

ANGUS COUNCIL

COMMUNITIES COMMITTEE – 22 FEBRUARY 2022

FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009 - UPDATE

REPORT BY DIRECTOR OF INFRASTRUCTURE

ABSTRACT

This report provides an update on the requirements of the Flood Risk Management (Scotland) Act 2009, including the development of Cycle 2 2022-28 Flood Risk Management Plans for the Tay Estuary and Montrose Basin area and the Tay area.

1. RECOMMENDATIONS

It is recommended that the Committee:

- (i) notes the progress of the draft Local Flood Risk Management Plans for Tay Estuary and Montrose Basin and Tay area, which sets out the delivery of the actions in the period 2022-2028, as detailed in this report;
- (ii) notes the results of the consultation on potential actions for the Local Flood Risk Management Plan for the Tay Estuary and Montrose Basin Local Plan District and the Tay Local Plan District by the end of October 2021;
- (iii) notes the publication of the Flood Risk Management Strategies for Tay Estuary and Montrose Basin and Tay by SEPA and the obligations contained for the delivery of the actions in the period 2022-2028;
- (iv) notes the changes made by Ministerial Direction to the deadline date for publishing the Final Reports on the current Local Flood Risk Management Plans for the period 2016-2022;
- (v) notes the changes made by Ministerial Direction to the deadline date for publishing the Local Flood Risk Management Plans for the period 2022-2028;
- (vi) notes the funding arrangements and distribution from Scottish Government capital funding allocations for flood risk management schemes and works are subject to ongoing review by a sub-group directed by COSLA Leaders, as detailed in this report;
- (vii) approves the further development of the Local Flood Risk Management Plans to deliver the actions in the period 2022-2028, subject to confirmation of funding arrangements and distribution from Scottish Government capital funding allocations and council revenue and capital budget setting over the period 2022-2028;
- (viii) notes that a report seeking approval to publish the Final Reports on the current Tay Estuary and Montrose Basin Local Flood Risk Management Plans for the period 2016-2022 will be required in advance of the December 2022 deadline; and
- (ix) notes that a report seeking approval to finalise the actions in the period 2022-2028 and to publish the Tay Estuary and Montrose Basin Local Flood Risk Management Plans will be required in advance of the December 2022 deadline.

2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN/COUNCIL PLAN

This report contributes to the following local outcomes contained within the Council Plan 2019-2024 and Community Plan 2017-2030:

- an inclusive and sustainable economy;
- a reduced carbon footprint;
- safe, secure, vibrant and sustainable communities; and
- enhanced, protected and enjoyed natural and built environment

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 Nos. 463/14 and 17/16).

3.2 This report refers to the development of the Flood Risk Management Strategies and Plans for the second flood risk management plan cycle from 2022-28 (reference Report No. 119/21).

4. CURRENT POSITION

4.1 Under the Act, SEPA are required to consult publicly on the draft Flood Risk Management Strategies. The draft Strategies identified and described the actions required to manage flood risk. The draft Plans identified timings, funding and responsibilities for the actions to be implemented over the second six-year flood risk management cycle from June 2022, which has now been deferred by Ministerial Direction to December 2022 – see section 4.7 below.

4.2 SEPA undertook a consultation on the Flood Risk Management Strategies in two stages for the characterisation, objective and measures stages. The consultation, published in December 2020, contained background details of Objective Target Areas (OTA) only. The second stage of consultation, which was due by the end of June 2021 but delayed to the end of October 2021 under a Ministerial Direction of 24 March 2021, due to the SEPA cyber-attack (reference Report No. 119/21) provided details of the objectives and actions.

4.3 The results of the consultation for the Tay Estuary and Montrose Basin Local Flood Risk Management Plan and Tay Local Flood Risk Management Plan are summarised in **Appendices 1 and 2** respectively.

4.4 The Flood Risk Management Strategies for 2022-2028 have yet to be published by SEPA.

4.5 The results of the consultation and Flood Risk Management Strategies for 2022-2028 published by SEPA have been reviewed by the Flood Risk Management Member Officer Working Group on 3 February 2022. The Member Officer Working Group is made up of officers and the following elected members: Provost Proctor, Cllr Fotheringham, Cllr McLaren and Cllr Duff.

4.6 The actions contained in the Flood Risk Management Strategies for 2022-2028 and draft Local Flood Risk Management Plans will not necessarily impose a resource burden on the Council and will be subject to future funding allocations and further detailed technical feasibility to ensure viability. The responses to the consultation will allow for the further development of the objectives and actions prior to finalising and publishing the Local Flood Risk Management Plans.

4.7 The progression and publication of the Flood Risk Management Strategies for 2022-2028 and subsequent Local Flood Risk Management Plans are to be subject to a further Ministerial Direction. This is required to accommodate further delays resulting from the cyber-attack on SEPA and to seek clarity on the funding arrangements and distribution from Scottish Government capital funding allocations over the period 2022-2028 – see section 7 Financial Implications. The Ministerial Direction will allow for the following:

- Extension of time to publish Local Flood Risk Management Plans for 2022-2028 from 6 months to 12 months after the publication of Flood Risk Management Strategies for 2022-2028 – until end of December 2022; and
- Extension of time to publish a Final Report on Local Flood Risk Management Plans for 2016-2022 by 6 months – until end of December 2022.

4.8 The six-month deferral of the date by which the Local Flood Risk Management Plans are required to be published by lead authorities will allow for development of actions to be included that are considered affordable based on confirmation of the Scottish Government capital funding distribution model, which is subject to ongoing review by a COSLA sub-group of Directors of Finance and flood risk officers and reporting to COSLA Leaders – see section 7 Financial Implications.

4.9 The six-month extension to the publication of the Final Report on Local Flood Risk Management Plans for 2016-2022 will allow local authorities additional time to assess the delivery of actions in the first cycle, which should include an assessment of any delays in delivering said actions, including cycle 1 flood risk management schemes.

4.10 Updates will be provided to this committee on the development of Final Report on the Local Flood Risk Management Plans for 2016-2022 and the Local Flood Risk Management Plans for 2022-28 for committee approvals in advance of December 2022 publication deadlines.

4.11 In consideration of the requirements for Strategic Environmental Assessment of the Local Flood Risk Management Plans (reference Report No. 119/21 and see section 7 below), it is proposed that the Plans are subject to a screening exercise and consultation with the Scottish Government's "SEA Gateway" (SEPA, NatureScot and Historic Environment Scotland).

5. FINANCIAL IMPLICATIONS

5.1 There are no specific financial commitments by the Council that are included in the Local Flood Risk Management Plans, with the exception of the Arbroath (Brothock Water) Flood Protection Scheme (reference Report No. 181/20) that is identified in the council's Financial Plan.

5.2 In cycle 1 from 2016-2022, Flood Risk Management schemes or works prioritised in published Local Flood Risk Management Plans were able to access grant funding from Scottish Government at an intervention rate of 80% grant, with 20% from local authority or others. It had been assumed that the same approach would apply to capital schemes and works for cycle 2 from 2022-2028. However, on review of the delivery of cycle 1 schemes and works against time and budget, it was discovered that many of the schemes were over budget and late, which would impact on the availability of grant funding from Scottish Government for cycle 2 schemes and works from 2022-2028. A sub-group of the COSLA Settlement & Distribution Group under the direction of COSLA Leaders was therefore established to undertake a review of the financial implications from the delivery of cycle 1 Scottish Government schemes and works, and recommendations for funding distribution for cycle 2 capital schemes and works. The work of the sub-group is ongoing and will be subject of reporting to COSLA Leaders in due course.

5.3 It is known that there will be no impacts on the delivery of the Arbroath (Brothock Water) Flood Protection Scheme from the above review. The review may though have an impact on the availability of Scottish Government capital funding for schemes in cycle 2, which were identified in the draft Local Flood Risk Management Plans for 2022-2028.

5.4 It is considered unlikely that the results of the above review and agreement on funding model for cycle 2 capital schemes and works will be known before Budget Setting 2022/23. Future consideration of the Financial Plan for flood risk management capital schemes will therefore be required. It is considered that this would be incorporated into the report seeking committee approval to publish the Local Flood Risk Management Plans for 2022-28 in advance of December 2022 deadlines, as these Plans would represent a clearer commitment to the schemes as actions, albeit always subject to necessary funding from Scottish Government.

5.5 Actions other than flood risk management schemes and works remain largely dependent on the allowance in the local government settlement for flood risk management.

6. RISK IMPLICATIONS

6.1 Implementation of the Plans ensures that Angus Council has set out a strategic, plan-led approach to managing flood risk and will consider the impacts of climate change. All actions progressed will take cognisance of the impacts of climate change in accordance with contemporary published guidance.

6.2 Specific risks have been detailed elsewhere in this report.

7. STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)

7.1 The Environmental Assessment (Scotland) Act 2005 (the '2005 Act') applies SEA to the proposed Local Flood Risk Management Plans. The process requires consideration of whether the public plans, programmes, and strategies (PPS) is likely to have no or minimal environmental effect (called "pre-screening") or is unlikely to have significant environmental effect (called "screening"). The latter requires prior consultation with the Scottish Government's "SEA Gateway" (SEPA, NatureScot and Historic Environment Scotland).

7.2 The draft Flood Risk Management Strategies by SEPA have been subject to a screening direction by the SEA Gateway. A Scoping Report has been consulted upon and an Environmental Report to consider the environmental effects of the Strategies forms part of the consultation exercise detailed in this report.

7.3 Any additional environmental effects from the Local Flood Risk Management Plans over and above those considered by the SEA of the Strategies are likely to be minimal. However, to evidence this, as part of the plan development officers will carry out all the required steps under SEA for the Local Flood Risk Management Plans up to the point of its adoption by the Council to ensure compliance with the requirements of the 2005 Act.

8. EQUALITY IMPACT ASSESSMENT

8.1 An Equality Impact Assessment was completed for the previous report (see Appendix 3 of Report No. 119/21), which concluded that there are either no impact or neutral impact on protected characteristic groups for the proposals contained in that report. There are no changes to the assessment resulting from the content of this report.

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. 119/21 - Flood Risk Management (Scotland) Act 2009 – Update, Communities Committee, 20 April 2021
- Report No. 181/20 - Arbroath (Brothock Water) Flood Protection Scheme Update – Special Arrangements Committee, 23 June 2020
- Report No. 17/16 - Flood Risk Management (Scotland) Act 2009 – Update, Communities Committee, 19 January 2016
- Report No. 463/14 - Flood Risk Management (Scotland) Act 2009 - Communities Committee, 18 November 2014

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List of Appendices:

Appendix 1 – Consultation Responses Summary – Tay Estuary and Montrose Basin LFRMP

Appendix 2 – Consultation Responses Summary – Tay LFRMP