

PLANNING APPLICATION: 08/01020/EIA

In the event that a recommendation on this planning application is overturned the Committee is reminded of the advice contained on the front page of the agenda for Reports on Applications

Introduction

This report on the application for planning permission for the Forres (River Findhorn and Pilmuir) Flood Alleviation Scheme (Findhorn/Pilmuir FAS) includes:

- **Appendix 1** The Proposal
- **Appendix 2** Planning Policy
- **Appendix 3** Relationship of Findhorn/Pilmuir FAS to planning policy
- **Appendix 4** Summary of Representations
- **Appendix 5** Summary of Planning Consultation responses
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- **Appendix 7** Summary of Impacts of Findhorn/Pilmuir FAS

The development of effective flood alleviation schemes is identified in the Single Outcome Agreement (SOA) as a stated Council priority. The overall programme to deliver the Findhorn/Pilmuir FAS and other flood schemes within Moray is subject to review by the Moray Council, including monitoring by the Council's Flood Alleviation Sub-Committee.

It was agreed that Option 3A (i.e. set back defence to Forres and all local communities where possible, raise the A96 over a length of some 400m, drainage channels from Pilmuir and flood warning review) be taken forward as the preferred scheme to alleviate and manage flood risk in Forres from the River Findhorn and Pilmuir catchments (Minute, Environmental Services Committee, 22 November 2006 refers). This option, including flood embankments, road raising, gravel extraction and a drainage channel is considered to represent the most cost-effective, environmentally acceptable and sustainable solution to flooding issues from the River Findhorn and Pilmuir catchments.

Previously, it was agreed that a channel diversion to the River Findhorn be taken forward as the preferred option for the Pilmuir catchment and that the separate Pilmuir and River Findhorn Flood Alleviation Schemes be combined into a single, comprehensive flood alleviation scheme (Minute, Environmental Services Committee, 30 August 2006 refers). In the absence of an economic justification to undertake flood alleviation works to outlying communities and isolated properties around Forres, the scheme has progressed on the basis of making the situation no worse off for these properties. Following changes in legislation, the responsibility for flood warning has transferred to SEPA, hence this aspect is not covered in the Findhorn/Pilmuir FAS.

After the planning application was submitted in May 2008, the proposal was amended in July 2009 with various small-scale changes made to parts of the design, location and/or construction of the Findhorn/Pilmuir FAS. The amended details were subject to further notification (July 2009) and where appropriate, consultation and advertisement procedures (November 2009), the latter in relation to the adopted Moray Local Plan 2008 (MLP2008).

The Findhorn/Pilmuir FAS is subject to a separate application for confirmation of a Flood Prevention Order (FPO), as submitted to the Scottish Ministers on 27 March 2008. Following notification, 11 objections were received on the FPO, of which 5 have been withdrawn and the remaining 6 objections will be heard at a Public Local Inquiry for the FPO, to commence on 8 June 2010.

Forres is not only at risk from the River Findhorn but also from the Burn of Mosset. Following confirmation of a separate FPO and grant of planning permission, the Forres (Burn of Mosset) FAS is complete other than minor works and landscaping works (Minute, Flood Alleviation Sub-Committee, 21 April 2010 refers).

The Proposal

The Findhorn/Pilmuir FAS will convey flood flows safely past Forres by a combination of works to the River Findhorn channel and adjacent flood plain, including flood embankments, road raising, gravel extraction and a drainage channel. The former will improve river conveyance and the latter will divert overland flows from Pilmuir to the River Findhorn.

The Findhorn/Pilmuir FAS will provide a 1 in 200 year design standard of defence. Details of the proposed permanent engineering works and other operations, which comprise the Findhorn/Pilmuir FAS are described in Appendix 1 including:

- Pilmuir drainage channel and pumping station
- West Forres embankment
- West Forres drainage channel and river outfall
- Raising of the A96 road
- West Forres embankment with grout curtain
- West Forres revetment
- Riverbank (left bank) vegetation removal and gravel extraction (Bend 1 and 3) and haulage tracks
- Riverbank (right bank) vegetation removal and gravel extraction (Bend 2) and haulage track, and new bridge south of Broom of Moy
- North Forres embankment and raising of Waterford Road
- Gravel extraction and vegetation clearance within the Back Run

A landscape planting scheme is also included, to replace vegetation being removed as part of the works and to mitigate against potential adverse landscape and visual impacts arising from the scheme. In addition, temporary site compounds (11 no.) and processing areas (6 no.) are also identified.

The planning application is accompanied by documents, summarised in Appendix 6, including

- an **Environmental Statement (ES)**, which assesses the likely significance of environmental effects of the scheme and identifies measures to mitigate against the impacts of the development. (The amended plans do not alter the assessment within the ES, however details of the works have changed and some planning policies in the ES have been superseded (Appendix 1 and 3))
- a **Flood Risk Assessment (FRA)**, which considers the impact on flood risk both within and around Forres (upstream and downstream of the defended area).
- **Information in Support of Appropriate Assessment**, which considers the impacts of the Findhorn/Pilmuir FAS on the Moray & Nairn Coast Special Protection Area (SPA) and Ramsar site.

The Site

The Findhorn/Pilmuir Flood Alleviation Scheme works are located within the Pilmuir area of Forres and within the River Findhorn corridor and adjacent land, both up- and down-stream of Forres. The Findhorn catchment is dominated by farmland, predominantly arable and the urban area of Forres. On the floodplain there are isolated properties, farmsteads and small communities including Mains of Moy, Broom of May, Redcraig and Mundole.

Pilmuir is an area on the west side of Forres. The Pilmuir catchment area is heavily modified with water channelled through artificial ditches and drains. Although predominantly residential in character, the area includes Pilmuir Playing Fields (Forres ENV5 in MLP2008), a nursery (Forres ENV9) and a large area of rough grassland on or under which two drainage channels and a culvert are proposed as part of the Pilmuir Drainage Channel works.

West of Pilmuir Road West, the northern part of the West Forres Embankment and Drainage Channel and the Pilmuir Drainage Channel including the pumping station) are located on open and flat area of agricultural land (Class 3.1 quality), which is located within the Forres settlement boundary and designated for floodplain woodland and open spaces (Forres ENV10). The southern 'tail' of the West Forres Embankment is located on agricultural land but lies outside the Forres settlement boundary in the Forres 'Countryside Around Towns' (CAT) designation.

The A96 road separates the agricultural land from the River Findhorn. South of the trunk road and underlying the land to the west of the West Forres Embankment is the Greshop Farm Scheduled Ancient Monument (SAM) site.

North of the A96 road, the West Forres Embankment (with grout curtain) will be located along the wooded, right hand bank of the River Findhorn between the A96 and the Aberdeen – Inverness railway line at Findhorn Viaduct (Category A listed Building). This embankment is located within the CAT along the western boundary of Forres and Greshop Industrial Estate (Forres I1) which includes the Mackenzie & Cruickshank Garden Centre and other industrial/commercial land-uses.

Along the left hand bank, between the River Findhorn road bridge and Findhorn Viaduct, haulage tracks and temporary site compounds/processing centres will be formed on farmland on both sides of the railway embankment. South of the railway, towards the western end of the track, a borrow pit will be formed on rough grassland, and along the riverbank, riparian woodland and vegetation will be removed and areas of gravel material deposited by the river will be re-profiled, or excavated both up- and down-stream of the Viaduct (Bend 1).

Downstream of the Viaduct along the left hand bank, on the landward side on an existing flood embankment, the haulage route heads northeast towards Bend 3 across agricultural land (Class 2) and around the eastern side of Broom of Moy to join an existing track which leads into an area of riparian woodland where vegetation and gravel material will be removed and lowered. North of Bend 3, to the east and north of Mains of Moy, is the Back Run, where a channel will be formed/defined by clearing riparian woodland (mainly scrub and saplings).

On the right hand bank downstream of Findhorn Viaduct, within the CAT, and on agricultural land (Class 2.1 quality), the North Forres Embankment initially runs parallel to the railway embankment before heading northwards across fields towards and around Greshop House (Category B), and then north-east across fields towards Waterford Road and beyond. To the north-west of Waterford Farm/Monkland Farm is the Council's Waste Transfer Station accessed from Waterford Road.

Opposite Broom of Moy is an area of woodland, to be removed as part of the proposed excavation of gravel material deposited by the River Findhorn (Bend 2). Extending through this area is a Sustrans cycle route and various footpaths leading to/from Forres. These routes connect to Broom of Moy and beyond via a bailey bridge across the River Findhorn. The existing bridge will be extended across the excavated area. A haul track to Bend 2, accessed from Waterford Road, will be located along on the crest of the North Forres Embankment with temporary site compounds/processing facilities located along the track.

North and downstream of Forres is Findhorn Bay, which is subject to various environmental designations including an SSSI and part of a Moray and Nairn Coast SPA and Ramsar site.

For planning purposes, the application site extends beyond the actual 'footprint' of the proposed works, to include temporary site compounds and for access during construction, etc. Areas of land on which no works are proposed but may be subject to temporary inundation during flood events are not considered to represent a material change of use requiring permission, and therefore are not included in the application site as defined.

For ES purposes, the geographical scope of consideration is greater and includes land both within and adjoining the planning footprint of the scheme, i.e. areas subject to flooding up to and within current and post-scheme flood extents for an estimated 1 in 200 year flood event.

Policy

Section 25 of the 1997 Act, as amended requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Appendix 2 identifies policies from the current Moray Development Plan i.e. the approved Moray Structure Plan 2007 and the adopted Moray Local Plan 2008 (MLP2008). Appendix 3 considers the relationship of the Findhorn/Pilmuir FAS to planning policy, including departures from the development plan.

History

27 March 2008 - submission of application for confirmation of FPO for Findhorn/Pilmuir FAS to Scottish Ministers. Order yet to be confirmed and Public Local Inquiry to commence 8 June 2010

Advertisement

The application was advertised

- as a departure from the development plan
- in accordance with the Environmental Impact Assessment Regulations
- in accordance with the Regulations relating to Listed Buildings and Conservation Areas

The application was initially advertised against the Moray Local Plan 2000, which is no longer in force. The amended plans were advertised against the adopted MLP2008.

Observations

The Moray Council is committed to formally promoting flood alleviation schemes (SOA and Corporate Plan 2008-2009 refers). The MLP2008 indicates that flood alleviation schemes are being progressed for Forres FA1 (Mosset Burn), FA2 (River Findhorn) and FA3 (Pilmuir) (Appendix 2). A scheme is now in place for FA1 i.e. the Forres (Burn of Mosset) FAS.

Impact of flooding

Following investigation of flooding scenarios for Forres, the area at Pilmuir will continue to be affected by flooding from the local catchment. The risk of flooding from the River Findhorn remains and is increasing due to the effects of climate change and continued degradation of existing defences. The combined impacts of economic loss, damage and disruption to property and business, infrastructure and services plus associated impacts on recreational, cultural and natural heritage interests, severe stress to individuals and other social issues caused by flooding are considered unsustainable, hence the overwhelming need for the Findhorn/Pilmuir FAS to address the problem of flooding within and around Forres.

The Findhorn/Pilmuir FAS will alleviate flooding from the River Findhorn and the local catchment of Pilmuir. The proposed works include flood embankments, road raising, gravel extraction and a drainage channel (Appendix 1). The proposed 1 in 200 year event standard of defence, allowing for anticipated effects of climate change to be managed, is a significant improvement compared with the current standard of defence to Forres from the River Findhorn, estimated at less than 1 in 25 years.

Historically, there have been at least 16 recognised flood events from the River Findhorn over the past 300 years, including the largest, the 1829 Muckle Spate and the most recent, in 1970 causing serious flooding and damage to the town. Historical data and hydraulic modelling demonstrate that the River Findhorn is still a significant risk of flooding to Forres and the surrounding area with significant residential and non-residential damage likely to occur at 1 in 25 year return period or greater i.e. 654 residential and 60 non-residential premises affected at 1 in 25 year return period and 891 residential and 74 non-residential premises affected at 1 in 200 year return period. The A96 road is affected by events greater than 1 in 20 years and the railway line, Pilmuir Primary School and Forres WWTW are affected by events of 1 in 25 years or greater.

Under a 'do nothing' scenario, the effects of climate change will exacerbate flood risk in the River Findhorn and Pilmuir catchments, leading to more frequent flooding within and around Forres, and degradation of existing defences. This will result in repeated disruption and damage to various land-uses and services used by the local community, and life in general together with significant delays or access to transport infrastructure, which become severed or unusable during or immediately after flood events.

The Pilmuir area will remain susceptible to increased flooding from the River Findhorn and also from increased rainfall and groundwater levels and a current drainage system which has limited capacity to convey higher levels of water. Within the River Findhorn catchment, increased flows and quantity of sediment and increased risks of contamination and pollution will reduce water quality and impact adversely on aquatic interests. Moreover, with increased volume of sediment transported/stored in the channel, gravel bars/platforms will build up and once colonised with vegetation, reduce flow capacity in the channel and cause water to spill out of the main channel. This will make the adjoining land more prone to flooding through breaching or overtopping of existing defences. With scour, erosion and incision of the river undermining existing structures, including the abutment of the Viaduct, vital infrastructure might fail. According to the ES, the river might avulse i.e. change course abruptly to find a new course to Findhorn Bay.

Once implemented, the Findhorn/Pilmuir FAS will alleviate flooding to a 1 in 200 year design standard, bringing long-term beneficial impacts to land-uses and services, including residential and commercial premises, community and recreational facilities plus associated social and economic benefits and reduced disruption of national and local transport infrastructure. The Findhorn/Pilmuir FAS includes revetment works to preserve vital infrastructure, a drainage channel to drain and divert surface and groundwater floodwater away from Pilmuir and setting back defences where possible to maximise use of the floodplain. In addition, extracting gravel from areas adjoining but not in the existing channel will help restore the river to its former natural regime and increase connectivity between the river and its floodplain. These features together with benefits to the natural environment including water quality and bio-diversity, all combine to provide a scheme which is the most cost-effective, environmentally acceptable and sustainable solution to flooding issues from the River Findhorn and Pilmuir catchments (Appendix 3, 6, and 7).

Overall, construction works will last approx. 2½ years. The ES and Appendix 1 indicate the anticipated construction periods for individual elements of the Findhorn/Pilmuir FAS. To reduce disruption and disturbance, work will be phased with enabling works, including service utility diversions undertaken early in the programme. Within the watercourse, works will generally start downstream and progressively work upstream i.e. from Back Run to Bends 3, then 2 then 1. This reduces the possibility of increasing flood risk to Forres and outlying communities and also allows for re-use of the excavated material, once processed, on the new embankments being built.

Environmental impacts

The planning application is accompanied by an ES, which assesses the likely environmental effects or impacts of the scheme and identifies mitigation measures to be implemented to manage and mitigate against the effects of those impacts.

The ES assesses 12 environmental topics i.e. land use and local community, recreation and amenity, historic environment, landscape and visual, soils geology and hydrogeology, hydrology and water quality, geomorphology, aquatic and terrestrial ecology, traffic, noise and vibration and air quality. Impacts – adverse or beneficial – are identified and assessed for the construction and operational phases of the Findhorn/Pilmuir FAS, with their significance ranging from no/negligible to major. Following independent review, the ES is considered to be “good” (with minor omissions and inadequacies), for example in presenting the environmental effects of the scheme and in identifying mitigation measures (Appendix 6 and 7).

Most adverse impacts are likely to be experienced during construction i.e. physical disturbance caused by engineering and other works to construct the elements, or other disturbance effects caused by construction vehicles and personnel, including storage and movement of construction materials and/or equipment, noise and dust emissions, loss of trees and vegetation, disruption to traffic, restricted access to facilities and release of sediment, etc. (Appendix 3 and 7). Many are short-term temporary effects, often limited to the duration of the construction works at each location. With mitigation, a number of the more adverse impacts can be reduced during the construction phase. The ES states its commitment to implementing mitigation measures to reduce or avoid adverse impacts together with continued consultation with the local community both before and during construction.

Operational impacts associated with implementing the scheme may be adverse or beneficial (Appendix 7). The former include predicted impacts upon various terrestrial ecology including protected species and trees, where in some locations no replanting is proposed, and in landscape and visual character (subject to viewpoint), where new features are provided by the scheme, etc. Beneficial impacts include the provision of defences to a 1 in 200 year event standard and reduced flooding and disruption to the local community, business and infrastructure in Forres plus improvements to the historic environment including Findhorn Viaduct and in surface water flows in the River Findhorn. Although not designed to protect agricultural land, there will be a reduction in the extent of agricultural land liable to flood (Appendix 3 and 7).

Following implementation of the Findhorn/Pilmuir FAS, and with mitigation and over time, operational impacts, whether initially anticipated as adverse or no/negligible impact, may not change or be reduced further, resulting in a beneficial residual effect e.g. from new/replacement planting providing or restoring habitats for protected and other species, or where possible, to “soften” the appearance of the scheme in landscape and visual terms, including the western approach to Forres from the west.

The exact number of trees being removed from large and small areas within the site is not stated in the ES, although in mitigation 5265 trees and 111 shrubs (all native species) will be planted to replace some but not all of the trees being removed. However, to achieve a more ‘instant’ effect, some semi-mature trees will be planted along the river-side of the West Forres Embankment with grout curtain. However, the majority of trees being planted are whips (45 – 60 cm high) which will not have an immediate impact. In the longer term (25 years or more), with establishment and maturity and dependent on the maintenance regime adopted including thinning after 5 years, planting will assist in assimilating the Findhorn/Pilmuir FAS into the landscape and in the creation of habitats.

Tree losses will occur where works and trees/riparian woodland are located along the river corridor on the banks or over gravel bars in the river channel or on areas where embankment defences are proposed e.g. at Back Run or Bends 1 – 3, or the West and North Forres Embankments. In some cases (re)planting will not be possible, whether on adjoining agricultural land or on areas where gravel is excavated (where to do so would conflict with other objectives of the scheme to increase channel capacity and contain high flows). As a result, planting is mainly concentrated primarily along the West Forres Embankment and road raising of the A96 road.

The planting proposals included in the scheme are intended solely to mitigate the impact of the Findhorn/Pilmuir FAS in this area. Whilst this may contribute towards an objective to improve the approach to Forres (MLP2008 refers), the scheme does not include additional planting to achieve the regeneration envisaged for the area between the Embankment and Pilmuir, i.e. Forres ENV10 (Appendix 2). Adjacent to a temporary processing area to the north of the railway, a small plantation woodland area is proposed and planted in a 'LXX' pattern. Although perhaps an individual land owner requirement, this area once established will have a very limited and local rather than substantial impact on the appearance of the scheme or the locality.

Mitigation is proposed to prevent, reduce, offset or remedy identified impacts during construction and/or operation of the Findhorn/Pilmuir FAS. Examples include replacement planting, bat boxes, sediment and pollution management plans, restrictions on working areas and operating hours, proposals to manage transport, dust, vibration and noise, and post construction monitoring and surveys to determine impact on habitats, species and water quality and/or further remediation work as necessary, etc. Details of mitigation measures are indicated in each topic chapter in the ES and the Non-Technical Summary (Appendix 6 and 7).

Mitigation also incorporates a "mitigation by design" approach adopted during the development of the Findhorn/Pilmuir FAS where, by careful design and siting of the scheme and its components, adverse environmental impacts have been minimised or avoided as the scheme is developed. This approach includes minimising the amount of in-channel works (limited here to the West Forres Revetment whilst gravel extraction is undertaken outwith the channel), reducing the visual impact of embankments by setting back defences which both maximise use of the floodplain and are lower in height than equivalent defences built on the river bank, replanting trees and vegetation following damage or loss during construction, removing vegetation and gravel built up to improve the setting of Findhorn Viaduct, a bridge design chosen to complement rather than match the existing bridge at Broom of Moy, locating processing areas and haulage tracks within the site both to reduce vehicle movements on public roads and after construction, for use to maintain the scheme, and re-using excavated material for flood embankments to reduce importing material in/out of the site, etc.

In addition, the Findhorn/Pilmuir FAS adopts the principles of "making space for water", to encourage greater connectivity between channel and flood plain, whether in setting back embankments or removing vegetation and extracting gravel built-up over the years at Bends 1, 2, and 3, to help restore the river to its former natural regime.

All mitigation measures will be identified and described within an Environmental Action Plan (EAP) which, as an evolving document, will be up-dated during the detailed design stage and before construction commences, for use by the contractor in implementing the scheme. The EAP is however, not a substitute for implementing the identified mitigation measures during construction and operation of the scheme, but it does provide a comprehensive account of all mitigation measures to be adopted and represent a commitment to undertaking mitigation.

Following a Review, the pro-active approach and commitment to mitigation, including the EAP is considered as "good" (Appendix 6). Where possible, the EAP should enhance the level of commitment being given to mitigation by addressing the comments in the Review about follow-up, which is graded as "satisfactory", and explain what mitigation will be carried out rather than rely on references to legislation.

The EAP is capable of accommodating consultee requirements, e.g. by SNH (and SEPA) for construction method statements, sediment and pollution management plans, etc. which require to be submitted and approved prior to development commencing, to demonstrate and ensure identified impacts are addressed (Appendix 5). Some statements etc. may be duplicated by other legislation (i.e. CARs) and not all mitigation measures as identified or required are capable of being translated into planning conditions, including those expressed in 'generic' terms or lacking in specification. Whilst conditions requiring submission of a finalised EAP incorporating all required statements can be considered, requirements to ensure implementation of agreed measures will present considerable and practical planning enforcement difficulties, as previously noted for other flood alleviation schemes.

Planning Policy

The amended proposal has been assessed against the current Moray Development Plan, in particular the MLP2008 (Appendix 2 and 3). The ES assesses compliance with planning policies that are no longer in force, although where these provisions do not materially differ, these comments may still be relevant.

Generally speaking, some elements of the Findhorn/Pilmuir FAS e.g. West Forres Embankment and raising of A96 road will impact on areas or site-specific designations within the Pilmuir and Greshop areas of Forres. However, this scheme (and the Forres (Burn of Mosset) FAS) will, in alleviating flooding, bring wider benefits to the community including other land-uses and designations within Forres. The remaining elements of the scheme, including works in or adjacent to the existing river channel are located on agricultural land or in countryside areas surrounding Forres. All elements combine to achieve the stated objective of alleviating flooding in Forres whilst ensuring that no property is worse off in the surrounding area.

The impact of the Findhorn/Pilmuir FAS on both site-specific designations in Forres and other, more general (or governing) policies is also assessed, including whether they accord or conflict with policy (Appendix 3). In some cases, the proposals are considered to comply with policy with or without conditions as recommended. However, there are departures from development plan and where identified, there are reasons to consider and support any departure, including regard to the nature scale and function of the Findhorn/Pilmuir FAS (Appendix 3). None of the departures are considered to be 'significant' i.e. contrary to the vision or wider spatial strategy of the plan (Circular 4/2008, Development Management Procedures refers). Furthermore, whilst the actual extent of the scheme is not shown on the Forres Proposals Map, the Forres settlement statement acknowledges that flood alleviation schemes for Forres are being progressed and the general area of each scheme is shown on the Proposals Map as FA1, FA2 and FA3 (Appendix 2). Generally speaking, during preparation of MLP2008, account was taken of the Findhorn/Pilmuir FAS proposals as known at that time.

A number of the works are located in countryside areas (i.e. works on left hand bank) or in the Forres CAT (i.e. works on right hand bank outwith Forres). Although 'contrary' to CAT policy, because the designation does not allow for flood alleviation works, the proposals are not significantly intrusive. Given their intended function they are not nor specifically designed to promote further development which would otherwise prejudice the objectives of this policy.

That said, substantive changes in landscape and visual appearance may result in the surrounding area, as a result of construction activities which are temporary in nature and duration, or from operation of the Findhorn/Pilmuir FAS where works remain in place, for example, embankments, a drainage channel new bridge, haulage tracks and excavated gravel bends, or from the loss and/or partial replacement of trees and vegetation.

In some cases, following further consideration and consultation, and despite being advertised initially as a (potential or actual) departure, the proposal may no longer 'depart' from policy or other material considerations, including SPP7 (now replaced by a single SPP which includes similar provisions for flooding). SEPA initially considered the proposal as being contrary to national policy but have since withdrawn that objection following further information and are now satisfied that property at Broom of May and Mains of Moy are not at increased risk of flooding from the scheme (Appendix 5).

Consultations

Appendix 5 summarises all consultation responses received on the application. Having been advised that the amended proposals do not impact on the conveyance of flood flows and that the assessment in the ES remains unchanged, SEPA have not objected to the proposal on flood risk or on any other grounds including hydrogeology and watercourse engineering issues although these will be subject to further scrutiny by SEPA under CARs procedures. Likewise, SNH do not object to the proposal subject to conditions as recommended, nor does sportsScotland based on proposed mitigation arrangements for Pilmuir Playing Fields and the Sustrans cycle route, NNR1.

The Findhorn/Pilmuir FAS will impact on the Moray & Nairn Coast SPA and Ramsar site, for which the Moray Council (and other authorities), as a competent authority, must undertake an "appropriate assessment" (AA). To assist the undertaking required of the Council (and others), the Council's agent has provided information to inform the AA and SNH have prepared a separate 'appraisal' (not an AA) (Appendix 6). The latter examines issues expected to be taken into account when preparing an AA to examine the impact of the Findhorn/Pilmuir FAS upon the Moray & Nairn Coast SPA and Ramsar site. The appraisal concludes that this proposal will not adversely affect the integrity of the site (Appendix 5 and 6). It is recommended that the Council adopt the appraisal by SNH for AA purposes. Without AA, the Findhorn/Pilmuir FAS cannot proceed.

Representations

Following notification and advertisement procedures, before and after receipt of the amended proposals, a total of 12 representations were received. Appendix 4 summarises the representations including an account of the consideration given to the submissions. The representations relate to various issues and topics, including specific impacts (economic and environmental) on individual business which may not be addressed within the ES. Not all the parties submitting representations on the planning application have submitted objections to the FPO or vice versa. Only objections to the FPO will be heard at the forthcoming FPO Inquiry.

Flood Risk

In terms of flood risk, the Findhorn/Pilmuir FAS does not change flood risk upstream of Forres. Within Forres it will provide a 1 in 200 year standard of defence and reduce the risk in many areas with attendant benefits of protection to the local community, including residential and business property, and reduced social distress and disruption to transport, infrastructure and community facilities.

It is acknowledged that the Findhorn/Pilmuir FAS will impact upon areas outwith Forres including smaller communities e.g. Broom of Moy, Mains of Moy, and isolated property and upon agricultural land. For the latter it was advocated during the Elgin FPO Inquiry, that the community benefits of alleviating flooding in Elgin and ensuring that no downstream property is worse off outweighed the increased risk of flooding to agricultural land downstream of Elgin and where parties consider that they have been adversely affected by the scheme then, they may be entitled to submit a claim for compensation for any loss. Whilst a similar position could be considered to apply to the Findhorn/Pilmuir FAS, it can be noted here that although not designed to protect agricultural land, farmland behind the embankments will be protected by the Findhorn/Pilmuir FAS.

The Findhorn/Pilmuir FAS does not include proposals to defend all outlying property beyond Forres because it would be uneconomic to protect outlying property to a similar standard of protection as that for Forres, hence the scheme has progressed on the basis of making no property worse off. The FRA concludes that all areas benefit or are no worse off from the implementation of the Findhorn/Pilmuir FAS (at 1 in 200 year event). As the amended plans do not affect the conveyance of flood flows, SEPA remains satisfied that property is not at increased risk from the scheme (Appendix 5 and 6). The FRA notes that Mains of Moy has a higher flood risk from the Muckle Burn than that from the River Findhorn but addressing this is not part of the scope of the Findhorn/Pilmuir FAS. However, further investigation has demonstrated that the Findhorn/Pilmuir FAS will not exacerbate any flooding caused by a flooding event on the Muckle Burn (Appendix 4).

In terms of policy EP7 and the SPP, the Findhorn/Pilmuir FAS will not exacerbate nor result in a material increase in flooding to property. This accords with earlier requirements and decisions taken by the Council and (Sub)Committee to ensure that no property is worse off or about the format of the scheme i.e. an agreed option including gravel extraction, raising the A96 road, a drainage channel to divert flows from Pilmuir and embankments to protect Forres, including agreed alignments for the latter. These decisions, together with a variety of other investigations have all combined to inform and develop the Findhorn/Pilmuir FAS into the application as now submitted for determination.

Recommendation

Having regard to the above, it is recommended that

- the appointed officer be granted delegated powers to approve the application as amended subject to
- the adoption of the appraisal (by SNH) as the Council's "Appropriate Assessment" of the impact of the Findhorn/Pilmuir FAS on the Moray & Nairn Coast SPA and Ramsar site
- conditions and informatives as recommended (details to follow)

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OBJECTIONS-REPRESENTATIONS

Appendix 4 summarises the representations received on the proposals. A total of 12 representations were received, of which 8 were submitted prior to submission of the amended proposals.

CONSULTATIONS

Appendix 5 summarises the consultation responses received on the application. There are no objections from consultees. SNH (and others) do not object subject to planning conditions as recommended. An objection by SEPA has been withdrawn.