

PERTH AND KINROSS COUNCIL

Environment Committee

20 November 2013

ALMONDBANK FLOOD PROTECTION SCHEME

Report by Executive Director (Environment)

This report provides an update on the progress of the Almondbank Flood Protection Scheme and proposes that the Environment Committee takes a decision under the Flood Risk Management (Scotland) Act 2009 to confirm the Scheme.

1. BACKGROUND / MAIN ISSUESBackground

- 1.1 There has been a history of flooding at Almondbank and Lochty from the River Almond and the East Pow Burn. Recorded flood events occurred in January 1993, September 1999, December 1999, and January 2011.
- 1.2 Perth and Kinross Council have engaged consultants to investigate and promote a flood protection scheme for Almondbank as illustrated in Appendix 1. The progress of the Scheme has been periodically reported to Committee. A full list of relevant committee papers is available at the end of this report.
- 1.3 Report (Art. 11/444) to the Environment Committee of 7 September 2011 provided an update on the progress of the Almondbank Flood Protection Scheme. Amongst other matters, the Committee resolved that:
- (i) The Scheme be “published” under the Flood Risk Management (Scotland) Act 2009;
 - (ii) Subject to the scheme being “confirmed” under the Flood Risk Management (Scotland) Act 2009, and funding being clarified, it be agreed that the consultants be re-engaged to progress the detailed design.

Scheme Proposals

- 1.4 The Scheme proposes new flood defences on the River Almond extending from the College Mill Trout Farm to the edge of the Pitcairnfield Industrial Estate (east bank) and from the Bowling Green to Low’s Works Cottages (west bank). Flood defences are also proposed for both banks of the East Pow Burn from the A85 bridge at Lochty to the confluence with the River Almond. The Proposed Scheme requires three bridges and adjacent road and footpath levels to be raised.

- 1.5 A flood storage area will also be created on the playing field adjacent to Main Street. A plan of the Proposed Scheme is shown in Appendix 1, and the Proposed Scheme, as published, can also be viewed on the Council's website at <http://www.pkc.gov.uk/almondbankfloodscheme>.

Scheme Publication

- 1.6 The Almondbank Flood Protection Scheme was published under the Flood Risk Management (Scotland) Act 2009 (the 2009 Act) on 2 July 2013. Those affected by the Scheme were notified and the Scheme and Environmental Statement were also made available for public inspection on 2 July 2013. The 2009 Act requires that a period of 28 days from the date of publication is allowed for objections. Late objections can still be submitted where it is reasonable for the objection to be made after the deadline.
- 1.7 Two valid objections and seven representations were received. The objections (from Scottish Natural Heritage and on other resident) were received late, by one and two days respectively. However, they have been accepted and treated as valid objections.
- 1.8 The objection from Scottish Natural Heritage (SNH) was a conditional objection dependent on agreeing conditions to the required deemed planning permission. Suitable conditions have now been agreed with SNH and they subsequently withdrew their objection on 15 August 2013. Deemed planning permission will be sought from the Scottish Government once the Scheme is confirmed under the 2009 Act.
- 1.9 The other objection was from a resident. Officers have met with the residents concerned, held discussions and suggested changes to address their concerns and they subsequently removed their objection on 11 November 2013. The suggested changes are not considered to amount to modifications to the Proposed Scheme but the Committee is asked to agree the changes. If not agreed, then the objection would have to be reinstated. Where there is a remaining valid objection a different, more complex, procedure to that outlined in this report would have to be followed.
- 1.10 In light of the withdrawal of the objections from Scottish Natural Heritage and the resident, the local authority must now make a decision under Paragraph 4 of Schedule 2 of the Flood Risk Management (Scotland) Act 2009 to either:
- (a) Confirm the proposed scheme, or
 - (b) Reject the proposed scheme.
- 1.11 A local authority must take the environmental information into account if it is to confirm a flood protection scheme. The environmental information in this case is considered to be the Environmental Statement, the seven representations, two objections and the Habitats Regulations Appropriate Assessment. The Environmental Statement and Habitats Regulations Appropriate Assessment are available on line at <http://www.pkc.gov.uk/almondbankfloodscheme>.

2. PROPOSALS

- 2.1 Two objections to the Almondbank Flood Protection Scheme were received and both have subsequently been withdrawn. Therefore, the Environment Committee must make a decision under Paragraph 4 of Schedule 2 of the Flood Risk Management (Scotland) Act 2009 to either:
- a) Confirm the proposed scheme, or
 - b) Reject the proposed scheme.
- 2.2 Prior to making the above decision, the Environment Committee must take into account the environmental information available through the link shown in paragraph 1.11.
- 2.3 Once the Scheme has been confirmed, the Council is required to notify those affected by the Scheme of the decision. A period of 6 weeks is then allowed for an appeal to be lodged by any person affected by the scheme. Should no appeals be lodged, the Scheme will be formally approved after the 6 week period.
- 2.4 It should be noted that both the detailed design and the construction of the Scheme are subject to funding and at present there is no guarantee that funding will become available.
- 2.5 Subject to the Scheme being confirmed under the 2009 Act and funding becoming available, consultants will be re-engaged to undertake the detailed design. Construction would begin at a later stage.
- 2.6 Although no date has been set, the Scottish Government will shortly be asking local authorities to apply for grant funding provided they have a confirmed flood protection scheme. It is proposed that the Council will apply for grant funding on confirmation of the Scheme. A successful application may provide up to 80% of the capital costs of the Scheme.
- 2.7 The 2009 Act does not require a separate planning application for flood protection schemes. If such schemes are confirmed under the 2009 Act, then the Scottish Ministers must also direct that planning consent is deemed to have been granted.
- 2.8 It is therefore proposed that further work be undertaken after the Scheme is confirmed towards writing to the Scottish Government setting out proposed planning conditions and requesting deemed planning consent be awarded.

3. CONCLUSION AND RECOMMENDATION(S)

- 3.1 The purpose of the flood protection scheme is to manage flood risk in the Almondbank and Lochty area.

- 3.2 The Scheme was published in July 2013 and received seven representations and two objections. The representations have been responded to and the objections have been withdrawn after consultation.
- 3.3 To progress the Scheme, it is recommended that the Environment Committee:
1. Note the Environmental Information, as outlined in this Report.
 2. Agree to the proposed changes for the residents.
 3. Confirm the Proposed Almondbank Flood Protection Scheme as outlined in this report.
 4. Authorise the Executive Director (Environment) to carry out all necessary steps to progress the Scheme to a final design stage, including:
 - a. Giving notice of the decision to confirm the Scheme
 - b. Submitting an application for funding to the Scottish Government
 - c. Seeking deemed planning permission from the Scottish Ministers
- 3.4 It should be noted that progression to construction stage will be dependent upon future funding availability.

Author(s)

Name	Designation	Contact Details
Peter Dickson Russell Stewart	Senior Engineer Engineer	01738 477278 01738 477277

Approved

Name	Designation	Date
Jim Valentine	Executive Director (Environment)	13 November 2013

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01738 475000

1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	Yes
Corporate Plan	Yes
Resource Implications	
Financial	Yes
Workforce	Yes
Asset Management (land, property, IST)	Yes
Assessments	
Equality Impact Assessment	Yes
Strategic Environmental Assessment	Yes
Sustainability (community, economic, environmental)	Yes
Legal and Governance	Yes
Risk	Yes
Consultation	
Internal	Yes
External	Yes
Communication	
Communications Plan	Yes

1. Strategic Implications

Community Plan / Single Outcome Agreement

- 1.1 The proposals relate to the delivery of the Perth and Kinross Community Plan / Single Outcome Agreement by reducing flood risk to residential and business communities in a sustainable manner.

Corporate Plan

- 1.2 The Council's Corporate Plan 2013 – 2018 lays out five outcome focussed strategic objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. They are as follows:
- (i) Giving every child the best start in life;
 - (ii) Developing educated, responsible and informed citizens;
 - (iii) Promoting a prosperous, inclusive and sustainable economy;
 - (iv) Supporting people to lead independent, healthy and active lives; and
 - (v) Creating a safe and sustainable place for future generations.
- 1.3 This report contributes to objectives (ii), (iii), (iv) and (v).

2. Resource Implications

Financial

- 2.1 Following implementation of the Concordat between the Scottish Government and local authorities, there have been significant changes to funding arrangements for flood schemes.
- 2.2 The most recent changes to this system were introduced as part of the Scottish Government's 2011 Spending Review which covers the period 2012-2015. The distribution of the flooding component of General Capital Grant changed. In the first instance the Scottish Government has allocated funding to support any on-going flood schemes and a small number of outstanding schemes that already have approval under the previous 1961 Act. Perth & Kinross Council had no such schemes.
- 2.3 Any remaining government funding is to be allocated to schemes which have statutory consent under the 2009 Act. Local authorities will be required to make an application to receive a share of the remaining funding. Those schemes that meet the government's criteria will receive grant funding of up to 80% of eligible capital costs. No date has yet been set for funding applications.
- 2.4 Therefore, the Council will be required to meet a minimum of 20% of the Capital cost of the project upon successful award of government funding.

Capital

- 2.5 In the original Outline Business Case, the estimated cost of the scheme was £18m and the Council's contribution was expected to be 30% of this, giving a budgeted cost to the Council of £5.243m.
- 2.5 Following the initial design process, the scheme costs have now been estimated to be £9.6m. However, a contingency, or optimism bias, must be added in accordance with the Scottish Government's guidance. This has been assessed as 38% and means that the estimated Capital cost for the scheme is £13.2m.
- 2.6 As the Council's contribution to the scheme is now estimated to be only 20%, this means that the budgeted figure needs to be changed to £2.64m.

Revenue

- 2.7 The on-going maintenance costs for the scheme are estimated at £20,590 per annum.
- 2.8 These additional resources will require to be considered as a budget pressure through the Council's budget process when the completion date for the scheme becomes clearer.

Workforce

- 2.9 The project management of the scheme will be undertaken by the Council's Structures and Flooding Team. There will be a resource implication for Legal and Property Services for technical assistance required throughout the progress of the Scheme.

Asset Management (land, property, IT)

- 2.10 In order to construct the proposed scheme there will be a requirement to purchase land or provide compensation to relevant landowners. Property Services have been consulted on the Scheme and have commenced negotiations with relevant landowners.

3. Assessments

Equality Impact Assessment

- 3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.
- 3.2 The function, policy, procedure or strategy in this report was considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:
- (i) Assessed as **relevant** and actions taken to reduce or remove the following negative impacts:
 - The construction works could temporarily have a greater impact on mobility impaired, sight impaired, blind people or disabled people, on children and the elderly and infirm and on pregnant women or nursing mothers in relation to adverse psychological, physical and health impacts. Appropriate mitigation measures will be adopted to minimise disruption, noise, dust and vibration and to ensure adequate safe access throughout the construction works.
 - (ii) Assessed as **relevant** and the following positive outcomes expected following implementation:
 - The flood scheme will substantially reduce the risk of flooding to residents and businesses in the Almondbank area (regardless of their equality protected characteristics) with consequent benefits for all (a safer environment, avoidance of economic flood damages, improved health & wellbeing, etc).

Strategic Environmental Assessment

- 3.3 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 3.4 The matters presented in this report were considered under the Environmental Assessment (Scotland) Act 2005 and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.
- 3.5 As outlined in this report an Environmental Statement was produced for the Scheme. The Environmental Statement identified the Scheme has a number of potentially significant impacts that would arise as a result of the construction and future use of the Scheme. Mitigation measures have been identified with a view to reducing those potentially significant impacts. The Schedule of Environmental Commitments would be incorporated into the future development of the Scheme design and construction.
- 3.6 As part of the Scheme publication, the Environmental Statement was considered by the appropriate Consultees and any additional requirements will be incorporated, as conditions, into the deemed planning consent for appropriate action during the detailed design or construction of the Scheme.
- 3.7 An Appropriate Assessment under the Habitats Regulations was also undertaken and concluded that there would be no significant adverse effects on the River Tay Special Area of Conservation. The Appropriate Assessment has been considered by Scottish Natural Heritage and the Council's Biodiversity Officer and they have agreed with the report findings.

Sustainability

- 3.8 Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. In terms of the Climate Change Act, the Council has a general duty to demonstrate its commitment to sustainability and the community, environmental and economic impacts of its actions.
- 3.9 The completed scheme will be designed to protect existing at risk properties and businesses up to the design flood event level and provide potential opportunities for the development of sites currently limited due to flood risk constraints. There will also be an opportunity to promote environmental improvements through the Scheme design.

Legal and Governance

- 3.10 The Head of Legal Services and the Head of Democratic Services have been consulted on this report.

- 3.11 The Scheme of Administration authorises the Environment Committee delegated powers to exercise the Council's functions in relation to matters concerning The Flood Risk Management (Scotland) Act 2009 for which this report is applicable.

Risk

- 3.12 Risks associated with implementation will be managed through appropriate communication and project management.

4. Consultation

Internal

- 4.1 The Head of Legal Services, the Head of Democratic Services and the Head of Finance have been consulted in the preparation of this report.
- 4.2 The publication of the scheme under the 2009 Act notified all relevant sections of the Council including, but not limited to: Local Councillors, Community Council, Planning, Property, Community Greenspace and Legal.

External

- 4.3 The publication of the scheme notified all relevant Landowners and tenants, Public Utilities, Scottish Government, SEPA, SNH, Historic Scotland and other relevant organisations.

5. Communication

- 5.1 A newsletter is issued periodically to the local community and relevant consultees in order to update them on the progress of the Scheme.

2. BACKGROUND PAPERS

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (and not containing confidential or exempt information) were relied on to a material extent in preparing the above Report;

- PKC - Roads and Transport Committee - 11 December 1996, Rural Communities – Flood Prevention (Report No. 96/653)
- PKC - Roads and Transport Committee - 20 October 1999, Rural Communities Flood Prevention Schemes (Report No. 99/520)
- PKC – Roads and Transport Committee – 22 November 2000, Flooding at Almondbank – Reappraisal of Flood Defence Options (00/673)
- PKC – Enterprise and Infrastructure Committee – 1 December 2004, Rural Communities Flood Prevention Schemes
- PKC - Enterprise and Infrastructure Committee - 24 October 2007, Flood Mitigation Schemes and Flood Studies (Report No. 07/681)

- PKC - Environment Committee - 30 January 2008, Biennial Report on Flood Prevention Responsibilities 2007 (Report No. 08/41)
- PKC - Environment Committee - 4 November 2009, Biennial Report on Flood Prevention Responsibilities 2009 (Report No. 09/504)
- PKC – Environment Committee – 27 January 2010, Flood Risk Management (Scotland) Act 2009 (Report No. 10/51)
- PKC - Environment Committee - 7 September 2011, Almondbank Flood Protection Scheme (Report No. 11/444)
- PKC – Environment Committee – 21 March 2012, Biennial Report on Flood Prevention (Report. 12/135)

3. APPENDICES

Appendix 1 – Plan indicating proposed scheme

