment works provided to meet requirements of Building Regulations

**Environmental Protection** – Waste Officers aware of closure of Waterford Road and recycling facility to be relocated for the duration of the contract. See also comments of Access Manager (below).

**Environmental Health (Contaminated Land)** – Conditions recommended:

- For excavations for both Pilmuir Drainage Channel and on railway embankment, no development to commence until results of investigation(s) to determine nature, extent and potential impacts of contamination submitted/approved including recommendations and/or requirements for supplementary investigations and/or remediation as necessary.
- For each specified location where further supplementary investigation is required, no development to commence until details of methodology and results of supplementary investigations submitted/approved, including recommendations and/or requirements for supplementary investigations and/or remediation as necessary.
- For each specified location, where remediation is required, no development to commence until details of remediation methodology submitted/approved, remediation measures implemented and details of validation methodology submitted/approved.
- Following remediation, and in accordance with agreed methodology including time-scale, validation report to be submitted/approved to demonstrate that no pollutant linkages remain or likely to occur.

**Environmental Health** – Following receipt of further information, approval subject to conditions:

- Construction activities permitted between 07.00 – 19.00 hrs Monday – Saturday. Any required exceptional works outwith those times not permitted unless satisfactory written details provided in the Construction Method Statement.
- Temporary acoustic fence to be constructed on north side of A96 temporary diversion and along edge of O&M track at Broom of Moy, and barrier specification as per details in Chapter 16.
- A ‘quiet’ pump (as specified, see Chapter 16.71), or equivalent to be installed and suitably enclosed at locations identified in Table 16.11 for night-time pumping operations.
- Once details of equipment for Pilmuir Pumping Station are known, site specific noise impact assessment to be undertaken, to highlight necessary noise mitigation measures to be undertaken.
- On-site vibration monitoring to be undertaken where continuous piling is proposed at Pilmuir drainage outfall pumping station and Pilmuir Road West culvert, to confirm that peak particle velocity limit (as defined) is not exceeded at nearest vibration sensitive premises. Limit to be reduced (as defined) where survey of adjacent existing residential property identifies significant structural defects.

**Scottish Water** – No objection to amended application but any planning approval does not guarantee connection to infrastructure. Scottish Water wastewater assets may be affected by the development. It is essential that these be protected from risk of contamination and damage in accordance with a list of precautions (included in response) to ensure this does not occur

**Transportation Manager** – No objections subject to conditions/informatives regarding:

- For access to north and south of railway line onto the public road, C7E (Brodie – Dyke – Kintessack Road), specifications including visibility, access radii, width of carriageway and surfacing for temporary accesses together with requirements for Roads Construction Consent.
- For works to existing public road system (Greshop Industrial Estate Road at new raised A96 roundabout) Roads Construction Consent required, roundabout and road raising to be dealt with by Transport Scotland, and any Traffic Orders to be prepared under planning legislation (where permanent road closure is proposed).
- For works to existing public road system (Waterford Road (U64E)), Roads Construction Consent required, 2m wide verges to be provided and provision for, and location of passing places, if required to be agreed.
- Proposal to close Waterford Road during construction period only acceptable if public recycling centre and Waste Busters facility is relocated to an accessible location in Forres, the commercial waste transfer depot is closed during construction with commercial waste redirected to Elgin; and a Travel Plan is submitted for residents of Monkland and Waterford Farm providing specific arrangements to enable access to property from Waterford Road
- Traffic Management Plan to be prepared to address movement of construction traffic in/out of site, include Waterford Road and all traffic regulation orders, temporary or permanent to be prepared in advance of commencement of works
- Drawings of structures e.g. extension of Broom of Moy footbridge will require technical approval and should be tabled for early discussion.
- Any required (permanent) road closure orders to be obtained through planning consent (and applicant should allow 6 months after grant of planning permission),
- private haul routes to be used where possible to lessen impact on public roads,
- route inspections with video records to be undertaken before works commence and after completion of the works,
- no haulage vehicle to access any works via Broom of Moy village,
- haul road to be regularly maintained to minimise dust and mud,
- construction traffic to access drainage channel works via haul route from A96 trunk road and not via Pilmuir Road West,
- care to be taken to avoid damage to existing Greshop surface water outfall off trunk road near gauging station

**Transport Scotland - Trunk Road Network Management Division (TS-TRMND)** – Condition recommended that prior to commencement of any construction work on site, details of work on trunk road to be agreed in writing, to ensure safety and free flow of traffic on the trunk road. Road modifications to comply with relevant guidance and legislation and road works to be subject to Minute of Agreement and cycle and roads safety audit.

In addition, JMP Consulting (term consultants acting on behalf of TS-TRMND), have no specific comments but note that whilst the proposal represents an intensification in the use of the site, the percentage increase in traffic is such that the development is likely to have minimal environmental impact on the trunk road network. The developer is recommended to liaise with TS-TRMND to minimise disruption to the trunk road network

**Scottish Government** (in terms of responsibilities for water supply, water protection, sewerage, flood prevention, coastal protection, waste disposal, soils, air quality and noise) - without prejudice, comments on the Environmental Statement (ES):

- **Water-** developer to ensure that no significant impact on water environment (surface and groundwater) during and after construction, including potential impacts from track construction, borrow pits, use of plant and machinery, plant compounds, oil storage, etc. All potential pollution risks associated with the proposals should be identified plus preventative and mitigation measures. SEPA should be fully involved in discussions in order that proper mitigation measures as introduced. CARs 2005 provide specific controls for activities impacting on the water environment and as development within catchment of River Findhorn, designated as a salmonid water, this requires certain, mainly chemical standards to be met for water quality.
- **Noise and Air** – a number of adverse noise impacts during construction are predicted but mitigation measures will be implemented to reduce or avoid these. For air quality, there are sensitive receptors at residential properties in close proximity to some construction sites but after mitigation, any adverse impacts will be reduced or avoided.

*(Note: The response indicates that separate responses from Countryside and Natural Heritage may be expected, but at time of writing this report, no further response received). 2008*

**Historic Scotland** – No objections to amended plans and content that there are unlikely to be any significant impacts on historic environment assets of national importance. The Council's Archaeology Service will advise on the adequacy of the assessment of likely impacts and mitigation for sites of regional and local importance.

Overall Historic Scotland is content with information in the ES which reflects discussion and advice regarding direct impact on the Scheduled Ancient Monument (SAM), Greshop Farm. It is agreed that after exploring the alternatives, the mitigation identified is acceptable. It is understood that the Council's Archaeology Service has agreed appropriate excavation of unscheduled sites adjacent to the SAM. The ES adequately addressed the likely impacts of the proposed scheme on the Category A Listed Building and on the designed landscape identified.

Given the demonstrable public benefit of the scheme, there are exceptional circumstances which justify the considerable impact on the SAM, hence no objection to the scheme. A separate application for SAM consent will be required in advance of works taking place within the legally protected area. This should relate to evaluating the northern margin of the SAM under the A96 corridor to inform appropriate mitigation, and for topsoil stripping and full excavation of any features exposed along the 12 m wide route of the temporary A96 road diversion, the course of which has been chosen to avoid, as far as possible, features within the RCAHMS transcription. Avoidance of the SAM by a temporary road diversion is not considered possible within the time and budgetary constraints of the project which Historic Scotland accept and await the application for SAM.

**Aberdeenshire Archaeology Service** – no comment as long as the development adheres to the recommended mitigation. The archaeological mitigation recommended in the ES is satisfactory.

**Scottish Natural Heritage** – The amendments made to the FAS are such that the position is unchanged from that advised in May 2009 and do not affect the 'appraisal' of the impact of the proposal on the Moray & Nairn Coast Special Protection Area (SPA) and Ramsar site (Appendix 6) or the appraisal on European Protected Species (otters and bats), nationally designated sites, protected species or any other natural heritage interest. Thus, SNH does not object to the proposed development as submitted provided that:

- Mitigation measures specified in the ES with respect to designated sites and protected species are fully implemented during construction and operation of the scheme.

- A Construction Environmental Management System for the scheme is agreed in writing by the MFA/Morrisons and the Planning Authority prior to any construction commencing on site, to be adhered to throughout construction and operation of the scheme. (The Construction Environmental Management System is an overarching “master document” which will guide the development and implementation of more specific documents i.e. a pollution management plan, sediment management plan and construction method statements, to ensure that the construction and operation of the scheme will be in accordance with the information and mitigation proposals contained in the ES.)

SNH also recommends that

- other mitigation measures contained in the ES relating to natural heritage issues, including recreation and access, are fully adopted and implemented during construction and operation of the scheme; and
- additional measures relating to specific natural heritage interests are adopted, to further reduce any impacts arising from the proposal.

***Internationally designated sites - Moray & Nairn Coast SPA and Ramsar site*** – No objection. The proposal is likely to have a significant effect on the qualifying interests of the SPA and Ramsar designations applying to Findhorn Bay. In accordance with Regulation 48 of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended), an appropriate assessment must be undertaken by the Moray Council, as the competent authority, of the implications for the site in view of the site’s conservation objectives. Based on an appraisal (Appendix 6), the proposal will not adversely affect the integrity of either designation. (SNH recommend that the Moray Council may wish to adopt or use SNH’s full appraisal as the basis of its appropriate assessment, but further appraisal may be carried out before completing the appropriate assessment.)

### ***European Protected Species***

***Bats*** - all precautions should be taken to ensure that bats are not injured, killed or disturbed and that bat roosts are not damaged or destroyed as a result of proposed works. To minimise such risks, all mitigation measures in the ES should be adhered to. If potential injury, death or disturbance of bats or damage/destruction of a bat roost cannot be avoided, the Moray Council must apply for a licence once it is known when works are likely to commence and include up-to-date survey information on bat activity in and around the area of proposed works, to include roost locations where known, and details of mitigation proposals.

The removal of woodland and riparian habitat currently used by bats will not adversely affect the favourable conservation status of any bat species. There is sufficient foraging and roosting potential in the area and bats should continue to be able to navigate between them but newly planted areas will not offer replacement bat foraging habitat for a substantial number of years. In addition to the proposed mitigation to provide boxes, SNH recommend that:

- any bat boxes provided are of varying designs to accommodate a range of species for a variety of purposes, for example hibernation roosts and mating roosts.
- the locations of the bats boxes are informed by survey work to establish flyways and foraging areas used post-felling to enhance the uptake of the boxes and maximise their value to the local bat population.

***Otters*** – would not be adversely affected by the proposed development provided that mitigation measures specified in the ES are fully implemented during construction and operation of the scheme. The proposed works may disturb otters as a result of proximity to foraging, habitat and

resting sites and may damage/destroy otter resting sites by removal of riparian habitat used by otters. The applicant should apply for a licence to disturb otters and damage/destroy otter resting sites once it is known when works are likely to commence and include up-to-date survey information on otter activity in and around proposed works.

**Nationally designated site - Culbin Sands, Culbin Forest & Findhorn Bay SSSI** – the same advice as for the Moray & Nairn Coast SPA and Ramsar site applies, i.e. no adverse impact on the designated SSSI provided that the various relevant mitigation measures are implemented.

***Protected species (other than EPS)***

**Badger** - by reducing opportunities for badgers excavating further setts in some areas, there will be minor adverse impacts which may be reduced subject to appropriate mitigation measures in the ES being fully implemented to avoid/minimise disturbance. However, the creation of good badger foraging habitat in the area around Pilmuir is not relevant since no signs of badger activity found in that area. The proposed works may disturb badgers as a result of proximity to setts thus the applicant should apply for a licence to disturb badgers.

**Breeding birds** - subject to mitigation measures being fully adopted and implemented, impacts on local breeding bird populations overall will be minor. This includes ensuring that no breeding birds are disturbed by the proposed works. SNH supports the approach for proposed bird box designs, numbers and locations, which are intended to off-set the impact of loss of breeding bird habitat. However, there is likely to be an overall net loss of breeding bird opportunities within the site as a result of the scheme but this impact will be minor as local bird populations using the wider area.

**Freshwater pearl mussel** - all precautions should be taken to ensure that freshwater pearl mussels are not injured or killed as a result of proposed works, either directly or indirectly, principally as a result of smothering by released sediments. If potential injury or death of mussels cannot be avoided, the Moray Council must apply for a licence and include mitigation proposals e.g. targeted surveys, detailed working methods to avoid physical damage, sediment management to avoid smothering and proposals for population enhancement and monitoring.

The mitigation measures in the ES to address sediment pollution should also address potential impacts to freshwater pearl mussels and enhance mussel habitats in areas downstream or outwith the footprint of the works. However, other suggested mitigation proposals focussing on habitat management are not appropriate within the footprint of the scheme. In addition, it is recommended that

- targeted surveys should be carried out immediately prior to any river works in areas where mussels were located or are likely to be found in order to confirm their presence or otherwise.
- freshwater pearl mussels are included in the proposed programme of post-construction monitoring to determine any long-term impacts on salmon, lamprey and aquatic invertebrates in the River Findhorn and inform the subsequent management and operation of the scheme.

**Red squirrel** - construction and operation of the scheme is unlikely to adversely impact on red squirrels. Whilst survey work in 2006 found no signs of red squirrel activity within the site, the proposed subsequent survey work prior to any construction commencing should aim to establish whether the species is present or absent ahead of works which may affect them. If a drey is identified, it would be illegal to fell the tree with a red squirrel drey in it. The developer should ensure that felling operatives are able to check trees prior to felling to ensure that no trees with dreys are felled.

**Water voles** - construction and operation of the flood scheme will not impact on water voles as no evidence of water voles was found.

**Invasive non-native species** – giant hogweed and Japanese knotweed are found in areas where gravel and/or vegetation extraction is proposed. Disposal and/or reuse of such material could result in the spread of these species, hence SNH support the approach for a management plan for invasive non-native plant species.

**Terrestrial and riparian habitats** - the scheme will have adverse impacts on a number of semi-natural terrestrial and riparian habitats and long-term loss of some habitats but the impacts will be local in nature given the extent of similar habitats across Moray. SNH recommend that

- all mitigation measures in the ES with respect to terrestrial and riparian habitats be fully adopted and implemented, and
- the Council considers extending the use of native species in its planting scheme, to include trees, hedging, shrubs and bulbs in order to secure additional benefits for biodiversity resulting from the landscaping intended to off-set the adverse impacts on local wildlife. (In the planting scheme, some species listed are not native to Moray and/or are domestic cultivars.

It is accepted that the scheme requiring substantial felling of trees and clearance of vegetation, particularly along the River Findhorn corridor will have an adverse impact on a number of terrestrial and riparian habitats, many of which are semi-natural in character and provide food and shelter opportunities for a variety of associated species, hence the bio-diversity value in the local area. The use of the retention of some felled timber to provide valuable deadwood habitats is supported. The proposed replanting scheme should be managed appropriately for its long-term retention and value for natural heritage interests. Future management and maintenance plans should demonstrate how they take into account good management practices for biodiversity (habitats and species) as well as any constraints necessary for the safe functioning of the scheme.

With the loss of some exposed riverine sediment habitats adjacent to the River Findhorn, following gravel extraction, the approach to minimise impacts on associated species such as invertebrates through phased work, timing to avoid sensitive periods and relocation of top layers, etc. is supported.

**Freshwater interests, including fish** – impacts from the small-scale bank revetment works, the extraction of gravel and removal of riparian vegetation from the banks of the River Findhorn and along the Back Run, have the potential to adversely affect in-stream habitats and species, directly and indirectly. However, subject to all mitigation measures as specified for freshwater interests (including invertebrates and salmonid and lamprey populations) being fully implemented, these impacts are likely to be relatively minor and short term, hence freshwater habitats and species will be maintained in the medium to long term.

Lowering gravel bars will help to reconnect the river with more of its natural flood plain will be beneficial to the river ecology as a whole. The proposed works will not affect the sediment regime of the River Findhorn, which will continue to transport and deposit varying grades of sediment. The adoption and adherence to the Construction Environmental Management System during construction and operation phases of the scheme, including the specific pollution management plan and sediment management plan, will ensure that any risk of pollution, including sediment, to watercourses is minimised and thus impacts to freshwater habitats and species will be minimised.

***Landscape and visual impact*** - no objection with respect to landscape and visual impact of the proposed scheme. However, some aspects of the works could be improved, to reduce impacts and present opportunities and to create more robust settlement edges and enhance the first impressions of the character of Forres, hence it is recommended that

- consideration is given to the design of the West Forres Embankment (a highly visible large scale feature) and other embankments to ensure that they fit the scale and character of the landscape, for example by ensuring that the embankment side slopes are gently graded; and
- the Moray Council explores a more suitable planting scheme on the West Forres embankment, to ensure that any adverse landscape and visual impacts are minimised, as the embankment is up to 30 metres wide at the crest and such a width may allow for a more flexible planting scheme on and along the lower slopes
- the landscape impact of boundary treatments should be given close consideration, for example the style of fencing in highly visible public areas.

Whilst noting the emphasis in the use of native species in the landscaping planting scheme, there are more opportunities to exploit the use of native species for example, using native perennial wildflowers in place of cultivars, which have a relatively short flowering season, would provide a longer flowering season and enhance the local landscape and deliver biodiversity benefits for a variety of wildlife.

***Recreation and access*** - a number of routes currently used by members of the public for recreation and access will be affected by construction activity, including removal of trees and vegetation and lowering of gravel banks, which will prevent access to parts of these routes. In some locations there are limited opportunities for alternative routes, resulting in lengthy diversions for example, to/from Broom of Moy where users will be required to cross the river via the A96 road bridge. The mitigation measures in the ES seek to allow access for members of the public whilst ensuring safety for them and construction staff and vehicles. It is accepted that construction works cannot be carried out whilst maintaining full public access to all paths hence SNH recommend that:

- mitigation measures are employed that will ensure path closures and diversions are minimised where possible.
- the Council explores appropriate measures to provide safe passage for members of the public across the A96 road bridge, given that it is likely that pedestrian, cyclist and possible equestrian use of the bridge will be increased during the period when the Broom of Moy bridge is closed.

***Other*** - SNH support the proposal to reuse a substantial amount of waste materials generated as a consequence of the scheme such as gravel & shingle, topsoil and road planings. This will greatly reduce the amount of waste material to be disposed of off-site, reduce the amount of ex-situ materials for construction needs and reduce transportation of imported and exported materials.

**SEPA** – On the basis of the amended plans, no objection on basis that previous information from Council’s agent confirms that the minor changes in widths of embankments etc will cause no impact on the channel and therefore conveyance of flows.

Following receipt and consideration of further information (June 2009), objection to application withdrawn and the majority of concerns have been addressed. In relation to flood risk, it is noted that the property at Mains of Moy at increased risk of flooding from the Findhorn as a result of the Scheme is already at risk of flooding from the Muckle Burn during lower return periods. Therefore, it has been satisfactorily demonstrated that the property is not at increased risk of flooding as a result of implementing the FAS and flood risk issues at Broom of Moy have been addressed to SEPA’s satisfaction.

In addition, evidence has been provided about why other options have been ruled out and in terms of watercourse engineering issues, it is accepted, at a high level, that the proposal to manage the river within existing constraints is the best practical environmental option. The use of sediment removal as a management technique has been shown to be appropriate and justifiable at each location and it is accepted that the impact of the scheme is potentially positive in that the reach will be managed, change monitored and measures taken as necessary. Without the scheme, on-going change would not be monitored and issues such as the A96 road, the railway bridge, Broom of May and the Waste Transfer Station would be dealt with in an ad hoc fashion.

From earlier responses by SEPA conditions are recommended regarding

- an Operation and Maintenance Plan for the scheme, to be developed with agreement of SEPA and implemented in full. This should include on-going monitoring of the FAS following implementation, with agreement of SEPA.
- all detailed method statements be provided for all aspects that impact on the water environment but not controlled under CARs, and thereafter the agreed statements are to be followed during construction and operation of the scheme.

**Health & Safety Executive** – No comment. Whereas EIAs are concerned with projects likely to have significant environmental effects, HSE’s principal concerns are the health and safety of people affected by work activities.

**MOD Safeguarding (RAF Kinloss)** – No safeguarding objections

**sportscotland** – No objections subject to implementation of mitigation measures in ES. SPP11 requires protection of open space and a presumption against development on playing fields yet construction of culvert at Pilmuir would have impact on football pitch. To mitigate this impact, the pitch will be relocated by 7 metres and there appears to be sufficient space within the grounds to accommodate this. Mitigation should include all works to relocate the pitch, including provision of appropriate playing surface on the extended area, re-instatement of goal posts and pitch barriers and erection of ball-stop fencing and works should take place during close season to ensure no disruption to fixtures. The mitigation measure for the Sustrans route are supported, including temporary diversions during construction and reinstatement of a realigned route

**Scottish Gas Networks** – No objection. Diversion of gas main in Pilmuir Road is at planning stage. Consultee to contact applicant prior to intended start date. Given the low/medium/intermediate pressure gas main in proximity of site, no mechanical excavations should take place within distance (as specified) for each system and position of mains should be confirmed using hand dug trial holes. Safe digging practices in accordance with relevant guidance must be used to verify and establish the actual position of pipes. Works to be carried out in manner allowing access to apparatus throughout duration of operations. The 10 inch main at the River Findhorn will be abandoned during September/October 2008.

**Forestry Authority** – Whilst content with the felling and replanting, wish to see further consideration given to the targeted creation of new floodplain and wet woods within the catchments to help stop peak flows. (This needs to be considered in the upper catchment with Highland Council) In addition, welcome clearer indication of establishment of associated floodplain woodland shown as Forres ENV10. The planting of riparian floodplain woodlands would help mitigate and delay (not stop) flood flows

**Moray Access Manager** – A number of core paths in the vicinity of Broom of Moy and the River Findhorn will be affected by the scheme. Following discussion, it was agreed to pursue existing path lines identified on Core Paths, FR06 – FR10 inclusive. The time-scale involved in developing the scheme will mean the designated Core Paths are unlikely to be altered for some time and the positioning of sections of these routes will be altered when works are implemented subject to the paths continuing to function as routes, being fully accessible to non-motorised users, signed at either end of each route and free of physical barriers precluding the public from exercising general public access rights. All opportunities to improve routes should be improved, in terms of width, surfacing, slope and drainage to maximise accessibility. General public access rights will also apply to the grassed embankments, maintenance tracks and landscaped areas with access accommodated through a strategy of providing principal access points and through routes connecting Core Paths.

A number of comments can be made on various drawings and paths, including re-alignment of Core Path FR10 not to include steps to maintain the accessibility of the re-engineered path behind the Garden Centre, the permanent closure of FR08 and it being repositioned to the south of Greshop House, the re-alignment of Core Path FR07 (Sustrans cycle route) is acceptable, the Core Path FR09 south from Broom of Moy will be totally re-aligned and the opportunity should be taken to create a peripheral footpath (an aspirational footpath) linking Greshop Industrial Estate across the A96 road to Pilmuir Road west and then beyond to Balnageith Road. All these core path routes should be annotated on the drawings.

**Developer Contributions** – following assessment, none identified other than comment that the proposal involves the considerable loss of trees downstream and with ENV10 designation to west of Forres, the creation of community woodland around and between the embankment and the town would further support the objectives of the MLP2008 and mitigate against the loss of trees elsewhere within the scheme

Although consulted, no responses were received from the following:

- Local Bio-diversity Co-ordinator
- Forres Community Council
- River Findhorn Salmon Fisheries Board
- Scottish & Southern Energy
- Railtrack