



SCOTTISH EXECUTIVE

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Your ref:
Our ref: B1259419

27 July 2007

Dear Mr Gowans

FLOOD PREVENTION (SCOTLAND) ACT 1961 FORRES (BURN OF MOSSET) FLOOD PREVENTION SCHEME 2005

1. This letter contains the Scottish Ministers' decision on the submission by the Moray Council (the Council) for confirmation of the Forres (Burn of Mosset) Flood Prevention Scheme 2005 ("the Scheme") under the Flood Prevention (Scotland) Act 1961 ("the Act").
2. In terms of paragraph 7 of the Second Schedule to the Act, the Scottish Ministers may confirm the Scheme without modification, confirm the Scheme with such modifications as they think fit (and which have been intimated in accordance with paragraph 7(1) of that Schedule), or refuse to confirm the Scheme.
3. The Scottish Ministers have decided to confirm the Scheme, with a number of specified modifications, for the reasons set out below.

Background

4. Following the flooding in 1997 of some 457 properties in Forres from the Burn of Mosset, the Council commissioned studies between 2001 and 2004 to develop a flood prevention scheme to mitigate flooding of homes and businesses from the Burn of Mosset, and consulted widely during its development of the proposed Scheme. The Scheme was made by the Council in terms of section 4 of the Act on 26 January 2005. It was submitted to the Scottish Ministers for confirmation in June 2005.
5. Objections to confirmation of the Scheme which were made and not withdrawn were considered at a public local Inquiry ("the Inquiry"), held on 26 and 27 September and 6 October 2006 by Mr Michael Cunliffe BSc(Hons) MSc MCIWEM ("the Reporter"). A copy of the report of the Inquiry ("the Report") was sent to those who had participated in the Inquiry ("the parties") on 9 March 2007.

Evidence at the Inquiry

6. The Reporter has summarised the background and description of the Scheme in Section 1 of the Report, and the cases of the Council, the Bruce family and Gordon and Macphail in Sections 2 to 4 of the Report. The Reporter's findings of fact and his conclusions and recommendation are set out in sections 5 and 6 respectively of the Report. Those who appeared at the Inquiry are listed in Appendix 1 of the Report, documents referred to by the Council are listed in Appendix 2 and the proposed modification in respect of Chapelton Springs is in Appendix 3.

Reporter's Recommendation

7. The Reporter recommended that the Scheme be confirmed, subject to modifications to incorporate the works for the protection of the Chapelton Springs as set out in Appendix 3.

Intimation of Proposed Modifications

8. On 12 March 2007, in accordance with paragraph 7(1) of the Second Schedule to the Act, the terms of modifications to the Scheme under consideration by the Scottish Ministers were intimated to all persons who were required to be served notice under paragraph 3 of that Schedule and to any other person who the Scottish Ministers considered may be affected by the modifications ("the affected parties"). At the same time, the Report was published so that the public were fully informed. The Scottish Ministers invited representations on the modifications to be submitted to them by 23 April 2007.

Post Inquiry Correspondence

9. Following the intimation of proposed modifications, several representations were received timeously. The Scottish Ministers wrote on 30 May 2007 to Wright, Johnston & Mackenzie seeking clarification of the issues raised in their representation on behalf of their client, Gordon and Macphail. Their response of 3 July 2007 explained that their client's concerns had since been addressed through further discussion with the Council. The Scottish Ministers have considered all the representations and are of the view that these do not introduce new issues material to their decision that require to be examined further in reaching their decision.

The Scottish Ministers' Decision

10. The Scottish Ministers consider that any decision to protect land by a flood prevention scheme has to be taken in order to achieve the maximum possible social and economic resilience against flooding in a way which is fair to all and affordable both now and in the future.

11. In exercising their functions under the Act, the Scottish Ministers must have regard to the desirability of protecting the water environment in terms of section 2(5) of the Water Environment and Water Services (Scotland) Act 2003. The Scottish Ministers also consider that in taking any decision to confirm a scheme they will inter alia consider the Scheme's technical soundness and, taking account of the goal of sustainable development, whether it is sympathetic to the environment and provides value for money.

12. The Scottish Ministers have carefully considered: - the objections to the Scheme which were not withdrawn; the evidence presented at the Inquiry, including the written submissions; the

Reporter's findings of fact and his conclusions and recommendations thereon; and the representations made.

13. In light of this, the question before the Scottish Ministers is whether to confirm the Scheme, with or without the recommended modifications, or to refuse to confirm the Scheme.

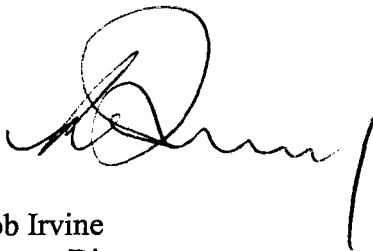
14. The Scottish Ministers conclude, in light of their consideration set out in detail in Annex A, that the Scheme, with the modifications considered above, is technically sound, is sympathetic to the environment, and in particular the protection of the water environment, and provides a level of protection that delivers value for money over the life of the Scheme.

15. Accordingly, the Scottish Ministers have decided to confirm the Forres (Burn of Mosset) Flood Prevention Scheme 2005 with the modifications intimated in their letter 12 March 2007, and set out in Annex B.

16. The foregoing decision of the Scottish Ministers is final, but any person aggrieved by the Scheme as confirmed who wishes to question the validity of the Scheme, or any of its provisions, on the grounds that it is not within the powers of the Act or that any requirement of the Act has not been complied with in the making or confirmation of the Scheme, may make an application to the Court of Session (under paragraph 9 of the Second Schedule to the Act.) within six weeks of the date on which the statutory notice of confirmation of the Scheme is first published.

17. Copies of this letter are being sent to all whose objections were not withdrawn and to all those who made representations within the period allowed. This letter will also be available on the Scottish Executive website; <http://www.scotland.gov.uk/Topics/Environment/Water/Flooding/new>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bob Irvine', with a long vertical stroke extending downwards from the end of the signature.

Bob Irvine
Deputy Director
Water, Air, Soils and Flooding Division

Annex A:**Detailed Assessment of Reporter's Recommendation**

1. The Reporter recommended that the Scheme be confirmed with a modification to incorporate the works for the protection of Chapelton Springs as set out in Appendix 3 of the Report. The Scottish Ministers developed the terms of the modifications which would be required to effect the recommendation and intimated these terms to the affected parties by their letter of 12 March 2007.
2. The Scottish Ministers have considered the evidence presented to the Inquiry and agree with the Reporter's conclusion that the Scheme, as originally proposed, is the best option to reduce the consequences of flooding in Forres from the Burn of Mosset but that this would result in the periodic flooding of land in the Chapelton area including the location of the Chapelton Springs from where water for the Benromach Distillery is abstracted.
3. They note the evidence submitted to the Inquiry contained in document 2.1, *Chapelton Flood Storage reservoir, Morayshire: Potential impacts on local groundwater*, a report of a study by the British Geological Survey (BGS). They note that BGS found that the spring outlet does not form a spring in its true sense but takes the form of a pipe discharging to the ground surface into a drainage ditch flowing towards the Burn of Mosset and is fed from various shallow groundwater sources through a mixed system of buried pipes and surface water flows. They note that BGS considered that the upper spring system leading to the outlet pipe was vulnerable to contamination through direct inundation from floodwater as that part of the moss was covered by glaciofluvial sands and gravels rather than peat and with the Scheme as originally proposed the impacts on the groundwater system would be increased due to the increased extent of inundation. They note that the embankment proposed as part of Operation 12 will mitigate these impacts by reducing the extent of inundation for events more frequent than once in 50 years.
4. The Scottish Ministers note there was no dispute at the Inquiry anent the need for the works to protect Chapelton Springs and the interests of Benromach Distillery. They also note from correspondence submitted to the Inquiry (documents 5.5) between the Council and SEPA that SEPA had a concern over the potential impact of the Scheme on groundwater and the spring source and that SEPA were not in a position to advise the planning authority that the Scheme, as originally proposed, was environmentally acceptable or necessarily consentable under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR).
5. The Scottish Ministers note the representation from SEPA in which they reported that, in October 2006, the Council had provided them with information about the proposed operation 12 to address their concerns about the planning application. However, they note that SEPA still have a concern over the permeability of the embankment material and required assessment of seepage rates under flood conditions but are of the view that this concern can be addressed through appropriate conditions attached to the licence for the Scheme under CAR. SEPA advised that the Council had recently made application for this licence and, without prejudice to SEPA's regulatory decisions, SEPA considered that the application, with some modification, was in principle consentable. The Scottish Ministers consider therefore that Operation 12 is a necessary modification for the protection of the water environment.
6. They also note that the condition of the pipe system downstream of the spring outlet was also vulnerable to flooding. They note the findings of documents 3.13: *MFAG 240, Benromach Spring and Supply Pipe* that the watercourse is understood to be of a variety of materials and conveys water

by gravity through a number of unsealed catchpits to encourage settlement of suspended particles to the Black Bridge cistern which is also not sealed and which is located immediately adjacent to the burn downstream of the proposed dam. The Scottish Ministers note that floodwater could enter the watercourse under pressure by various routes. They note that flow would continue during flood events but would be floodwater rather than spring water. They are of the view that, in addition to impacts on the water quality of the supply, there is potential for stored flood waters to discharge downstream of the proposed dam. They consider that the proposed replacement of the watercourse is necessary to ensure the efficacy of the storage reservoir at Chapelton.

7. The Scottish Ministers agree with the Council that these proposed operations do not directly prevent or mitigate the flooding of land. However, given the above, they are of the view that these operations are integral to the construction of the flood storage reservoir at Chapelton formed by operations 1, 2 and 4 to contain the stored floodwaters for the purpose of mitigating flooding of non-agricultural land in Forres. Therefore they agree with the Reporter in paragraph 5.32 of the Report that section 2(1)(e) of the Act would provide the statutory powers for these operations.

Annex B

Terms of Confirmed Modifications

In the paragraph headed: **“3. SITE OF THE FLOOD PREVENTION OPERATIONS”**

At the end of the list of the plans, add “9P7081/0060-A Chapelton Springs – General Arrangement” and “9P7081/0061-A Chapelton Springs – Details”

In the paragraph headed **“4. DESCRIPTION OF THE OPERATIONS”**

At the end of the paragraph add;
“Operation 12: Chapelton Springs

An embankment, some 200m long, or thereby, will be constructed to the east of Wright’s Hill of fill material with a permeability of no more than 1×10^{-4} m/sec. The embankment will be grassed and suitably landscaped and incorporate adequate drainage as generally shown on the plans marked 9P7081/0060-A and 9P7081/0061-A. The existing piped watercourse conveying water from the Springs to the Black Bridge Cistern will be replaced by two new piped watercourses, together with appropriate ancillary apparatus necessary for its operation such as valves, scour facilities and chambers, as generally shown on the plan marked 9P7081/0060-A. The pipelines will be of a material suitable for potable water.”

In the paragraph headed **“6. ANCILLARY OPERATIONS”**

In the section headed “Services”, omit the sentence “Works will be undertaken to safeguard the water supply from Chapelton Springs”

In the paragraph headed **“8. COST”**

After “eight million” insert “four hundred and fifty thousand”