PLANNING APPLICATION: 07/00646/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

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Introduction

This report and recommendation on the proposed Rothes Flood Alleviation Scheme (Rothes FAS) includes the following appendices:

- **Appendix 1** The Proposal
- **Appendix 2** The Site
- **Appendix 3** Planning Policy
- **Appendix 4** Relationship of Rothes FAS to planning policy
- **Appendix 5** Planning Consultation responses
- **Appendix 6** Review of Environmental Statement by Institute of Environmental Management and Assessment
- **Appendix 7** Summary of Impacts of Rothes FAS

On 26 October 2005 the Environmental Services Committee agreed to a 'combined' option being taken forward as the preferred scheme for implementing the Rothes flood alleviation strategy. The 'combined' option comprises channel rehabilitation, channel works and monitoring and adaptive maintenance on each of the three Burns. The overall programme to deliver the Rothes FAS and other flood schemes within Moray is subject to review by the Council, including the Council's Flood Alleviation Sub-Committee.

The Rothes FAS is subject to a separate application for confirmation of a Flood Prevention Order (FPO). This was submitted to the Scottish Ministers in February 2007. Following receipt of objections, the FPO submission is to be referred to the Directorate of Planning and Environmental Appeals for consideration. Unless the objections are withdrawn, a Public Local Inquiry may be required to consider the FPO submission and the stated objections.

The Proposal

The Rothes FAS will alleviate flooding in Rothes from the Back Burn, the Burn of Rothes and the Black Burn. For each Burn the scheme aims to ensure a standard of flood protection for at least a 1 in 100 return period event plus an allowance for climate change. Appendix 1 contains a detailed description of the various engineering works and other operations comprised in the scheme. In summary these include:

a) BACK BURN

to up-grade capacity of existing channel and new structures to accommodate higher flows and prevent flooding:

Channel rehabilitation

- Stabilise upstream channel within Glen Grant Distillery gardens
- Re-route services within the Burn
- Create fish passes at A941 road bridge
- Stabilise existing channel within the town
- Riparian planting along various sections of the existing and proposed channel

Channel works

- Demolish/replace bridges (Glen Grant Distillery access bridge and Caperdonich bridge), form new parapet (A941 New Street bridge) and remove Station Street bridge
- Replace Glen Grant Distillery Visitor Centre footbridge
- Reprofile existing channel
- Waterproof barrier protection to Glen Grant Visitor Centre
- Construct new floodwalls, repair/replace gabions and new embankments (Mackessack Park)
- Channel widening (Mackessack Park and Glen grant Distillery gardens)
- Provide rock revetment and scour protection
- Up-grade existing surface water drainage on B9015

Monitoring and adaptive maintenance

- Post-construction monitoring to assess expected performance of channel and analyse environmental effects of scheme
- Construct access routes for maintenance (Breich Street)
- Removal of debris and sediment
- Repair damage

b) BURN OF ROTHES

to up-grade capacity of existing channel and new structures to accommodate higher flows and prevent flooding:

Channel rehabilitation

- Remove obstruction to fish passage, including weirs and services within the burn
- Stabilise upstream channel
- Stabilise existing channel within the town
- Riparian planting along various sections of the existing and proposed channel

Channel works

- Replace road bridges (A941, Cemetery bridge and Glen Rothes Distillery access bridge)
- Replace footbridges (Bairns Brig, Green Street, playground, Cemetery footbridge, Glenrothes footbridge)
- Demolish two residential properties (Burnside Street), Gala store (garage) and Burgh Chambers
- Replace/relocate pavilion, football pitch area, playground equipment, public conveniences and fuel storage tank
- Widen burn, including two-stage channel through Rothes Park
- Construct embankments and floodwalls (Provost Christie Drive, Glenrothes Distillery)

Monitoring and adaptive maintenance

- Post-construction monitoring to assess expected performance of channel and analyse environmental effects of scheme
- Construct access routes for maintenance (Burnside Street)
- Removal of debris and sediment
- Repair damage

c) BLACK BURN

to collect run-off from the upper catchment, particularly from high ground above Rothes, and channel it to the River Spey, to prevent flooding

Channel rehabilitation

- Realign channel downstream of A941
- Stabilise upstream channel
- Riparian planting along various sections of the existing and proposed channel

Channel works

- Up-grading existing drainage systems above and below cascade including re-alignment of existing drainage ditches
- Install new culverts (under A941, under Golf Course road)
- Construct new cascade channel and new U-shaped channel (Blackburn Cottages)
- Up-grade surface water drainage and new outfall flap at Land Street
- New storage pond and embankment
- New outfall to River Spey

Monitoring and adaptive maintenance

- Post-construction monitoring to assess expected performance of channel and analyse environmental effects of scheme
- Construct access routes for maintenance (above cascade, between A941 and former railway line)
- Removal of debris and sediment
- Repair damage

This application is accompanied by an Environmental Statement (ES) prepared under the EIA regulations. This assesses the likely significance of the environmental effects associated with the scheme and identifies measures to mitigate against the impacts of the development. A review of the ES and a summary of the potential environmental impacts are included in Appendix 6 and 7.

The Site

The scheme comprises works to three burns which contribute to flooding and flow through or close to Rothes, namely the Back Burn, the Burn of Rothes and the Black Burn. Works are proposed both up-stream and down-stream of the A941 road, both within and outwith Rothes. The existing watercourses are described in Appendix 2

Policy

Appendix 3 identifies development plan policies and Appendix 4 considers the relationship of the Rothes FAS to planning policy. Reasons to support departures from the development plan are considered.

History

The application site as defined includes land on either side of each Burn. A number of applications made since 2000 are located within the site boundary including :

Back Burn

00/01733/FUL - Erect changing facilities and floodlit all-weather pitch at Mackessack Park – approved 7 December 2000. (The all-weather pitch on land to the east of the football ground has not been formed.)

07/00034/FUL - Proposed alterations to convert existing visitors reception building into tearoom and to convert existing staff accommodation into a visitors reception Glen Grant Distillery - approved 24 April 2007.

Burn of Rothes

04/01477/OUT - Outline for one residential dwelling at 10 Burnside Street - refused 1 November 2004 because the proposal would result in the loss of a potential suitable access point to the Rothes Burn (in a location where access and space is restricted), which is the subject of a planned Flood Prevention Scheme and could have a major impact on the Council's ability to construct and maintain the scheme. This may give rise to high levels of public expenditure on these flood protection works contrary to policy L/ENV26. Approval would be premature as it may compromise options for the forthcoming prevention scheme contrary to the general principles outlined in SPP7. (This site is identified in the current submission for a "post and rail fence with gate around grassed area" to provide access to the Burn.)

Advertisement

Advertised:

- as a departure from the development plan
- in accordance with the Environmental Impact Assessment Regulations
- under S.34 of the 1997 Act (bad neighbour)

(Note: This application was advertised after 1 April 2007 and as such the proposal is not subject to the procedures under the Development by Planning Authority Regulations, 1981 (as amended) which were withdrawn on this date.)

OBJECTIONS/REPRESENTATIONS

No objections received following formal notification and advertisement procedures.

CONSULTATIONS

Appendix 5 contains a summary of all consultation responses received on the Rothes FAS.

At the time of writing this report:

- SEPA object to the Rothes FAS planning application. However, subject to the satisfactory receipt of further information on flood risk and geomorphological issues, they will be in a position to withdraw all remaining objections. The required information has been forwarded to SEPA.
- The objection by SNH is to be addressed by planning conditions as recommended. SNH have provided an "appropriate assessment" of the impact of the Rothes FAS upon the River Spey Special Area of Conservation.
- Contaminated Land investigations and consideration of associated reports are outstanding.

Observations

The Rothes FAS will alleviate flooding in Rothes from the Back Burn, the Burn of Rothes and the Black Burn (Appendix 1). These three watercourses account for the majority of past flooding in Rothes. Proposals to address flooding attributable to the Broad Burn and River Spey are not included. There is no record of these watercourses causing, or contributing to significant flooding to residential areas in Rothes, although surrounding agricultural land has flooded.

The Rothes FAS proposes a range of measures – channel rehabilitation, channel works and adaptive management – to three Burns that flow through, or close to Rothes (Appendix 1 and 2). The works are designed to improve existing flood defences for Rothes and along each Burn, all to the same standard of protection i.e. to at least a 1 in 100 year flood event including an allowance for climate change.

Historically Rothes has experienced a number of flood events (at least 31 are identified in the ES). In 2002 the flood event inundated approx. 155 residential properties, affected local business and Distillery operations, and disrupted transport links including the A941. Within the 1 in 100 year flood event area approx. 354 residential and 29 commercial properties are at risk together with various other community and recreational facilities. In addition to damage and disruption to property and infrastructure, including services/utilities, there are economic, environmental, recreational and heritage losses as well as distress and social impacts.

The effect of climate change will exacerbate future flood risk, leading to more frequent flooding in Rothes. Under a 'do nothing' scenario, existing defences are likely to deteriorate, existing premises and other uses are likely to be affected and remain at risk with further impact and disturbance upon the local economy, environment and community well being.

If implemented the Rothes FAS will prevent damage and disturbance caused by regular flooding and have a major beneficial impact on the local community, property and infrastructure. According to the ES, the scheme represents the most cost-effective investment solution and also the most environmentally acceptable and sustainable solution to manage flood issues in Rothes.

The overall duration of construction works for the Rothes FAS is approx. 26 months with approx. 22, 21 and 20 months indicated for the Back Burn, Burn of Rothes and Black Burn respectively. This will have a high impact on the town. To reduce disruption, construction will be carried out in a number of phases. A detailed, programme of construction is being developed to allow the design and construction of the works on each Burn to be undertaken consecutively rather than in parallel, although there will be some overlap. The applicant's consultants indicate the likely sequence as the Back Burn followed by the Black Burn, with works starting downstream below the A941 before progressing upstream. On the Burn of Rothes demolition and construction of the A941 bridge is dependent on other works being completed and is likely to be carried out during summer months.

With construction activity, there will be disruption to all types of traffic, both through and local traffic and public transport. These will affect local residents and business. A Traffic Management Plan (TMP) is being developed to mitigate these impacts. This will require extensive consultation to ensure that the duration of disruption is minimised with works phased to ensure alternative routes are available. The TMP will be finalised prior to construction works commencing.

During construction and operation of the Rothes FAS a number and range of impacts – adverse and beneficial – are identified in the ES (Appendix 7). Most adverse impacts are experienced during construction, including physical disturbance to construct the defence works and disturbance from construction vehicles and personnel. The ES identifies impacts on the local community, residential property and business as well as traffic, landscape and visual, ecology and nature conservation, geomorphological and hydrological interests (Appendix 5 and 7).

Longer-term impacts from operation of the scheme include adverse impacts on agricultural land and practices, where agricultural land remains susceptible to flooding and landscape character, the latter following the loss of trees until planting is re-established. However, identified beneficial impacts include the provision of flood defences, reduced disruption to the local community, business and infrastructure and improved conservation value of the Burns (Appendix 7).

A number of mitigation measures are proposed to avoid, reduce or remedy identified impacts. Not all of these can be readily translated into planning conditions: some are expressed in general or 'generic' terms, or qualitatively. Others are vague and lack sufficient or suitable quantification to enable stakeholders to verify whether the measures are effective in their implementation. This is reflected in only a 'satisfactory' grading being given to mitigation and other criteria in a review of the ES despite its 'good' objectivity in assessing environmental effects (Appendix 6).

SNH and SEPA require a variety to construction method statements to demonstrate and ensure that the environmental and other impacts are managed and reduced (Appendix 5). The applicant's consultants commitment towards mitigation is expressed through preparation of an Environmental Action Plan (EAP). Whilst this proposed undertaking (or follow-up) is considered as "excellent" (Appendix 6), the EAP has yet to be finalised. The EAP is not a substitute for mitigation measures but it should identify details for all the required measures to be adopted, how they will be managed and arrangements for monitoring. Conditions are therefore recommended to address these issues. As previously indicated in other flood alleviation scheme proposals, consultee requirements for mitigation measures to be implemented and monitored (Appendix5) may raise difficulties in terms of enforcement. The method statements may be based on, or refer to a variety of (non-planning) legislation, whereas SPP 1

on the planning system indicates the need to avoid 'duplication' between planning and other legislation.

The relationship of the Rothes FAS to planning policy is considered in Appendix 3 and 4. For each Burn, departures from the development plan are identified. Taking into account the intent of the policy and the function, nature and scale of the proposed works, reasons to support identified departures from the development plan can be considered (Appendix 4).

Other planning policies have also been taken into account, including impact on landscape character, visual amenity, disturbance, traffic, noise, etc., natural heritage, river engineering and flooding both within the built up-area of Rothes and in the surrounding rural area (Appendix 4). No significant adverse impacts are identified although there may be changes in the appearance of the locality, for example in Rothes Park, or in the vicinity of the A941 bridge over the Burn of Rothes, or at the cascade. Overall, the proposals are acceptable in policy terms, subject to conditions as recommended and the satisfactory resolution of outstanding issues with consultees.

Further landscape survey work is on-going to provide more detailed landscaping proposals, both to clarify and reduce the extent of tree removal. At present 559 trees of varying species and maturity are to be removed from within the scheme area (Appendix 4). It is acknowledged that trees growing in or immediately adjacent to the banks will require to be removed if the required defences are to be provided. However, the applicant's consultants 'precautionary principle' based on removal rather than retention requires to be reconsidered during the current 0n-going survey work and the 'detailed design' process involved in developing the scheme design for construction contract purposes (Appendix 4).

The outcome of contaminated land considerations are awaited. Before the meeting information will be submitted to SEPA to address their outstanding concerns (Appendix 4 and 5). As a result additional conditions may be required. In addition, where the works are to be phased, it may be appropriate to consider and apply the conditions to each respective phase.

Recommendation

As a result of the on-going considerations by SEPA and Contaminated Land, it is recommended that delegated powers be granted to approve the application subject to the satisfactory resolution of these outstanding issues and conditions as recommended. The objection from SNH can be addressed through conditions. No other objection to the development has been received following notification and advertisement procedures.

In light of the obligation for the Council to undertake "appropriate assessment" of the effects of the Rothes FAS upon the River Spey SAC, it is recommended that the Council agree to adopt the appraisal by SNH and the recommended conditions (see schedule).

Procedural issues

The proposal includes departures from the development plan. SEPA's objection has not been withdrawn at the time of writing this report. If SEPA's objection is maintained, a hearing is recommended (in accordance with PAN 41), at which the applicant and objector are given an opportunity to speak to the application before the Committee determine the application. If SEPA's objection is withdrawn before the meeting, no hearing is required.

Under Circular 5/2007 (and the associated Direction) this application requires to be notified to the Scottish Ministers as the application is an EIA development and as a development in which the Council has an interest and it departs from the plan.

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