

**ANGUS COUNCIL**

**COMMUNITIES COMMITTEE – 1 MARCH 2016**

**FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009 UPDATE**

**REPORT BY HEAD OF TECHNICAL AND PROPERTY SERVICES**

**ABSTRACT**

This report updates the Committee on the progress of the draft Local Flood Risk Management Plans under the Flood Risk Management (Scotland) Act 2009.

**1 RECOMMENDATIONS**

It is recommended that the Committee:-

- (i) notes the progress of the draft Local Flood Risk Management Plans for the Tay Estuary and Montrose Basin and Tay, under the Flood Risk Management (Scotland) Act 2009, as detailed in this report;
- (ii) approves the delivery of the actions in the period 2016-2022, detailed in the Local Flood Risk Management Plans, subject to funding from Scottish Government capital funding allocations and council revenue and capital budget setting over the period 2016-2022, as detailed in this report; and
- (iii) agrees that the Head of Technical & Property Services develops the presentation of the Local Flood Risk Management Plans for the Tay Estuary and Montrose Basin for publication in June 2016.

**2 ALIGNMENT TO THE ANGUS COMMUNITY PLAN/SINGLE OUTCOME AGREEMENT/COPORATE PLAN**

This report contributes to the following local outcomes contained within the Angus Community Plan and Single Outcome Agreement 2013-2016:

- Our communities are prosperous and fair;
- Our communities are safe and strong;
- Our communities are sustainable; and
- Our natural and built environment is protected and enjoyed.

**3 BACKGROUND**

- 3.1 The Flood Risk Management (Scotland) Act 2009 (the "Act") places duties on the council as a responsible authority for the Tay local plan district, and lead authority and responsible authority for the Tay Estuary and Montrose Basin local plan district (reference Report No. 463/14).
- 3.2 As approved at Communities Committee 19 January 2016 (reference Report No. 17/16) the committee agreed to the further development of the Local Flood Risk Management Plans to deliver the actions in the period over the period 2016-2022 subject to funding from Scottish Government capital funding allocations and council revenue and capital budget setting.
- 3.3 Details of the coordination and funding arrangements and delivery of each of the actions by Angus Council either shared or individually have been developed under the guidance of the member/officer working group, and in partnership with SEPA and all responsible authorities. Likewise, details of actions by SEPA and other responsible authorities have also been

developed.

## **4 CURRENT POSITION**

### **4.1 Flood Risk Management (Scotland) Act 2009 Update**

4.1.1 The Flood Risk Management Strategies for Tay and Tay Estuary and Montrose Basin (TEAMB), published by SEPA in December 2015, identified actions selected as the most appropriate to manage flood risk in the local plan districts, as agreed with flood risk management authorities following consultation.

4.1.2 SEPA share the responsibility to deliver their own and shared actions for each Strategy and local Plan with the responsible authorities by local plan district. The members of the partnerships established in each local plan district to develop the Strategy and local Plan, and who have actions to be delivered, are as follows:

Tay Estuary and Montrose Basin local plan district:

- Angus Council (lead authority and responsible authority); Aberdeenshire Council; Dundee City Council; Fife Council; and Perth and Kinross Council;
- Scottish Water; and
- SEPA.

Cairngorms National Park Authority and Forestry Commission Scotland are also responsible authorities for TEAMB. They have engaged in the development of the Strategies and local Plans through national and Local Advisory Groups.

Tay Basin local plan district:

- Perth and Kinross Council (lead authority and responsible authority); Angus Council; Fife Council; and Stirling Council
- Loch Lomond and Trossachs National Park Authority and Cairngorms National Park Authority;
- Scottish Water; and
- SEPA.

Forestry Commission Scotland, which is also responsible authorities for Tay, has engaged in the development of the Strategies and local Plans through national and Local Advisory Groups.

4.1.3 The following Potentially Vulnerable Areas (PVAs) include Angus Council as a responsible authority:

Tay Estuary and Montrose Basin local plan district (where there are 19 PVAs in total):

07/03 North of Brechin (shared with Aberdeenshire Council);  
07/04 Montrose Basin;  
07/05 Brechin;  
07/06 Lunan Water;  
07/07 Arbroath;  
07/08 Coast north of Arbroath;  
07/09 Carnoustie and Barry;  
07/10 Monifieth (shared with Dundee City Council);  
07/11 Downfield and Dundee (shared with Dundee City Council);  
07/12 Invergowrie (shared with Dundee City Council and Perth and Kinross Council);  
07/13 Dundee and Broughty Ferry (shared with Dundee City Council); and

Tay Basin local plan district (where there are 17 PVAs in total):

08/05 Kirriemuir and Forfar.

4.1.4 The complete range of actions available is shown in the Figure 1 below. The columns are ordered to indicate the spectrum of structural to non-structural actions from left to right. The lines are ordered to indicate the spectrum of scale and frequency of intervention.

**Figure 1 Range of actions**

Flood protection scheme/works	Natural flood management works	New flood warning	Community flood action groups	Property level protection scheme	Site protection plans
Flood protection study	Natural flood management study	Maintain flood warning	Awareness raising	Surface water plan/study	Emergency plans/response
Maintain flood protection scheme	Strategic mapping and modelling	Flood forecasting	Self help	Maintenance	Planning Policy

4.1.5 Figures 2 and 3 summarise the actions (shaded) to manage flood risk in the Potentially Vulnerable Areas of the Tay Estuary and Montrose Basin and Tay Flood Risk Management Strategies. These actions will be delivered by SEPA and responsible authorities. Angus PVAs are shown in bold.

**Figure 2 Summary of actions to manage flood risk in the Potentially Vulnerable Areas of the Tay Estuary and Montrose Basin**

PVA	Flood protections scheme/works	Natural flood management works	New flood warning	Flood protection study	Natural flood management study	Surface water plan/study	Strategic mapping and modelling	Maintain flood protection scheme*	Maintain flood warning	Flood forecasting	Property level protection scheme	Community flood action groups	Self help	Awareness raising	Maintenance	Site protection plans	Emergency plans/response	Planning policies
07/01							✓	N/A	N/A	✓			✓	✓	✓		✓	✓
07/02				✓			✓	✓	N/A	✓		✓	✓	✓	✓		✓	✓
<b>07/03</b>							✓	N/A	✓	✓			✓	✓	✓		✓	✓
07/04			✓	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓
07/05		✓			✓	✓	✓	✓	✓	✓			✓	✓	✓		✓	✓
07/06							✓	N/A	N/A	✓			✓	✓	✓		✓	✓
07/07	✓					✓	✓	✓	✓	✓			✓	✓	✓		✓	✓
07/08						✓	✓	N/A	N/A	✓			✓	✓	✓		✓	✓
07/09				✓		✓	✓	✓	N/A	✓			✓	✓	✓		✓	✓
07/10			✓	✓		✓	✓	✓	N/A	✓			✓	✓	✓		✓	✓
07/11			✓	✓		✓	✓	N/A	N/A	✓		✓	✓	✓	✓		✓	✓
07/12					✓	✓	✓	N/A	N/A	✓			✓	✓	✓		✓	✓
07/13	✓					✓	✓	✓	✓	✓			✓	✓	✓		✓	✓
07/14				✓			✓	N/A	✓	✓			✓	✓	✓		✓	✓
07/15							✓	N/A	N/A	✓			✓	✓	✓		✓	✓
07/16	✓		✓	✓		✓	✓	N/A	✓	✓			✓	✓	✓		✓	✓
07/17	✓		✓	✓		✓	✓	N/A	N/A	✓			✓	✓	✓		✓	✓
07/18			✓	✓		✓	✓	✓	N/A	✓			✓	✓	✓		✓	✓
07/19			✓	✓	✓		✓	✓	N/A	✓		✓	✓	✓	✓		✓	✓

\*Note: N/A is used where there is no formal Flood Protection Scheme or flood warning scheme present

**Figure 3 Summary of actions to manage flood risk in the Potentially Vulnerable Areas of the Tay**

PVA	Flood protection scheme/works	Natural flood management works	New flood warning	Flood protection study	Natural flood management study	Surface water plan/study	Strategic mapping and modelling	Maintain flood protection scheme*	Maintain flood warning*	Flood forecasting	Property level protection scheme	Community flood action groups	Self help	Awareness raising	Maintenance	Site protection plans	Emergency plans/response	Planning policies
08/01	✓						✓	N/A	N/A	✓		✓	✓	✓	✓		✓	✓
08/02								N/A	N/A	✓			✓	✓	✓		✓	✓
08/03	✓			✓			✓	✓	✓	✓		✓	✓	✓	✓		✓	✓
08/04			✓		✓		✓	N/A	N/A	✓			✓	✓	✓		✓	✓
<b>08/05</b>				✓		✓	✓	✓	<b>N/A</b>	✓			✓	✓	✓		✓	✓
08/06						✓	✓	N/A	✓	✓			✓	✓	✓		✓	✓
08/07			✓				✓	N/A	N/A	✓			✓	✓	✓		✓	✓
08/08	✓			✓			✓	N/A	✓	✓			✓	✓	✓		✓	✓
08/09							✓	N/A	N/A	✓			✓	✓	✓		✓	✓
08/10	✓					✓	✓	✓	✓	✓			✓	✓	✓		✓	✓
08/11	✓			✓		✓	✓	N/A	N/A	✓			✓	✓	✓		✓	✓
08/12	✓					✓	✓	✓	✓	✓			✓	✓	✓		✓	✓
08/13				✓			✓	✓	✓	✓		✓	✓	✓	✓		✓	✓
08/14	✓						✓	✓	✓	✓		✓	✓	✓	✓		✓	✓
08/15							✓	N/A	✓	✓			✓	✓	✓		✓	✓
08/16							✓	N/A	✓	✓			✓	✓	✓		✓	✓
08/17							✓	✓	✓	✓		✓	✓	✓	✓		✓	✓

\*Note: N/A is used where there is no formal Flood Protection Scheme or flood warning scheme present

At this stage, there are no specific actions identified for 'property level protection scheme' and 'site protection plans' actions. Consideration of property level protection schemes will be included in the 'flood protection study', 'surface water plan/study' and/or 'emergency plans/response' actions. Site protection plans will be identified through these same 'study' actions and also 'planning policies' action.

4.1.6 Descriptions of how each action is to be implemented are provided for each PVA in TEAM B – see Appendix 1 and Tay – see Appendix 2 of this report. In compliance with the Act, these descriptions include:

- (i) a detailed timetable for the completion of action currently being implemented, and the implementation of measures yet to be commenced;
- (ii) who is, or is to be, responsible for implementing the action and the arrangements for funding the action; and
- (iii) a description of the coordination arrangement to implement the actions.

4.1.7 The descriptions presented in Appendix 1 of this report represent the 'content' of the Local Flood Risk Management Plans as developed by representatives of SEPA and every other responsible authority. The content has been developed under the guidance of the Angus Council member/officer working group.

4.1.8 The critical step to finalise the Plans is that the lead authority, every other responsible authority which has flood risk related functions exercisable in or in relation to the local plan district and SEPA must agree to its content. Each of the local plan district partners listed in section 4.1.2 are therefore seeking formal agreement to the content of the Plans to meet their own governance arrangements.

4.1.9 The agreement to the selected actions as set by the Strategies published in December 2015 has already been approved by each local plan district partner, including Angus Council (reference Report Nos 463/14 and 297/15), as have now been developed in the local Plans as approved in January 2016 (reference Report No. 17/16).

- 4.1.10 For Angus Council, this report seeks the approval of content only, i.e. the details included in the descriptions as stated in paragraph 4.1.6 of this report.
- 4.1.11 Following agreement from all other local plan district partners (as listed in 4.1.2 of this report), the content will then be finalised. Each Local Flood Risk Management Plan will then be published in June 2016 presenting the agreed content. Once finalised, the lead authority must:
- (a) publish the final plan in such manner as it considers appropriate,
  - (b) make copies of it available for public inspection,
  - (c) provide a copy of it to SEPA and the Scottish Ministers,
  - (d) make copies of it available to the public, and
  - (e) publicise the publication of the final plan.
- 4.1.12 Should any of the local plan district partners not agree to the content as detailed in this report then a further round of development of the content may be necessary if this is considered by the lead authority, in consultation with local plan district partners, to require a material change or modification. Such a delay in order to seek fresh approvals would result in a risk that the Plan will not be finalised by the local plan deadline (end of June 2016). If this risk is considered to mean that the deadline will not be met then the lead authority, Angus Council in the case of TEAMB), must notify the Scottish Ministers of that fact. Where the Scottish Ministers receive such a notice, they must determine the content of the local flood risk management plan taking into account representations made by the local plan district partners.
- 4.1.13 Given the effective governance arrangements and partnership working that has been evident in the development of the Strategies and the Plans to date, it is considered that the risk to the finalisation of the Plans is low, but that careful leadership is applied by the lead authorities to ensure that this is the case.

## **5 PROPOSALS**

- 5.1 Noting the progress of the draft Local Flood Risk Management Plans for the Tay Estuary and Montrose Basin and Tay, under the Flood Risk Management (Scotland) Act 2009, as detailed in this report, it is proposed that the content as detailed is agreed.
- 5.2 In agreeing the content of the Local Flood Risk Management Plans, it is accepted that the delivery of the actions is subject to funding from Scottish Government capital funding allocations and council revenue and capital budget setting over the period 2016-2022.
- 5.3 In agreeing the content of the Local Flood Risk Management Plans as described in this report, it is accepted that should the low risk that agreement will not be reached with any of the responsible authorities or SEPA result in a material change or modification, that a fresh agreement would be sought from committee.
- 5.4 In agreeing the content of the Local Flood Risk Management Plans as described in this report, as lead authority, it is proposed that the Head of Technical & Property Services develops the presentation of the Local Flood Risk Management Plans for the Tay Estuary and Montrose Basin for publication in June 2016; and coordinates with Perth and Kinross Council in the presentation of the Local Flood Risk Management Plans for Tay, where they are lead authority.

## **6 FINANCIAL IMPLICATIONS**

- 6.1 As detailed in section 4 and 5 of this report, it is accepted that the requirement for the council to undertake the actions identified through the Flood Risk Management process needs to be affordable. The delivery of the actions by Angus Council, SEPA and all other responsible authorities is subject to funding from Scottish Government. The following draft wording is proposed to be used in the Local Flood Risk Management Plans so as to explain this.

*"The Act requires Scottish Government to have regard to the Strategy and Local Flood Risk Management Plan when allocating funding to SEPA and responsible authorities. The delivery of the actions in the first flood risk management plan cycle from 2016-2022, as detailed in the*

*Local Flood Risk Management Plan, is therefore subject to revenue and capital funding allocations from Scottish Government to SEPA and responsible authorities; and to revenue and capital budget setting by councils and other responsible authorities over the period 2016-2022.”*

- 6.2 Consideration has been given to the financial implications for the delivery of actions in the budget setting process. This will be subject to further consideration annually and as required, and will be subject to future reporting and committee approvals as necessary.

## **7 OTHER IMPLICATIONS**

### **7.1 Risks**

- 7.1.1 The overall risk identified in this report is that of flooding to people, property and land in Angus. The Flood Risk Management (Scotland) Act 2009 presents the risk-based, plan-led approach to managing flood risk across Scotland and locally. Delivering the actions identified in the Local Flood Risk Management Plans, as detailed in this report, will reduce flood risk.
- 7.1.2 As outlined in section 4.1 of this report, the delivery of the actions is subject to the publication of the Local Flood Risk Management Plans, which must be agreed by SEPA and every responsible authority. Delays in such agreements present a risk to meeting the statutory deadline for finalising and publishing the Plans.
- 7.1.3 As outlined in sections 4 and 6 of this report, the delivery of the actions in the first flood risk management plan cycle from 2016-2022 is also and will remain subject to revenue and capital funding allocations from Scottish Government to SEPA and responsible authorities; and to revenue and capital budget setting by councils and other responsible authorities over the period 2016-2022.
- 7.1.4 In order to implement all of the actions identified in the Plans, sufficient funding and resources will need to be available and allocated. The revenue and capital budget setting by the council over the period 2016-2022 must consider the statutory requirements of the Act against all other requirements of the council.
- 7.1.5 As a lead authority, one of the statutory responsibilities is that an interim report on the Local Flood Risk Management Plan must be published. The interim review would be undertaken between June 2018 and June 2019 (between years 2 and 3 of the six year plan cycle). The review will report on the progress that has been made towards implementing the actions identified in the Plan.
- 7.1.6 Between years 5 and 6 (June 2021 and June 2022), a report must be published by the lead authority on progress against the Plan actions, those not implemented, with reasons, and any other additional actions that contributed to the objectives set down in the Flood Risk Management Strategies.
- 7.1.7 Our performance and that of other responsible authorities and SEPA will therefore be subject to published scrutiny, which would present a risk should actions not have been delivered where adequate resources have been allocated.

### **7.2 Human Rights**

As reported previously to this committee (Report No. 602/10), the progression of a Flood Protection Scheme has potential implications for property owners and for occupiers in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). However, it is considered that any actual or apprehended infringement of such Convention Rights is justified in the public interest and in accordance with the council's duty to carry out works to reduce the likelihood of flooding of land.

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**NOTE:**

The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

Report No. 17/16 - Flood Risk Management (Scotland) Act 2009 Update – 19 January 2016  
Report No. 297/15 – Flood Risk Management (Scotland) Act 2009, Arbroath Flood Strategy & Arbroath (Brothock Water) Flood Protection Scheme Updates – 18 August 2015  
Report No 463/14 – Flood Risk Management (Scotland) Act 2009 Update – Communities Committee – 18 November 2014  
Report 602/10 – Arbroath Flood Strategy, Infrastructure Services Committee 24 August 2010

**Appendix 1 - Tay Estuary and Montrose Basin - copy available in the Information Hub**

**Appendix 2 - Kirriemuir and Forfar Plans – copy available in the Information Hub**