

Directorate for Planning and Environmental Appeals



## Report to Aberdeenshire Council

# FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009

## HUNTLY FLOOD PROTECTION SCHEME

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Report by Michael J P Cunliffe

- Site Address: Land to the north and west of Huntly, Aberdeenshire
- Promoting Authority: Aberdeenshire Council
- Flood protection scheme under section 60 of the Act
- Objectors: Mr John E Rhind and Mr Neil Duncan
- Date of hearing: 18 February 2015

Date of this report and recommendation: 27 February 2015

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# SUMMARY OF EVIDENCE

## Background

1.1 The Meadows area of Huntly is situated on low-lying ground on the north side of the town between the River Deveron and the Meadow Burn. It is susceptible to flooding from both sources. The flow in the Meadow Burn is greatly increased during flood events by water escaping from the Deveron upstream of the town in the vicinity of Milton. The Ittingstone Burn, which enters the Deveron in this area, plays a part in the flood mechanism by which water from the Deveron (and from the Ittingstone Burn itself) enters the Meadow Burn and flows eastwards to the Meadows.

1.2 Despite being part of the natural flood plain, the Meadows area was developed in the 1990s for housing, a nursing home and a caravan site. Flooding has occurred on at least four occasions since the development began, most recently in 2009 when nearly 50 properties were affected. The A96 trunk road and A920 were also flooded, and had to be closed.

1.3 The Council appointed Atkins Consulting Engineers to develop a scheme to provide the properties in the Meadows with protection against flood events up to a 0.5 percent annual exceedance probability (AEP) (1 in 200 years), with an allowance for future climate change. The scheme would involve constructing new embankments and raising existing embankments in both the Meadows and Milton areas, and constructing new culverts on the Meadow Burn and the Ittingstone Burn. A key feature of the scheme is that it would use agricultural fields to store water during flood events and limit the rate of flow in the Meadow Burn.

1.4 Having initially sought to progress the project through negotiation with affected landowners, the Council decided in December 2013 to promote a Flood Protection Scheme under section 60 of the Flood Risk Management (Scotland) Act 2009. The Scheme was advertised in January 2014 and attracted four objections. Two of these were subsequently withdrawn. The remaining objections, by Mr John E Rhind and Mr Neil Duncan, were the subject of the hearing required by Schedule 2 (paragraph 8) of the 2009 Act.

## The need for the Scheme, and the general principles of the Scheme

1.5 The Council maintains that the proposed works are necessary to provide an adequate level of flood protection to residents of the Meadows, who include vulnerable people living in the care home and in two special needs houses as well as the occupiers of nearly 50 other houses and the caravan site. The present flood defences provide residential properties with protection to a 10 percent AEP (1 in 10 years), with flooding of roads and other land occurring at 20 percent AEP (1 in 5 years). The proposed works would increase the level of protection to 0.5 per cent AEP (1 in 200 years) for the Meadows area, and 1 in 75 years for the public roads. An economic appraisal has shown that the benefits of the proposal would exceed the costs, when both are reduced to present values, by a ratio of 1.1:1. The estimated capital cost is £3.1 million.

1.6 The Council's consultants have examined alternative ways of improving flood protection, but have concluded that the proposals incorporated in the Scheme provide the best solution. The proposals have been discussed in detail with the Scottish Environment Protection Agency (SEPA), which has granted a licence under the Controlled Activities

Regulations. The proposals have also received planning permission from the Council. The need for a scheme under section 60 of the 2009 Act arises because the Council has been unable to secure the agreement of all the affected landowners to enter their land and carry out the works. The Council is therefore seeking the powers of entry conferred by section 79 of the Act.

1.7 Mr Rhind has indicated in writing, and confirmed at the hearing, that he does not wish to stand in the way of flood prevention measures which would alleviate the situation in the Meadows Estate. While maintaining that the situation arises from the actions of the Council's predecessors and was foreseen when planning permissions were granted, he accepts that the Scheme is now necessary. He is not proposing an alternative scheme, and he is not seeking modifications to the design of the Scheme proposed by the Council.

1.8 Mr Duncan in his written objection has not questioned the need for the Scheme or proposed an alternative. He has, however, expressed concerns about the Scheme's effects on his farming business. These are described in the next section of this report. By implication, Mr Duncan would favour modifications to the Scheme that would reduce those adverse effects, though he has not put forward any specific proposals.

### **Effects of the Scheme on agricultural land**

1.9 The Scheme would affect agricultural land in two ways. First, there would be the direct impact of constructing earthworks and other structures on the land, and taking access across land to do so. Second, there would be the periodic flooding of areas of farmland to a greater extent than occurs at present.

1.10 The areas of land required for new permanent engineering works, such as bunds and culverts, are relatively small. The Council is seeking to acquire these parcels of land by agreement. While the 2009 Act provides compulsory purchase powers in relation to a confirmed scheme, the exercise of those powers (in the absence of agreement to sell) would not be necessary since the Council could enter onto land and carry out the works using the powers granted under section 79.

1.11 The direct loss of agricultural land to accommodate works would not be on a scale likely to have a significant effect on farming operations or farm viability. Neither Mr Rhind nor Mr Duncan cites such effects as a basis for objection. Matters of access during and after construction are discussed below.

1.12 A central feature of the Scheme is the use of agricultural land to store floodwater. Two fields would principally be affected: the Meadow Field lying west of the Meadows Estate and forming part of Mr Rhind's holding, and the field between Arnhall Cottages and the Ittingstone Burn adjacent to the A920 which belongs to Mr Duncan. Plans produced for the Council show the extents of flooding that would occur at different return periods with the Scheme in place. A small part of the Meadow Field would flood at 50 percent AEP (1 in 2 years), about half the field would be under water with a 10 percent AEP (1 in 10 years) event, and most of the field would be flooded at the 0.5 percent AEP (1 in 200 years) level, though the extent would be only slightly greater than that which would occur anyway without the Scheme. The greatest increases in the extent of flooding of the Meadow Field would occur at the 10 percent and 4 percent AEP levels. The maximum flood extent in Mr Duncan's field would be reached at the 1 in 75 year level.

1.13 At the hearing Mr Rhind expressed concern about the risk that the trash screen to be constructed on the outlet culvert where the Meadow Burn exits the Meadow Field could become blocked by debris, thereby increasing the extent and depth of water in the field. The flooding of the Meadow Field would therefore be more frequent and extensive than the plans show. The Council acknowledges the risk, but would act in response to flood alerts by sending personnel to monitor the screen and manually remove blockages if necessary. The culvert would still operate at 50 percent screen blockage. Mechanical clearance has been considered, but dismissed on cost grounds. The bund between the Meadow Field and the river would be 600 millimetres lower than the bund between the field and the housing. In the last analysis, if the level of water did build up in the Meadow Field, the water would spill northwards into the Deveron. By that stage, however, most of the Meadow Field would be under water.

1.14 The Council confirmed at the hearing that the Meadow Field, under the Scheme, has been designed as a reservoir. In a 1 in 2 year flood, it would take about 4.8 hours to drain down; in a 1 in 200 year flood, around 40 hours. Mr Rhind expressed concern about the field becoming littered with plastic and other debris, as had occurred in previous flood events. He accepted, however, the Council's assurance that rubbish from the Deveron would not enter the field once the works are in place. He pointed out that the field is out of sight from Milton Farmhouse, and raised the possibility of relocating the farmhouse to higher ground with a view over the Meadow Field. The Council, however, considered that adequate warning of flood events could be given to farm operators to enable them to take precautions such as moving livestock.

1.15 The periodic flooding of the Meadow Field would have implications for the farming system adopted there, including the future management of livestock in the field. It is currently subject to a conservation management regime which gives it favourable status under the Single Farm Payment scheme, which imposes a requirement on all farmers who grow cereals to place a percentage of their arable area into an Environmentally Favourable Area. Mr Rhind drew attention to his offer, made in January 2013 and still on the table, to sell the whole of the Meadow Field to the Council. If the offer is not taken up, Mr Rhind maintains that the Scheme would give rise to substantial damage to his land for which he would be entitled to compensation under section 82 of the Act.

1.16 Mr Duncan in his written objection expressed concern about the adverse impact of the Scheme on his field lying to the east of Arnhall Cottages. This field is used for grazing, silage and spring barley. Mr Duncan has not had any issues with flooding of this land in the past, and is concerned that the Scheme would result in slow draining of floodwater and the growth of marsh grass and rashes in the field. In addition to the area of the field identified by the Council as liable to flood, Mr Duncan is concerned about waterlogging of other parts of the land with a long-term effect on its quality and productiveness. He considers that the overall effect on farm profitability could be significant in relation to the size of the farm.

1.17 Mr Duncan also expressed concern about the potential flood risk to his land and property to the south-west of the field directly affected. The Ittingstone Burn passes close to the farmhouse and steading. There has been no problem with flooding there in the past, but if the Scheme were to result in backing up of the burn, Mr Duncan would hold the Council liable for any resulting damage.

1.18 The Council is proposing to create a small flood storage area on Mr Duncan's field beside the A920. If this were omitted, the result would be flooding of the road and of

Mr Rhind's fields further east. The Council accepts that the field is likely to drain more slowly than the Meadow Field, and that land quality would be adversely affected. The Council proposes to compensate Mr Duncan for this. The Council does not consider that there is any risk of the farmhouse or steading being affected by water backing up in the burn. My site visit confirmed that these buildings stand on raised ground, and that any excess of water in the burn would be likely to spill over the A920 and lower-lying ground rather than affecting the buildings.

### **Scope for mitigation**

1.19 The storage of floodwater in the Meadow Field and in Mr Duncan's field beside the A920 is an integral feature of the Scheme, and any mitigation of the effects on these fields would come at the expense of increased flooding elsewhere. The Council does not consider that there is any scope for mitigation through altering the design of the Scheme. Mr Rhind confirmed at the hearing that he was not seeking any design changes, and Mr Duncan has not put forward any proposed modifications.

1.20 Mr Rhind identified at the hearing the importance of maintenance and management measures to ensure that the Scheme performed as intended and that actions by other parties did not increase flood risk. He drew attention to a cycle track that had been constructed without authorisation across the Meadow Burn to the west of Meadow Bridge. This had formed a barrier which exacerbated flooding. He also drew attention to an instance of dumping of debris near the burn by the Council's contractors. The Council accepted the need for active management and the implementation of good housekeeping measures.

### **Matters of access during and after construction**

1.21 Mr Rhind expressed concern about the track proposed to be constructed across the Meadow Field from the west to provide access to the bund on the south bank of the Deveron. He pointed out that the Meadow Field is subject to an environmental scheme for ground nesting birds, and that grazing is restricted from March to June. He questioned the effect of the proposed track on grazing use of the field.

1.22 The Council responded that the bulk of the traffic for the construction of the bunds would come from the east, and would not cross the Meadow Field. There would be limited use of the track during construction, and infrequent use for maintenance access after construction. The contractor would give plenty of notice to Mr Rhind, and the track would not be fenced other than temporarily. The surface would be in hardcore, and the junction with the public road would be constructed so as to make use of the existing gate and avoid disturbing the tree that stands nearby.

1.23 Mr Duncan in his written objection expressed concern about the possible loss of roadside access to his field from the A920. The Council confirmed that access to the field would be maintained by providing a gate from the proposed layby next to the road.

### **Other considerations**

1.24 Mr Rhind in his written objection raised a number of what might be described as 'process issues'. These included:

- The Council's failure to set and adhere to dates of entry, resulting in uncertainty which has affected farm management and finances;
- The potential conflict of interest arising from the Council's roles as a landowner, developer and grantor of planning consent; and
- Inadequacies of consultation by the Council and its consulting engineers with affected landowners.

The Council has acknowledged that it could have performed better in some of these respects. However, the delay in starting the Scheme has been the result of unwithdrawn objections and the inability to resolve these through negotiation.

1.25 Mr Rhind has also expressed concern about a number of aspects of the assessment of compensation, including the possibility that the council as landowner could benefit if the protection offered by the Scheme allowed undeveloped plots in the Meadows area to be sold with planning permission. Mr Rhind maintains that this should be taken into account in calculating the compensation due to him, since it would be the flooding of his field that would unlock the development value. However, matters of compensation, and of planning permission for development other than the Scheme itself, are outwith the scope of this report.

# CONCLUSIONS AND RECOMMENDATION

## The need for the Scheme, and the general principles of the Scheme

2.1 I find that the Scheme is necessary in order to provide an adequate level of protection to the Meadows Estate, which includes a care home, special needs housing, nearly 50 other houses and a caravan site. The Scheme would also improve the level of flood protection for public roads including the A96 and A920. It has a positive net present value and is acceptable to SEPA. The objectors have not sought to challenge the need for the Scheme or to put forward alternative proposals. A formal Scheme under section 60 of the Act is needed because it has not been possible to secure the necessary powers to enter land and carry out the works by agreement. Following confirmation of the Scheme, the Council would have powers under section 79 of the Act to enter onto land and carry out operations.

## Effects of the Scheme on agricultural land

2.2 As well as requiring small areas of land for permanent occupation by bunds, culverts and other works, the Scheme would increase the extent of flooding of the Meadow Field owned by Mr Rhind, and of the field opposite Arnhall Cottages owned by Mr Duncan. The storage of floodwater on these fields is an integral part of the Scheme, in order to reduce the risk of flooding of more vulnerable areas. The periodic flooding of the land would adversely affect its quality and would impact on both arable and livestock farming operations.

2.3 Section 82(2) of the Act provides that a local authority must compensate any person who has sustained damage in consequence of the carrying out of scheme operations, the subsequent maintenance of such operations, or the exercise of rights of entry. Under section 83(1), a person sustains damage if the value of their interest in land has been depreciated, or if they have been disturbed in their enjoyment of the land. It appears to me that the Scheme would have the effect of depreciating the value of both Mr Rhind's and Mr Duncan's interest in their land, and of disturbing their enjoyment of the land by placing restrictions on the ways it can be used. They would therefore be entitled to compensation from the Council. However, the scope, amount and timing of compensation are outside my remit. In the event of disagreement between the landowners and the Council, these matters fall to be determined under section 83(4) of the Act by the Lands Tribunal for Scotland.

## Scope for mitigation

2.4 The effects on agricultural land are an inevitable and intended consequence of the Scheme. There is no scope for mitigation by modifying the Scheme without reducing its effectiveness. However, it is important that the Council puts in place a regime of active management and maintenance following construction of the Scheme. This should include ensuring that culvert inlet screens are kept clear of debris, and channels are kept free of obstructions, to avoid the flooding of agricultural land becoming more frequent and extensive than the Scheme design intends.

## **Matters of access during and after construction**

2.5 A track across the Meadow Field is necessary to provide access to the bund on the south bank of the Deveron for construction and maintenance. The Council should ensure that the construction, use and fencing of the track are carried out so as to cause minimum disturbance to farming operations and wildlife. Access to the field adjacent to the A920 opposite Arnhall Cottages should be maintained at all times.

## **Other considerations**

2.6 The other matters raised by Mr Rhind in his written objection do not provide grounds for modifying or refusing to confirm the Scheme. However, the Council may wish to reflect on these matters in relation to its dealings with landowners in connection with any future flood prevention schemes.

## **Overall conclusion and recommendation**

2.7 I recommend that the Huntly Flood Protection Scheme be confirmed without modification.