

07/00646/EIA  
30th March 2007

**Construct the Rothes Flood Alleviation Scheme Adjacent To  
The Black Burn, Burn Of Rothes And The Back Burn Rothes  
Moray for The Moray Council**

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**Comments:**

- Application is major development – Rothes Flood Alleviation Scheme
- Development Control Manager minded to approve application as a departure from the development plan
- Unresolved Objection - subject to on-going consultation with SEPA
- Application accompanied by an Environmental Statement prepared under EIA Regulations
- Advertised as a departure from the development plan
- Advertised under current EIA Regulations
- Advertised under S.34 of the Act (“bad neighbour”)
- No objections/representations received following advertisement/notification procedures

**Procedure:**

- Application to be considered at Special Meeting of the Environmental Services Committee (30 August 2007), where
  - a) if objection by SEPA not withdrawn, consideration of proposal to include 'hearing' (PAN 41) procedure at which the applicant/agent and objectors are to be given an opportunity to speak to the application and the stated objections prior to determination of application; or
  - b) if objection by SEPA withdrawn, no hearing required.
- If minded to approve, application to be notified to the Scottish Ministers under Circular 5/2007 prior to issue of consent because application is EIA development and as development in which the planning authority has an interest and where the development is contrary to the development plan. (Notification of application may also be required if advice from SEPA and SNH is not adhered to).

**Recommendation:      Delegated Powers to approve the application subject to**

- a) **the Council agree to adopt the “appropriate assessment” (May 2007) as undertaken by SNH, and the associated conditions, to ensure the Rothes Flood Alleviation Scheme will not adversely impact on the River Spey Special Area of Conservation;**
- b) **prior to determination:**
  - i) **the provision of information on geomorphological and flood risk issues to address the outstanding objection from SEPA (August 2007)**
  - ii) **the satisfactory resolution of contaminated land issues; and**
- c) **the following conditions:**

*Note: For the purposes of this schedule "Rothes FAS" means Rothes Flood Alleviation Scheme.*

1. The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which this permission is granted.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. No development shall commence until
  - (i) details of the following have been submitted to and approved by the Council, as Planning Authority regarding: -
    - a) confirmation of the proposed date(s) of commencement for each work location comprised in the Rothes FAS, including a detailed programme of works for the phased construction of the development. The programme shall include the period of construction activity for all Rothes FAS sites and pre-and post-construction activity works, including site clearance works, the establishment and subsequent restoration of the site compounds. In addition, the time-scale(s) for the programme of works shall be related to and take account of breeding and hibernating seasons of all ecological/nature conservation interests, including those identified in the submitted Environmental Statement and required Environmental Action Plan (EAP) (see Condition 3r);
    - b) samples of all proposed coursing and pointing for all stonework for on-site inspection and approval by the Council, as planning authority prior to the erection of stone clad flood and retaining walls and the proposed new public conveniences;
    - c) samples or specifications of the external roof materials including colour for the pavilion;
    - d) where not already specified, samples or specifications for the external colours of all bridge parapets;
    - e) where alternative external finishes are identified e.g. form liner finish or re-constituted stone to retaining walls or similar, confirmation of the actual external finish to be used, including the pattern of the form liner finish;
    - f) the location, height, design and external appearance, and material finishes and colouration of the replacement fuel storage tank (Glenrothes Distillery);
    - g) the location and design construction of the silt lagoon to be formed at the confluence of the Burn of Rothes and Back Burn. The required details shall identify all engineering works and other operations including cross-sections and finished and existing levels and details of all earth excavation and mounding works required to form the lagoon together with all other proposed

measures to mitigate against the impact of sediment and pollution downstream. (These details may also be submitted with the sediment management plan (see Condition 3p);

- h) the location, design and external appearance, height and material finishes of the required additional noise screens to be provided at all noise-sensitive locations where a 'major adverse' noise impact is identified during construction of the Rothes FAS (as identified in the submitted Environmental Statement (Table 18.5). The required information shall demonstrate that the additional noise screens are capable of achieving at least 10dB attenuation and the screens shall be erected prior to construction works commencing in the locality of the noise sensitive premises and thereafter removed upon completion of construction activity;
- i) the location, design and external appearance, height and material finishes of the noise screens required to be erected at the site compound at Station Mews/Station Road. The screens shall be erected prior to the use of the compound area first commencing and thereafter shall be removed upon cessation of the use of the compound area;
- j) details of the location(s) and an acoustic assessment of the demountable pumping equipment to be provided (Section 18.9 of Environmental Statement refers), in accordance with scope of the required assessment which shall previously have been submitted to and agreed with the Council, as planning authority in consultation with the Environmental Health Manager;
- k) the design specifications for the proposed up-grade/overlay of the public road serving Caperdonich Cottages (Caperdonich Road);
- l) the location, design specifications and surfacing materials for the turning facility which shall be provided to the end of Station Street on the southern side of Back Burn;
- m) in consultation with the Council's archaeological advisor, Aberdeenshire Archaeological Services, a scheme for the implementation of a programme of archaeological works in accordance with a written scheme of investigation. The required scheme shall include details of the arrangements for the recording and recording of archaeological resources within the Rothes FAS;
- n) in consultation with SEPA, a construction phase waste management plan, to address waste implications of the development, including procedures and arrangements to recycle and re-use waste materials generated by the development and details of the arrangements for the disposal of unsuitable waste material off-site, where required, together with longer-term proposals to deal with the sustainable removal of any sediment from each Burns during the design life of the scheme. (These details may also form part of the EAP (see Condition 3r));

- o) in consultation with SNH, details of the arrangements to remove or make passable existing obstacles to fish passage on the Black Burn (under Station Street bridge, under A941 bridge, immediately upstream of A941 bridge, under Glen Grant Distillery bridge) and on the Burn of Rothes (downstream of Green Street bridge, and upstream of A941 bridge). The required details shall include the time-scale for removal of obstructions or provision of the fish passes, including the location, design specifications and material finishes of any new fish pass structure to be provided;
- p) in consultation with SNH and SEPA, a sediment management plan to include details to minimise elevated sediment loads and pollution of the watercourse. The details shall include the arrangements for all temporary works for burn flow management, localised de-watering and sediment control including the silt lagoon together with the arrangements of a regime for inspection and monitoring both during and after construction for erosion and deposition. (This plan may be provided as part of the required EAP (see Condition 3r));
- q) in consultation with SEPA and SNH, construction method statements shall be provided. The statement shall include details of all on-site construction, drainage, mitigation measures to be adopted, including identification of all "best practice" methods to be employed, site restoration/re-instatement works and timetable for construction to ensure environmental and visual impacts are reduced, including the risk of pollution and to minimise disruption to habitats and species. The statements shall also include details of the arrangements to monitor and ensure compliance with the approved details. (These statements may be provided as part of the required EAP (see Condition 3r));
- r) in accordance with the Environmental Statement, a finalised Environmental Action Plan (EAP). The EAP shall be based on the final detailed scheme design and contracts documents and include all environmental recommendations and specification of all mitigation measures to be adopted (The EAP may incorporate information required under Condition 3a, 3n, 3p, 3q);

and

- (ii) thereafter, the development shall be implemented in accordance with the approved details.

4. The required EAP (Condition 3r refers) shall include proposals for post-construction monitoring of the development, including surveys on fish, the wildlife corridor along the Burns and tree/shrub planting and prior to development works commencing, details shall be submitted to and approved by the Council, as Planning Authority, regarding the time-scales for the undertaking of the proposed survey works and submission of survey results. Where appropriate, the surveys should identify whether further remediation work is required and where so identified, details of all proposed remediation works to be carried out shall be submitted for approval by the Council, as Planning Authority.

5. Construction work activity and vehicle movements associated with the Rothes FAS shall only take place between 08.00 and 18.00 Mondays - Saturdays and not at any other time except with the prior written agreement of the Council, as planning authority.
6. Noise emissions from plant and machinery that require to operate at night-time for the construction period shall be suitably maintained and located so as not to exceed Noise Rating Curve 25 (NR25), as measured within the bedroom or living apartment of any nearest noise-sensitive property, between 2300 and 0700 hours.
7. Site compounds shall only be located at the locations identified on drawing 9R6607/9005 P1 and 9006 P1 and no other compound may be formed without the prior written consent of the Council, as planning authority and in relation to the proposed compounds:
  - a) prior to use of the compounds first commencing, the compound area shall be clearly defined using temporary fencing or similar;
  - b) all compound activity associated with the construction phase of the Rothes FAS, including the storage and movement of materials and vehicles, and site accommodation shall be contained entirely within the defined compound area; and
  - c) thereafter, upon completion of construction activity at each works location for the Rothes FAS, the use of any identified land for a site compound shall cease and the land shall be restored/re-instated to its existing condition in accordance with written details of the arrangements for restoration/re-instatement of the land, to be submitted for approval by the Council, as planning authority not less than 4 weeks prior to the cessation of the land used as a site compound.
8. No development shall commence on the works to remove the existing Station Street bridge until
  - a) the required turning area, to be located at the end of Station Street on the southern side of Back Burn, has been constructed and made available for use (Condition 31); and
  - b) all relevant statutory procedures for the stopping-up of Station Street/Station Street bridge have been completed.
9. In relation to the landscape drawing details submitted with the application and/or the Environmental Statement:
  - a) drawings 9901 - 9904 (landscaping details for storage pond and embankment only) and 9905 -- 9908 (landscaping for amenity areas around A941 bridge and Rothes Park and to rear of Primary School) are approved; and

- b) drawings 9901-- 9904 are not approved in relation to landscaping proposals for relation to cascade (to west of A941) and all plans/figures provided within Appendix L of the Environmental Statement regarding the extent of vegetation removal along each of the three Burns are not approved.
10. No development shall take place until a detailed Landscape Scheme (drawn to scale) for the Rothes FAS has submitted to and approved by this Council (as Planning Authority). This Landscape Scheme shall show: -
- (a) the location of any existing trees, shrubs and hedgerows on the site and identify those to be retained and those to be removed;
  - (b) details of the measures to be taken to protect any existing trees, shrubs and hedgerows during the course of developing the site;
  - (c) details of the numbers, species, position, planting distances and sizes of all planting to be undertaken;
  - (d) the arrangements for the maintenance of all landscaping.
11. In respect of the required landscape scheme (Condition 10 refers): -
- (i) as part of the requirements for the identification of all trees/shrubs to be retained or removed:
    - a) details of a tree survey information shall be submitted (in accordance with BS5837:2005 (memorandum from Royal Haskoning, 14 August 2007 refers) to identify and locate all trees and arboricultural features within the footprint of the Rothes FAS;
    - b) the information from the tree survey shall be overlain with the construction footprint of the various elements of the Rothes FAS (including any requirements for maintenance) to identify trees to be removed and trees to be retained; and
    - c) no trees or other vegetation other than those identified for removal within the approved scheme details shall be removed either during the construction phase or thereafter, without the prior consent, in writing, of the Council, as planning authority.
  - (ii) as part of the required details of the arrangements for protection of any existing trees, shrubs and hedgerows and bankside and channel vegetation during the course of developing the site:
    - a) the details shall include the measures such as temporary fencing or similar means of enclosure to demarcate defined working areas for construction activity and/or protect adjacent vegetation and trees from construction activity at all sites within the Rothes FAS,

- b) the details shall include the arrangements, where proposed to protect any vegetation including trees to be lifted and replanted during construction works (e.g. to rear of Primary School); and
  - c) no construction activity, including the storage of material and use of equipment shall take place outside the defined working areas.
- (iii) the required details of all new planting to be undertaken (where not already approved) shall include:
- a) the proposed seeding and planting mixes for all bankside vegetation;
  - b) the use of native tree/shrub species of local provenance;
  - c) the proposals for the amenity area adjacent to the A941 bridge and Rothes Park (Burn of Rothes) and the storage pond and embankment in accordance with the submitted drawings; and
  - d) trees and shrubs to replace those lost during construction at all locations within the Rothes FAS area, based on stated intentions in the Environmental Statement to replanted as close as possible to the location of those removed, to plant more trees than those removed, including two trees planted for every one removed in the cascade area.

12. All planting, seeding or turfing comprised in the approved landscaping details shall be carried out no later than the end of the first planting and seeding season following the completion of construction works at each work location within the Rothes FAS. Any trees, shrubs and plants which within a period of 5 years from planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a size and species to the satisfaction of the Council, as Planning Authority.

**WHERE REQUIRED, OTHER CONDITIONS TO BE ADDED INCLUDING ANY ADDITIONAL CONDITIONS IDENTIFIED BY SEPA AND CONTAMINATED LAND**

**Reasons:**

1. The time limit condition is imposed in order to comply with the requirements of Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. In order to ensure that there are no unauthorised departures from the approved plans which could adversely affect the development or character and amenity of the surrounding properties and area.

3. To ensure a satisfactory form of development, including details currently lacking from the submission, in the interests of amenities and appearance of the development and the surrounding locality, in the interests of road safety, to safeguard and record the archaeological potential of the area and to reduce the risk of pollution and minimise disturbance to protected and local species and habitats, including River Spey Special Area of Conservation qualifying species.
4. To ensure an acceptable form of development including further evaluation of the scheme as constructed and where required to ensure that further remediation work is undertaken to mitigate any residual impact arising from construction and operation of the scheme.
5. To ensure a satisfactory form of development and safeguard the amenities and appearance of the area from impacts identified during the construction phases of the development.
6. To ensure a satisfactory form of development in the interests of the amenities of the development and occupiers of surrounding property.
7. To ensure an acceptable form of development in the interests of the amenities and appearance of the land, including protection of the Rothes Castle Scheduled Ancient Monument.
8. To ensure a satisfactory form of development in road safety terms.
9. To avoid any ambiguity regarding the terms of the consent in respect of the landscaping arrangements for the Rothes FAS, including further consideration to be given to the extent of removal of existing trees and vegetation following further survey work to be undertaken (memorandum from Royal Haskoning, 14 August 2007 refers) and to safeguard the appearance of the locality.
10. In order that further detailed consideration can be given to the landscaping of the site, including further survey work to be undertaken (Memorandum from Royal Haskoning, 14 August 2007 refers) and to safeguard the appearance of the locality.
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12. In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.

**List of Informatives:**

THE DEVELOPMENT CONTROL MANAGER, DEVELOPMENT SERVICES, has commented that:-

Details of consultation responses have already been forwarded to the applicant's agent.

THE BUILDING STANDARDS MANAGER, has commented that:-

Proposals largely exempt as works of 'civil engineering construction'. However, Building Warrant required for pavilion and public conveniences and Demolition Order required for demolition of existing buildings including the pavilion, Burgh Chambers, and the residential property.

THE ENVIRONMENTAL HEALTH MANAGER, DEVELOPMENT SERVICES, has commented that:-

Sources of vibration and dust associated with the construction period shall be suitably monitored so as to prevent a statutory nuisance in terms of the Environmental Protection Act 1990.

THE TRANSPORTATION MANAGER, DIRECT SERVICES, ACADEMY STREET, ELGIN has commented that:-

All costs involved in the promotion of the required Stopping-up Order shall be met by the applicant.

All footbridges and approaches to them shall comply in all respects with appropriate disability discrimination legislation.

The Traffic Management Plan shall be revised in consultation with the Transportation (and others) and written approval of individual sections of the Traffic Management Plan shall be obtained from the Transportation Manager prior to the implementation of each individual section of the works.

SCOTTISH NATURAL HERITAGE has commented that:-

An appropriate assessment (May 2007) has been prepared an impacts of the Rothes FAS upon qualifying interests upon the River Spey Special Area of Conservation are likely to occur throughout construction. Operation of the Rothes FAS should have beneficial impacts. The proposal will not adversely affect the integrity of the SAC providing the conditions relating to the preparation of the Environmental Action Plan and the Sediment Management Plan and obstacles to fish passage are removed or made passable.

See consultation response dated 24 May 2007 regarding the obligations and responsibilities under varying legislation regarding natural heritage interests present within the site and the various detailed requirements to be taken into account in preparing the EAP and SMP including requirements for licences to disturb otter and bat species, time-scales for demolition and felling trees to avoid disturbance to bats and breeding birds, etc.

SSE POWER DISTRIBUTION has commented that:-

See consultation response dated 6 April 2006 including the requirements for the scheme to comply with health and safety guidance regarding the proximity of the works to overhead and/or underground cables.

SCOTTISH WATER has commented that:-

See consultation response dated 27 April 2007 regarding a list of general precautions to be undertaken. In addition, further discussion over the impact of the Rothes FAS on Scottish Water infrastructure and assets is recommended

THE SCOTTISH ENVIRONMENT PROTECTION AGENCY has commented that:-

See consultation response dated 11 May 2006 including requirements for scheme to comply with the Water Environment (Controlled Activities) (Scotland) Regulations 2005; the Environment Act 1995, the Waste Management Licensing Regulations 1994 and all associated legislation/requirements and SEPA's Pollution Prevention Guidelines.