

PERTH AND KINROSS COUNCIL

24 June 2020

COMRIE FLOOD PROTECTION SCHEME 2020

Report by Head of Environmental & Consumer Services (Report No. 20/103)

PURPOSE OF REPORT

This report provides an update on the progress of the Comrie Flood Protection Scheme and proposes that the Council takes a preliminary decision under the Flood Risk Management (Scotland) Act 2009 to confirm the proposed Scheme without modification.

1. BACKGROUND / MAIN ISSUES

Introduction

- 1.1 The approach to tackling flooding in Scotland has changed in recent years. Under the Flood Risk Management (Scotland) Act (the 2009 Act), SEPA and lead local authorities published new Flood Risk Management (FRM) Strategies and Local FRM Plans. These documents set out a range of actions that SEPA and responsible authorities will take to manage and, where possible, reduce the risk of flooding over a six-year period.
- 1.2 Although public authorities are expected to take a proactive role in managing and, where achievable, lowering flood risk, the primary responsibility for avoiding or managing flood risk still remains with land and property owners. The 2009 Act does not alter this. Individuals, businesses and communities must, therefore, play a critical role in making themselves more resilient and helping to reduce the impact of flooding.
- 1.3 The Environment Committee approved the publication of the Tay Local FRM Plan on 1 June 2016 (Report 16/241 refers). The published document can be viewed at the following link: <http://www.pkc.gov.uk/frmplans>
- 1.4 Since the publication of the FRM Strategies and Local FRM Plans in 2016, the Council has been moving forward with the implementation of the actions set out therein. An interim report on the progress made was published by the Council on 1 March 2019 and can also be viewed at the above link.
- 1.5 The 2009 Act provides local authorities with discretionary powers to promote new flood protection schemes. Only those flood schemes which have been included in the published FRM Strategies, the Local FRM Plans and the national priority list will be taken forward in the six year period.

- 1.6 One of the key actions included within the Tay Local FRM Plan is to implement a flood protection scheme in Comrie. The flood scheme was included as the 7th highest scheme on the national priority list.

Flood Risk Management in Comrie

- 1.7 Comrie is located in the River Earn catchment within a Potentially Vulnerable Area (PVA) 08/14. More specifically it is located at the confluence of three large rivers – the Water of Ruchill, the River Earn and the River Lednock. There has been a history of flooding in the town, and in the Dalginross area in particular.
- 1.8 Perth and Kinross Council have engaged consulting engineers to investigate and promote a flood protection scheme for Comrie. The progress of the Scheme has been periodically reported to the former Environment, Enterprise and Infrastructure Committee and more recently the Environment and Infrastructure Committee. A full list of relevant committee papers is provided at the end of this report.
- 1.9 On 6 September 2017, the Council's then Environment, Enterprise and Infrastructure Committee was provided with an update on the progress of the Comrie Flood Protection Scheme (Report 17/277 refers). Amongst other matters, the Committee resolved that:
- i) the recommended Scheme should progress through the outline design phase, including publication under the Flood Risk Management (Scotland) Act 2009;
 - ii) further reports be brought to Committee in due course.
- 1.10 The Council, along with consulting engineers, Sweco, have been working to develop the outline design of the preferred flood scheme.

Scheme Proposals

- 1.11 The proposed flood scheme includes approximately 2.8km of new flood walls and embankments on the Water of Ruchill and the River Earn extending from Comrie Bridge to the Comrie Holiday Park (north bank) and from the private property 'Aros Field' to the east side of Tay Place (south bank). Flood defences are also proposed for both banks of the River Lednock extending from both St Serfs Church and St Margaret's Church to the confluence with the River Earn.
- 1.12 The proposed scheme will also require public utility diversions, the provision of river bank erosion protection measures and areas of landscaping.
- 1.13 A plan of the proposed scheme is shown in Appendix A and, as published, can also be viewed on the Council's website at <https://www.pkc.gov.uk/article/21568/Comrie-flood-protection-scheme-documents>.

Scheme Publication

- 1.14 The notice for the Comrie Flood Protection Scheme was published under the Flood Risk Management (Scotland) Act 2009 (the 2009 Act) on 28 February 2020. Those affected by the Scheme were notified and information (including an Environmental Impact Assessment Report (EIAR)) were also made available for public inspection on 28 February 2020. The 2009 Act requires that a period of 28 days from the date of publication is allowed for objections; this period being slightly increased to 30 days in relation to the EIAR. It is important to note that late objections can still be submitted where it is reasonable for the objection to be made after the deadline.
- 1.15 Two valid objections and fourteen submissions were received. The submissions were of a general nature and do not require material changes to the proposals. The objections (both from residents) were received by the Council within the 28-day period.
- 1.16 Officers have held discussions with these two residents, but their objections have not been withdrawn.

2. PROPOSALS

- 2.1 As stated above, the Council has received two valid objections to the Comrie Flood Protection Scheme. Therefore, the Council must make a decision under Paragraph 5 of Schedule 2 of the Flood Risk Management (Scotland) Act 2009 to either:
- (a) confirm the proposed Scheme without modification,
 - (b) confirm the proposed scheme with modifications, or
 - (c) reject the proposed Scheme.
- 2.2 Prior to making the above decision, the Council must consider
- (a) The valid objections – these can be viewed in Appendix B and;
 - (b) The scheme's environmental impact as set out within the EIAR. The EIAR is available online at <https://www.pkc.gov.uk/article/21568/Comrie-flood-protection-scheme-documents>
- 2.3 It is proposed that the Council make a preliminary decision to confirm the proposed Scheme without modification. Once the preliminary decision has been made, the Council is required to notify those residents who submitted an objection and the Scottish Ministers.
- 2.4 Within 28 days, the Scottish Ministers will advise the Council if they will consider the proposed Scheme (note that this period may be extended, particularly given the current circumstances). If this proves to be the case, then a public local enquiry will be held. If not, then the Council will be required to hold a local authority hearing.

- 2.5 This will either result in the Scottish Ministers or the Council taking a further final decision to either:
- (a) confirm the proposed Scheme without modification,
 - (b) confirm the proposed Scheme with modifications, or
 - (c) reject the proposed Scheme.
- 2.6 A period of 6 weeks is then allowed for an appeal to be lodged by any person affected by the Scheme. If no appeals are lodged, the Scheme would become operative after this 6-week period.
- 2.7 Subject to the Scheme being confirmed, consulting engineers will commence the necessary detailed design work. Construction is anticipated to commence in early 2022, assuming no further delay to the statutory process and the detailed design programme. However, the lengthier statutory process set out above will delay this.
- 2.8 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.
- 2.9 It is, therefore, proposed that further work be undertaken when the Scheme is confirmed towards writing to the Scottish Government setting out proposed planning conditions and requesting that planning permission shall be deemed to be granted and be subject to those conditions.

3. CONCLUSION AND RECOMMENDATION

- 3.1 The purpose of the flood protection scheme is to manage flood risk in Comrie.
- 3.2 The Scheme was published on 28 February 2020 and received two objections and fourteen submissions. The submissions have been responded to however, the objections have not been withdrawn following consultation.
- 3.3 In order to progress the Scheme, it is recommended that the Council:
- (i) notes the valid objections and the Environmental Impact, as outlined in this report;
 - (ii) makes a preliminary decision to confirm the proposed Comrie Flood Protection Scheme without modification as outlined in this report; and
 - (iii) authorises the Executive Director (Housing & Environment) to carry out all necessary steps to progress the statutory process, including:
 - a) giving notice of the preliminary decision to confirm the Scheme to those residents who submitted an objection and to the Scottish Ministers;
 - b) participating in a public local enquiry or to arrange a local authority hearing as directed by the Scottish Ministers.
 - c) bringing a further report to Committee once b) has been concluded.

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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 in terms of the following priorities:

- (iii) Promoting a prosperous, inclusive and sustainable economy
- (iv) Supporting people to lead independent, healthy and active lives
- (v) Creating a safe and sustainable place for future generations

Corporate Plan

1.2 The proposals relate to the achievement of the following Priorities in the Council's Corporate Plan:

- (iii) Promoting a prosperous, inclusive and sustainable economy;
- (iv) Supporting people to lead independent, healthy and active lives; and
- (iv) Creating a safe and sustainable place for future generations.

2. Resource Implications

Financial

2.1 The Comrie Protection Scheme has been prioritised in the published Tay Flood Risk Management (FRM) Strategy and Local FRM Plan. The flood

scheme is therefore receiving Scottish Government capital grant assistance and this will continue up to 80% of its value at tender stage. The Council is required to fund the remainder of the cost of the scheme, assuming that it remains economically viable.

- 2.2 Although funding for the scheme is in place, it should be noted that the implementation of the flood scheme will be some time away. The current outline design for the proposed scheme requires further development as part of the detailed design process and some further statutory consents require to be obtained. Construction is anticipated to commence in early 2022, assuming no further delay to the statutory process and the detailed design programme. However, the lengthier statutory process set out in this report will delay this.

Capital

- 2.3 The estimated capital cost of the flood scheme over the financial years to 2023/24 is £27.9m. The Scottish Government has committed £22.3m in capital grant to the scheme and the Council's contribution is expected to be 20% of this, giving a budgeted cost, to the Council of £5.6m. The Scheme is included in the Council's current capital programme.
- 2.4 The estimated costs of flood schemes across Scotland continue to be reported to the Scottish Government by local authorities on an annual basis.

Revenue

- 2.5 The on-going maintenance costs for the scheme are estimated at £0.025m per annum.
- 2.6 This additional cost will require to be considered through the Council's budget process once the scheme has been completed.

Workforce

- 2.7 The project management of the flood 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 remaining duration of the project.

Asset Management (land, property, IT)

- 2.8 In order to construct the proposed scheme there will be a requirement to purchase land and/or provide compensation to relevant landowners. Property Services have been consulted on the scheme and a landownership plan has been produced to inform future 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. The Equality Impact Assessment undertaken in relation to this report can be viewed clicking [here](#).
- 3.2 The proposals in this report have been 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 have the same positive impact for all equality groups as the reduction in flood risk to Comrie will provide benefits for all (improved safety, health & wellbeing through avoidance of flood impacts and damages) in the long-term.

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 Impact Assessment Report (EIAR) was produced for the Scheme. The EIAR identified that 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, managing and minimising those impacts. The Schedule of Mitigation describes the measures embedded in the design solution and those that should be incorporated into the future development of the Scheme design and construction.

- 3.6 At the time of publishing the notice for the flood scheme under the 2009 Act, the EIAR was submitted to statutory and non-statutory Consultees for their consideration. Any additional requirements have been incorporated, where appropriate, as conditions into the deemed planning consent for action during the detailed design or construction of the Scheme.

Sustainability

- 3.7 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. Under the Climate Change (Scotland) Act 2009 the Council also has a duty relating to climate change and, in exercising its functions must act:
- in the way best calculated to delivery of the Act's emissions reduction targets;
 - in the way best calculated to deliver any statutory adaptation programmes; and
 - in a way that it considers most sustainable.
- 3.8 Following an assessment using the Integrated Appraisal Toolkit, it has been determined that the proposal is likely to contribute positively to the following corporate sustainable development principles:

(i) Climate Change

Efficient use of resources now and in the future in the built environment and service provision (e.g. energy efficiency, land, water resources, flood defence, waste minimisation) (*Principle 2*)

Mitigation and adaptation to manage the impact of climate change & reduce the production of greenhouse gases (*Principle 3*)

Justification:

The flood scheme proposed in this report will significantly reduce flood risk in Comrie and will therefore help in tackling the effects of climate change.

(ii) Fairer Communities

Creating a sense of place (e.g. a place with a positive 'feeling' for people, and local distinctiveness) (*Principle 22*)

Justification:

The flood scheme will help to make the local community safer and more sustainable for residents, through a reduction in flood risk. This will help the community to thrive in the longer term despite the temporary construction impacts.

3.9 Following an assessment using the Integrated Appraisal Toolkit, it has been determined that the proposal is likely to contribute negatively to the following corporate sustainable development principles:

(iii) Consumption and Production

Efficient use of resources now and in the future in the built environment and service provision (e.g. energy efficiency, land, water resources, flood defence, waste minimisation) (*Principle 2*)

Mitigation and adaptation to manage the impact of climate change & reduce the production of greenhouse gases (*Principle 3*)

Justification:

There will be a short term increase in the use of materials and resources during construction of the flood scheme, but a future reduction due to reduced flood risk.

Mitigation:

The Environmental Impact Assessment and eventual Construction Environmental Management Plan will consider energy consumption and waste management practices during construction.

Legal and Governance

3.10 The Head of Legal and Governance has been consulted on this report.

3.11 The Scheme of Administration authorises the Environment and Infrastructure 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. However, given the current circumstances this matter is brought to the Council for consideration.

Risk

3.12 Risks associated with the proposal will be managed through appropriate communication and project management.

4. Consultation

Internal

4.1 The Head of Legal and Governance and the Head of Finance have been consulted in the preparation of this report.

4.2 At the time of publishing the notice for the flood scheme under the 2009 Act, all relevant sections of the Council were notified including, but not limited to: local elected members, Planning, Property, Land Quality, Environmental Health, Structures Team, Community Greenspace, the Council's Biodiversity Officer and Legal.

External

- 4.3 All relevant landowners and occupiers, Comrie Community Council, SEPA, SNH, Historic Environment Scotland, the Public Utilities and all other relevant organisations were consulted during the development of the proposals.
- 4.4 A public exhibition was held in Comrie on 30 April and 8 May 2019. The aim of the exhibition was to provide the community with further information on:-
- the risk of flooding in Comrie;
 - the Council's proposals for the flood scheme; and
 - other action to raise awareness of flood risk and improve flood resilience.
- 4.5 The exhibition was widely advertised in advance and the local community was invited to attend through the distribution of newsletters, posters, personal letters and e-mails, a press release and via social media. Approximately 150 people attended the exhibition.
- 4.6 The public exhibition included a central display, the proposed outline design drawings, computer-generated visualisations at key locations, flood maps and a presentation. Representatives from the Council's flooding team, Sweco, SEPA and the Scottish Flood Forum were available to answer questions and provide further information. Those attending were given an opportunity to record their views and questions on comment forms or via the Council's website and Consultation Hub. 43 comment forms and e-mails were returned to the Council after the exhibition.
- 4.7 The Council has issued a public consultation report to the local community, including a response to any questions raised during the exhibition or on comment forms.
- 4.8 The public consultation materials used at the exhibition and public consultation report can still be viewed on the Council's website at <http://www.pkc.gov.uk/comriefloodscheme>.
- 4.9 The response to the exhibition was generally positive with the majority of the community being supportive of the proposed outline design for the flood scheme. Some concerns were raised and these were summarised and addressed in the public consultation report. The Council and Sweco also responded in writing to any concerns that were raised and, where possible, amendments were made to the proposed outline design.
- 4.10 All relevant Landowners and occupiers, the Public Utilities, Scottish Government, SEPA, SNH, Historic Environment Scotland and other relevant organisations were notified of the flood scheme under the 2009 Act.

5. Communication

- 5.1 The communication arrangements to date were as noted in Section 4 above.

- 5.2 A newsletter is issued periodically to the local community and relevant consultees in order to update them on the progress of the Scheme. Full details of the scheme are also available to view on the Council's website.
- 5.3 The Council will continue to communicate with the local community, statutory consultees, local landowners and other stakeholders as the detailed design of the scheme is developed. The above noted website will continue to be updated and further letters and newsletters will be issued to the local community as appropriate.

2. BACKGROUND PAPERS

2.1 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 the preparation of the above report;

- 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 – 21 March 2012, Biennial Report on Flood Prevention (Report No 12/135)
- PKC – Environment Committee – 20 November 2013, Progress Report Flood Risk Management (Scotland) Act 2009 (Report No 13/544)
- PKC – Environment Committee – 12 November 2014, The Flood Risk Management (Scotland) Act 2009, Short List of Potential Measures to Manage Flood Risk (Report No 14/483)
- PKC – Environment Committee – 9 September 2015, The Flood Risk Management (Scotland) Act 2009, Selected Actions and Prioritisation (Report No 15/359)
- PKC – Environment Committee – 1 June 2016, The Flood Risk Management (Scotland) Act 2009, Publication of Local Flood Risk Management Plans (Report No 16/241)
- PKC – Environment, Enterprise and Infrastructure Committee – 6 September 2017, Comrie Flood Protection Scheme (Report No 17/277)
- PKC – Environment and Infrastructure Committee – 23 January 2019, The Flood Risk Management (Scotland) Act 2009 Publication of Interim Report (Report No 19/16)

3. APPENDICES

- 3.1 Appendix A – Plan of the Proposed Scheme
Appendix B – Summary of Objections