



Report to the Scottish Ministers

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Report by Rob Huntley, a reporter appointed by the Scottish Ministers

- Case references: NA-ABS-043, ENA-110-2012 and ENA-110-2013
- Site Address: Land south west of Eskview Farm, St Cyrus, Montrose DD10 0AG
- Application for planning permission ref. APP/2015/3608 dated 25 November 2015, called-in by notice dated 19 August 2016
- The development proposed: change of use of agricultural land to form 10 stance caravan park (permanent halting site for gypsies/travellers) and touring gypsy/travellers site, formation of road and erection of boundary fencing/walls/gates, toilet block, washroom, day room/classroom, pump station and recycling point
- Appeals by Northesk Investments Limited against enforcement notices dated 3 September 2015 served by Aberdeenshire Council
- The alleged breach of planning control the material change in the use of the land from agricultural grazing land to a caravan site without the benefit of planning permission and
- Dates of site visits: 26 November 2015 and 8 December 2016

Date of this report and recommendation: 4 July 2017



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- 1. Application for planning permission for the change of use of agricultural land to form 10 stance caravan park (permanent halting site for gypsies/travellers) and touring gypsy/travellers site, formation of road and erection of boundary fencing/walls/gates, toilet block, washroom, day room/classroom, pump station and recycling point; and**
- 2. Appeals against 2 enforcement notices alleging the material change in the use of the land from agricultural grazing land to a caravan site without the benefit of planning permission**

At land North Esk Park (southwest of Esk View Farm), St Cyrus, Montrose

• Case references	NA-ABS-043, ENA-110-2012 and ENA-110-2013
• Case types	Enforcement appeals and called-in application for planning permission
• Reporter	Rob Huntley
• Applicant / Appellant	Northesk Investments Limited
• Planning authority	Aberdeenshire Council
• Other parties	SEPA, SNH, one MSP and the Grampian Gypsy Traveller Inter-agency Group, together with 45 (mainly local) objectors, as listed in Appendix 2
• Date of application	25 November 2015
• Date case received by DPEA	6 September 2016
• Method of consideration and date	Written submissions following my procedure notice dated 13 October 2016 and accompanied site inspections on 28 November 2015 and 8 December 2016
• Date of report	4 July 2017
• Reporter’s recommendations	<ol style="list-style-type: none"> 1. That planning permission be refused. 2. That both enforcement notices be modified by deleting the “6 months” given as the time for compliance following paragraph 5.15 in each notice, and replacing this with a period which elapses at the end of the first school year which begins after the date of Minister’s decisions, if those decisions are to dismiss the enforcement appeals. 3. Subject to that modification in each case, I recommend that both notices be upheld.

SUMMARY

Background

This report to Ministers is in respect of the development of land at St Cyrus, Aberdeenshire for the provision of a gypsy / traveller site. The facility, which exists and has been in operation since late 2013, provides pitches for permanent occupation and for temporary halting purposes. The development was undertaken without planning permission having been granted, and enforcement notices were issued by the council in that regard, against which 2 appeals remain outstanding.

The retrospective application for planning permission was considered at a meeting of the full Aberdeenshire Council on 28 April 2016, at which the council resolved that it was minded to grant planning permission, subject to conditions. The resolution commented:

“that the reason for the decision was the overriding need for touring and permanent halting sites for travellers in Aberdeenshire, and the Council’s duties in terms of Section 149 of the Equality Act, 2010, to advance equality of opportunity between those who share a protected characteristic and persons who do not share it, and to foster good relations between those who share a protected characteristic and persons who do not share it.”

SEPA had objected to the granting of planning permission on flooding grounds so, following that resolution, the council was required to refer the application to Ministers in accordance with the provisions of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009. By a direction dated 19 August 2016, Ministers required the application to be referred to them for determination. Directions dated 26 August 2016 followed, by which Ministers recalled the outstanding enforcement appeals for their own decisions.

This report therefore considers the called-in application for planning permission at the site and the 2 enforcement appeals.

The site and surroundings

The application / appeals site occupies an area of 1.8 Hectares of level ground, approximately 1.8 kilometres to the south-west of the village of St. Cyrus. It forms part of a low-lying strip of coastal land bounded by sand dunes and marshland forming part of the St Cyrus National Nature Reserve to the northeast and the estuary of the River North Esk to the south.

To the north-west the ground rises steeply as a vegetated bank up to the former railway line with the A92 beyond. This bank forms part of the St. Cyrus & Kinnaber Links Site of Special Scientific Interest (SSSI). As part of the creation of the facility, earth-moving operations have created a bund at the foot of the bank along the north-west edge of the land, part of which encroaches into the SSSI. To the south-east, adjacent to the river and just beyond a listed former railway viaduct which overlooks the site, is a fishing lodge on the river bank. Eskview Farm, a residential and B&B property with outbuildings and paddocks, lies immediately to the north of the site.

Prior to the formation of the gypsy/traveller site, the application site comprised a relatively flat field used for grazing, primarily by horses. The level of the site has been raised, creating a platform on which the gypsy/traveller site stands.

The application for planning permission

Prior to the submission of the application, the council provided a screening opinion for the purposes of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. This indicated that the development was not such as to require Environmental Impact Assessment.

The development for which planning permission is sought in the called-in application is described as:

“Retrospective change of use of agricultural land to form 10 stance caravan park (permanent halting site for gypsies/travellers) and touring gypsy/travellers site, formation of road and erection of boundary fencing/walls/gates, toilet block, washroom, day room/classroom, pump station and recycling point.”

The site is bounded on all sides by substantial timber fencing about 2 metres high, with 2 gated accesses set within curving brickwork entrance features connecting to the adjacent public road. The north-eastern part of the site provides a temporary halting facility for touring vans laid out as some 19 pitches, each of which is provided with a mains electrical connection. Communally provided toilet, washing, recycling and laundry facilities are located in a group of 3 centrally located buildings of modular construction, together with a water supply taken from a private ground pump.

The south-western part of the site is divided into 10 individual plots for permanent occupation bounded by rendered masonry walls about 1 metre high. Each of the plots is provided with a hardened surface, mainly of crushed stone or other granular material. Mobile homes, set on raised plinths, are in place on the majority of the 10 plots, with several also accommodating smaller touring vans and free-standing sheds or chalets. A private sewerage system serves the development as a whole.

Policy and guidance

The development plan consists of the Aberdeen City and Shire Strategic Development Plan, approved by Scottish Ministers in March 2014 (SDP), and the Aberdeenshire Local Development Plan 2017, together with its Supplementary Guidance, adopted by the Council in March 2017 (LDP).

The SDP and the LDP both contain policies concerning development and flood risk. These are consistent with national policy on such matters. In this regard SPP provides for the application of a precautionary approach to flood risk from all sources, the avoidance of development in areas liable to flood and the promotion of flood reduction. In this context, paragraph SPP 256 resists prevent development which would have a significant probability of being affected by flooding, or would increase the risk of flooding elsewhere.

Caravans and mobile homes for residential occupation are amongst the categories of use defined as most vulnerable, which national policy indicates are not generally suitable in

areas at medium to high risk of coastal or watercourse flooding. Additional development is also resisted in undeveloped and sparsely developed areas at risk of flooding. SPP paragraph 265 resists land raising, other than in exceptional circumstances, and only then where it is shown to have a neutral or better impact on flood risk outside the raised area.

The cases for the parties

The case for the applicant

There is an identified and unmet need for a caravan site for gypsy/travellers in the area. The development is well managed and is home to residents including some 14 children who attend school and nursery locally. Refusal of the planning application would potentially result in the eviction of the residents and would tend to lead to an increase in unauthorised encampments.

The provisions of the European Convention on Human Rights (ECHR), brought into Scottish law by the Human Rights Act 1998, support the granting of planning permission. The potential loss of resident's homes would run counter to the respect for private and family life of residents guaranteed by Article 8. The provisions of Article 14, in respect of discrimination, are of direct relevance as residents are part of the gypsy/traveller community. The right to education, enshrined in Article 2 of the First Protocol, would be affected if attendance at local schools by pupils resident at the site were to be disrupted, as it would be if they could no longer reside at the site.

The applicant considers that the development is on the whole in accordance with the development plan, and that the material considerations point in favour of granting planning permission on the application.

The site, post-development, remains free from flooding in response to a 0.5% AEP flood event. Planning conditions should be attached to any grant of planning permission to secure appropriate on-site flood risk management including through implementation of a Flood Emergency Plan. Restoration measures, involving removal of the bund, elimination of uncharacteristic vegetation and reinstatement of the previous species mix, can be satisfactorily undertaken to reinstate the SSSI to its previous state.

Overall, any adverse effect of the development is of limited significance and capable of being satisfactorily addressed by measures that can be secured by planning conditions. The risk of flooding at the site, in its post-development state, is not such as to justify withholding planning permission. In any event, any technical infringement of national or development plan policy in this regard is outweighed by the pressing need to meet the acknowledged shortfall of provision of permanent and halting sites for the gypsy and traveller community

Aberdeenshire council's position

Aberdeenshire Council supports the granting of planning permission. It considers that there is an overriding need for touring and permanent halting sites for travellers in Aberdeenshire. Section 149 of the Equality Act, 2010 imposes a duty to advance equality of opportunity between those who share a protected characteristic and persons who do not share it, and to foster good relations between those who share a protected characteristic and persons

who do not share it. The council does not have to follow the recommendation of officials, which was to refuse planning permission.

In this case the council's judgement is that, notwithstanding the recommendations of the council's coastal and flooding team and SEPA, the need for touring and permanent halting sites for travellers is such as to outweigh the objections on flooding and other grounds. Planning permission should therefore be granted, subject to conditions.

SEPA's objection

SEPA considers that the applicant has not demonstrated that the site and its access is not at medium to high risk from flooding. The proposal is new development on land at risk from flooding, within the functional flood plain. The application site in its pre-unauthorised development state, together with the access route to it, is located in an undeveloped and sparsely developed area at medium to high risk of flooding contrary to SPP paragraph 263. The land raising at the application site, without compensatory storage, has increasing flood risk elsewhere, in conflict with SPP paragraph 265.

The establishment of a new caravan park is a highly vulnerable form of development specifically identified as being unsuitable for such locations. Because of the vulnerability categorisation of the development SPP confirms that the proposals should be assessed against not just a 1:200 year flood event but the more stringent 1:1000 year event.

The flood risk assessment (SLR FRA April 2016) submitted by the applicant in support of application does not comply with guidance set out within SEPA's Technical Guidance for Stakeholders (June 2015), because best practice set out in the Flood Estimation Handbook has not been followed. SEPA does not consider that the proposals have been subject to appropriate up to date flood risk assessment but it considers that enough assessment has been undertaken to demonstrate that the development conflicts with flooding policy set out in SPP and the development plan.

The 2 flood events that have occurred since the submission of the application for planning permission (30 December 2015 and 7 January 2016) support SEPA's view that the site is at significant risk of flooding. The former event involved attendance at the site by the emergency services, including Police, Fire and Rescue and Coastguard and partial evacuation of the site took place at that time.

Other consultee responses

Scottish Natural Heritage (SNH) advises that if planning permission is to be granted, measures should be put in place to secure the restoration of the affected part of the St Cyrus and Kinnaber Links Site of Special Scientific Interest (SSSI). Implementation of the measures outlined in the restoration strategy previously submitted by the applicant, which SNH is in agreement with, should be secured.

The Grampian Gypsy/Traveller Inter-agency Group supports the granting of planning permission to allow retention of the development. There is an identified need for accommodation for gypsy/travellers in north-east Scotland which the facility helps to meet. The council's housing service expresses similar sentiments, commenting that the development helps meet housing need as detailed in the council's Housing Need and Demand Assessment and its Local Housing Strategy.

Representations by interested parties

Some 45 mainly local objectors made representations to the council at application stage. In addition to raising concerns in terms of flooding, the adequacy of drainage provision and nature conservation, which largely reflect the matters raised by SEPA and SNH, the main topics raised in those representations concerned; amenity effects, including in terms of noise, overlooking and privacy; visual impact; traffic and road safety considerations; the need for the development in a coastal location; effect on the setting of the nearby B-Listed North Esk railway viaduct; education capacity; stability of the adjacent embankment; water supply; loss of agricultural land, and tourism effects.

The reporter's assessment

The main determining issue in the application for planning permission is whether the development is in conflict with the development plan and national policy in flooding terms, and if so whether any such conflict is outweighed by the need for the development.

I find SEPA's criticisms of the applicant's approach to the assessment of flood risk to be persuasive. The focus, in the 2016 FRA, on assessment of the propensity of the site to flood in its present state with raised ground levels, is not consistent with the approach set out in SPP. Not taking full account of the small watercourse flowing down the embankment towards the site and around its northern edge reduces the reliance that can be placed on the findings of the 2016 FRA.

Although the flood events that occurred at and in the immediate vicinity of the site in December 2015 and January 2016 cannot be equated with certainty to any particular return frequency, these are strongly suggestive of the site being at considerable risk of flooding. That this occurred after the raising of the level at the site as part of the implementation of the development reinforces my conclusion that the site is properly to be regarded as at medium to high risk of flooding, and that the development is in conflict with national policy in this regard.

In view of the vulnerability of caravans and mobile homes to flooding, and in the light of the precautionary approach required by SPP, it would be unsafe to consider that the risk of flooding is outweighed by the contribution that the site currently makes towards meeting the undoubted need for gypsy / traveller accommodation in the locality. The SDP and the LDP follow essentially the same approach to flood matters as SPP, in resisting developments on land at an unacceptable risk from coastal or river flooding except in exceptional circumstances. The application is contrary to Policy C4 of the LDP and with Supplementary Guidance LSD8: Flooding and Erosion, associated with the predecessor 2012 LDP.

The visual impact of the development on the local landscape is significant. The cluster of mobile homes, outbuildings, touring vans and facilities buildings, set within a largely hard surfaced site is incongruous within this sparsely developed coastal strip.

The development intrudes into close and more distant views of the B-listed former railway viaduct, and is prominent in views obtainable at high level from the public foot and cycle route that passes across it. In both these respects the development fails to preserve the setting of the listed building, contrary to the duty set out in section 14 of the Planning (Listed Buildings and Conservation Areas) Act 1997.

The effects of the development on nature conservation interest at the SSSI, on highway matter and in relation to water supply are not such as to themselves justify withholding planning permission. Conditions could be attached to a planning permission which could ensure a satisfactory outcome in these respects.

The enforcement appeals

In both cases the appeals against the enforcement notices are made on the statutory grounds (f) (that the steps required by the notice to be taken are excessive), and (g) (that a longer period for compliance should be given than the 6 months stated in the notice). It is open to Ministers to grant planning permission on the called-in application, but not in response to the enforcement appeals. The option of substituting lesser requirements by modifying the enforcement notices is only available where the express purpose of the notices is to remedy injury to amenity. In this case, the notices were issued to remedy the breach of planning control comprising the change of use of the land to use as a caravan site. No lesser steps, such as would enable continuation of the caravan site use, would achieve the purpose of the notice. The enforcement appeals cannot therefore be upheld on ground (f).

A number of children currently resident at the site attend local schools and their education would potentially be disrupted with cessation of the caravan site use. This would be undesirable and not in the best interests of the children. Seeking to minimise such adverse consequences would be consistent with the provisions of the ECHR and the EA.

To allow sufficient time for orderly arrangements to be made to avoid undue disruption to the schooling of pupils resident at the site, the period for compliance with the requirements of the notices should be extended. Extending the compliance period to encompass the whole of the next full school year following decisions on the enforcement appeals would strike an appropriate balance between remedying the breach of planning control in a timely way, and minimising educational and community disruption. A longer compliance period would give certainty to all parties (the appellant, site residents, the council and others), as to the eventual outcome at the site, in the event that Ministers' decision on the called-in application for planning permission is that permission should be refused. An extended compliance period would be a positive response to the ECHR and EA considerations raised by the appellant.

The appeals against the enforcement notices should be allowed on ground (g), and the notices modified to give a longer period for compliance. Subject to that modification, the notices should be upheld.

Conclusions

The application for planning permission

The application development gives rise to substantial risk to life and property on account of the propensity of the site to flood. I do not consider that the establishment of a flood emergency plan as proposed by the applicant can sufficiently ameliorate the level of risk, bearing in mind the serious consequences arising from potential flooding. I therefore

conclude that the development conflicts with national policy on flooding, as set out in SPP and elsewhere, and with the relevant provisions of the adopted and previous LDPs.

I accept that the provision of facilities and accommodation for gypsies and travellers at the site meets an identified need in the council's area and I acknowledge that this is a significant benefit to which I attach considerable weight, bearing in mind the vulnerable position of the minority gypsy/traveller community. However, I do not consider that this outweighs the risk to the occupants of the development arising from flooding.

The harm caused by the development in terms of nature conservation and visual impact, although less significant than the flooding considerations, are nevertheless factors which weigh against the application development.

Overall, I consider that the development conflicts with the provisions of the development plan, and also with national policies on flooding. I therefore conclude that retrospective planning permission should not be granted for the development specified in the application.

If Ministers are, nonetheless, minded to grant permission conditions should be attached as set out at Appendix 3 to this report. These address the matters that the council suggests should be the subject of controls in this way, with which the applicant broadly accepts.

The enforcement notice appeals

I have found that both enforcement notices are sufficiently clear and unambiguous such that there is no basis to hold that the notices are nullities. I also find that the council's decision to issue the notices was neither premature nor unreasonable, such as to cast doubt over whether the council properly exercised its duty to consider whether it was expedient to issue the notices. In any event, any challenge to the lawfulness of the council's decision to issue the notice on those grounds would be matters for consideration by the courts.

I conclude that the appeals on ground (f) against both enforcement notices should not be upheld. In response to the ground (g) appeals, I consider it is appropriate to minimise, as far as possible, disruption to the education of school pupils resident at the site. I therefore conclude that a longer period for compliance should be given than the 6 months specified in the notices as issued. This would be consistent with the provisions of Article 2 of the First Protocol of the ECHR concerning the right to education. The period for compliance should, in both notices, be extended to encompass a full school year from the date the notices come into effect if they are upheld in Ministers' decisions.

Recommendations

The application for planning permission

I recommend that planning permission be refused for the development which is the subject of the called-in application.

In the event that Ministers are nevertheless minded to grant planning permission, I recommend the attachment of the conditions listed in Appendix 3 to this Report.

The enforcement notice appeals

I recommend that both notices be modified by deleting the “6 months”, given as the time for compliance following paragraph 5.15 in each notice, and replacing this with a period which elapses at the end of the first school year which begins after the date of Minister’s decisions, if those decisions are to dismiss the enforcement appeals. Subject to that modification, I recommend that both notices be upheld.

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DPEA case references: NA-ABS-043,
ENA-110-2012
and ENA-110-2013

The Scottish Ministers
Edinburgh

Ministers

In accordance with my minute of appointment dated 19 October 2016, I conducted an accompanied site visit on 8 December 2016 in connection with a retrospective application for planning permission for the establishment of a gypsy/traveller caravan site on land to the south west of Esk View Farm, St Cyrus, Montrose. Aberdeenshire council had resolved to grant planning permission on the application, but was required to refer it to Ministers in view of an unresolved objection on flooding grounds by SEPA. [By notice dated 19 August 2016](#) Ministers directed, pursuant to Section 46(1) of the Town and Country Planning (Scotland) Act 1997, that the application be referred to them for determination. The reason given by Ministers for this Direction was the proposed development's potential conflict with national policy on flooding.

I had undertaken a previous accompanied visit to the site on 28 November 2015. That was in connection with appeals against 3 enforcement notices previously issued by Aberdeenshire council, all of which related to the establishment of a gypsy/traveller caravan site on the land. I found that one of the 3 notices (relating to the formation of a "bund" at the site) was defective so as to be a nullity. DPEA accordingly wrote to the parties on 8 December 2015 advising that no further action could be taken on that appeal.

During consideration of the enforcement appeals, Northesk Investments Limited (the appellant in those cases and the applicant in respect of the called-in application), requested that my consideration of the appeals be held in abeyance. This was to give the council time to consider an application for planning permission for the caravan site development at the site, which was registered by the council in early December 2015. The council indicated it was content for this to be done and I accordingly agreed to sists in respect of the enforcement appeals. As a grant of planning permission would have effectively negated the enforcement notices, such that those appeals would not have needed to be decided, I agreed to an extension of the period of abeyance.

The council subsequently resolved to grant planning permission on the application for planning permission. Notwithstanding its resolution, the council was unable to grant planning permission at that time. SEPA had raised objection on flooding grounds, which it had not withdrawn. The council was therefore required to refer the application to Ministers.

By Directions dated 26 August 2016, Ministers recalled the enforcement appeals for their own decisions (refs ENA-110-2012 and ENA-110-2013). This was so that those appeals

could be considered in conjunction with the called-in application for planning permission (ref NA-ABS-043).

By [letters dated 13 October 2016](#) I requested further written submissions from the applicant, the council and SEPA on flooding matters. This was to assist me in formulating recommendations to Ministers on the called-in application, bearing in mind the reason given by Ministers for the call-in.

My report therefore considers the called-in application for planning permission at the site and the 2 remaining enforcement appeals. It takes account of the written statements, further written submissions and other documents lodged by the main parties, as well as the representations made to the council during its consideration of the application.

1: BACKGROUND

1.1 This report to Ministers is in respect of the development of land at St Cyrus, Aberdeenshire for the provision of a gypsy / traveller site. The facility, which exists and has been in operation since late 2013, provides pitches for permanent occupation, and for temporary halting purposes, in distinct areas of the overall site. The development was undertaken without planning permission having been granted, and enforcement notices were issued by the council in that regard, against which 2 appeals remain outstanding. A series of applications for retrospective planning permission for substantially the same development have been made to Aberdeenshire Council. Some of these were withdrawn prior to decisions being taken and others resulted in planning permission being refused. The council resolved to grant planning permission on the most recent of the applications, notwithstanding the enforcement notices that it had previously issued, and which had not been withdrawn.

1.2 Work commenced at the site in September 2013 in connection with the establishment of a caravan site without the benefit of planning permission. The council issued a Temporary Stop Notice in respect of the work and obtained an Interdict from Stonehaven Sheriff Court, but work continued on site nevertheless. Two retrospective applications for planning permission were submitted to the council, in September and November 2013. These sought planning permission for the establishment of permanent caravan stances in the southwestern part of the overall site, and for a touring site in the north-eastern part, respectively (application references APP/2013/3099 and APP/2013/3824).

1.3 The council issued an enforcement notice in October 2013 in respect of the site. The notice was not appealed and it therefore became effective. That notice is not amongst the matters to which this report relates, but I understand that its requirements have not been complied with. The planning applications submitted in September and November 2013 were due to be determined by the council under powers delegated to officers, but both applications were withdrawn before decisions were taken on them.

1.4 In September 2014 two further applications for planning permission at the site were made to the council. These similarly sought planning permission for a caravan park containing 8 permanent stances, (reference APP/2014/3358), and a touring caravan site together with a further 2 permanent stances (reference APP/2014/3360), respectively. The council refused to grant planning permission on both applications on 30 April 2015. No appeals were made against those refusals of planning permission.

1.5 The Council then issued 3 enforcement notices, all of which were appealed and came before me. The notices were in respect of the whole site, but 2 of them were directed essentially at the caravan site development involved in each of the applications refused in April 2015. The third notice was in respect of operational development involving earthworks leading to the creation of a bund along the north-western boundary of the overall site. Following my site inspection on 28 November 2015, I found that the “bund” notice was defective so as to be a nullity. DPEA accordingly wrote to the parties on 8 December 2015 advising that no further action could be taken on that appeal (DPEA reference ENA-110-2014). At around the same time as my site inspection, a further application for planning permission was submitted to the council (application reference APP/2015/3608). In order to give time for the council to consider that application, the appellant requested that my consideration of the 2 remaining enforcement appeals be held in abeyance. The council

indicated it was content for this to be done and I accordingly agreed to assist in respect of the 2 enforcement appeals.

1.6 The council's Scheme of Delegation required the application to be determined by full council but in accordance with the council's normal procedure, the view of the council's Kincardine and Mearns area committee was first sought. A report was accordingly presented to the area committee, with an officer recommendation that the application be refused for 4 reasons, including reference to flooding matters. The area committee endorsed that recommendation and each of the 4 reasons. The matter was then considered at a meeting of the full Aberdeenshire Council on 28 April 2016. The council resolved that it was minded to grant planning permission, subject to conditions, commenting:

“that the reason for the decision was the overriding need for touring and permanent halting sites for travellers in Aberdeenshire, and the Council's duties in terms of Section 149 of the Equality Act, 2010, to advance equality of opportunity between those who share a protected characteristic and persons who do not share it, and to foster good relations between those who share a protected characteristic and persons who do not share it.”

1.7 SEPA had objected to the granting of planning permission on flooding grounds so, following that resolution, the council was required to refer the application to Ministers in accordance with the provisions of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009. That was done on 28 June 2016, and by a direction dated 19 August 2016 Ministers required the application to be referred to them for determination. Directions dated 26 August 2016 followed, by which Ministers recalled the outstanding enforcement appeals for their own decisions.

1.8 This report therefore considers the called-in application for planning permission at the site and the 2 enforcement appeals. It takes account of the written statements, further written submissions and other documents lodged by the main parties, as well as the representations made to the council during its consideration of the application.

2 THE SITE AND SURROUNDINGS

2.1 The application / appeal site occupies an area of 1.8 Hectares of level ground, approximately 1.8 kilometres to the south-west of the village of St. Cyrus. It forms part of a low-lying strip of coastal land which is bounded by sand dunes and marshland forming part of the St Cyrus National Nature Reserve to the northeast (with the North Sea beyond); the estuary of the River North Esk to the south; and a steeply sloping brae (tending to cliffs further to the north) forming its north-western edge.

2.2 The site abuts the unclassified road that branches east off the A92 Stonehaven to Montrose Road just before it crosses the River North Esk, which marks the boundary between Aberdeenshire and Angus Council areas. The unclassified road drops down and passes underneath the former railway viaduct (now part of the Nortrail coastal path) then travels past the site towards the visitor centre and beach access at the St. Cyrus National Nature Reserve located approximately 1.5km further to the north-east. Prior to the formation of the gypsy/traveller site, the land comprised a relatively flat field used for grazing, I understand primarily by horses.

2.3 To the north-west the ground rises steeply as a vegetated bank up to the former railway line with the A92 beyond. This bank, which encloses the site on this side and extends north-eastwards, forms part of the St. Cyrus & Kinnaber Links Site of Special Scientific Interest (SSSI). Across the unclassified road from the site to the east is open flat agricultural land which extends down to the River North Esk, close to where it discharges into the North Sea. Further to the south-east, adjacent to the river and just beyond the viaduct, lies a fishing lodge on the river bank. Immediately adjacent to the site, and sharing a boundary with it on the north side, is a residential and B&B property called Eskview Farm. This consists of a single storey house with outbuildings and paddocks. A minor watercourse/drainage ditch issues at high level onto the steep slope above the north-west side of the site and flows, along a partly culverted route, around its northern boundary and through the curtilage of Eskview Farm, before entering a roadside ditch at the frontage of that property.

3 THE APPLICATION FOR PLANNING PERMISSION

3.1 Prior to the submission of the application, the applicant requested the council to provide a screening opinion for the purposes of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. In a letter to the applicant's agent dated 4 November 2015, the council stated its opinion that the development was not such as to require Environmental Impact Assessment. The development to which the application relates had been undertaken prior to the submission of the application. Section 33(1) of the Town and Country Planning (Scotland) Act 1997 enables planning permission to be granted for development carried out before the date of the application.

3.2 The development for which planning permission is sought in the called-in application is described as:

“Retrospective change of use of agricultural land to form 10 stance caravan park (permanent halting site for gypsies/travellers) and touring gypsy/travellers site, formation of road and erection of boundary fencing/walls/gates, toilet block, washroom, day room/classroom, pump station and recycling point.”

The application was accompanied by drawings and a series of supporting documents which are listed in Appendix 1.

3.3 During consideration of the application, principally in response to representations by SEPA on flooding and related matters, the applicant submitted further and revised material on the subject of flood risk. These additional submissions are also identified in Appendix 1.

3.4 The nature and appearance of the site, and the elements of built development on it, was substantially the same at the times of my site inspections in November 2015 (in respect of the enforcement appeals) and December 2016 (following the call-in of the application for planning permission). The overall site is bounded on all sides by substantial timber fencing about 2 metres high, with 2 gated accesses set within curving brickwork entrance features connecting to the adjacent public road. The overall site comprises 2 distinct elements. The north-eastern part provides a temporary halting facility for touring vans, with the south-western part being divided into 10 individual plots for permanent occupation. A bituminous surfaced roadway connecting the 2 access points passes through the site, giving access to the touring part of the site and each of the 10 permanent plots.

3.5 The touring element is laid out to provide some 19 pitches, each of which is provided with a mains electrical connection served from a substation sited in the northeast corner of the site. Communally provided toilet, washing, recycling and laundry facilities are located in a group of 3 centrally located buildings of modular construction, together with a water supply taken from a private ground pump. A private sewerage system serves the development as a whole.

3.6 The 10 permanent plots are separated from each other and from the central accessway by rendered masonry walls a little over one metre high, with each of the areas enclosed being provided with a hardened surface. In the majority of plots this is of crushed stone or other granular material, with several of the plots also having areas of block paving. At the time of my 2 site inspections mobile homes, set on raised plinths, were in place on the majority of the 10 plots. Several of the plots also accommodated smaller touring vans and free-standing sheds or chalets. The site photographs dated March 2015, provided as

part of the application documents, and the council's photographs dated October 2015, illustrate these elements and the character of the development.

4 POLICY AND GUIDANCE

4.1 The development plan consists of the Aberdeen City and Shire Strategic Development Plan, approved by Scottish Ministers in March 2014 (SDP), and the Aberdeenshire Local Development Plan 2017, together with its Supplementary Guidance, adopted by the Council in March 2017 (LDP). At the time of submission of the application and the council's resolution to grant planning permission, the previous 2012 LDP remained in force, with its emerging replacement being then in the process of examination. Where appropriate in the interests of clarity I make reference to any relevant provisions of the now replaced 2012 LDP, although I recognise that this does not now have development plan status.

4.2 No specific provisions of the SDP have been drawn to my attention as being of particular relevance to the development at the site. However, I note that it does address aspects of flood risk of relevance to the application.

Aberdeen City and Shire Strategic Development Plan

4.3 Under the heading "Sustainable development and climate change", the approved SDP explains in paragraph 4.11 that:

"Areas of Aberdeen and Aberdeenshire are already at risk from flooding, but increased risk comes about through changing and more unpredictable weather patterns and rising sea levels. Avoiding flood risk is an important measure to adapt to climate change. We will need to take account of the scale of these changes when we consider what new developments should be built and where they should be located."

4.4 In this context, the SDP establishes a target, expressed in paragraph 4.17 in the following terms:

"To avoid developments on land which is at an unacceptable risk from coastal or river flooding (as defined by the 'Indicative River and Coastal Flood Map for Scotland' or through a detailed flood risk assessment), except in exceptional circumstances"

The paragraph goes on to list ways in which the targets can be met, and in relation to flooding matters states:

"Local development plans should not identify sites for new development which are at an unacceptable risk from flooding, except for brownfield sites which have appropriate flood prevention measures in place. Unacceptable risk will normally be more than a 1 in 200 (0.5%) chance of a flood happening in any year, although this will vary with the type of development being proposed."

Aberdeenshire Local Development Plan

4.5 The 2017 LDP defines, as did its 2012 predecessor, a "Coastal Zone" within which Policy R1 provides that housing and employment development opportunities are to be significantly restricted. The application / appeals site is within the defined coastal zone, which is shown in detail in the council's April 2017 Supplementary Guidance 4 "The Coastal Zone". Policy R1 makes clear that the only development that will be allowed in the coastal zone is that which is essential, cannot be located elsewhere, and where its social and economic benefit outweighs any adverse environmental impact. In this context, the policy

makes specific mention of the need to ensure no significant adverse impacts on natural coastal habitats, and stresses that great care must be taken to assess flood risk.

4.6 LDP policy H4 makes clear that the establishment or extension of residential caravan parks is not generally supported, but policy H5 addresses the provision of gypsy/traveller sites. Certain of the settlement statements of the LDP identify provision in this respect. Within the Kincardine and Mearns part of Aberdeenshire, provision for gypsy/traveller sites is made only in the settlement statement promoting the new town to be developed at Chapelton to the south of Aberdeen, so this part of policy H5 is not supportive of the application development.

4.7 However, policy H5 also establishes the approach to be adopted in respect of proposals for gypsy/traveller facilities on sites other than those allocated in the LDP. It provides that permanent or temporary halting sites for gypsies and travellers on unallocated sites will generally be approved, where there is a proven need, and subject to there being no appreciable detracting from the character, appearance or amenity of the area. Such proposals are also required to provide a secure environment, access to essential services and to employment, education and other community infrastructure, and the main road network. In terms of need, the policy explains that developers of private gypsy/traveller sites for their own use do not have to prove a specific need for their proposals but the remaining policy tests must be met.

4.8 Policy C4 of the LDP is concerned with flooding issues. It requires flood risk assessments to be provided in connection with development in the medium to high category of flood risk (0.5%-10% annual probability or 1 in 200 years to 1:10 years), as well as in areas of lower annual probability where other factors indicate a potentially heightened risk. Development is to avoid areas of medium to high risk, the functional floodplain and other areas where risks are otherwise heightened, except in certain defined circumstances. None of these circumstances apply to the application development. The policy also requires that development must not increase the severity of flood risk elsewhere, such as by altering flood storage capacity or the pattern and flow of flood waters.

4.9 Supplementary Guidance (SG) on flooding aspects was adopted by the council in connection with the 2012 LDP (SG LSD8: Flooding and Erosion). SEPA makes reference to this document in its representations. With the adoption of the 2017 LDP the 2012 SG is no longer part of the development plan and there is no direct equivalent amongst the suite of 2017 SG documents. However, I note that much of the content of the SG replicates that set out in Scottish Planning Policy.

4.10 Considerations of natural heritage are addressed in LDP policy E1. This provides that new development is not to be allowed where it may have an adverse effect on a nature conservation site designated for its biodiversity or geodiversity importance, except in cases of overriding public importance and there is no alternative solution. In the case of an internationally designated nature conservation site, development is not to be allowed where it may have an adverse effect on its integrity. For nationally designated sites the objectives of designation and the overall integrity of the site are not to be compromised, unless any significant adverse effects are clearly outweighed by social, environmental or economic benefits of national importance. For other recognised nature conservation sites the public benefits of a proposal must clearly outweigh the nature conservation value of the site.

4.11 In the context of this policy, the application site lies within local nature conservation site number 85, St Cyrus, identified in the councils adopted April 2017 Supplementary Guidance 5 "Nature Conservation Sites". In that document the overall nature conservation site is described as:

"Extensive coastal site with geological and geomorphological features. Dune, coastal grassland, saltmarsh, maritime grassland and rocky shore. Woodland within the steep dens. Botanically rich."

That nature conservation site encompasses the St Cyrus and Kinaber Links Site of Special Scientific Interest, into part of which the application site encroaches along its north-western edge. The nature conservation site also encompasses the St Cyrus National Nature Reserve, but no part of the application site is covered by that designation.

National policy on flooding

4.12 Scottish Planning Policy 2014 sets out, in paragraphs 254 to 268, national policies relevant to "Managing Flood Risk and Drainage". Paragraphs 255 and 256 identify, as policy principles to be applied, the adoption of a precautionary approach to flood risk from all sources, flood avoidance and flood reduction. In this context, paragraph 256 indicates that the planning system should prevent development which would have a significant probability of being affected by flooding, or would increase the risk of flooding elsewhere.

4.13 SPP paragraph 263 sets out a flood risk framework to guide development. This recognises that vulnerability to flooding varies between different categories of development, such that less vulnerable types of development may be acceptable in locations at greater risk of flooding. The paragraph identifies the categories of development not generally suitable to be located in areas at "Medium to High Risk" of coastal or watercourse flooding, defined as a probability greater than 0.5% (1:200 years). Amongst the categories of development listed as not generally suitable in such locations are those which are for the most vulnerable uses, as well as additional development in undeveloped and sparsely developed areas. The Glossary to SPP contains a definition of what is meant by "most vulnerable uses" in the context of flood risk. This specifically lists caravans, mobile homes and park homes intended for permanent residential use, and sites used for holiday or short-let caravans and camping. Where such development is nevertheless to be permitted, any loss of flood storage capacity is required to be mitigated so as to achieve a neutral or better outcome.

4.14 SPP paragraph 265 provides that land raising should only be considered in exceptional circumstances, and only then where it is shown to have a neutral or better impact on flood risk outside the raised area. It points out that compensatory storage may be required in such circumstances.

5 THE CASES FOR THE PARTIES

The case for the applicant

5.1 The development was established by the applicants as a direct response to an identified need for a caravan site for gypsy/travellers in the area. There are no suitable alternative sites in the Kincardine and Mearns area of Aberdeenshire and the council accepts that there is an unmet need. The development is well managed and is home to residents including some 14 children who attend school and nursery locally. Refusal of the planning application would potentially result in the eviction of the residents in circumstances where there are no suitable alternative sites. That would tend to lead to an increase in unauthorised encampments.

5.2 In determining the application regard must be had to the European Convention on Human Rights (ECHR), brought into Scottish law by the Human Rights Act 1998. In this regard, the respect for private and family life of residents at the site, addressed by Article 8, would be affected by the potential loss of their homes. The provisions of Article 14, in respect of discrimination, are of direct relevance as residents are part of the gypsy/traveller community. The right to education, enshrined in Article 2 of the First Protocol, would be affected if attendance at local schools by pupils resident at the site were to be disrupted, as it would be if they could no longer reside at the site.

5.3 The applicants and their advisers have carefully considered the reasons for refusal of the earlier planning applications (APP/2014/3358 and APP/2014/3360), and have addressed these through technical reports addressing issues of flood risk, drainage, landscape and visual impact, geotechnical issues and the restoration of the SSSI. Overall, the applicant considers that the development is on the whole in accordance with the development plan, and that the material considerations point in favour of granting planning permission on the application.

5.4 The Flood Risk and Drainage Assessment dated April 2016 (FRDA), provides the applicant's up-to-date assessment of the flood risk and indicates an annual probability of coastal or watercourse flooding at the site of between 0.1% and 0.5% (1:1000 and 1:200 years). The FRDA is informed by a Hydraulic Modelling Report that summarises the detailed hydraulic model constructed of the River North Esk from which the flood risk to the application site was determined. The hydraulic model is well calibrated to flood events which occurred locally in December 2015 and December 2012. The Hydraulic Modelling Report is in turn informed by a Hydrology Report that summarises the estimation of the flood flows used as inputs to the hydraulic model for a range of events, including the 0.1% and 0.5% events, and takes account of the combined effects of fluvial and tidal flooding.

5.5 The Hydraulic Model report presents the pre-development flood risk at the site, for 0.5% and 0.1% events, in terms of flood depths rather than levels as the applicant considers that these are more relevant to the determination of the flood risk (Drawings HMR11 and HMR12). The estimated post-development flood depths of 0.5% and 0.5% plus climate change events respectively, are shown on drawings HMR15 and HMR16. The 0.1% post-development flood depth is not explicitly considered in the FRDA, as the applicant considers that mitigation measures, and the impact of the development on the level of flood risk elsewhere, are more appropriately assessed against the 0.5% plus climate change event.

5.6 The applicant comments that the flood level across the application site varies significantly spatially and that therefore it is not possible to provide a single measure that would represent the flood level for the pre and post development 0.1% and 0.5% events as was sought in my Procedure Notice. Instead the applicant has provided drawings showing the pre and post development 0.5% and 0.1% flood levels at the site (Drawings HMR 25 to 28).

5.7 As set out in the FRDA, the post-development site remains free from flooding in response to a 0.5% AEP flood event. However, the effects of climate change means that some limited flooding of the site could be expected over the period 2025 to 2100, but this would be only for the most extreme events. For that reason the applicant considers that planning conditions should be attached to any grant of planning permission to secure appropriate on-site flood risk management as explained in the FRDA. A draft Flood Emergency Plan is provided by the applicant in this regard.

5.8 Any flooding that has occurred at the adjacent Eskview Farm property has not been caused or exacerbated by the development interfering with the small watercourse flowing down the bank to the north of the site, but as a result of the culverting of part of that watercourse within the grounds of that adjacent property.

5.9 The visual character of the development is acknowledged not to accord with that of traditional styles of small cottages typically found in coastal locations locally, but its appearance is similar to holiday caravan and mobile home sites. Such developments are a characteristic of the coastal area in the vicinity and in this context the development has only a limited visual effect.

5.10 Although it is acknowledged that the earth moving undertaken in connection with the establishment of the site has involved encroachment into the adjacent SSSI at the foot of the bank, any effect is limited. Restoration measures, involving removal of the bund, elimination of uncharacteristic vegetation and reinstatement of the previous species mix, can be satisfactorily undertaken. The principles to be adopted in this regard have been agreed with Scottish Natural Heritage and could be secured through the attachment of a condition to a grant of planning permission.

5.11 A double line of timber fencing substantially screens the site from the adjacent Eskview Farm, such that no adverse effect on the amenity enjoyed at that property arises. Additional landscape planting, in the area between the 2 fences, would further ameliorate this relationship. Such planting could be secured by a planning condition attached to a grant of planning permission.

5.12 Overall, any effect of the development in landscape, visual or nature conservation terms is of limited significance and capable of being satisfactorily addressed by restoration and landscape measures that can be secured by planning conditions. The risk of flooding at the site, in its post-development state, is not such as to justify withholding planning permission. In any event, any technical infringement of national or development plan policy in this regard is outweighed by the pressing need to meet the acknowledged shortfall of provision of permanent and halting sites for the gypsy and traveller community.

Aberdeenshire council's position

5.13 At its meeting on 28 April 2016 the full Aberdeenshire Council resolved to support the granting of planning permission. Its stated reason for that decision was:

“the overriding need for touring and permanent halting sites for travellers in Aberdeenshire, and the Council’s duties in terms of Section 149 of the Equality Act, 2010, to advance equality of opportunity between those who share a protected characteristic and persons who do not share it, and to foster good relations between those who share a protected characteristic and persons who do not share it.”

5.14 The recommendation presented to the council by its officers was to refuse planning permission. However, the council does not have to follow the recommendation of officials, and each application must be considered on its own merits, giving consideration to the policies of the development plan, and all other material information available.

5.15 The acceptability of a proposal, and the extent of its compliance with the development plan, is a matter of judgement. In this case the council’s judgement is that, notwithstanding the recommendations of the council’s coastal and flooding team and SEPA that the site is susceptible to flooding, the need for touring and permanent halting sites for travellers is such as to outweigh the objections on flooding and other grounds. Planning permission should therefore be granted, subject to conditions.

5.16 In its resolution that planning permission should be granted, the council identified a series of conditions that should be attached. These would require the submission of further details in relation to foul and surface water drainage, water supply arrangements, the removal of spoil and restoration of the affected part of the SSSI, landscape planting, paving and visibility splays at the accesses, parking and the arrangements for recycling and waste storage.

5.17 The council’s resolution also indicated that, as far as practicable, provision should be made for flood storage to compensate for that lost at the site as a result of the development. However, the council now considers that it is not practicable to provide compensatory flood storage to offset the land raising that has taken place. This is because, the council explains, the applicant does not have access to adjacent land, and a planning condition that sought to secure such compensatory storage would not meet the relevant tests set out in circular 4/1998. As a result, the council does not now seek the provision of compensatory flood storage in connection with the development.

SEPA’s objection

5.18 SEPA considers that the applicant has not demonstrated that the site and its access is not at medium to high risk from flooding. SEPA considers that the proposal is new development on land at risk from flooding, within the functional flood plain. The application site in its pre-unauthorised development state (and a section of the only access road) is located in an undeveloped and sparsely developed area in the Medium to High Risk of flooding category in Scottish Planning Policy (paragraph 263). The application site has been subject to an element of land raising, without compensatory storage, and this has increasing flood risk elsewhere, in conflict with SPP paragraph 265.

5.19 The development involves the establishment of a new caravan park, which is a highly vulnerable form of development specifically identified as being unsuitable for such locations. Because of the vulnerability categorisation of the development SPP confirms that

the proposals should be assessed against not just a 1:200 year flood event but the more stringent 1:1000 year event. SEPA does not consider that the proposals have been subject to appropriate up-to-date flood risk assessment in the context of either the 1:200 year or 1:1000 year event. However, it considers that enough assessment has been undertaken to demonstrate that the development conflicts with flooding policy set out within SPP and the development plan.

5.20 SEPA draws attention of a flood risk assessment provided in connection with earlier applications for planning permission for similar development at the site (Fairhurst Flood Risk Assessment (March 2014)). That FRA confirmed that part of the site is located in the functional floodplain and is at risk of flooding from a 0.5% Annual Probability (1:200) flood. SEPA agrees that the site is located on the natural floodplain of the River North Esk and that a section of the access road and part of the site is at risk of flooding from at least a 0.5% annual probability (1:200) flood. The 2014 FRA concludes that the rear part of the site would be outwith the 0.5% annual probability (1:200) flood risk from the River North Esk but that the remainder of the site would be covered by 200-300mm of floodwater with depths reaching up to 500 mm at a low point along the south boundary of the site and 450 mm in the northeast corner. SEPA explains that, although it does not have a model to assess flood depths, it considers that flood depths on the site could be of the order of 130-160 mm greater than those quoted if the impacts of climate change are taken into consideration, as referred to in SPP paragraph 264.

5.21 The Fairhurst FRA confirms, in SEPA's view, that parts of the site at least lie within the functional floodplain of the River North Esk. That 2014 FRA was prepared prior to the flood event of December 2015. SEPA considers that, taking account of this further real-life data, the estimated heights of the 0.5% annual probability (1:200) and 0.1% annual probability (1:1,000) floods therefore need to be increased compared to when the 2014 FRA was undertaken. The flood risk position is, therefore worse than when calculated within the 2014 FRA.

5.22 The later flood risk assessment (SLR FRA April 2016) submitted by the applicant in support of current application does not comply with guidance set out within SEPA's Technical Guidance for Stakeholders (June 2015). This is because best practice set out in the Flood Estimation Handbook (FEH), has not been followed. In particular, the FRA has not assessed the risks to the pre-development site from the small watercourse which flows towards the site down the adjacent steep bank. The course of this has been altered by the raised site ground levels as a result of the development, otherwise it would have spilled across the site during high flows. Neither has the SLR FRA investigated the post-development impact of raised levels at the site.

5.23 The SLR FRA has selected distributions to estimate design flows which do not include the one recommended in the (FEH), which is the industry standard. As a consequence SEPA considers that the 2014 FRA significantly underestimates the flow rates for the 0.1% annual probability (1:1000) flood and 0.5% annual probability (1:200) flood. This in turn produces results which SEPA considers significantly to underestimate the risk of flooding at the site. SEPA considers that the hydraulic model used as an input to the SLR FRA does not apply a suitable distribution in determining design flow estimates at the application site. SEPA therefore does not consider that the FRA is a valid technical report for the assessment of flood risk at the site.

5.24 However, even the SLR FRA demonstrates that the low-lying parts of the pre-development site were at risk from the 200 year flood, commenting at paragraph 5.8.1 that the site is partially within the functional floodplain of the River North Esk. The photographs of the flood event of 23 December 2012 included in the FRA confirm this.

5.25 The land-raising at the site and the formation of a bund has the effect of excluding flood water from the site. It is not known if the site itself has been raised higher than the 1:200 or 1:1000 flood level as the applicant has not undertaken appropriate modelling by which this can be determined. However, such land raising is contrary to SPP which states at paragraph 265 that this should only be considered in exceptional circumstances, where it is shown to have a neutral or better impact on flood risk outside the raised area, and that compensatory storage may be required.

5.26 SEPA considers that the land-raising and formation of a bund at the site have increased the flood risk to land outside the application site due to loss of storage volume and alteration of overland flow paths. This is contrary to SPP paragraph 256 which resists development which would increase the probability of flooding elsewhere, with flood water now diverted to the east towards Eskview Farm.

5.27 As evidence of the propensity of the site to flood, SEPA comments that it understands that the site was flooded in 2002, 2012 and 2013 prior to the development being undertaken, and draws attention to 2 flood events that have occurred since the submission of the application for planning permission. The flood event that took place on 30 December 2015 involved attendance at the site by the emergency services, including Police, Fire and Rescue and Coastguard. Partial evacuation of the site took place, with several touring vans being removed from the northern part of the site by their owners. Although none of the residential mobile homes or touring vans were themselves flooded at that time, the approaches to the site were, for a time, impassable except to specialist vehicles. SEPA considers that the flood event of 30 December 2015 had a return period of approximately 2% annual probability of flooding (1:50). In the second flood event of 7 January 2016 SEPA comments that the Fire Brigade attended to pump water away from the garden ground of the neighbouring property Eskview Farm.

5.28 SEPA also comments that the application does not include details of acceptable foul drainage arrangements to serve the development. A significant failing in this regard is that the outfall from the site would be to a small watercourse which does not provide adequate dilution of the discharged treated effluent.

5.29 Overall SEPA considers that the SLR Flood Risk Assessment (April 2016) does not take the precautionary approach to flood risk recommended by Scottish Planning Policy.

Other consultee responses

5.30 Scottish Natural Heritage commented on the application and drew attention to damage that the development has caused to the botanical interest of part of the St Cyrus and Kinnaber Links Site of Special Scientific Interest (SSSI). This has arisen from the deposit, inside the SSSI boundary, of spoil and earth excavated from the caravan park as part of its construction, and its deposition in the form of a bund at the base of the embankment along the north-west edge of the site. This has covered areas of neutral grassland of nature conservation interest. SNH advises that if planning permission is to be

granted, measures should be put in place to secure the implementation of the Restoration Strategy previously submitted by the applicant.

5.31 The Grampian Gypsy/Traveller Inter-agency Group supports the granting of the planning permission applied for. It explains that there is an identified need for accommodation for gypsy/travellers in the north-east of Scotland which the facility helps to meet. The council's housing service expresses similar sentiments, commenting that the development helps meet housing need as detailed in the council's Housing Need and Demand Assessment and its Local Housing Strategy.

Representations by interested parties

5.32 At application stage the council received representations from some 45 mainly local objectors, as listed in Appendix 2. In addition to raising concerns in terms of flooding, the adequacy of drainage provision and nature conservation, which largely reflect the matters raised by SEPA and SNH which I have referred to above, the main topics raised in those representations concerned;

- amenity effects, including in terms of noise, overlooking and privacy;
- visual impact;
- traffic and road safety considerations;
- the need for the development in a coastal location;
- impact on the setting of the nearby B-Listed North Esk railway viaduct;
- the capacity of the local primary school;
- stability of the adjacent embankment;
- potential cross contamination of water supply;
- loss of agricultural land;
- impact on tourism;

5.33 Mention was also made in representations that granting retrospective planning permission would create an undesirable precedent, which could encourage similar unauthorised development elsewhere.

6 THE REPORTERS ASSESSMENT

6.1 I consider that the main determining issue in the application for planning permission is whether the development is in conflict with the development plan and national policy in flooding terms, and if so whether any such conflict is outweighed by the need for the development.

6.2 The council has previously refused to grant planning permission in response to applications for substantially the same development as that to which the current application relates. It has also issued enforcement notices against the unauthorised development which has been undertaken. The resolution of April 2017, that planning permission should be granted, is indicative of a change in the council's view of the acceptability of the development.

6.3 The applicant and the council both draw attention to the provisions of the European Convention on Human Rights (ECHR) and the Equality Act 2010 (EA), section 149 of which introduced the "Public Sector Equality Duty" to avoid unlawful discrimination in decision making. I agree that the provisions of the ECHR and the EA are important factors to which considerable weight should be given, and I have done so in my consideration of the application. I have also taken account of the extent of any conflict or compliance with other aspects of national and development plan policy, as well as the representations made by interested persons to the council at the initial application stage.

Flood Risk

6.4 The precautionary approach to the consideration of flood risk advocated by SPP paragraph 255 means that, where there is doubt over the degree of risk, decision making should err on the side of caution. This is because flooding can impact on people as paragraph 254 explains. Such risk can be to safety and to life.

6.5 SPP makes clear that the approach to be applied is to seek to avoid flood risk to development by locating it away from functional flood plains, outside areas at medium to high risk of flooding, and to reduce flood risk by, for example, enhancing flood storage capacity.

6.6 It appears to be common ground that prior to the raising of site levels in connection with the application development, the risk of flooding at the site was properly categorised as being within the "medium to high" category outlined in SPP paragraph 263. The raising of the level of the site, which the applicant accepts has been undertaken in connection with the development, has inevitably reduced the likelihood of it being flooded to some degree. The extent of the land raising has not been precisely quantified, but the applicant maintains that in its post-development raised state, it is appropriate to apply the "low to medium risk" criteria to the assessment of the acceptability of the development. That approach is contrary to the national policy set out in SPP paragraph 265, which provides that land raising should be considered only in exceptional circumstances and then only when it can be shown to have a neutral or better impact on flood risk elsewhere. I am not satisfied that these criteria are met at the site with the development in place. In any event, as the council and the appellant acknowledge, the provision of compensatory flood storage, as the SPP envisages in such circumstances, cannot in practice be achieved at the site.

6.7 I note that a different approach has been adopted by the applicant in the most recent FRA undertaken on its behalf by SLR (April 2016), from that of the previous Fairhurst FRA (2014). I appreciate that the previous FRA is not relied on by the applicant in support of this called-in application, but as it was concerned with the same development on the same site, and has been drawn to my attention, it is not appropriate for me to ignore its findings. I find SEPA's criticisms of the approach adopted in the 2016 FRA to be persuasive. In particular, I consider that the focus, in the 2016 FRA, on assessment of the propensity of the site to flood in its present state with raised ground levels, not to be consistent with the approach set out in SPP. I also consider that not taking account of the small watercourse flowing down the embankment towards the site and around its northern edge reduces the reliance that can be placed on the findings of the 2016 FRA.

6.8 Although I acknowledge that the flooding that occurred at and in the immediate vicinity of the site in December 2015 and January 2016 cannot be equated with certainty to any particular return frequency, these events are strongly suggestive of the site being at considerable risk of flooding. Flooding affecting the site and the access to it has occurred since the raising of the level of the site as part of the implementation of the development. This reinforces my conclusion that the site is properly to be regarded as at medium to high risk of flooding, and that the development is in conflict with national policy in this regard.

6.9 The establishment of caravans and mobile homes at the site means that the development is to be regarded as highly vulnerable in flood risk terms. The site is also potentially vulnerable to coastal flooding, being below the 5 metre contour (above ordnance datum). I do not consider that the establishment of a flood emergency plan, as proposed by the applicant, can sufficiently ameliorate the level of risk, bearing in mind the serious consequences, including to life that can arise from flooding.

6.10 The SDP 2014 follows essentially the same approach to flood matters as set out in SPP and seeks to avoid developments on land which is at an unacceptable risk from coastal or river flooding except in exceptional circumstances. The application is contrary to Policy C4 of the LDP and with Supplementary Guidance LSD8: Flooding and Erosion associated with the predecessor 2012 LDP.

6.11 Acceptable foul drainage arrangements to serve the development, although not currently provided at the site, are likely to be capable of achievement. This could be addressed through a suitable planning condition.

Other matters

6.12 The Landscape and Visual Report (LVR) submitted with the application, which contains a series of photographs of the site viewed from several viewpoints in the vicinity, acknowledges that the visual character of the development does not accord with that of traditional styles of small cottages typically found in coastal locations, and that its appearance is similar to holiday caravan and mobile home sites. Although I note that several holiday caravan sites are found in the wider locality, I do not accept that such features are characteristic of the locality as the LVR maintains. Notwithstanding the existence of a scatter of individual houses, steadings, agricultural and other buildings, the character of the flat and low-lying area within which the site lies is substantially undeveloped.

6.13 Although the topography is such that the site is not readily visible from the A92 or further inland, the development is prominent in more local views. This includes from the footpath / cycleway on the B-listed former railway viaduct to the south (now part of the national cycle network), in views southwards from within the St Cyrus National Nature Reserve and its visitor centre, and from the road which passes adjacent to the site. The LVR understates the visual impact of the development on the landscape in my view. The cluster of mobile homes, outbuildings, touring vans and facilities buildings, set within a largely hard surfaced site is in my judgement incongruous within this sparsely developed coastal strip.

6.14 Section 14 of the Planning (Listed Buildings and Conservation Areas) Act 1997 requires that special regard is to be had to the desirability of preserving the setting of a listed building. The development intrudes into close and more distant views of the B-listed former railway viaduct, and is prominent in views obtainable at high level from the public foot and cycle route that passes across it. In both these respects the development does not preserve the setting of the listed building.

6.15 In view of the substantially hard surfaced nature of the site, and the character and peripheral location of the site fencing, there is limited scope for landscape planting within the main part of the site. Planting could be undertaken between the double fence-line along the north-eastern boundary of the site which would have the potential, in time, to soften the visual impact of the development in views from the north. However, such planting would not ameliorate, to any significant degree, the visual intrusion of the development in the wider landscape or its effect on the setting of the viaduct. Although I note that representations also suggest that the development gives rise to overlooking and loss of privacy at Eskview Farm, the intervening fencing and potential for additional planting means that any effect in this regard is not such as to be unacceptable.

6.16 The St. Cyrus and Kinnaber Site of Special Scientific Interest (SSSI), covers an extensive area in the vicinity, including the dune and marsh complex, cliffs and parts of the steep banks bounding the north-western edge of the coastal strip. The development has encroached into a small and discontinuous part of the SSSI, with surface soil from the improved grassland which previously comprised the site having been formed into a bund at the foot of the slope. This has modified that part of the SSSI in a manner inconsistent with its character, including by obliterating the vegetation previously existing there. However, the degree of encroachment has been relatively limited and SNH is content that measures can be undertaken, consistent with the outline restoration strategy proposed by the applicant, to secure appropriate reinstatement of the affected part of the SSSI. Subject to appropriate restoration measures being undertaken, details of which could be secured by a condition, the nature conservation aspects are not such as to warrant withholding planning permission.

6.17 During my site visits I was able to observe that the width and gradient of the road leading to the site, as well as the alignment of its junction with the A92, is such that traffic speeds on that part of the approach are low, especially for larger vehicles. The volume of traffic using the road in the vicinity of the site was also low. I note that the council's roads department has no objection to the development in principle, although it suggests conditions relating to parking, visibility and surfacing at the accesses, which I refer to later in this report. I conclude that any traffic effect of the development is not such as to warrant withholding planning permission.

6.18 The council's Education and Children's Service points out that, while there is restricted capacity at St Cyrus Primary School and Mearns Academy, children resident at the site are already accounted for and are attending school. I therefore conclude that the development has no adverse effect in terms of education capacity.

6.19 The present source of water supply to the development, via a private on-site borehole, is potentially susceptible to disruption and contamination particularly during flood incidents as the council's Environmental Health service comments. A connection to the mains supply would guarantee quantity and quality of supply reducing risks to the health of residents and visitors. The achievement of satisfactory water supply arrangements would be capable of being secured through the submission of further details required by a condition, if planning permission were to be granted.

The planning balance

6.20 Central to the determination of the application for planning permission is a judgement as to whether the need provision of permanent and transit accommodation for gypsies / travellers, overrides any conflict with national or development plan policy and any other adverse effects.

6.21 The Grampian Gypsy/Traveller Inter-agency Group and the council's housing service both support the development and confirm that there is an identified need for gypsy/traveller sites in Aberdeenshire, which development helps to meet. Four sites have been identified in the LDP for such development, at Blackdog, Ellon, Thainstone and at the new settlement of Chapelton of Elsick. This latter site is the only one within the Kincardine and Mearns part of Aberdeenshire. However, the council confirms that these sites are unlikely to be delivered in the short-term. As a result, I conclude that a proven need has been established for the establishment of gypsy/traveller sites, and that the development, to that extent and in principle, accords with that part of LDP policy H5.

6.22 However, policy H5 goes on to require that development should not appreciably detract from the character, appearance or amenity of the area, and that a secure environment and essential services should be provided. For the reasons I have explained above, I conclude that, notwithstanding my acceptance that a proven need has been established, the development conflicts with the provisions of policy H5 taken as a whole.

6.23 I note that the council's position is that the contribution that the development makes to meeting the acknowledged need justifies granting planning permission, notwithstanding conflict with the provisions of the development plan and the precautionary approach to the consideration of flood risk established in SPP. I do not share that view. The desirability of meeting the acknowledged need does not require that approval must be given to development which may contribute to meeting that need, irrespective of any adverse consequences. I have been provided with no compelling evidence to lead me to conclude that the application site is the only land in the area on which a contribution to meeting the established need can be met. Development of land at lower risk of flooding, where conflicts with national and development plan policy would be absent or less significant, would enable a contribution to be made towards meeting the need for gypsy / traveller accommodation and facilities.

6.24 The potential for the site to flood from more than one source leads me to conclude, bearing in mind the precautionary approach which SPP requires, that it would be unsafe to consider that the risk of flooding is outweighed by the contribution that the site currently makes towards meeting the undoubted need for gypsy / traveller accommodation in the locality. The application development gives rise to substantial risk to life and property on account of the propensity of the site to flood. In these ways, the development is in conflict with national policy on flooding, as set out in SPP and elsewhere. Accepting such risk would run counter to the social strand of sustainable development, the fostering of which is a core principle of national and development plan policy, reflecting the Scottish Government's central purpose. By involving development of land at significant risk of flooding, and in other ways as I have identified, the development also conflicts with the environmental strand of sustainability. The effect of the development on the setting of the listed viaduct building is such that granting planning permission would not be consistent with the statutory duty to have special regard to the desirability of preserving the setting of the listed building.

6.25 I therefore conclude that the development conflicts with national policy on flooding, and with the relevant provisions of the development plan which I have drawn attention to.

Possible conditions in the event of planning permission being granted

6.26 In its resolution that planning permission should be granted, the council indicated that conditions should be attached to address the following matters:

- a) compensatory water storage to offset the land raising;
- b) provision of a flood emergency plan;
- c) satisfactory provision of water supply, drainage and waste water treatment provision;
- d) removal of the bund from and restoration of the part of the site in the SSSI, and between the application site and Eskview Farm;
- e) landscaping;
- f) the retention of parking provision within the site, the surfacing of the interface between the 2 access points and the adjacent public road, and the provision of enhanced visibility splays;
- g) preventing development within the SSSI boundary.

6.27 Subsequently the council recognised that it would be impractical to secure the provision of compensatory flood storage and this matter was not therefore included in the list of conditions that the council has suggested should be attached to any grant of planning permission.

6.28 If, notwithstanding my recommendation on the called-in application, Ministers consider that planning permission should be granted for the development, I have set out conditions which I suggest be attached, in Appendix 2. Conditions would be necessary to ensure that the development would be provided with appropriate foul and surface water drainage facilities, water supply and arrangements for the storage and removal of waste and the applicant raises no objection to conditions dealing with these matters. Without satisfactory provision of necessary facilities and infrastructure, the development should not be retained. To be effective, conditions addressing these matters need to contain a mechanism to ensure their enforceability. The wording proposed by the council would not do this and would establish no satisfactory means by which the provision of the necessary

facilities could be guaranteed. The wording I put forward in Appendix 2 includes a structure by which the necessary measures can be required to be provided, with the sanction that the caravan site use shall cease and its components be removed, in the event of non-compliance.

6.29 In view of the low numbers of vehicular movements associated with the development, the relatively slow speed of traffic I observed using the adjacent road during my site inspections and the nature of the 2 accesses, there is no necessity for an increase in visibility distance to be required as the council suggests. Nor is it essential that the first 5 metres at the 2 access points be resurfaced as one of the councils suggested conditions would require. As virtually the whole of the site is hard surfaced so as to be suitable for car and vehicle parking, providing ample space to accommodate significantly more than the 20 car spaces suggested by the council, there is no necessity for a condition to require a specific number of spaces to be retained.

6.30 Although I have suggested conditions that should be attached in the event that Ministers are minded to grant planning permission, I do not consider that these would overcome the harm that I have found to be caused by the development.

7 THE ENFORCEMENT APPEALS

7.1 The appeals against the 2 remaining (virtually identical) enforcement notices have been recalled by Ministers for their own decisions. In both cases the appeals against the enforcement notices are made on the statutory grounds (f) and (g). In addition, however, the appellant argues that there was no proper authority to issue the notice, as the resolution passed by the relevant committee to refuse earlier applications for planning permission in April 2015 did not include authority to issue an enforcement notice. However, the council has explained that powers are delegated to its officers to take enforcement action in such circumstances. I therefore have no reason to doubt that the council's action in issuing the notice was the subject of proper authorisation.

7.2 The appellant also maintains that the enforcement notices are fundamentally flawed such that they are of no legal effect and thereby nullities. The appellant argues that, in issuing the notice, the council has not given proper consideration to the provisions of the ECHR or to its duties under the EA. I address these aspects of the appellant's case first, before turning to the appeals against the notices on the statutory grounds. However, I also take account of the factors that arise from the ECHR and EA in my consideration of the appeals on grounds (f) and (g).

Nullity

7.3 Applications for planning permission in connection with the provision of caravan site facilities on the land have previously been made to the council. The most recent of these, prior to the issue of the enforcement notices, sought planning permission for firstly, a caravan park containing 8 permanent stances, and secondly for a touring caravan site together with a further 2 permanent stances. These 2 applications for planning permission were in respect of different, but adjoining, areas of land defined in the application drawings. The council refused planning permission on both applications in April 2015. The appellant maintains that, because the reasons set out in paragraphs 4.1 to 4.4 of the notices each make reference to an application previously refused, the respective notice could not properly require steps to be carried out on land outwith the site of that application. I do not find that argument persuasive.

7.4 The breach of planning control in respect of which each notice is issued is identified in paragraph 3 of the notice, with the land affected being described in paragraph 2 and defined by a red line on the plan attached to the notice. During my first site visit in November 2015, I observed that the caravan site use extends over a wider area than the individual sites of each of the 2 earlier applications, and encompasses both parts of the overall site. The plan attached to each notice correctly identifies the land on which the caravan site has been established and within which the notice requires the steps set out in section 5 of the notices to be undertaken. The fact that previous refused applications were made on lesser areas of land than that to which each of the notices relates, does not mean that the notice must be confined to that same site. I therefore conclude that there is no ambiguity or lack of clarity in the notice which amounts to a fundamental flaw.

7.5 The 2 notices both allege the same breach of planning control, both specify identical requirements, and both relate to the same site. The difference between these notices is confined to the mention, in paragraph 4.3 of both notices, of the refusals respectively of 2 planning applications in April 2015, relating to different but adjoining sites, which together comprise the sites of the enforcement notices. These references to the earlier applications

are simply descriptive and do not amount to any substantive difference between the notices or their respective requirements. Although it may not have been necessary for 2 “change of use” notices to have been issued by the council, there is no conflict between them or the requirements that they specify. I do not consider that any ambiguity or lack of clarity arises from the issue of the 2 notices in parallel. The existence of the 2 notices does not give rise to any uncertainty as to what is the nature of the breach of planning control alleged, nor what is required to be done to rectify the breach.

7.6 For these reasons, I consider that both of the notices are clear on their face and are not ambiguous or uncertain, either in the breach of planning control identified, or in the steps required to be undertaken to rectify the breach. I consider that both notices are valid and not to be nullities.

Human Rights and Equality Issues

7.7 The appellant argues that the council’s action in issuing the notices was premature and disproportionate, and that in deciding to issue them it paid no, or insufficient, regard to the provisions of the ECHR and EA. While it is appropriate to have regard to these provisions, in so far as they are relevant to my determination of the enforcement appeals, it is not open to Ministers to review whether the council ought to have issued the notice in the first place. Any challenge to the lawfulness of the authority’s decision to serve the notices can only be made by way of judicial review.

7.8 The appellant’s argument that the occupants of the caravan site should be permitted to remain resident at the site is tantamount to requesting that planning permission be granted to authorise the caravan site use. So too is the appellant’s argument that the council’s decision to issue the notices was disproportionate. The grant of planning permission for this, or any, development at the site is not an outcome that can arise from the appeals against the enforcement notices. The called-in application for planning permission provides the appropriate context for consideration to be given to the planning merits of the development at the site.

7.9 I note that the council undertook an equality assessment in connection with its consideration of the previous applications, refusal of which predated the issue of the notices, and in connection with its consideration of the called-in application for planning permission. I therefore conclude that the council did properly take account of its duties under the European Convention on Human Rights and the Equalities Act in this regard. I consider the appellant’s argument that the period for compliance ought to be extended to avoid disrupting children’s schooling in the context of my consideration of the ground (g) appeal).

Appeal on ground (f)

7.10 The main thrust of the appellant’s argument on this ground of appeal is that the steps required by the notices to be taken are excessive, as compliance would inevitably mean that residents would be required to vacate the site. That outcome would, the appellant argues, be disproportionate because a new application for planning permission had recently been submitted to the council, which the appellant considers should be granted for the caravan site use of the land.

7.11 As explained above, it is not open to Ministers, in considering the enforcement appeals, to grant planning permission for the development enforced against. However, it would be open to Ministers to grant planning permission on the application now called-in for their decision, which is also considered in this Report. In any event the option of substituting lesser requirements by modifying the enforcement notices is only available where the express purpose of the notices is to remedy injury to amenity. In this case, the notices were issued to remedy the breach of planning control comprising the change of use of the land to use as a caravan site. No lesser steps, such as would enable continuation of the caravan site use, would achieve the purpose of the notice. I do not therefore consider that the appeal on ground (f) can be upheld.

Appeal on ground (g)

7.12 The period specified in each of the 2 notices for the requirements to be complied with is 6 months from the date each notice takes effect. That period, the appellant argues, is insufficient and a longer period should be substituted. Upholding the notices would, unless planning permission were to be granted for retention of the caravan site use and the elements of built development associated with this, inevitably require residential occupation to cease at the site. A number of children currently resident at the site attend local schools and their education would potentially be disrupted. I agree that this would be undesirable and would be likely to run counter to the children's best interests. Seeking to avoid or minimise such adverse consequences would be consistent with the provisions of the ECHR and the EA.

7.13 To allow sufficient time for orderly arrangements to be made to avoid undue disruption to the schooling of pupils resident at the site, I consider that the period for compliance with the requirements of the notices should be extended. In my judgement extending the compliance period to encompass the whole of the next full school year following decisions on the enforcement appeals would strike an appropriate balance between remedying the breach of planning control in a timely way, and minimising educational and community disruption. A longer compliance period would give certainty to all parties (the appellant, site residents, the council and others), as to the eventual outcome at the site, in the event that Ministers' decision on the called-in application for planning permission is that permission should be refused. An extended compliance period would be a positive response to the ECHR and EA considerations raised by the appellant.

7.14 As the date of Ministers' decisions on the enforcement appeals, following their consideration of this report, is at this stage unknown, Ministers should set the period for compliance in the light of the stage of the school year that the decisions are made. This matter of timing would not be so relevant if Ministers decide to grant planning permission on the called-in application.

8: CONCLUSIONS

8.1 In the following paragraphs I set out my overall conclusions on the called-in application for planning permission and on the 2 enforcement appeals. Thereafter, I consider the implications for the enforcement notices, in the event that Ministers decide to grant planning permission on the called-in application.

The application for planning permission

8.2 As explained in chapter 6 above, I conclude that the application development gives rise to substantial risk to life and property on account of the propensity of the site to flood. I do not consider that the establishment of a flood emergency plan as proposed by the applicant can sufficiently ameliorate the level of risk, bearing in mind the serious consequences arising from potential flooding. I therefore conclude that the development conflicts with national policy on flooding, as set out in SPP and elsewhere, and with the relevant provisions of the adopted and previous LDPs.

8.3 I accept that the provision of facilities and accommodation for gypsies and travellers at the site meets an identified need in the council's area and I acknowledge that this is a significant benefit to which I attach considerable weight, bearing in mind the vulnerable position of the minority gypsy community. However, I do not consider that this outweighs the risks to occupants of the development in flooding terms.

8.4 The harm that I have found to be caused by the development in terms of nature conservation and visual impact, although less significant than the flooding considerations, are nevertheless factors which weigh against the application development.

8.5 Overall, I consider that the development conflicts with the provisions of the development plan, and also with national policies on flooding. I therefore conclude that retrospective planning permission should not be granted for the development specified in the application.

8.6 If Ministers are, nonetheless, minded to grant permission I have provided a set of recommended conditions at Appendix 3 to this report. These address the matters that the council suggests should be the subject of controls in this way, with which the applicant broadly accepts. However, for the reasons I explain in chapter 6 above, I have reworded these to ensure enforceability, taking account of the provisions of circular 4/1998 on the use of conditions in planning permissions

The enforcement notice appeals

8.7 I have found that both enforcement notices are sufficiently clear and unambiguous such that there is no basis to hold that the notices are nullities. I also find that the council's decision to issue the notices was neither premature nor unreasonable, such as to cast doubt over whether the council properly exercised its duty to consider whether it was expedient to issue the notices. In any event, any challenge to the lawfulness of the council's decision to issue the notice on those grounds would be matters for consideration by the courts.

8.8 For the reasons set out in chapter 7 above, I conclude that the appeals on ground (f) against both enforcement notices should not be upheld. In response to the ground (g)

appeals, I consider it is appropriate to minimise, as far as possible, disruption to the education of school pupils resident at the site. I therefore conclude that a longer period for compliance should be given than the 6 months specified in the notices as issued. This would be consistent with the provisions of Article 2 of the First Protocol of the ECHR concerning the right to education. The period for compliance should, in both notices, be extended to encompass a full school year from the date the notices come into effect if they are upheld in Ministers' decisions.

8.9 In the event that planning permission is granted on the called-in application, formal decisions on the enforcement appeals would still need to be given. For the reasons I have explained, I do not consider that the enforcement appeals can succeed on ground (f). I have concluded that the enforcement appeals should succeed on ground (g). However, this would be confined to extending the period for compliance and the notices would still require to be complied with. Nevertheless, a grant of planning permission would (subject to compliance with its conditions), negate the requirements of the enforcement notices, even if they are upheld with extended periods for compliance.

9: RECOMMENDATIONS

The application for planning permission

- 9.1 I recommend that planning permission be refused for the development which is the subject of the called-in application, namely:
change of use of agricultural land to form 10 stance caravan park (permanent halting site for gypsies/travellers) and touring gypsy/travellers site, formation of road and erection of boundary fencing/walls/gates, toilet block, washroom, day room/classroom, pump station and recycling point.
- 9.2 In the event that Ministers are nevertheless minded to grant planning permission, I recommend the attachment of the conditions listed in Appendix 3 to this Report.

The enforcement notice appeals

- 9.3 I recommend that both notices be modified to give a longer period for compliance, but otherwise that the notices be upheld.

Enforcement Notice reference COMP/2014/0249 - Appeal ENA-110-2012

- 9.4 I recommend the notice be modified by deleting the “6 months”, given as the time for compliance following paragraph 5.15 of the notice, and replacing this with a period which elapses at the end of the first school year which begins after the date of Minister’s decisions, if that decision is to dismiss the enforcement appeals.
- 9.5 Subject to that modification, I recommend that the notice be upheld.

Enforcement Notice reference COMP/2014/0250 - Appeal ENA-110-2013

- 9.6 I recommend the notice be modified by deleting the “6 months”, given as the time for compliance following paragraph 5.15 of the notice, and replacing this with a period which elapses at the end of the first school year which begins after the date of Minister’s decisions, if that decision is to dismiss the enforcement appeals.
- 9.7 Subject to that modification, I recommend that the notice be upheld.

Rob Huntley

APPENDIX 1

LIST OF DOCUMENTS

THE CALLED-IN APPLICATION

Application Drawings

[Site Location Plan \(1:5000\) - 001](#)
[Location Plan \(1:1250\) - 1799 LOC 010](#)
[Site elevations and sections - 1799 Planning 005A](#)
[Site plan and views - 1799 Planning 004B](#)
[Site Sections – 2015-064 Dwg 02](#)
[Post Upfill Levels 2015-064 Dwg 01A](#)

Application Documents

[Application Form](#)
[Planning Statement - December 2015](#)
[Landscape and Visual Report – Issue 1 October 2015](#)
[Site Photographs 15 March 2015](#)
[Restoration Strategy – September 2015](#)
[Topographic Survey](#)
[Hydrology Report - Issue 2 February 2016](#)
[Flood Risk and Drainage Assessment – Issue 1 December 2015](#)
[Flood Risk and Drainage Assessment – Issue 2 April 2016](#)
[Flood Risk Assessment illustrations HMR 1-11](#)
[Flood Risk Assessment illustrations HMR 12-24](#)
[Draft Flood Emergency Plan – April 2016](#)

Other documents

[Council photographs October 2015](#)
[Consultation responses received by the council](#)
[Representations received by the council](#)
[Kincardine & Mearns Area Committee Report - 22 March 2016](#)
[Report to full Aberdeenshire Council - 28 April 2016](#)

Further written submissions

[Procedure Notice requesting further information on flooding matters - 13 October 2016](#)
[Applicant's Further Written Statement in Response to Procedure Notice - 27 October 2016](#)
[Council's Further Written Statement in Response to Procedure Notice - 27 October 2016](#)
[SEPA Further Written Statement in response to Procedure Notice - 27 October 2016](#)
[Fairhurst Flood Risk Assessment March 2014 \(provided by SEPA in response to Procedure Notice\)](#)
[Police Scotland Report on Flood Event of 30 December 2015](#)
[Applicant's comments on SEPA's response to Procedure Notice](#)
[SEPA's comments on applicant's response to Procedure Notice](#)

THE ENFORCEMENT APPEALS

[The first enforcement notice \(ENA-110-2012\)](#)
[Recall direction \(ENA-110-2012\)](#)

[The second enforcement notice \(ENA-110-2013\)](#)

[Recall direction \(ENA-110-2013\)](#)

[The grounds of appeal](#)

[The council's statement](#)

APPENDIX 2

List of 3rd party objectors

Ron Beveridge,	The Old Nick, Main Road, St Cyrus, DD10 0BA
Eileen Bingham,	67 Invergarry Park, St Cyrus, DD10 0BU
Mark Boydell,	3 Greenbraes Road, Gourdon, DD10 0NE
Ngairé Boydell,	3 Greenbraes Road, Gourdon, DD10 0NE
Fiona Brims,	1 Melrose Drive, Grangemouth, FK3 9LN
John Brown,	Littlecote, 7 Highview Grove, St Cyrus, DD10 0DY
Tracey Carson,	62 Denmore Gardens, Aberdeen, AB22 8LP
Lynne Corpe,	Inchalla, Lochside Road, St Cyrus, DD10 0DB
Thomas Dooley,	8 Craigs Avenue, Clydebank, G81 5LF
Nadia Douglas,	88 Hillwood Rise, Edinburgh, EH28 8QD
Olga Feldt,	Waterside Of Kinnaber Farm, Montrose, DD10 0AQ
Sheila Ferguson,	4 Parklands Of Murroes, Kellas, Dundee, DD5 3PB
Linda Hedges,	134 Hilton Drive, Aberdeen, AB24 4NH
Shirley Howard,	12 Kinaldie Holdings, Arbroath, DD11 5SH
Andy Inglis,	1 Dalgarno Park, Hillside, DD10 9JF
Frances Johnson,	3 Scotston Cottages, St Cyrus, Montrose, DD10 0DA
Chris Johnston,	6 Hillside Terrace, Portlethen, AB12 4QG
Elaine Kerr,	The Old Fishing Station, Kirkside, St Cyrus, Montrose, DD10 0AQ
Claire Lawson,	16 Croftlands, St Cyrus, DD10 0AX
Catherine Luke,	Furkastrasse 10, Zurich, 8048
Angela Mackinnon,	Flat 2/1, 37 Guthrie Port, Arbroath, DD11 1R
Linda Macpherson,	39 Redford Drive, Edinburgh, EH13 0BE
Lorna McAllister,	24 Glen View, Cumbernauld, G67 2DA
Patricia Mottram,	Broomhill Cottage, Hill Of Morphie, St Cyrus, Montrose, DD10 0AD
Paul Mottram,	Broomhill Cottage, Hill Of Morphie, St Cyrus, Montrose, DD10 0AD
Kristian Nilssen,	Burnside Cottages, 2 Stonehaven, AB39 2UL
Andrew Orr,	Kirkside, St Cyrus, Montrose, DD10 0DA
George Petrie,	Nether Warburton Cottages, Montrose, DD10 0AQ
Lindsay Petrie,	Nether Haughs, Mill Of Morphie, Montrose, DD10 0AA
Andrzej Piechota,	Waterside Of Kinnaber Farm, Montrose, DD10 0AQ
John Rore,	The Old Farmhouse, Nether Warburton, Montrose, DD10 0AQ
Susan Rore,	The Old Farmhouse, Nether Warburton, Montrose, DD10 0AQ
Wendy Sanger,	Prettycur, Montrose, DD10 9EG
Mel Sayer,	Upper Warburton Farm, St Cyrus, Montrose, DD10 0AG
Gail Sephton,	Farmhouse, East Balhagarty Farm, Laurencekirk, AB30 1HT
Peter Shankley,	38 Malcolm's Mount, West Stonehaven, AB39 2TF
David Smart,	Kinnaber Ltd Gateside, Aboyne, AB30 1HT
Garry Smith,	Eskview Farm, St Cyrus, Montrose, DD10 0AQ
Joseph Smith,	Artmond House, Upper Dysart Farm, Montrose, DD10 9TQ
Kath Smith,	Eskview Farm, St Cyrus, Montrose, DD10 0AQ
Alexander Somerville,	Little Kinnaber, Montrose, DD10 9ER
Martin Stansfeld,	Rosa Maris, 29 Avenue Des Papalins, Monaco, 98000
Maureen Thomson,	2 Heron Bank, Montrose, DD10 9NG
Michael Went,	4 Parkland Of Murroes, Kellas, Dundee, DD5 3PB
Peter Winder,	2 Waterworks Cottages, Hillside, Montrose, DD10 9EN

APPENDIX 3

Recommended conditions in the event that planning permission is to be granted

1. The use of the land as a caravan site hereby permitted shall cease, all caravans and mobile homes shall be removed, all structures (including all boundary and dividing walls and fences), shall be demolished and all equipment and materials brought onto the land for the purposes of such use (including materials resulting from demolition) shall be removed from the site within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-

- i) within 3 months of the date of this decision, details of the matters listed at items a) to e) below, including a timetable for the implementation of the relevant matters following approval, shall have been submitted for the written approval of the planning authority.
 - a) A Flood Emergency Plan, setting out the arrangements for the evacuation of the residents and occupiers of the development hereby approved, in the event of a flood;
 - b) Details of the proposed means of disposal of foul and surface water from the development including the arrangements for subsequent maintenance;
 - c) Details of a scheme for the storage of recyclable waste, food waste and residual waste within the development and the arrangements for its removal from the site;
 - d) A scheme for the restoration of the part of the site lying within the boundaries of the St. Cyrus and Kinnaber Site of Special Scientific Interest (SSSI), comprising the removal of the bund and the reinstatement of appropriate flora;
 - e) Details of the provision of an appropriate potable water supply to the development, including details of the source, treatment and storage required if connection to the public mains is not practicable.
- ii) if within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, Scottish Ministers.
- iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by Scottish Ministers.
- iv) the development scheme shall have been carried out and completed in accordance with the approved schemes, details and timetable.

Reason

To ensure that appropriate emergency procedures are put in place in the interests of safety, to secure the provision of adequate means of foul and surface water drainage, water supply and arrangements for waste disposal, and to safeguard the botanical interest of the SSSI.

2. Within 3 months of the date of this permission, a detailed scheme of landscaping and tree planting shall be submitted for the written approval of the Planning Authority. Details of the scheme shall include:

- a) A schedule of tree and shrub planting, to comprise species, plant sizes, proposed numbers and density to be planted in the area (following the removal of the remains of the bund) along the north/northeast boundary adjacent to Eskview Farm.
- b) A programme for the implementation, completion and subsequent maintenance and management of all such landscaping and tree planting. All soft landscaping proposals shall be carried out in accordance with the approved planting scheme, and maintenance and management programme.

Any planting which, within a period of 5 years from the completion of the landscaping, shall die or become severely damaged or diseased, shall be replaced in the next planting season by plants of similar size and species to those originally required to be planted.

Reason

To enable the development to integrate into the local landscape, in the interests of the visual amenity of neighbouring residents and of the wider area.

3. The dayroom/classroom forming part of the development described in the application shall not be constructed except in accordance with details of its siting, design and external appearance, which shall have been first submitted to and approved by the planning authority.

Reason

No details of the dayroom/classroom referred to in the description of the development have been provided as part of the application.