



REPORT TO: SPECIAL MEETING OF THE PLANNING AND REGULATORY SERVICES COMMITTEE ON 15 FEBRUARY 2023

SUBJECT: PRE-DETERMINATION HEARING: PLANNING APPLICATION 21/01901/EIA – PROPOSED 100,000 TONNES PER ANNUM MALT PRODUCING FACILITY ON LAND AT GREENS OF ROTHES, ROTHES

BY: HEAD OF GOVERNANCE, STRATEGY AND PERFORMANCE

1. Purpose of Pre-Determination Hearing

- 1.1 The purpose of the Pre-determination Hearing is to afford those submitting representations and the applicant the opportunity to state and explain their cases before the Planning & Regulatory Services Committee prior to the Committee determining the application.
- 1.2 This report is submitted to Committee in terms of Section III (E) (1) of the Council's Scheme of Administration relating to the functions of the Council as Planning Authority.

2. Background

- 2.1 In terms of the Council's Scheme of Delegation relating to Planning Applications the above noted application has been referred direct to a Pre-determination Hearing to which the applicant and those submitting representations have been invited to attend and afforded the opportunity of being heard.

3. Appointed Officer's Report

- 3.1 A copy of the Appointed Officer's report on the application is attached.

4. Pre-determination Hearing Procedure

- 4.1 The proposed procedure which the Committee will follow in respect of the Hearing is as follows:-
 - (i) The Applicant will speak first (maximum of 15 minutes) outlining the application and addressing the stated objections.

- (ii) Members of the Committee will then be given the opportunity to question the Applicant in order to clarify points raised.
 - (iii) Those submitting representations (Representation Speakers) on the application will then be given the opportunity to address the meeting (maximum of 10* minutes) to speak to their stated objections/representations. It should be noted that the Committee will not be prepared to consider any new ground(s) of objection/representation.
 - (iv) Members of the Committee will be given the opportunity to question each Representation Speakers in turn in order to clarify points raised.
 - (v) The Clerk will read out the names of those who have submitted written statements and advise that these have been circulated to the Committee and uploaded on to the Councils Committee Website.
 - (vi) Both Applicant and Representation Speakers will then be given the opportunity to summarise their respective cases, in light of the submissions, to the Committee (5 minutes each maximum for Representation Speakers and equivalent time for the Applicant).
 - (vii) The Depute Chief Executive (Economy, Environment and Finance), or their representative, will then be afforded the opportunity to make any additional comments and/or points of clarification in light of the submissions.
 - (vii) The Committee will then conclude the Hearing and make a recommendation to a reconvened Committee in respect of the determination of the application.
- * This may be extended at the discretion of the Chair in cases where the speaker is speaking on behalf of a number of representatives or is representing other party/parties who are unable to attend a Hearing.

5. Conclusion

5.1 The Committee is invited to hear the applicant and those submitting representations on the application in regard to application for a proposed 100,000 tonnes per annum malt producing facility on Land at Greens of Rothes, Rothes

Author of Report:	Lissa Rowan, Committee Services Officer
Background Papers:	Report on application
Ref	

21/01901/EIA
8th December 2021

Proposed 100,000 tonnes per annum malt producing facility on Land At Greens Of Rothes Rothes Moray for Simpsons Malt Ltd And Sir Edward Mountain

Comments:

- A site visit will have been carried out.
- Application is for planning permission in principle.
- Advertised for neighbour notification purposes, as a departure from the development plan and as an EIA development.
- 4 objections received from members of the public, local community council has objected (Speyside).
- The application is considered to be significantly contrary to the development plan, therefore a statutory pre-determination hearing is required under section 38A of the Town and Country Planning (Scotland) Act 1997 (as amended).

Procedure:

- Application to be considered at a meeting of the Planning and Regulatory Services Committee which will include a statutory pre-determination hearing. The hearing will allow for the applicant and those making representations to be given opportunity to speak to the application and the stated representations prior to its determination.
- The Planning and Regulatory Services Committee will then determine the application after the hearing.

Recommendation: Approve subject to the following conditions:-

Conditions/Reasons

1. In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended:
 - (a) That in the case of any matter specified in conditions attached to the planning permission in principle, application for approval of matters specified in conditions must be made before:-
 - (i) that expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 6 months from the date on which an earlier application for such approval for the same matters was refused; or

- (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest, and
- (b) That the development to which the permission relates must be begun not later than whichever is the later of the following dates:-
 - (i) the expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 2 years from the final approval of the matters specified in conditions or in the case of approval on different dates the final approval of the last such matter to be approved.

If an application for approval of matters specified in conditions has not been made or the development has not begun within the specified dates this planning permission in principle shall lapse unless there is a specific condition attached to this permission which varies the stated timescales.

Reason: The time limit condition is in accordance with section 59 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. The approval hereby granted is for planning permission in principle and prior to the commencement of the development approval of matters specified in conditions, including the siting, design and external appearance of the building(s), plant and other structures; the means of access thereto; drainage; and the landscaping of the site shall be obtained from the Council, as Planning Authority.

Reason: In order to ensure that the matters specified can be fully considered prior to the commencement of development.

3. The grant of planning permission in principle hereby granted for the proposed development shall be carried out only in accordance with detailed drawings which shall previously have been submitted to and approved by the Council, as Planning Authority. These drawings shall show the matters specified in conditions numbered 3-8 below.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

4. Plans, sections and elevations of all building(s), plant and structures proposed with details of the type and colour of all external materials and finishes shall be submitted in accordance with condition no. 3 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

5. The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water (i.e. a SUDS system or equivalent) shall be submitted in accordance with condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

6. Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure (including noise attenuation bunds) and screening shall be submitted in accordance with condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

7. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

8. Landscaping proposals which reflect the planting shown in the EIA Site Layout Plan, drawing number SML-001-013 hereby approved and detail any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials shall be submitted in accordance with condition no. 2 above. The landscaping proposals shall be maintained in accordance with the maintenance details specified in section 10.212 of the EIA Report hereby approved.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

9. For the avoidance of doubt, the height of the buildings, structures and plant hereby approved, shall be in accordance with the indicative heights specified in section 10.24 of the approved Environmental Impact Assessment Report as well as those indicated on the LVIA Massing Elevation drawing.

Reason: To ensure the development is carried in accordance with the detail contained within the information that accompanied the application, the landscape and visual impact of the development having been assessed against this.

10. Prior to development commencing, a phasing plan for the development, which includes timing for provision of the buildings and plant permitted, along with any infrastructure, landscaping and bunding shall be submitted and approved in writing by the Council, as Planning Authority. Thereafter, the development shall proceed in accordance with the approved phasing plan, unless otherwise agreed in writing with the Council, as Planning Authority.

Reason: To allow consideration to be given to the phased delivery of the development.

11. A Waste Management Plan shall be submitted to and approved in writing by the Council, as Planning Authority prior to development commencing. The Waste Management Plan shall relate to the operation of the development hereby approved and include information on the following:
 - a) identification of the likely waste sources associated with the operation of the development;

- b) proposed waste management requirements, including provisions to maximise waste reduction and waste separation at source; and
- c) proposed waste management and storage strategy, which shall include details of:
 - i. measures to minimise cross-contamination of materials
 - ii. storage of waste and by-products (including measures to ensure waste is secure from wind/weather)
 - iii. provision of access for collection of waste, and
 - iv. recycling and localised waste management facilities.

Thereafter, the Waste Management Plan shall be implemented in full accordance with the details hereby approved prior to the completion or first operation of development hereby approved (whichever is the soonest).

Reason: To ensure waste is minimised as a result of the operation of the proposed development, in accordance with National Planning Framework 4 Policy 12 – Zero Waste.

- 12. Prior to any development commencing, a Decarbonisation Strategy shall be submitted to and approved in writing by the Council, as Planning Authority. The Decarbonisation Strategy shall include detail of:
 - a. Measures to improve the efficiency of the operation of the development (including, but not limited to industrial processes and building operations) in order to reduce potential carbon emissions; and
 - b. Commitment to continually review operations, improve efficiencies and further reduce carbon emissions throughout the lifetime of the development, should new technology/methodologies allow.

Thereafter the development shall be developed and operated in accordance with the approved decarbonisation strategy, unless otherwise agreed in writing with the Council, as Planning Authority.

Reason: To ensure carbon emissions are minimised during the operation of the development, in accordance with National Planning Framework Policy 26 – Business and Industry.

- 13. Prior to any development commencing, a scheme which shows biodiversity mitigation and enhancement measures shall be submitted and approved in writing by the Council, as Planning Authority. The scheme shall demonstrate how the mitigation measures (as outlined in sections 8.277 – 8.291 of the Environmental Impact Assessment Report approved as part of this application) have been incorporated into the final design of the development hereby approved, and provide timing for the delivery of the measures. Thereafter all measures shall be provided in full accordance with the approved details.

Reason: To ensure timely delivery of biodiversity mitigation and enhancement, as identified in the Environmental Impact Assessment Report that accompanied this application, in the interests of the environment.

14. Unless otherwise agreed in writing with the Council, as Planning Authority (and in consultation with Moray Flood Risk Management and SEPA), there shall be no development or land-raising within the functional floodplain as outlined in Figure 7 within the Flood Risk Assessment (Ref. P20-083 SM Rothes EIA/RPT Rothes Detailed FRA and DIA).

Reason: To ensure there is no increased flood risk as a result of the development.

15. Prior to development commencing, a Construction Environmental Management Plan (CEMP) shall be submitted to and agreed in writing by the Council, as Planning Authority in consultation with the Environmental Health Manager, Moray Flood Risk Management, NatureScot (SNH) and Scottish Gas Networks. The plan shall include:
- a) measures to minimise construction related noise, vibration, dust and artificial lighting on nearby residential properties and ecology, including nearby water courses;
 - b) a waste management strategy that includes:
 - i. identification of the likely waste sources associated with the operation of the development;
 - ii. proposed waste management requirements, including provisions to maximise waste reduction and waste separation at source; and
 - iii. proposed waste management and storage strategy, which shall include details of measures to minimise cross-contamination of materials, storage of waste (including measures to ensure waste is secure from wind/weather), provision of access for collection of waste, and recycling and localised waste management facilities;
 - c) measures to ensure soil disturbance is minimised during construction;
 - d) a scheme of surface water management to prevent run-off from the site during construction works;
 - e) protection measures for trees adjacent to the site to be provided during the course of works;
 - f) a scheme of works for any development within 35 metres of the high pressure gas pipeline that passes through the site, along with detail of any construction or land movement on or in close proximity to the high-pressure gas main.

The above measures shall be accompanied by information for the timing of their provision. Thereafter the development shall be carried out in accordance with the details hereby approved unless otherwise agreed with the Council, as Planning Authority, in writing.

Reason: In order to ensure environmental impacts are suitably managed and maintained during the construction phase.

16. Construction works (incl. vehicle movements) associated with the development that are audible above background noise levels at the boundary of any noise sensitive dwelling shall be permitted between 0700 - 1900 hours, Monday to Friday and 0800 - 1700 hours on Saturdays only, and at no other times out with these permitted hours (including National Holidays) shall construction works be

undertaken except where previously agreed in writing with the Council, as Planning Authority and where so demonstrated that operational constraints require limited periods of construction works to be undertaken out with the permitted/stated hours of working.

Reason: In order to ensure the times of construction are controlled so as to prevent noise disturbance to neighbouring residential amenity.

17. As part of condition 6, 3 metre high acoustic bunds shall be provided along the northern and western site boundaries of the development, as illustrated in dark green in figure 3.1 and figure 3.2 and also described in Table 6.1, page 20, of the noise impact assessment prepared by The Airshed, 5 Lauder Place, East Linton, titled "Environmental Noise Assessment for Proposed Maltings Rothes. Report Ref. AS 0806, dated 16th November 2021" within Appendix 11.1 of the Environmental Impact Assessment Report supporting document. The final selected acoustic barrier in terms of chosen material, design, surface density shall be submitted in a plan and agreed in writing with the Council, as Planning Authority prior to the use being established, and shall thereafter be installed and retained throughout the lifetime of the development in full accordance with the details hereby approved prior to the development becoming operational or its completion (whichever is the soonest).

Reason: To ensure an acceptable form of development as these details are lacking from the application.

18. Prior to the development commencing, a detailed Light Impact Assessment undertaken by a competent person shall be submitted to and agreed in writing with the Council, as Planning Authority. The findings arising from the assessment shall thereafter be implemented and retained throughout the lifetime of the development in full accordance with the details hereby approved prior to the development becoming operational or its completion (whichever is the soonest).

Reason: To ensure an acceptable form of development as these details are lacking from the application.

19. Fixed plant noise emissions associated with the development shall not exceed Noise Rating Curve (NR) 25, as determined within the bedroom of the nearest noise sensitive property with the window moderately open, during the night-time hours of 2300 to 0700 hours. This limit would apply and be determined over a minimum of 5 minutes duration within the night-time hours of 2300 to 0700 hours.

Reason: In order to protect local residents from noise nuisance by limiting noise emissions from the development.

20. The rating level of noise associated with the development ventilation shall not exceed the background sound level by more than 5 dB (A) at the nearest noise sensitive dwelling. Measurement and assessment to demonstrate compliance with the rating level shall be undertaken in accordance with BS 4142: 2014 Methods for rating and assessing industrial and commercial sound. For the purpose of measurement and assessment using this above standard, the background sound

level has been determined as an L A 90 of 39 dB, as stated within the “Proposed Design Criteria” section of the noise impact assessment prepared by The Airshed, 5 Lauder Place, East Linton, titled “Environmental Noise Assessment for Proposed Maltings Rothes. Report Ref. AS 0806, dated 16th November 2021” within Appendix 11.1 of the Environmental Impact Assessment Report supporting document.

Reason: To protect local residents from noise nuisance by limiting noise emissions from the development.

21. Prior to the development commencing and in order to demonstrate compliance with condition 19 above, a further detailed Noise Impact Assessment (NIA) shall be submitted to and approved in writing by the Council, as Planning Authority. The NIA shall be undertaken in accordance with BS 4142:2014 Method for rating and assessing industrial and commercial sound. The approved operational noise rating levels arising from this further NIA shall not be exceeded during the operational lifetime of the development.

Reason: In order to ensure that in the final design selected a further assessment of noise impact shall be undertaken and can demonstrate no noise nuisance to local residents.

22. Prior to the development commencing, a detailed noise management plan for operational noise at the development shall be reported in writing to and approved by the Council as Planning Authority. Thereafter the development will be carried out in full accordance with the agreed plan for the operational lifetime of the development.

Reason: In order to ensure noise impacts are suitably managed and maintained during the operational phase.

23. Unless otherwise agreed in writing with the Planning Authority, access and egress by HGV vehicles to the development during the operational phase shall not be permitted between 1800 and 0800 hours.

Reason: In order to ensure the times of HGV vehicle access and egress is controlled so as to prevent noise nuisance to local residents.

24. No works in connection with the development hereby approved shall commence unless an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the written scheme of investigation will be provided throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be brought into use unless a Post-Excavation Research Design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and

approved in writing by the planning authority. The PERD shall be carried out in complete accordance with the approved details.

Reason: To safeguard and record the archaeological potential of the area.

25. Notwithstanding the options submitted and prior to the completion of development or the development becoming operational (whichever is soonest), details shall be submitted for approval in writing by the Planning Authority in consultation with the Roads Authority which demonstrate the provision of a pedestrian connection between the development and New Street in Rothes (including any associated works required). Thereafter the pedestrian connection shall be provided in accordance with the approved details prior to the completion of the development or the development becoming operational (whichever is soonest).

Reason: To ensure an acceptable development in road safety terms through the provision of details to be agreed.

26. There shall be no obstructions over 0.26 metres in height measured from the nearest edge of the carriageway and all boundary walls/fences/hedges set back to a position behind the visibility splay as shown in drawing LGR-WSP-XX-XX-DR-C-006 Rev A. Thereafter prior to completion of the site access or the access becoming operational the visibility splay shall be provided in accordance with the approved details and maintained in accordance with a schedule of maintenance to be agreed in writing by the Council, as Planning Authority.

Reason: To ensure an acceptable development in terms of visibility splays, road safety and non-vehicular accessibility, through the provision of details currently lacking and/or incorrectly shown on the submitted particulars to date.

27. No part of the development shall be completed or become operational until evidence has been submitted to demonstrate that the statutory process to promote and implement any new speed limit(s) on the B9015 required as a consequence of the proposed development, have been completed by Moray Council.

Reason: To ensure an acceptable development through the provision of details currently lacking and/or incorrectly shown on the submitted particulars to date.

28. No works shall commence on site until a Construction Traffic Management Plan has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. The Construction Traffic Management Plan shall include the following information:

- a) duration of works;
- b) construction programme;
- c) number of vehicle movements (i.e. materials, plant, staff, components);
- d) anticipated schedule for delivery of materials and plant;
- e) full details of any temporary construction access;
- f) measures to be put in place to prevent material being deposited on the public road;
- g) measures to be put in place to safeguard the movements of pedestrians;

- h) traffic management measures to be put in place during works including any specific instructions to drivers; and
- i) Parking provision, loading and unloading areas for construction traffic.

Thereafter, the development shall be implemented in accordance with the approved details.

Reason: To ensure an acceptable form of development in terms of the arrangements to manage traffic during construction works at the site.

29. Notwithstanding the details submitted (which do not include sufficient detail of the proposed staff and operational parking within the proposed development), no development shall commence until the following have been submitted for approval in writing by the Planning Authority in consultation with the Roads Authority:

A Parking Assessment to demonstrate adequate parking provision including but not limited to the following provisions:

- a) Car spaces for staff and visitors (including disabled parking spaces)
- b) Operational parking for HGV's
- c) Secure and weatherproof cycle parking
- d) EV charging spaces (in accordance with the Moray Local Development Plan 2020 and supplementary guidance).

A plan (Scale 1:500 min) of the proposed locations for parking and internal roads within the site serving the parking, including swept paths at locations to be agreed with the Roads Authority.

Thereafter, unless otherwise approved in writing by the Planning Authority, the development shall be completed in accordance with the approved details and no part of the development shall become operational until the parking associated with it has been provided and is retained and available for use at all times.

Reason: To ensure the permanent availability of parking and the provision of infrastructure to support the use of low carbon transport, through the provision of details currently lacking in the interests of an acceptable development and road safety.

30. No boundary fences, hedges, walls or any other obstruction whatsoever over 1.0 metre in height and fronting onto the public road shall be within 2.4 metres of the edge of the carriageway, measured from the level of the public carriageway, unless otherwise agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority.

Reason: To enable drivers of vehicles leaving driveways to have a clear view over a length of road sufficient to allow safe exit, in the interests of road safety for the proposed development and other road users.

31. All drainage shall be designed in accordance with the details specified in the "Detailed Flood Risk Assessment and Drainage Impact Assessment" hereby approved.

Reason: To ensure surface water drainage is provided in accordance with the approved details.

Reason(s) for Decision

The Council's reason(s) for making this decision are:-

The siting of a malt processing facility on this site is justified in light of the lack of suitable alternative sites in Moray that meet the applicant's needs, as highlighted in the supporting information accompanying this application. Whilst it is located immediately outwith the settlement boundary of Rothes (as defined in the Moray Local Development Plan 2020), the benefits of the development to the local economy and environment justify a departure from Moray Local Development Plan 2020 Policy EP6 – Settlement Boundaries.

The proposal is in accordance with all other aspects of the Moray Local Development Plan 2020 and National Planning Framework 4, and there are no material considerations that indicate otherwise.

Moray Council's assessment of the information presented within the EIA Report and other environmental information in relation to the development is contained within the Report of Handling. It is considered that the development will not have any significant impacts on the environment.

Moray Council is satisfied that other effects/issues can be addressed by way of mitigation. A detailed description of the proposed mitigation is contained within the EIA Report and the Report of Handling.

Monitoring is secured through conditions 12 – 16, 18 – 22, 24 – 28.

All documents can be viewed online at <https://publicaccess.moray.gov.uk/eplanning> and searching using the case reference number.

List of Informatives:

THE CONTAMINATED LAND SECTION has commented that:-

This development has been identified from historical Ordnance Survey maps as being located on the route of a former railway. Moray Council does not have any further information as to whether the ground is contaminated. Safe development is the responsibility of the developer. You should consider investigating this matter further prior to proceeding with the proposed works. Should contamination be encountered, contact the Environmental Health section immediately (email contaminated.land@moray.gov.uk , tel 0300 1234561) to agree an appropriate course of action.

THE DEVELOPMENT MANAGEMENT AND BUILDING STANDARDS MANAGER has commented that:-

The applicant should be mindful of the need for Hazardous Substances Consent under the Planning (Hazardous Substances) (Scotland) Act 1997 where hazardous substances are to be stored on site at levels above those specified in the regulations.

SCOTTISH GAS NETWORKS has commented that:-

Contact should be made with Pipeline Engineer Colin Borthwick at: colin.borthwick@sgn.co.uk in advance of any work starting on site.

If you plan to dig, or carry out building work to a property, site, or public highway within our gas network, you must: 1. Check your proposals against the information held at <https://www.linerearchbeforeudig.co.uk/> to assess any risk associated with your development.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Resurfacing and profiling over full width of the B9015 junction and a design for the roads drainage will be required to correct for the road camber as a result of the road widening to form the access junction.

Before commencing development, the applicant is obliged to apply for Construction Consent in accordance with Section 21 of the Roads (Scotland) Act 1984 for new roads. The applicant will be required to provide technical information, including drawings and drainage calculations, and provide a Road Bond to cover the full value of the works in accordance with the Security for Private Road Works (Scotland) 1985 Regulations. Advice on this matter can be obtained from the Moray Council web site or by emailing transport.develop@moray.gov.uk

Construction Consent shall include a CCTV survey of all existing roads drainage to be adopted and core samples to determine the construction depths and materials of the existing road.

A Stage 2 Road Safety Audit for the modifications to the existing public road (including works to form a pedestrian connection to Rothes) will be required. Requirements for a Stage 3 or 4 Road Safety Audit will be determined through the Roads Construction Consent process or subsequent to the road construction.

Requirements for any traffic calming, road construction materials and specifications and any SUDs related to the drainage of the public road must be submitted and approved through the formal Roads Construction Consent process.

Planning consent does not carry with it the right to carry out works within the public road boundary and the applicant is obliged to contact the Transportation Manager for road opening permit in accordance with the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road.

If required, street furniture which needs to be repositioned will be at the expense of the developer. Advice on this matters can be obtained by e-mailing transport.develop@moray.gov.uk

Street lighting will be required as part of the development proposal.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into their property.

The applicant shall ensure that their operations do not adversely affect any Public Utilities, which should be contacted prior to commencement of operations.

The applicants shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.

The Transportation Manager must always be contacted before any works commence. This includes any temporary access, which should be agreed with the Roads Authority prior to work commencing on it.

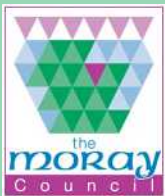
No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority.

Comments from SCOTTISH WATER are attached for your information.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT	
Reference No. Version No.	Title/Description
SML-001-013	Site layout
B.16,200r	Site boundary plan
	Location plan
LGR-WSP-XX-XX-DR-C-006 REV A	Proposed site access visibility assessment
LGR-WSP-XX-XX-DR-C-001 REV 02	Footway improvements – option 1
LGR-WSP-XX-XX-DR-C-004	Footway improvements – option 2
	Footway improvements – option 3

Documents to be Stamped Approved:

- EIA Report and appendices
- Flood Risk Assessment and Drainage Impact Assessment
- Spey Modelling Report
- Indicative Massing Elevations



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:

21/01901/EIA

Site Address:

Land At Greens Of Rothes

Rothes

Moray

Applicant Name:

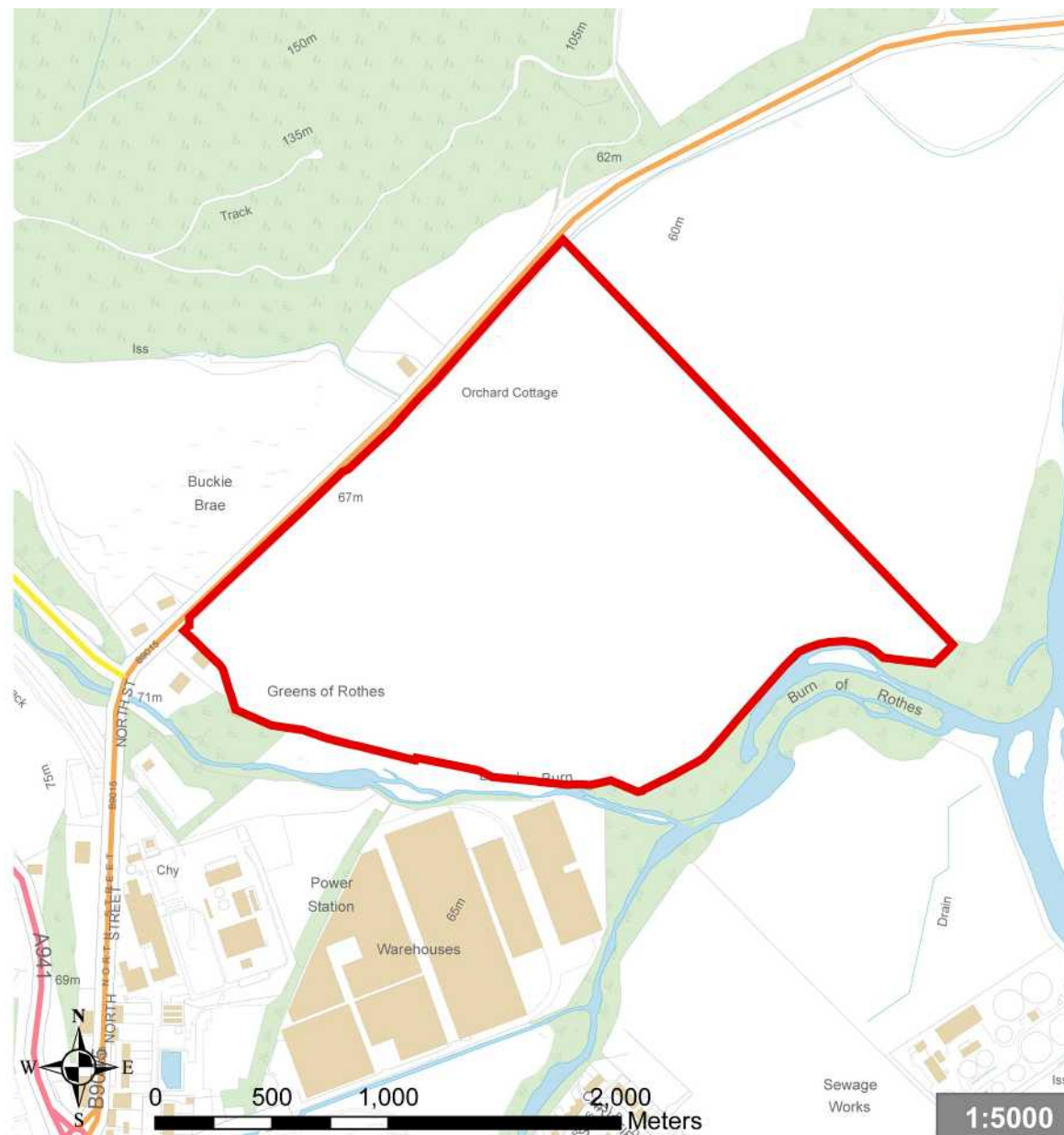
Simpsons Malt Ltd And Sir Edward Mountain

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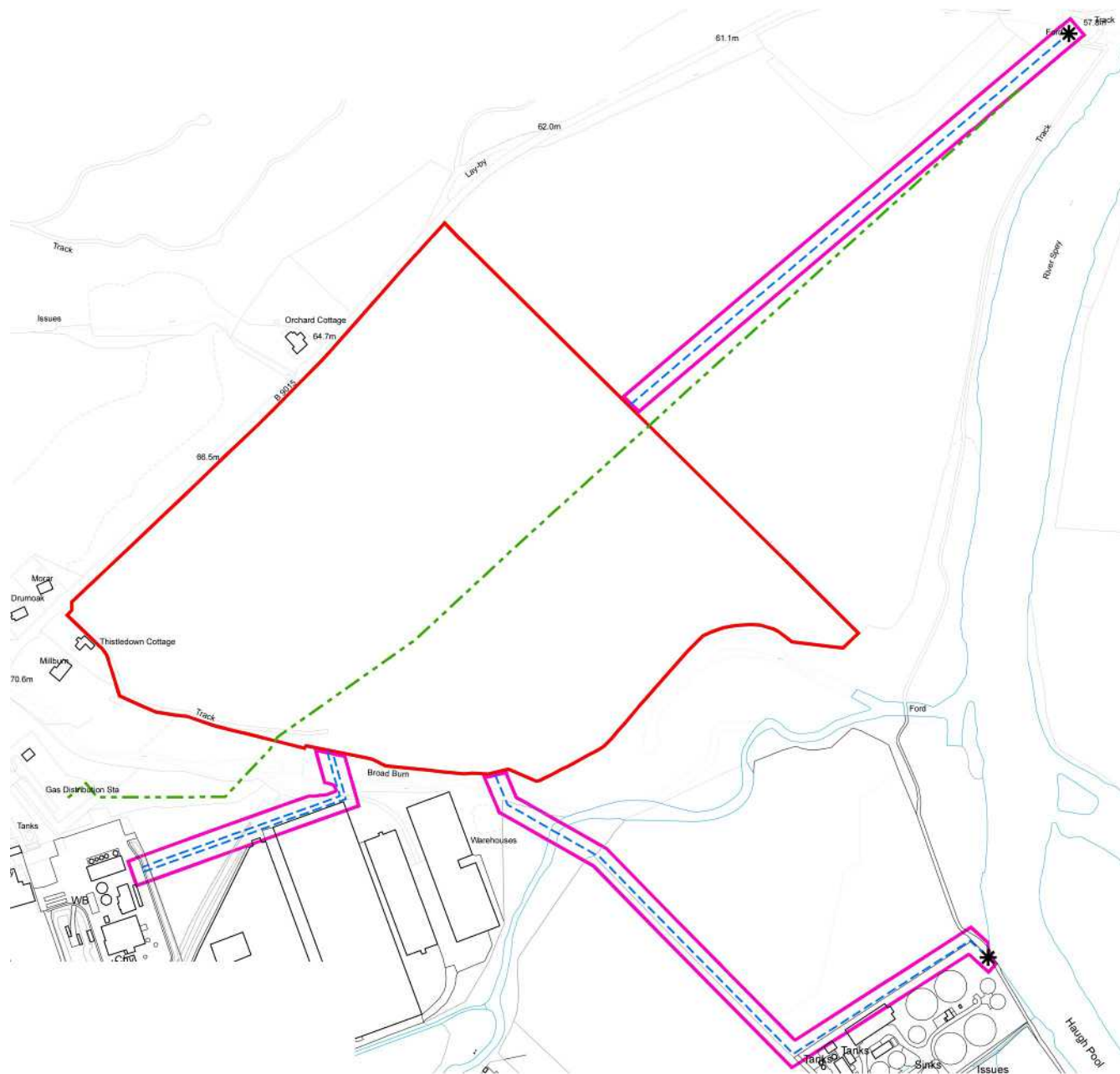
Location Plan



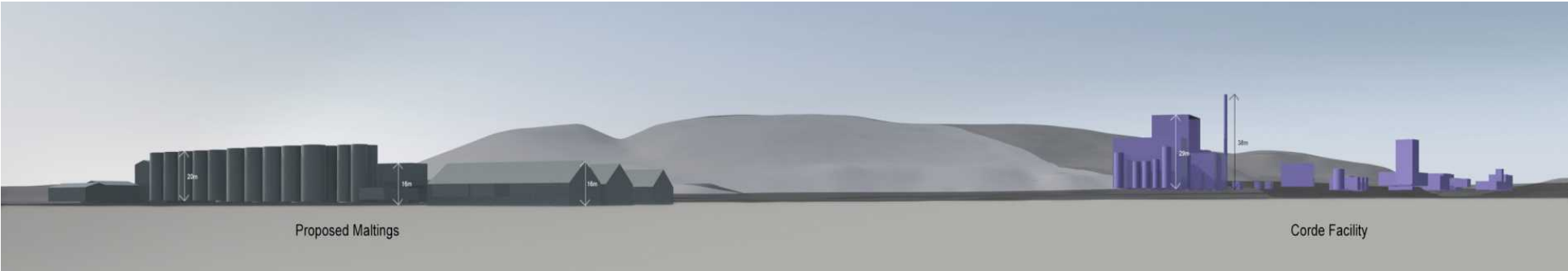
Site Location



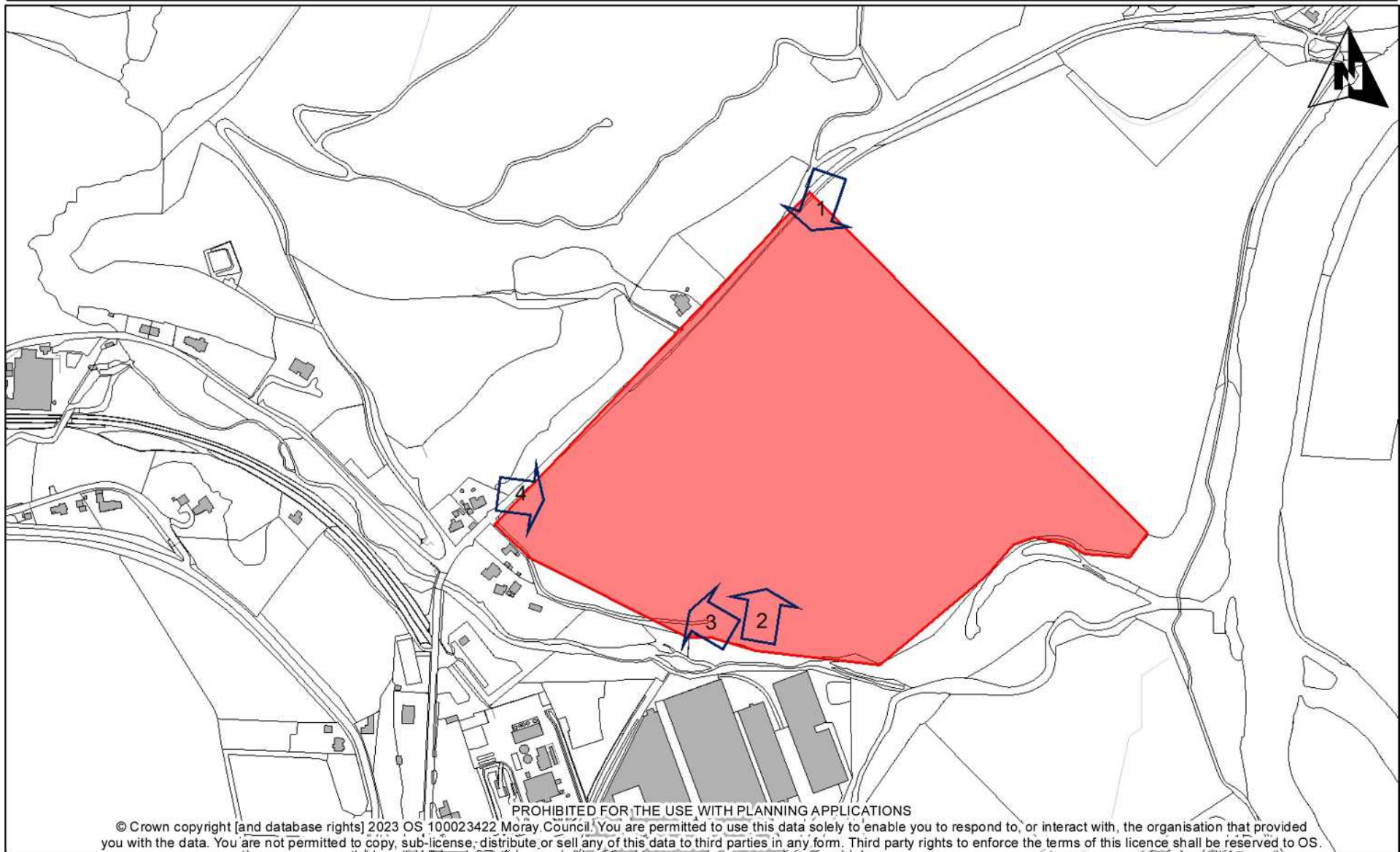
Site Boundary Plan



Indicative massing elevation



21/01901/EIA - Photograph Positions



Map Description: Arrows point in direction photograph was taken

Scale: 1:5,000 @ A4



Photo 1



Photo 2



Photo 3



Photo 4



PLANNING APPLICATION: 21/01901/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

1. **THE PROPOSAL**

- Planning permission in principle (PPiP) is sought for the erection of a malt production facility with associated infrastructure and landscaping.
- The maltings would process 100,000 tonnes of malt per annum.
- An indicative layout provided with the application shows the site would have access from the B9015, and have buildings including barley storage, workshop, heating plant/biomass boiler, lab/office, whilst there would also be processing and storage tanks, water storage and treatment.
- The application is an Environmental Impact Assessment (EIA) development and is supported by an Environmental Impact Assessment Report (EIAR) which includes assessment on: air quality and odour; ecology; flood risk, drainage and water quality; landscape and visual impact, noise and vibration; transport and cumulative assessment.
- Three applications have been submitted alongside this application for waste water discharge pipes (two options covered under applications 21/01902/EIA and 21/01903/EIA), and a heat and power connection to the Rothes CoRDe plant on North Street via application 21/01904/EIA. These are local applications being dealt with under delegated powers following determination of this application.

2. **THE SITE**

- A 15.8 ha area of agricultural land at Greens of Rothes, to the north east of Rothes.
- The roughly triangular shaped site is bounded by the B9015 Rothes to Mosstodloch road to the north west, further agricultural land to the north east, and the Broad Burn to the south (with Rothes CoRDe, a gas distribution site and distillery warehousing beyond).
- The Broad Burn meets the River Spey to the west of the site.
- The closest residential properties are Orchard Cottage to the north west on the opposite side of the B9015, and four dwellings to the east (Thistledown Cottage, Millburn, Morar and Drumoak).
- A high pressure main gas pipeline bisects the site on a north east – south west axis, following a former railway line between Rothes and Orton.
- The site lies adjacent to the Rothes Settlement Boundary as zoned in the Moray Local Development Plan 2020 (MLDP), and lies within the Spey Valley Special Landscape Area Designation (SLA).
- The River Spey and Broad Burn are designated as part of the River Spey Special Area of Conservation (SAC), whilst the River Spey itself is also a

- Site of Special Scientific Interest (SSSI).
- A large part (approx. 10.9 ha) of the application sits on Prime Agricultural Land type 3.1 - land capable of producing consistently high yields of a narrow range of crops.
- Part of the eastern side of the site is identified as being at risk from flooding from the River Spey on SEPA flood maps (1 in 200 and 1 in 1000 year events).

3. **HISTORY**

20/01207/SCN – Screening Opinion sought by Simpsons Malt Limited for a proposed 100,000 tonnes per annum malt production facility on land at Greens of Rothes. Moray Council adopted a Screening Opinion on 9 October 2020 stating the proposal would require to be subject to Environmental Impact Assessment.

21/00284/SCO – Scoping Opinion sought by Simpsons Malt Limited for a proposed 100,000 tonnes per annum malt production facility on land at Greens of Rothes following adoption of Screening Opinion 20/01207/SCN. The Scoping Opinion was adopted by Moray Council on 13 April 2021 and detailed the scope of information and assessment required to form an EIAR.

21/00740/PAN – Proposal of application notice (PAN) submitted by Simpsons Malt Limited for a proposed 100,000 tonnes per annum malt production facility on land at Greens of Rothes. The PAN level of consultation proposed was considered suitable by Moray Council on 3 June 2021. The PAN was reported to the Planning and Regulatory Services Committee, where members provided feedback on the proposal.

21/01902/EIA – Planning application for waste water discharge pipe (option B) from proposed maltings at Greens of Rothes to River Spey at Burn of Crofts pending consideration. Application to be determined under delegated powers.

21/01903/EIA – Planning application for waste water discharge pipe (option B) from proposed maltings at Greens of Rothes to River Spey at Rothes Waste Water Treatment Works pending consideration. Application to be determined under delegated powers.

21/01904/EIA – Planning application for heat and power connection from proposed maltings at Greens of Rothes to Rothes CoRDe at North Street pending consideration. Application to be determined under delegated powers.

4. **POLICY**

Moray Local Development Plan 2020

Primary Policies

PP1 – Placemaking

PP2 – Sustainable Economic Growth

PP3 – Infrastructure and Services

Development Policies

DP1 – Development Principles

DP5 – Business and Industry

Environment Policies

EP1 – Natural Heritage Designations

EP2 – Biodiversity

EP3 – Special Landscape Areas and Landscape Character

EP5 – Open Space

EP6 – Settlement Boundaries

EP7 – Forestry, Woodlands and Trees

EP12 – Management and Enhancement of the Water Environment

EP13 – Foul Drainage

EP14 – Pollution, Contamination and Hazards

National Planning Framework 4

Sustainable Places

Policy 1 – Tackling the climate and nature crises

Policy 2 – Climate mitigation and adaption

Policy 3 – Biodiversity

Policy 4 – Natural places

Policy 5 – Soils

Policy 6 – Forestry, woodland and trees

Policy 7 – Historic assets and places

Policy 9 – Brownfield, vacant and derelict land and empty buildings

Policy 12 – Zero waste

Policy 13 – Sustainable transport

Liveable Places

Policy 14 – Design, quality and place

Policy 22 – Flood risk and water management

Policy 23 – Health and safety

Policy 24 – Digital infrastructure

Productive Places

Policy 26 – Business and industry

Policy 29 – Rural development

5. ADVERTISEMENTS

- 5.1 The application was advertised in the Northern Scot and Edinburgh Gazette as an EIA development and for Neighbour Notification, as a departure from the development plan and a Schedule 3 development.

6. CONSULTATIONS

Health and Safety Executive – Does not advise against the granting of planning permission on safety grounds (in relation to High Pressure Gas

Pipeline that passes through the site).

Strategic Planning and Development – In light of the locational justification provided a departure from Moray Local Development Plan 2020 Policy EP6 – Settlement Boundaries can be supported, with specific reference to support provided under overarching Policy PP2 – Sustainable Economic Growth. The proposal complies with all other aspects of the Moray Local Development Plan 2020 and National Planning Framework 4.

Developer Obligations – No obligations sought.

Environmental Health – No objections subject to conditions limiting hours of construction works and vehicle movements (including operation of development), ensuring acoustic bunds are provided in accordance with Noise Impact Assessment, requiring a Light Impact Assessment, Construction Environment Management Plan, as well as provision of a detailed Noise Impact Assessment

Contaminated Land – No objections, informative note provided on the former railway running through the site.

Transportation Manager – No objections following provision of options for pedestrian linkages to Rothes. Conditions recommended in respect of the following detail/information required as part of subsequent AMC applications:

- Pedestrian connection to Rothes (confirmation of route of options provided with application).
- Visibility splays.
- Speed limit changes to B9015.
- Provision of Construction Traffic Management Plan.
- Parking Assessment to inform parking provision.

Moray Flood Risk Management – No objections following provision of updated flooding and drainage information.

Spey Fishery Board – Preference for option B for effluent discharge to River Spey to be undertaken, as the confluence with the Spey at this point is into a significant volume of generally fast-flowing water which, even in periods of low flows, will help disperse and dilute the outflowing effluent. (Note – this will be dealt with under respective applications for outfalls).

Aberdeenshire Council Archaeology – No objection subject to condition requiring written scheme of investigation for archaeology.

NatureScot – No objections subject to condition requiring CEMP to be submitted and undertaken to ensure impacts on ecology are suitably mitigated.

SEPA – Following provision of an updated Flood Risk Assessment and Drainage Impact Assessment, no objections subject to condition ensuring no development or landraising takes place within the functional flood plain as identified in the Flood Risk Assessment.

Scottish Water – No objection. Advisory notes provided on impact on Scottish Water assets, as well as drinking water protection.

Scottish Gas Networks – no objection subject to condition ensuring that no works are carried out within 35 metres of the pipeline, as well as ensuring a suitable design is agreed with SGN to prevent overload of ground above the pipeline as a result of earthmoving/construction or land movement.

Speyside Community Council – Object to application on the basis the site is not designated for development in the Moray Local Development Plan 2020 (MLDP) and is contrary to the MLDP because:

- It is within a Special Landscape Area and is contrary to Policy EP3 (Special Landscape Areas and Landscape Character).
- It is immediately outwith the settlement boundary of Rothes and thus is contrary to Policy EP6 (Settlement Boundaries).
- The development would be in breach of Policy PP1 (Placemaking) on the basis it would not create successful, healthy places.
- There is no justifiable locational need under Policy PP2 (Sustainable Economic Growth).
- The site cannot be adequately served by existing infrastructure or that proposed, therefore it is contrary to Policy PP3 (Infrastructure and Services).
- The Transport Statement is flawed, with insufficient bus services, pedestrian and cycling links. The traffic survey data was collected in June 2021 during the COVID lockdown, and will not take account of the increase in lorries that will provide fuel for the biomass plant. There will be a further increase in 24/7 HGV movements generating noise and vibrations that are detrimental to the amenity of Rothes and its residents, and historic environment.
- With reference to Policy DP5 (Business and Industry), the site is not designated as employment land and should not be built on. There are plenty employment opportunities in Rothes and surrounding area.
- Criteria for Policy DP9 (Renewable Energy) have not been met in respect of the biomass plant, stack and gas boiler. There will be pollution impacts in terms of dust, air pollution, noise and vibration during construction. There will be noise, dust, air pollution and odour from the site during operation.
- The site is highly visible from the A941 and B9015.
- Cumulative impact with CoRDe needs to be considered (noise/pollution/discharge to River Spey).
- A high pressure gas pipeline runs through the site and is a major accident hazard (with regard to Policy EP14 – Pollution, Contamination and Hazards).
- Adverse impact on flora and fauna and nearby River Spey SAC/SSSI, contrary to Policy EP2 - Biodiversity.

The site is designated as grade 3 Prime Agricultural Land and thus development on this site would result in a loss of this land, with a subsequent impact on food security.

There will be an increased risk of flooding from and pollution of the River Spey during construction. There is also risk to private water supplies – what mitigation is in place should these supplies be adversely impacted?

The development will be a dominant feature in the landscape on approach to Rothes on the B9015, given the impression that Rothes is not a rural town but an industrial site. There will also be an impact on visual amenity from properties to the south on the A941 which sit at a higher level.

(NOTE: The points raised above have been addressed throughout the Observations section below).

7. **OBJECTIONS-REPRESENTATIONS**

NOTE: Following the determination of this application, name and address details will be/have been removed (i.e. redacted) in accordance with the General Data Protection Regulations (paragraph 3 of Minute, Planning & Regulatory Services Committee 16 September 2014).

[REDACTED]

The points raised can be summarised as follows:

Principle

Issue: The proposal is contrary to the Moray Local Development Plan 2020 as it is on an unallocated site outwith the Rothes settlement boundary.

Comments (PO): It is acknowledged the proposal is contrary to the MLDP2020, and consideration is given to this in the Observations section below. The application has been advertised as a departure from the development plan.

Issue: Question whether the estimated job creation and need to call on existing skilled local workforce. Is this for construction or operation phase? Would employees be relocated from the applicant's other sites and how much benefit will there be for Rothes?

Comments (PO): The information accompanying the application suggests 40 jobs will be created as part of the operation of the site. The origin of staff cannot be assumed nor be a reason for planning permission to be refused.

Access and Traffic

Issue: There is a farm track from the B9015 used to access an adjacent house and the Scottish Gas pipeline – assurance sought that this will be left and access maintained.

Comments (PO): Private rights of access as outlined are separate to the planning process and cannot be considered as part of this application. Any wayleaves required by Scottish Gas Networks is a separate matter between the applicant and SGN.

Issue: An increase in 44 tonne trucks servicing the proposed maltings. There is already a high number of HGV movements with industry in Rothes, and the development of a maltings will exacerbate this. The roads through Rothes are hard enough for pedestrians and emergency vehicles to navigate. (Images and video of HGV movements on A941 through Rothes provided with application).

Comments (PO): The Transport Assessment submitted as part of the EIAR has found that the increase in HGV movements on the local road network will be negligible (see Parking and Access under Observations below).

Issue: 100,000 tonnes of barley will be brought from Keith to the site via the Boat o' Brig which is single track, sitting at the bottom of a steep hill with S bends, the condition of the road is far from ideal for this increase in HGV movements.

Comments (PO): The Transport Assessment provided with the application assesses the traffic generation associated with the proposal including impacts on roads in the wider area, and this is not considered to be significant to warrant upgrades to the wider road network outwith Rothes. The Transportation Manager raised no objections to the proposed development.

Issue: Condition of bridge on the B9015 which currently has cracks.

Comments (PO): The Transportation Manager has not raised any concerns regarding suitability of the bridge to serve the increase in traffic associated with the development (noting it is negligible).

Issue: There is no safe footpath connection into Rothes from the site. Inadequate pedestrian route along North Street towards site means it's unsafe for pedestrians – the roadway has no prospect of being widened due to protected trees.

Comments (PO): Options for a pedestrian connection to Rothes have been proposed as part of the scheme (3 options), and there is a condition recommended requiring details of a pedestrian route to be agreed and provided prior to operation of the maltings. Indicative plans show a path provided through the Rothes CoRDe to avoid impacts on protected trees on North Street.

Design and Landscape Impact

Issue: Insufficient information on height of buildings at pre-application consultation event held in Rothes.

Comments (PO): The planning in principle nature of the application means specific design of the buildings and plant is not available at this stage, though the heights of the buildings have been specified in the EIAR. A condition is recommended to limit the height of the structures in accordance with this information.

Issue: Buildings proposed are vast and will impact on an area of outstanding natural beauty which has suffered with a lack of visitors, this will further deter tourists. The visualisations give the impression the proposal will be screened by

landscaping which is false. We would seek assurances that buildings will not be permitted to exceed tree heights and that any building above 25ft in height must be coloured in line with the surrounding countryside.

Comments (PO): Evaluation will be given to the design and siting of the buildings via a subsequent application for Approval of Matters Specified in Conditions (of Planning Permission in Principle).

Pollution

Issue: Noise assessment must be based on the quietest period when there is lower noise levels.

Comments (PO): Noise Impact Assessment has been provided and further assessment is sought in light of the in principle nature of this proposal. Background noise levels for NIAs take account of long periods of times and set a baseline to be considered (i.e. quieter times as noted by comment).

Issue: Light impacts on wildlife must be considered.

Comments (PO): As part of their comments on the proposal, NatureScot have requested that this is considered as part of evaluation of lighting. Consideration to light will be given via a Light Impact Assessment and Construction Environment Management Plan to consider impacts of light from the operations and construction of the maltings respectively.

Issue: Any lighting of the site should not be too bright and impact on nearby residents.

Comments (PO): A Light Impact Assessment has been requested by the Environmental Health service as part of any consent for planning permission in principle whilst any Construction Environment Management Plan will also consider lighting during the construction process. This will ensure lighting does not become a nuisance to nearby residential properties.

Issue: Barley dust and rats are a problem that may affect neighbouring homes.

Comments (PO): The impact of dust is considered under air quality in the EIAR and has found that dust levels generated by the development is unlikely to have an adverse impact on the amenity of nearby residents. Should the proposal attract rats that affect neighbouring properties, any concerns regarding unsanitary storage/practice should be reported to Environmental Health.

Issue: Construction and Operational noise (equipment and HGVs) will have adverse impact on nearby residential properties (including those elevated in Rothes), similar to the Rothes CoRDe at present. Rothes is currently exposed to noise from the variety of industrial premises in the town, and the proposed maltings will add to this. (Audio recording of noise from Rothes CoRDe received).

Comments (PO): A Noise Impact Assessment provided with the application has identified predicated noise levels, and the Environmental Health service has raised no objection to this information. A further NIA is sought to ensure noise levels are within suitable limits once a detailed scheme is worked up in light of the in principle nature of this application.

Issue: Odours from the site as well as exhaust fumes from HGVs will adversely impact on properties in wider area, including those at an elevated position in Rothes. Odour in Rothes has improved in recent years following redevelopment of Rothes CoRDe, but siting of maltings on edge of town will create odour that residents will not be used to.

Comments: The impact of the proposal in terms of air quality has been assessed and is not considered to be unacceptable, see section on Pollution under Observations. A maltings previously existed on North Street in Rothes.

Issue: Difficult to believe Moray Council has declared a climate emergency yet will consider proposals that will increase air pollution from increased vehicle movements, noise and artificial lighting.

Comments (PO): A Noise Impact Assessment provided with the application has identified predicated noise levels, and the Environmental Health service has not objected to this information. A further NIA is sought to ensure noise levels are within suitable limits once a detailed scheme is worked up in light of the in principle nature of this application.

A Light Impact Assessment has been requested by the Environmental Health service as part of any consent for planning permission in principle whilst any Construction Environment Management Plan will also consider lighting during the construction process. This will ensure lighting does not become a nuisance to nearby residential properties.

Ecology

Issue: Was an otter survey carried out?

Comments (PO): Yes, otters have been considered as part of the Ecological Survey undertaken in the EIAR. The proposal is not considered to result in an adverse impact on otters and their habitats.

Issue: Ecological concerns of water discharge from Maltings into Spey runs the risk of adversely affecting the ecological balance within the Spey. How will this be minimised/mitigated and monitored and will this be checked by an enforcement body?

Comments (PO): Water discharge from the site will be permitted and controlled by SEPA as regulatory body for such matters.

Issue: Impact of proposal on water environment in terms of abstraction and discharge, given climate change and reduction in ground water and river levels.

Comments (PO): Water abstraction is covered under legislation separate to the planning process (via SEPA) and thus is not material to the consideration of this application.

Flooding

Issue: Proposed power and heat supply will cross the Broadburn and since 1993 the high pressure gas pipeline has been exposed by severe floods that scoured a large area of ground away.

Comments (PO): This will be considered as part of the relevant planning application (21/01904/EIA).

Issue: There was a large flood event in 1970 and the water of the Spey came as far as Meldrum's Farm on Green Street, to the field which is now Ben Aigen View. The Maltings is on a flood plain and the flood extent will come higher than the proposed predictions of the Flood Risk Assessment.

Comments (PO): A Flood Risk Assessment has been undertaken by the applicant, and this has found that the indicative layout of the site ensures built form avoids areas at risk of flooding. SEPA have not objected to the application and have requested a condition be placed ensuring no developer or land raising takes place within the flood plain.

Other Matters

Issue: Copy of FOI response to Northumberland County Council provided in respect of the applicant's operations at Berwick-upon-Tweed. This questions the context of the site, whether there have been complaints about the site (3 noise complaints, 3 odour complaints, 3 air quality complaints, have been reported to Public Protection, no water or traffic nuisance complaints have been received since 2016.), whether there were any planning conditions (none), and whether there has been enforcement action (none).

Comments (PO): The copy of the response is noted, though this is a different site within a different local authority and consented some time ago.

Issue: Copy of FOI response to South Norfolk and Broadland District Council provided in respect of the applicant's operations at Tivetshall St Margaret. This questions the context of the site, whether there have been complaints about the site (two noise, one dust and diesel leakage over past 20 years), whether there were any planning conditions (none), and whether there has been enforcement action (one in respect of external lighting).

Comments (PO): The copy of the response is noted, though this is a different site within a different local authority and consented some time ago.

Issue: Reference made to the Human Rights Act 1988 Schedule 1 Part 1: Article 8 - Right to respect for private and family life and Schedule 1, Part II, The First Protocol: Article 1 - Protection of Property - The protection of peaceful enjoyment of possessions.

Comments (PO): It is not considered granting of planning permission will contravene any human rights as referred to above.

Non-Material Considerations

Issue: Loss of property values.

Comments (PO): This is not a material planning consideration.

Issue: Boundary fence of property adjacent to site has been moved over the years by previous owners/contractors. Request this is corrected before any permission is granted.

Comments (PO): This is not a material planning consideration and is a private matter between the relevant parties.

Issue: Application should be made to restore local curling pond as part of its cultural past.

Comments (PO): This would be unreasonable – any developer obligation has to be directly related to a proposal and there is no clear link between this proposal and restoration of the curling pond.

Issue: Moray Council should consider ecological and long term impacts of the proposal over profits from the sale of the site.

Comments (PO): Moray Council does not own the land and has no financial interest in the proposed development.

8. **OBSERVATIONS**

- 8.1 NOTE: On 11 January 2023 the Scottish Parliament approved National Planning Framework 4. Legislative changes to incorporate this as part of the development plan are expected on 12 February 2023 and will come into force on 13 February 2023. Therefore this report has taken account of the changes in advance of the pre-determination hearing and meeting of the Planning and Regulatory Services Committee on 15 February 2023.
- 8.2 Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the Development Plan i.e. National Planning Framework 4 (NPF) and the adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.
- 8.3 The main planning issues are considered below:
- 8.4 **Pre-application Consultation Report**
The application is accompanied by a Pre-Application Consultation (PAC) Report, as prescribed under section 35C of the 1997 Act. This outlines the statutory consultation that the applicant undertook with the local community in relation to this application. The form and scope of the pre-application consultation was considered to be suitable, and agreed by the Council in response to Proposal of Application Notice 21/00740/PAN, and takes account of temporary legislative changes as a result of the COVID-19 pandemic (allowing for online/virtual consultation in lieu of in-person events).
- 8.4.1 The PAC Report states a website was set up to provide information as part of the online PAC event, as well as an online “zoom” with representatives of the applicant and agent in July 2021. As COVID restrictions eased over summer 2021, an in-person consultation event was also held at The Grant Hall in Rothes on 16 September 2021. The PAC report details the feedback received as part of the PAC process and addresses how the points raised have been considered in formulating the application.
- 8.5 **Appropriate Assessment - Habitats Regulation Appraisal**
In this instance, Moray Council will adopt the appraisal as modelled by NatureScot and this appropriate assessment is detailed below.
- 8.5.1 The proposed development will be located to the north/west of the River Spey and Broad Burn, part of the River Spey Special Area of Conservation (SAC) and River Spey Site of Special Scientific Interest (SSSI). The site's status means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the "Habitats Regulations") apply.

Consequently, Moray Council is required to consider the effect of the proposal on the designations and their qualifying interests before it can be consented.

- 8.5.2 In this case, the site is adjacent to the River Spey and the Broad Burn tributary, therefore the proposal has the potential to result in release of sediment and other pollutants into the river and burn and affect qualifying interests of the River Spey SAC and SSSI which are dependent on the water environment. There is also potential for light emissions during construction and operation to adversely affect qualifying interests of the nearby water courses. The SAC and SSSI have been selected for the River Spey's populations of Atlantic salmon, European otter, freshwater pearl mussel and sea lamprey.
- 8.5.3 The proposal is not directly connected with or necessary for the conservation management of the SAC and SSSI, hence further consideration is required. The proposal has the potential to result in release of sediment and other pollutants during construction activities and subsequent discharge of surface/foul water which may adversely affect the water environment. There is also potential for light emissions during construction and operation to adversely affect qualifying interests of the nearby water courses.
- 8.5.4 NatureScot has advised Moray Council that the proposal is likely to have a significant effect on the interests of the SAC. Accordingly, suitable mitigation measures will be required to ensure the development does not adversely affect the interests of the SAC and SSSI. NatureScot has advised the following mitigation be undertaken:
- A Construction Environment Management Plan detailing measures to be put in place to ensure no release of sediment and other pollutants to the River Spey and Broad Burn.
 - Suitable drainage arrangements for surface and foul water from the development.
 - Measures to ensure light pollution from the construction process (and operation) do not impact on the qualifying interests that may be present in the river/burn.
- 8.5.5 These matters will be required by condition - and on this basis, the proposal will not adversely affect the integrity of the site; including the conservation objectives of its qualifying interests.
- 8.6 **Principle and Locational Justification**
All designated settlements within the MLDP are given a boundary to represent the limit to which the settlement can expand during the period of the MLDP. Any development that is located immediately outwith the settlement boundary (aside from LONG designations being released for development) will not be accepted under MLDP Policy EP6 – Settlement Boundaries. Given this site is immediately outwith the settlement boundary of Rothes, and the site is not designated as LONG development site, the proposal is therefore considered to be contrary to MLDP Policy EP6. The application was advertised as a departure from the development plan on this basis.
- 8.6.1 Under the previous Moray Local Development Plan 2015, part of the site subject to this application was designated as an opportunity site (OPP1 Rothes) suitable for a mix of developments. This 9.6 ha designation also noted a

preference for a single user should industrial development come forward, recognising the lack of alternative employment land sites in Speyside.

- 8.6.2 The proposed Moray Local Development Plan 2020 designated part of this site (6.3 ha) as an industrial development site (I5 Rothes). This was subsequently removed at examination stage of the MLDP by the Scottish Government Planning and Environmental Appeals Division (DPEA) Reporter. The DPEA Reporter noted the visual impact industrial development of the site would have on the character and a main gateway into Rothes, notwithstanding the previous designation of the site in the 2015 Plan.
- 8.6.3 In addition to the requirements of MLDP Policy EP6, there are a number of other Policy considerations with regard to the general principle of business and industrial development under the MLDP and NPF:
- MLDP Policy DP5 – Business and Industry allows for new rural business and industry including distilling, subject to a locational justification and compliance with other development plan policies.
 - MLDP Policy PP2 – Sustainable Economic Growth supports development proposals that support the Moray Economic Strategy where there is a locational need for such development. Proposals must ensure the quality of the natural and built environment is safeguarded.
 - NPF Policy 26 – Business and Industry allows such development outwith designated sites in local development plans where there are no suitable alternatives allocated in the LDP or identified in the employment land audit and the nature and scale of the development is compatible with the surround area.
 - NPF Policy 29 – Rural Development encourages economic activity to ensure rural places are vibrant and sustainable, and ensure rural communities and business are supported. Part a (iii) of this Policy states that production and processing facilities for local produce and materials including local food production is supported.
- 8.6.4 Simpson's Malt (the applicant) has operations in Berwick-upon-Tweed in Northumberland and Tivetshall St Margaret in Norfolk and supply customers all over the UK from these locations. A number of the applicant's distilling customers are located in Speyside and elsewhere in northern Scotland. They currently deliver approximately 75,000 tonnes per annum to 7 distilling customers with 13 distilleries in the local area from their site in Berwick. An additional 5,000 tonnes per annum is also delivered north of Inverness. The 13 distilleries served are located in Elgin, Keith, Craigellachie, Rothes, Aberlour and Dufftown. The applicant has also noted that this proposal has attracted new potential business from distilleries that are in the process of expanding their production. By developing a maltings close to customers in northern Scotland, the applicant has estimated that in excess of 1.3 million miles of HGV movements will be taken off the UK road network with subsequent environmental benefits.
- 8.6.5 The EIAR submitted alongside the application acknowledges the site subject to this application lies outwith a designated site in the MLDP, as well as being outwith the settlement boundary of Rothes (and the subsequent implications of MLDP Policy EP6 as outlined above). In justifying this site for the proposed maltings, Section 4 of the EIAR details the applicant's locational requirements

for a malt processing plant:

- Site Characteristics – at least 9 ha, flat undeveloped land with ability to create a landscape framework, with appropriate access.
- Access to Water Supply – close to a reliable potable water supply for water abstraction.
- Point of Discharge – Treated process water from the maltings needs to be discharged to a suitable receptor (in this case the River Spey).
- Electrical Capacity – A maltings facility has a large electrical load and requires to be close to a local distribution network or another supply (e.g. Rothes CoRDe or other renewable energy generator).
- Heat Capacity – Gas is not directly available to the site to provide sufficient quantities to provide full heat requirements, however the applicant is committed to be carbon neutral by 2030 and is therefore sourcing heat required for processing malt from the Rothes CoRDe.
- Access to Customers – minimise need for travel to serve customers, many of which are in the Speyside area.
- Availability of skilled workforce – this proposal will create approximately 40 jobs and there is a need for a skilled local workforce to operate the maltings.

8.6.6 Alternative sites were explored across Moray for the proposed development, and their reasoning for discounting has been outlined as follows:

Site	Designation(s) in MLDP	Reason for Discounting
Rothes: Land to north of Glenrothes Distillery	None, within The Spey Valley Special Landscape Area.	Site is currently used for cask storage and discounted due to access constraints via Burnside Street and impracticalities of bridging access over to Drumbain Farm north to the A941. (Site now part of pending planning application 22/01673/EIA for erection of whisky maturation warehouses)
Buckie: Rathven Industrial Estate	Buckie I3 – March Road SE	Local water sources unlikely to be suitable, whilst local water courses insufficient to accommodate volumes whilst competing with neighbouring maltings.
Buckie: Rathven Industrial Estate	Buckie I4 – Maltings	Remaining undeveloped land adjacent to existing maltings is too small to accommodate the proposed maltings, and any development would require tower type structures in excess of 50 metres in height. Local water sources unlikely to be suitable, whilst local water courses insufficient to accommodate volumes whilst competing with neighbouring maltings.
Elgin: Burnside of Birnie	Elgin I16/LONG3 – Burnside of Birnie	Geology of site indicates potential for water supply but unlikely to yield necessary volume due to competition for resource. Suitability of watercourse discharge also of low potential. Unlikely that necessary land available for proposed maltings given the applications

		currently permitted/under consideration and the configuration of the service roads now in place.
Elgin: Barmuckity Business Park	Elgin I7 – Barmuckity Business Park	Same geology issues as Burnside of Birnie but also susceptible to flooding.
Elgin: Newfield	Elgin I8 – Newfield, small part to North of designation within Spynie Special Landscape Area.	Prominent site on approach to Elgin, suitable for class 4 and 5 that would be compatible with residential. Moray LDP confirms that uses must be compatible with surrounding uses which is predominantly residential.
Mosstodloch: West of Mosstodloch	Mosstodloch I3/LONG2 – West of Mosstodloch	Favourable geology but flooding from Burn bisects designation, meaning land outwith the designation would be required. A Water Framework Directive waterbody specific objective requires to be addressed. The site has a minimum 30% open space across site with 15m wide corridors for potential future connections to the west, north and east required which significantly reduce the net developable area. The principle reason for discounting this area was the potential for flooding. This would also require purchase and development of farmland not previously identified for development, thereby adding additional barriers.
Mosstodloch: South of A96 Mosstodloch Bypass	Mosstodloch LONG1 – Long Term Mixed Use	Water supply issues identified as constraint, whilst mixed use nature of the site means a maltings would be incompatible with other uses. Proposed A96 dualling route may have also impacted on site.
Dallachy Inward Investment Site		Identified as an inward investment site. Fails to meet the applicant's specific locational criteria i.e. site considerations, access to water supply, heat and electricity capacity. Noted that the MLDP also states that additional inward investment sites may be identified during the lifetime of the Plan.
Forres: Enterprise Park	Forres BP1: Forres Enterprise Park	Only a very small portion of the BP1 site is able to accommodate general industrial uses and there is insufficient industrial land (2.75ha) available for proposed maltings development.
Forres: Easter New Forres	Forres I4: Easter New Forres	17.75ha identified as being constrained by high infrastructure costs that will likely require public sector funding support to make the site effective as confirmed in Employment Land Audit April 2022
Lossiemouth: Sunbank	Lossiemouth OPP1: Sunbank, within Burghead to Lossiemouth Coast Special Landscape Area.	The Employment Land Audit 2022 confirms that the 10.24ha available are constrained by topography and ground conditions, as well as likely constraints due to proximity of RAF Lossiemouth.

- 8.6.7 The search exercise undertaken by the applicant demonstrates there are no suitable sites designated for industrial uses in the MLDP that would be suitable to accommodate the proposed development. Given the locational requirements of the applicant, and the central position of this site in Speyside/Moray to serve the distilling industry, as well as the economic and environmental benefits of the proposal (with particular reference to decreased HGV movements in excess of 1.3 million miles per annum), a departure from MLDP Policy EP6 – Settlement Boundaries can be justified. The subsequent location of a maltings in the area would see subsequent benefits to local farms (through supply of barley, as well as availability of by-products from the maltings process).
- 8.6.8 The above considerations with regard to the locational justification of the proposed development means the proposal complies with MLDP Policies DP5 and PP2 and NPF Policies 26 and 29.
- 8.6.9 NPF Policy 9 – Brownfield, Vacant and Derelict Land and Empty Buildings promotes and encourages reuse of such land in order to reduce development on greenfield land. As such, it creates a presumption against development on greenfield sites unless the site is allocated for development or is explicitly supported by LDP Policies. In this case, the locational justification outlined above is noted, and a departure from Policy EP6 – Settlement Boundaries is supported in this instance given the compliance with overarching MLDP Policy PP2 – Sustainable Economic Growth. The proposal complies with all other aspects of the LDP, and thus it is not considered to be contrary to NPF Policy 9.
- 8.7 **Sustainability**
At its heart, NPF recognises the global climate emergency. Policy 1 states that significant weight will be given to the global climate and nature crisis. For major industrial development, Policy 26 – Business and industry requires all development to be accompanied by a decarbonisation strategy to demonstrate how greenhouse gas emissions can be appropriately abated. The EIAR notes that the applicant is pursuing a carbon neutral status across its operations by 2030. For this site, the site incorporates biomass boiler. A connection to Rothes CoRDe is proposed (application 21/01904/EIA covers the connection between the sites). This is envisaged to utilise excess heat from the CoRDe biomass plant that is currently lost to the atmosphere. Heat recovery processes are also envisaged as part of the maltings development. The in principle nature of this application means it is difficult to give full evaluation to this until a detailed scheme is worked up. A biomass boiler is also shown on the plans, the applicant has confirmed this will utilise local wood, mainly forest residues and horticultural wood waste though this will not provide full heat provision, hence the proposed connection to Rothes CoRDe.
- 8.7.1 NPF also recognises the need to minimise waste, with Policy 12 – Zero Waste seeking to encourage, promote and facilitate development that is consistent with the waste hierarchy. From a construction perspective and as part of the requirement for a Construction Environment Management Plan, a waste management strategy will be required as part of this to ensure construction waste is minimised and recycling is undertaken. From an operational perspective, a waste management plan will also be required by condition to ensure all opportunities to reduce, reuse and recycle materials is maximised as

part of the development. The applicant has indicated that by-products of the malting process (spent grain etc.) are sold on as cattle feed, further link between agriculture and the maltings processes.

- 8.7.2 Conditions requiring a decarbonisation strategy, waste management strategy (for both operational and construction phases) for the development are to be placed to ensure compliance with relevant NPF requirements as outlined above.

8.8 **Design, Siting and Landscape Impact**

Policy DP1 – Development Principles of the MLDP requires all development to be of a suitable scale, density and character and integrated into the surrounding landscape. NPF Policy 14 – Design states development proposals should improve the quality of an area and be consistent with the six qualities of successful places, echoing the requirements of MLDP Policy PP1 - Placemaking.

- 8.8.1 Given this application is for planning permission in principle, no detailed design and layout of the proposal is available at this stage. An indicative layout provided with the application shows the majority of development taking place on the north western portion of the site, though set back from the B9015. Bunds would surround the site along with landscaping. Indicative site sections also show the mix of proposed structures with a variety of heights of structures and buildings. The lack of detail on design and siting of buildings/plant etc. that invariably accompanies a PPiP means limited consideration can be given to siting and design, however indicative layout and siting has been provided which can help identify the visual landscape impact of any development on the site.
- 8.8.2 The indicative layout and sections have been used to inform the EIAR's Landscape and Visual Impact Assessment, which demonstrates the impact of the proposed development on the surrounding landscape. The EIAR (section 10.24) notes that the following heights have been used in informing the LVIA:
- Two Site Offices (4 metres)
 - Engineer Workshop (8 metres)
 - Three Grain Stores (16 metres)
 - Barley Storage (20 metres)
 - Malt Storage (20 metres)
 - Steeping Process (16 metres)
 - Germination Process (8 metres)
 - Biomass Plant (20 metres) with associated stack (25 metres)
 - Fuel Store (10 metres)
 - Water Storage / Treatment (8 metres)
- 8.8.3 The LVIA has found that the visual impact will largely be contained to the valley area in and around the site to the north of Rothes, with visibility of the development from the A941 Rothes to Elgin road at Drumbain, as well as from the B9015 Rothes to Mosstodloch road. Due to tree coverage (which comprises a mix of natural and plantation planting) in the wider area, visual impacts of the development will be intermediate on approach to Rothes on these main roads.

- 8.8.4 Inevitably the development of a relatively large maltings will have a visual impact and this will change the character of the north eastern approach to Rothes. At present, the main visual impact on this approach is the collection of industrial buildings at Rothes CoRDe on North Street. These buildings are larger than those indicatively shown (the largest building at CoRDe being 29 metres high, with the stack at 38 metres), and considered to provide an industrial backdrop against which this development would be viewed from the east.
- 8.8.5 Specialist landscape input was sought to review the LVIA methodology and outputs to ensure the significance of impacts have been appropriately identified. In the main the review report agreed with the outputs and conclusions of the LVIA. The applicant has been asked to make a number of minor amendments that help better understand the rationale behind some of the assumptions, but this does not fundamentally change the content or conclusions within the supporting LVIA.
- 8.8.6 The report prepared concluded that given the scale of the proposed development there is very little mitigation possible, landscaping will have a softening effect but the main buildings will be very visible. The landscaping proposed even at full maturity will not fully mitigate the visual impact but instead assist in softening the appearance of the proposed development. There are a number of houses in the immediate vicinity where there will be a significant visual impact as a result of the proposed development. The proposed development will however be seen against the industrial backdrop of the Rothes CoRDe buildings from the north east.
- 8.8.7 In summary the visual and landscape impacts associated with the development are localised to the area surrounding the site, mitigation will be provided in the arrangement of the buildings so they are read in conjunction with the existing Rothes CoRDe buildings and landscape planting is provided to help soften the appearance of the buildings.
- 8.8.8 On this basis the proposals are not considered to have a significant adverse impact on the special qualities of the wider Spey Valley Special Landscape Area (SLA) see section on Special Landscape Areas below. The visualisation with indicative heights, massing and relationship to Rothes CoRDe will be used to inform conditions for any subsequent detailed planning application to minimise adverse visual and landscape impact and to effectively help mitigate impacts.
- 8.8.9 At this in principle stage, the siting and design of the proposal is considered to satisfy MLDP Policies PP1 and DP1, as well as NPF Policy 14.
- 8.9 **Special Landscape Areas and Landscape Character**
MLDP Policy EP3 – Special Landscape Areas and Landscape Character states development proposals within SLA's will only be permitted where they do not prejudice the special qualities of the designation, adopt the highest standards of design, minimise adverse impacts on the landscape and visual qualities the area is important for and meets all other Policy requirements. In addition to this the development must be one of acceptable uses identified with the Policy.

- 8.9.1 In this case as a maltings the use is considered to be directly related to distilling. As well as being an acceptable use within a SLA there must be a clear locational need for the proposed use and it must be demonstrated that there is no alternative location. The justification for locational need is set out in MLDP Policy PP2 – Sustainable Economic Development where the applicant has demonstrated the need for this specific site and discounted alternative sites across Moray. As previously referenced, this is a planning in principle application and there is not a detailed design for the proposed maltings. Design will be considered as part of any detailed planning application submitted in the future. The landscape and visual impact of the proposals are set out in the landscape and visual impact section of DP1 Development Principles and concludes that significant landscape and visual impacts are localised and there is no significant adverse impact on the wider Spey Valley SLA.
- 8.9.2 On the basis of the above the proposals are considered to meet the requirements of MLDP Policy EP3.
- 8.10 **Prime Agricultural Land and Soils**
Policy DP1 – Development Principles states that any new development should avoid the sterilisation of significant workable reserves of prime agricultural land, whilst NPF Policy 5 – Soils states that development on prime agricultural land will only be supported in limited circumstances.
- 8.10.1 75% of the application site is designated as prime agricultural land (PAL) capable of producing a consistently high yield of a narrow range of crops. Of this, 59% would be within developable land whilst the remainder cannot be developed in due to flood risk (see Flooding below). Nonetheless, there will be a loss of PAL as a result of this proposal. NPF Policy 5 – Soils, creates a presumption against development on PAL, though there are instances where it would be accepted, which includes instances where a development is for production and processing facilities associated with land produce where no other local site is available. In this case, the development of a maltings would process barley grown on farmland throughout the north east of Scotland. The applicant has also confirmed that undeveloped land surrounding the site will remain in agricultural use, with research and development undertaken by growing different strains of barley to assess their qualities for the malting process.
- 8.10.2 The portion of land taken by the development of the maltings represents a very small proportion of prime agricultural land surrounding Rothes, and this is highlighted in the EIAR as an insignificant impact of the proposed development. On the basis of the locational justification of the site, lack of alternative site and small area of land removed from agricultural use the proposals are not considered to conflict with Policy DP1 Development Principles.
- 8.10.3 NPF Policy 5 - Soils also recognises the importance of ensuring disturbance to soils is minimised by avoiding and minimising areas of soil affected, whilst also ensuring development protects soil from damage including compaction and erosion and minimising soil sealing. In this case, the in principle nature means it is difficult to give full evaluation to the level of soil disturbance, though the EIAR recognises there is a need to minimise vegetation loss as a result of

development. Evaluation will be given to the extent of development via a subsequent AMC application, which will include consideration given to soil loss. The need for a Construction Environment Management Plan (CEMP) for a project of this scale is to be conditioned, and this will be required to minimise impacts on soil during the construction process. In light of these considerations, the proposal is considered to comply with NPF Policy 5 with regards to soil impacts.

8.11 **Biodiversity and Ecology**

In recognition of the need to stop and reverse biodiversity loss, MLDP Policy EP2 – Biodiversity requires all development to preserve, retain, protect and enhance features of biological interest. For major developments NPF Policy 3 - Biodiversity goes further by requiring significant biodiversity enhancement, in addition to any mitigation of potential negative effects of new development.

8.11.1 Both MLDP Policy EP1 – Natural Heritage Designations and NPF Policy 4 – Natural Places create a presumption against development that will have a significant effect on European Site designations which includes Special Areas of Conservation and Sites of Special Scientific Interest.

8.11.2 Section 8 (Ecology) of the EIAR identifies the potential impacts of the development on the environment of the site and the wider area. This water environment in the surrounding area is of particular note, with the River Spey (including the Broad Burn and Burn of Rothes and their tributaries) being sensitive to development. The River Spey is designated as a Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) due to its populations of otters, freshwater pearl mussels, sea lamprey and Atlantic salmon.

8.11.3 The EIAR identifies the current baseline condition of the site and surrounding area, including the qualifying features of the SAC and SSSI (i.e. the species outlined above) as well as other species - badgers (protected) and breeding birds in this instance.

8.11.4 Potential impacts on the species present or likely to be present have been considered, and where avoidance of species is not possible mitigation measures have been identified. A Biodiversity Net Gain (BNG) approach is proposed, which is where development provides an overall increase in natural habitat and ecological features, to minimise losses of biodiversity and restore ecological network. However it is worth noting such approaches are not a justification to develop on ecologically sensitive sites and a mitigation hierarchy must be applied first, with priority given to avoidance of such features. The following measures are proposed:

- Badgers – avoid setts near the site and ensure sufficient protection of these (at least 30 metre buffer, 100 metres for high vibration/noise works). Provision of three badger tunnels to encourage foraging on landscaped areas of site (although decrease in overall foraging ground, considered to be a net gain compared to current agricultural land use).
- Breeding Birds – no site clearance, investigation, construction etc., unless a pre-works survey has been undertaken to ensure no birds are present. Where present, appropriate protection and buffer to be applied until birds have left area.

- Landscaping – will create native woodland and scrub planting (circa 1.05 ha) forming part of landscaping of site will increase biodiversity value of site.

8.11.5 The EIAR has competently considered the impacts of the development upon ecology on and surrounding the site, including the qualifying interests of the nearby European Designations. Overall, subject to conditions ensuring the BNG and mitigation measures are undertaken, the proposed development will not adversely impact on ecology and biodiversity and offers a suitable level of biodiversity enhancement. The proposal therefore complies with the aforementioned policies.

8.12 **Trees**

MLDP Policy EP7 – Forestry, Woodlands and Trees requires all development to ensure healthy trees are maintained where development may impact on them (including offsite). NPF Policy 6 – Forestry, Woodland and Trees also supports development that enhances, expands and improves woodland and tree cover.

8.12.1 There are no trees on the site that would be affected by the proposal though trees are to the south and south west of the site. The indicative layout shows it is unlikely these will be adversely impacted by the indicative layout. However, to ensure there is sufficient protection given to trees during the course of works, tree protection measures are to be required as part of a construction environment management plan to ensure works do not encroach on roots of nearby trees. A full tree survey is not necessary to inform this given there is sufficient space within the site to ensure more than adequate protection areas are given to the adjacent trees.

8.12.2 Landscaping is proposed as shown on the indicative plan provided with the application, as well as highlighted in the EIAR. The landscaping will give some screening to the proposed development over time, however this impact will not be instant. Nonetheless, the screening will go some way to softening the impact of the development, and the provision to enhance tree planting/woodland is welcome. Though no detail is available on planting at this stage, the EIAR notes that planting will comprise native species. A condition requiring detailed landscaping is recommended, along with a requirement for ongoing maintenance to be undertaken in accordance with the details specified in section 10.212 of the EIAR.

8.12.3 In light of these matters the proposal is considered to comply with MLDP Policy EP7 and NPF Policy 6.

8.13 **Flooding**

MLDP Policy EP12 – Management and Enhancement of the Water Environment and NPF Policy 22 – Flood Risk and Water Management creates a presumption against all development at risk from flooding. This site's proximity to the River Spey means part of the site is identified as being at risk from fluvial flooding on SEPA Flood Risk Maps. In support of the application, the EIAR contains a Flood Risk Assessment (FRA). Following consultation, SEPA found that the information contained within it was insufficient and requested a detailed FRA be undertaken. The FRA submitted to address SEPA's comments

identified the flood extent of the watercourses surrounding the site to a 1:1000 year flood risk event (0.1% Annual Exceedance Probability). This found that the extent of the indicative layout provided with this application would not be impacted by fluvial flood waters during such an event. SEPA raised no objections to the application in light of this information, but have recommended a condition ensuring any layout submitted for an AMC will see no development within the flood extents (contained to the eastern corner of the site). Subject to this condition being placed, the proposal is considered to comply with MLDP Policy EP12 - Management and Enhancement of the Water Environment and NPF – Policy 22 – Flood Risk and Water Management.

8.14 **Drainage**

A Drainage Impact Assessment that formed part of the EIAR (and subsequent additional information in respect of flooding) has found that the ground conditions within the site are suitable to provide a surface water drainage system that can be designed in accordance with Sustainable Urban Drainage System (SuDS) principles. This also takes account of climate change allowances (34% for North East Scotland). The indicative layout shows surface water draining to an attenuation pond within the site. Both Moray Flood Risk Management and SEPA have raised no objections to the proposal. The proposal is therefore in compliance with MLDP Policy EP12 – Management and Enhancement of the Water Environment (and associated Supplementary Guidance on Drainage and Flood Risk Assessment in New Development), as well as NPF Policy 22 - Flood Risk and Water Management, all of which advocate use of SuDS principles to ensure surface water drainage can be treated on site without detriment to flood risk elsewhere.

- 8.14.1 The EIAR notes that waste water from the maltings process will be recycled where possible on site. Waste water from the site would discharge to the River Spey (after treatment) via pipelines that are subject to separate applications (21/01902/EIA and 21/01903/EIA) SEPA will ultimately be responsible for ensuring the quality of water that discharges to the River Spey via The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended). This ensures compliance with the requirements of the above mention policies and Supplementary Guidance.

8.15 **Water Supply**

As noted above as part of the locational justification for this development, the proposed maltings will abstract water from a superficial aquifer for on-site. This abstraction would at its highest rate be 1000 m³ per day, though typical demand will be 500 m² per day. This is ultimately controlled and licenced by SEPA, though infrastructure and plant on site for abstraction and water storage is subject to this planning application.

8.16 **Pollution – Construction and Operation**

Operation and construction of a maltings could give rise to potential pollution in terms of noise, odour, air quality, light and vibration. MLDP Policy EP14 – Pollution, Contamination and Hazards requires all development that may cause pollution or exacerbate existing issues must be accompanied by assessment reports, and any adverse impact must be mitigated else it will not be acceptable. NPF Policy 23 – Health and Safety has similar requirements with regards to noise and air quality. The EIAR that accompanied the application

contains assessment on air quality, odour, noise and vibration (lighting was scoped out of the EIAR and has been dealt with separately). The findings of these assessments are such that in general there will be no adverse impact on the amenity of the surrounding area with regard to these impacts. A summary of the EIAR findings is as follows:

8.16.1 Air Quality and Odour

Potential risks from dust, odour and road traffic exhaust fumes. The EIAR sets out current baseline conditions and assess the impact of the development on these matters. During construction, the largest risk lies with dust associated with earthworks and construction. The EIAR suggests a Construction Environment Management Plan (CEMP) be required by condition (note – this has been requested by the Environmental Health Service). This can be suitably mitigated in line with industry standards/good practice.

8.16.2 During the operational phase, there is potential air quality impacts from the process emissions associated with the combustion of solid fuel in the biomass boiler, as well as dust from the malting process. Dispersion modelling has been undertaken in respect of these, and results indicate there are no significant effects on human or ecological receptors in the vicinity of the site. Impacts from odour emissions as well as road traffic exhausts are predicted to be not significant. Pollution Prevention and Control Permits will be required from SEPA (separate to the planning process).

8.16.3 Noise and Vibration

Risks of noise come from both construction and operation of the proposed maltings. Construction noise is likely to be in line with that expected with a project of this size, though the Environmental Health service have asked for a CEMP to give consideration to construction noise. In terms of the operational phase of the development, the use of boiler plant, fans, pumps, conveyer belts and other mechanical plant, as well as vehicle movements, give rise to potential noise and vibration. The site would operate 24 hours a day. The NIA within the EIAR identifies that the proposed scheme (including the indicative layout and suggested mitigation), would bring noise levels to acceptable levels at the nearest noise sensitive receptors.

8.16.4 Lighting

Lighting was scoped out of the EIAR on the basis the application was to be submitted as a planning permission in principle. Industrial developments that operate 24 hours a day have the potential to give rise to nuisance in terms of artificial lighting. As noted below, a Light Impact Assessment has been requested by Environmental Health.

8.16.5 The Environmental Health service have raised no objections to the application, but have recommended a number of conditions requiring submission of:

- a further Noise Impact Assessment;
- CEMP covering noise, vibration, dust and artificial lighting during the construction phase;
- Light Impact Assessment; and
- Noise Management Plan.

8.16.6 Conditions have also been recommended requiring construction hours to be limited to 0700 – 1900 Monday to Friday, and 0800 – 1700 Saturdays; provision of acoustic bunds as identified in the NIA within the EIAR; maximum noise levels, provision of bunds (incorporated into phasing condition); and limitations on HGV movement hours. Subject to these conditions, the impact of the proposed development on the surrounding area in terms of potential pollution is considered to be suitable and complies with MLDP Policy EP14 and NPF Policy 23.

8.17 **Access and Parking**

MLDP Policy PP3 requires all development to be planned and co-ordinated with infrastructure to ensure that places function properly and proposal area adequately serviced by infrastructure and services, including roads, access, paths and parking, whilst MLDP Policy DP1 – Development Principles contains a number of criteria to ensure safe and suitable access and parking arrangements. With regard to NPF, Policy 13 – Sustainable Transport contains a number of criteria which aim to encourage, promote and facilitate development that prioritises sustainable travel and reduces the need to travel unsustainably.

8.17.1 Vehicular access to the site would be taken from the B9015 to the north of the site, with a new access formed. In order to accommodate this, the B9015 would be widened along the site frontage, with creation of a right hand turn lane into the site. Speed limits on approach to Rothes would have to be reduced to take account of the revised layout.

8.17.2 Traffic surveys were undertaken as part of the Transport Assessment within EIAR to establish a baseline (current) analysis, though historical data from the Department of Transport has also been used to take account of pre-pandemic traffic volumes/movements. Data comparisons show that traffic in the area was higher in 2021 than pre-pandemic levels of 2019.

8.17.3 During construction, traffic movements are estimated to be 34 vehicle movements per day (26 HGVs and 8 non HGV). The increase in total traffic associated with construction traffic on the local road network is low. A Construction Traffic Management Plan has been requested by the Transportation Manager as part of conditions applied to any planning permission in principle.

8.17.4 When operational and during standard operational procedures (Mon – Fri, 0600 – 1800 hrs) 62 HGV movements in and out of the site are predicted. However for one/two weeks during August/September (harvest) 118 HGV movements in and out of the site are predicted. With regard to non-HGV movements, the site is predicted to have 44 maximum staff working on a 12 hours rotational shift basis. Those vehicle movements are anticipated to be 18 vehicle arrivals during the weekday AM peak, with 20 arrivals and 18 departures during the weekday PM peak hour. The Transport Assessment has found predicated traffic volumes represent a negligible increase in traffic on the local road network, and that increase can be readily accommodated on the local road network.

8.17.5 As described under the Principle and Locational Justification section above, the overall decrease of HGV movements on the wider road network associated with

this proposal is estimated at 1.3 million miles per annum. This reduction in vehicle movements at a national level would be supported by NPF Policy 13 with regard to reducing the need to travel unsustainably by ensuring local distilleries have access to locally produce malt.

- 8.17.6 There are no continuous footway connections from the development site to the existing footway network within Rothes. The applicant's submission includes the assessment of several possible options for providing non-vehicular connectivity to the site from Rothes, this has identified a number of constraints including third party land issues, environmental and ecological constraints and engineering issues. Whilst the preferred route would see a continuous route alongside or set back from the B9015 which does not impact on the flow of traffic and avoids the need to cross the public road or walk within the carriageway, this would currently be unachievable. It is noted that should third party land become available in the future it may be possible to provide this.
- 8.17.7 As this option is not achievable, three options were presented by the applicant to provide pedestrian linkages for the site:
- Option 1 – Footway improvements and traffic calming along the B9015 towards North Street.
 - Option 2 – Footway improvements with signing and lining along a section of the carriageway of the B9015 towards North Street.
 - Option 3 – Southern path over Broad Burn, along former railway line between distillery warehouses and Rothes CoRDe connecting to the public road to Capertonich Cottages from New Street.
- 8.17.8 Option 1 requires the existing road width to be narrowed to one-way working at two locations to provide space for a continuous footway to be constructed within the existing carriageway avoiding third party land constraints. This option would act as a gateway traffic calming feature on the approach into Rothes which could improve safety for non-vehicular users travelling to both the development and the residential properties nearby. This option would however impact on the flow of traffic, which could result in vehicle delays.
- 8.17.9 Option 2 does not impact on vehicular traffic and would improve pedestrian connectivity between the existing residential properties and Rothes. Non-vehicular trips to the proposed development would however require to walk in the carriageway over a short section of approximately 20 metres (approx. 17 seconds) and 15 metres across an access to a residential property (approx. 13 seconds). Additional signage and road markings to mitigate for this are proposed.
- 8.17.10 Option 3 has been discounted by the applicant highlighting third party land ownership issues, as well as potential ecological constraints along the Broad Burn. Of the first two options, a preferred option has not been agreed at present however the proposals are considered sufficiently detailed at this stage to support an application for planning in principle. A condition has been placed requiring a detailed scheme to be provided as part of any subsequent AMC application.
- 8.17.11 Given the in principle nature of this application and the lack of a detailed layout of the site, a condition requiring a parking assessment is recommended to

inform car, HGV and cycle parking, as well as provision of EV charging to allow consideration to be given to parking provision at the site. The indicative plan shows there is sufficient space to accommodate parking within the site.

- 8.17.12 In light of the above considerations, the proposal is not considered to have an adverse impact on the road network in the local area, and complies with Policies DP1 and PP3, as well as NPF Policy 13.

8.18 **Archaeology**

NPF Policy 7 – Historic assets and places notes that where there is potential for non-designated buried archaeological remains to exist below a site, developers should provide evaluation of the site at an early stage. In this case, archaeological matters were scoped out of the EIAR, however the Regional Archaeologist has requested a condition be placed requiring a Written Scheme of Investigation be undertaken. Subject to this condition, the proposal is not considered to conflict with Policy 7.

8.19 **Digital Infrastructure**

To encourage, promote and facilitate the roll out of digital infrastructure NPF Policy 24 – Digital infrastructure supports development that incorporates appropriate, universal, and future-proofed digital infrastructure. The applicant has confirmed that such infrastructure is proposed as part of the development.

8.20 **High Pressure Gas Pipeline/Major Accident Hazard**

A high-pressure gas pipeline bisects the site on an east-west basis, running to the gas distribution station to the west of the site on North Street. The indicative layout takes account of its presence for the site layout. Scottish Gas Networks have raised no objections to the application on the basis a condition is applied ensuring there is no land disturbance in close proximity to the pipeline.

- 8.20.1 Identification as a major accident hazard requires consultation with the Health and Safety Executive. They have identified no reason to refuse planning permission for this application with regard to safeguarding. The proposal is therefore in compliance with NPF Policy 23 – Health and Safety, as well as MLDP Policy EP14 – Pollution, Contamination and Hazards.

Conclusion

This application has given rise to a number of material considerations to be taken into account. On balance, the development is largely in accordance with policies contained in the development plan. The siting of a malt processing facility on this site is justified in light of the lack of suitable alternative sites in Moray that meet the applicant's needs, as highlighted in the supporting information accompanying this application. Whilst it is located immediately outwith the settlement boundary of Rothes and thus is contrary to Policy EP6 – Settlement Boundaries, the benefits of the development to the local economy in terms of investment (£55 million), job creation (40 jobs) and environmental credentials of the proposal justify a departure from the Policy. The potential impacts of this proposal on the environment and infrastructure have been identified via EIAR submitted with the application. Any adverse impacts of the proposal can be mitigated appropriately. Approval is therefore recommended, subject to conditions.

REASON(S) FOR DECISION

The Council's reason(s) for making this decision are: -

The siting of a malt processing facility on this site is justified in light of the lack of suitable alternative sites in Moray that meet the applicant's needs, as highlighted in the supporting information accompanying this application. Whilst it is located immediately outwith the settlement boundary of Rothes (as defined in the Moray Local Development Plan 2020), the benefits of the development to the local economy and environment justify a departure from Moray Local Development Plan 2020 Policy EP6 – Settlement Boundaries.

The proposal is in accordance with all other aspects of the Moray Local Development Plan 2020 and National Planning Framework 4, and there are no material considerations that indicate otherwise.

Moray Council's assessment of the information presented within the EIA Report and other environmental information in relation to the development is contained within the Report of Handling. It is considered that the development will not have any significant impacts on the environment.

Moray Council is satisfied that other effects/issues can be addressed by way of mitigation. A detailed description of the proposed mitigation is contained within the EIA Report and the Report of Handling.

Monitoring is secured through conditions 12 – 16, 18 – 22, 24 – 28.

All documents can be viewed online at <https://publicaccess.moray.gov.uk/eplanning> and searching using the case reference number.

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