

PERTH AND KINROSS COUNCIL

Environment and Infrastructure Committee

23 January 2019

**The Flood Risk Management (Scotland) Act 2009
Publication of Interim Report**

Report by Executive Director (Housing And Environment) (Report No. 19/16)

The Council's duties with regard to flooding are set out within the Flood Risk Management (Scotland) Act 2009. The Council published its first Local Flood Risk Management Plans in June 2016. This report now presents the final drafts of the Council's interim reports on the progress made in implementing those plans. The interim reports are required to be published no later than 22 June 2019. This report seeks the Committee's approval of the content of the interim reports on the Local Flood Risk Management Plans.

1. BACKGROUND / MAIN ISSUES

- 1.1 The Flood Risk Management (Scotland) Act 2009 (the 2009 Act) has introduced a more modern, coordinated and sustainable approach to flood risk management at both national and local levels.
- 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 2009 Act sets out a framework designed to manage and reduce flood risk across Scotland over time. Local authorities, the Scottish Environment Protection Agency (SEPA) and Scottish Water have duties to work together to produce a national flood risk assessment, flood risk and hazard maps, Flood Risk Management (FRM) Strategies and Local FRM Plans. This process of risk assessment, mapping and planning is to be repeated in cycles every six years.
- 1.4 SEPA published the first FRM Strategies in December 2015. These documents cover the 14 local plan districts across the whole of Scotland. They describe the objectives and actions that will be implemented by SEPA and responsible authorities over the first six year cycle from 2015-2021.
- 1.5 The Environment Committee of 1 June 2016 approved the content and publication of the first Local FRM Plans for the Tay, the Forth, the Forth Estuary and the Tay Estuary & Montrose Basin districts. (Report No. 16/241 refers). The published documents can be viewed on the Council's website at www.pkc.gov.uk/frmplans.

- 1.6 Section 37 of the 2009 Act requires lead authorities to review their Local FRM Plan and publish an interim report on it around the mid point of the 6 year cycle, i.e. within 2 to 3 years of publication (between June 2018 and June 2019). The interim report covers the conclusions of this review. It includes information on the progress that has been made towards addressing the measures identified in the implementation part of the plan.
- 1.7 As the lead authority for the Tay district, Perth and Kinross Council is required to publish this interim report. The Council also has to contribute to the interim reports on the three other Local FRM Plans for the other districts noted at 1.5.
- 1.8 The 2009 Act also requires the interim report be made available for public inspection.

2. PROPOSALS

- 2.1 Public awareness, participation and community support are essential components of sustainable flood risk management. Public participation can not only raise awareness of flood risk, it can also inform decisions and contribute to the successful implementation of actions. The publication of an interim progress report near to the mid-point of the 6 year FRM cycle is, therefore, intended to assist with this.
- 2.2 The final draft interim reports have been developed in partnership with SEPA and the relevant responsible authorities. For the Tay district, this includes local authorities, Scottish Water, Forestry Commission Scotland, the Loch Lomond & the Trossachs National Park Authority and the Cairngorms National Park Authority. Transport Scotland and the Scottish Flood Forum have also provided information.
- 2.3 The interim reports have been developed based on an agreed national template to ensure consistency. The documents are intended to be public facing and to provide a local perspective on flood risk management.
- 2.4 The published FRM Strategies and Local FRM Plans contain both general actions which apply across the local plan district and actions that are specific to Potentially Vulnerable Areas (PVAs). The published Local FRM Plans also provided delivery timescales for the selected actions. The interim reports, therefore, set out the progress made to date on delivering those actions as well as the measures planned to complete them.
- 2.5 Each action has been allocated a red, amber or green (RAG) status to provide an indication of its progress to date. The RAG status definitions are set out in Chapter 3 of the Tay LPD interim report.
- 2.6 The introduction of the Flood Act has led to improved partnership working and data sharing between SEPA and the responsible authorities. The published Tay Local FRM Plan remains current and relevant. Since publication in June 2016 (Report No. 16/241 refers), in general, good progress has been made over the initial three years of the first cycle, despite a relatively slow start.

Progress on the initial actions was delayed by the response required to Storms Frank and Desmond, which required additional actions to be implemented. Staff resources were required to complete investigations into flood schemes (in Comrie, Bankfoot and Coupar Angus) and to carry out public consultation. The procurement of sufficient consultancy services initially also proved problematic. However, with relatively few flood events since early 2016, more steady progress has been made in delivering the selected actions. Fluvial flood studies have generally progressed as programmed, while progress on the larger and more complex flood protection schemes was slightly delayed. The large flood protection scheme in Almondbank has been completed in 2018 and progress has also been made on the development of a further major scheme for Comrie. It should be noted that the responsible authorities involved in delivering the actions for the Tay LPD are also involved in delivering actions in other local plan districts and their resources have to be split accordingly.

- 2.7 In order to finalise the interim reports, the other partners in each district are, therefore, arranging formal agreement in accordance with their respective governance arrangements.
- 2.8 The four interim reports are currently at a final draft stage and only require minor amendments prior to publication.
- 2.9 The final drafts of the Tay interim report and the Council's input to the other interim reports can be viewed at the following links:

- [Tay](#)
- [Tay Estuary & Montrose Basin](#)
- [Forth](#)
- [Forth Estuary](#)

Next Steps

- 2.10 As noted at 2.8, the interim reports are at a final draft stage and may still require further minor amendments prior to final publication. The amendments will mainly relate to the presentation of the final documents and will include any further progress updates prior to final publication. As such, the content (as presented in this report) will not substantially change prior to publication.
- 2.11 Publication is currently programmed for 1 March 2019. This date is earlier than the statutory deadline but coincides with the publication of other interim reports across Scotland. It is shortly after the national FRM Conference when the publication (by SEPA) of the second national flood risk assessment will also be launched.
- 2.12 Following agreement from all other members of the Tay LPD Partnership, the final interim report for the Tay District will, therefore, be published on the Council's website at this time. The proposed publicity surrounding this will be as follows:

- (i) the Council's website will be updated to include the final interim report for the Tay District and to provide links to the other relevant published interim reports.
- (ii) a copy of the final interim report for the Tay District will be provided to SEPA and the Scottish Ministers.
- (iii) notices will be placed in *the Scotsman*, *the Courier*, *the Stirling Observer* and *the Edinburgh Gazette*.
- (iv) an e-mail with a link to the interim reports will be sent to all Councillors within Perth and Kinross.
- (v) letters will be issued to each community council that falls within a PVA to notify them of the publication of the interim reports and how to access them.
- (vi) hard copies of the documents will also be made available in the Council's Perth and Area Offices.
- (vii) announcements will be posted on social media (the Perth & Kinross Council Facebook and Twitter pages).
- (viii) an article will be placed in the first available 2019 Council e-mail bulletin.
- (ix) information will be added to the Community Watch website.
- (x) information will be sent to local community resilience groups within a PVA
- (xi) any other publications which are considered appropriate.

- 2.13 It should be noted that it will not be possible to carry out all of the selected actions to manage flood risk within the resources available to the Council at this time. Although the interim reports will be published on 1 March 2019, the implementation of the actions, thereafter, will continue to be based on a number of factors, including: priority; availability of funding; capacity within delivery bodies and third parties to develop the actions; coordination and agreements between partners; statutory processes and permissions; design or other preparatory time required.
- 2.14 The 2009 Act sets out a 6 year cycle between subsequent FRM Strategies and Local FRM Plans. SEPA and the responsible authorities are required to implement the actions set out in the current strategies and plans. In addition, the process of reviewing and updating the national flood risk assessment and flood maps, as well as producing the second cycle of FRM Strategies and Local FRM Plans, has also re-commenced.
- 2.15 In December 2019, SEPA will be assessing and prioritising the actions to be funded in the second cycle of FRM Strategies (2022-2028). Any studies and investigations that have not arrived at an identified solution by this time will not attract funding in the second cycle. This may result in certain communities being at an increased risk of flooding for longer.
- 2.16 Further public consultation will be carried out in 2020/21 during the development of the next FRM Strategies and Local FRM Plans.
- 2.17 A final report on progress must also be published no later than 6 years after the Local FRM Plan is finalised, i.e. between June 2021 and June 2022.

- 2.18 The second set of Flood Risk Management Strategies and Local Flood Risk Management Plans will be published in December 2021 and June 2022 respectively.

3. CONCLUSION AND RECOMMENDATIONS

- 3.1 This report provides an update on the publication of the Council's interim reports on the Local Flood Risk Management Plans published in June 2016.
- 3.2 The report seeks the Committee's approval of the content of the interim reports on the Local Flood Risk Management Plans for the Tay, Forth, Forth Estuary and Tay Estuary & Montrose Basin districts.
- 3.3 The report also seeks the Committee's approval to allow officers to carry out final minor amendments to the presentation of the interim reports, prior to publication on 1 March 2019.
- 3.4 It is recommended that the Committee:
- (i) endorses the progress made on delivering the Local Flood Risk Management Plans published in June 2016 as set out in the interim reports.
 - (ii) approves the content of the interim reports on the Local Flood Risk Management Plans for the Tay District and the Council's input to the interim reports for the Forth, the Forth Estuary and the Tay Estuary & Montrose Basin Districts.
 - (iii) approves that the Head of Environmental & Consumer Services will carry out final minor amendments to the presentation of the above interim reports prior to final publication on 1 March 2019, if required.
 - (iv) approves the proposed arrangements for publication of the interim reports.

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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	None
Asset Management (land, property, IST)	None
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 managing flood risk to our residential and business communities in a sustainable manner.

Corporate Plan

- 1.2 The Council's Corporate Plan 2018 – 2022 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 It should be noted that the actions identified in the Local FRM Plans will not be implemented at this time. The implementation arrangements have been set out in the published Local FRM plans and the Interim Reports provide an update on progress. The actions have been prioritised over the first six year cycle of the Plans from 2016-2022. Any remaining actions will still require further development through the progression of flood scheme proposals or further flood studies. As a result, there are no immediate resource implications arising directly from the recommendations in this report.
- 2.2 However, the flood risk management planning process will have future financial implications. The Local FRM Plans contain the implementation arrangements including the timetable for current and new actions to manage flood risk, who will be responsible for implementing them, as well as how they will be funded and coordinated by SEPA and the responsible authorities over the remainder of first six year cycle.
- 2.3 The 2009 Act requires the Scottish Government to have regard to the FRM Strategies and Local FRM Plans when allocating funds to SEPA and responsible authorities. The Scottish Government, CoSLA and SEPA have agreed the distribution of capital funding to the actions identified nationally in the FRM Strategies and Local FRM Plans. The following arrangements apply:
- (i) Only works and schemes that are prioritised in the FRM Strategies and Local FRM Plans are eligible for capital funding.
 - (ii) Flood protection schemes attract capital grant assistance of up to 80% of their estimated project cost at tender stage from the Scottish Government. Local authorities are required to fund the remainder of the cost of flood schemes.
 - (iii) The Scottish Government allocates capital funding to local authorities engaged in flood risk management across Scotland. 80% of this capital funding will continue to be allocated to flood protection schemes with the remaining 20% to other actions within the FRM Strategies, as detailed in the Local FRM Plans. This 20% is distributed to the 32 Scottish local authorities based on the number of properties at risk of flooding and the estimated annual average flood damages.
- 2.4 The Council currently has four new flood protection schemes that have been included in the national priority list. Both the Scottish Government and the Council have made capital allocations for these schemes. The allocated grant is adjusted as flood scheme proposals are developed. The estimated costs of flood schemes across Scotland, therefore, continue to be reported to the Scottish Government by local authorities on an annual basis.
- 2.5 As noted at 2.15 in the main report, in December 2019 SEPA will be assessing and prioritising the actions to be funded in the second cycle of FRM Strategies (2022-2028). Any studies and investigations that have not arrived

at an identified solution by this time will not attract funding in the second cycle. This may result in certain communities being at an increased risk of flooding for longer.

- 2.6 Revenue funding will continue to be distributed in line with current arrangements.
- 2.7 The Council has a duty to have regard to the FRM Strategies and local FRM plans and so the actions set out therein are statutory obligations. The actions included in the strategies and plans have been set out assuming that funding levels remain at current levels. However, if funding should prove not to be available throughout the remainder of the 6 year cycle of the plans, the implementation of those actions is likely to be delayed.
- 2.8 Clearly the issue of funding support from central government will continue to have a significant bearing on when the Council will be able to deliver any actions to manage flood risk in the future. In the meantime, the actions set out in the Council's local FRM plans have been prioritised but will only be implemented as available resources allow.

Workforce

- 2.9 There are no workforce implications arising directly from the recommendations in this report.

Asset Management (land, property, IT)

- 2.10 The proposals in this report have no IT implications.
- 2.11 The individual actions set out within the local FRM plans may have land and property implications however these will be dealt with on an individual project basis.

3. Assessments

Equality and Fairness 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 function, policy, procedure or strategy presented in this report was previously considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome.
- 3.3 Following an assessment using the Integrated Appraisal Toolkit, it was determined that the proposal be assessed as **relevant** and the following positive outcomes expected following implementation:

- The selected actions will have the same impact for all equality groups as the reduction in flood risk to communities will provide benefits for all (improved safety, health & wellbeing through the avoidance of flood impacts and damages).
- The effects and aftermath of flooding could have a greater impact on mobility impaired, sight impaired or blind people, learning disabled people, children, the elderly and infirm, pregnant women or nursing mothers in relation to adverse psychological, physical and health impacts. The selected actions to reduce flood risk described in the report will reduce or remove these impacts.

Strategic Environmental Assessment

- 3.4 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 3.5 There are likely to be significant environmental effects associated with the Tay Local FRM Plan and the other three Local FRM Plans that the Council has contributed to. As a consequence an environmental assessment was previously found to be necessary. SEPA completed an environmental assessment for their FRM Strategies and their environmental report was published. Following a review of this assessment, it was confirmed that this will cover the Local FRM Plans and that no further assessment was required. Screening reports submitted to the SEA Gateway confirmed this.

Habitats Regulations Appraisal

- 3.6 As the lead authority for the Tay district and a competent authority, the Council also undertook a Habitats Regulations Appraisal to ensure that the Tay Local FRM Plan will not adversely affect the integrity of Special Areas of Conservation and Special Protection Areas. Scottish Natural Heritage was consulted on the appraisal and their views were taken into account. Mitigation was applied where required to ensure that the Tay Local FRM Plan will not adversely affect the integrity of Special Areas of Conservation and Special Protection Areas.

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 was previously determined that the proposal is likely to contribute positively to the following corporate sustainable development principles:

- 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 and reduce the production of greenhouse gases (Principle 3)

Justification:

The selected actions will help to manage the increased flood risk brought about by climate change.

- Community:-
 - A sense of civic values, responsibility and pride (Principle 20)
 - Creating a sense of place (e.g. a place with a positive 'feeling' for people, and local distinctiveness) (Principle 22)

Justification:

The proposed measures will help to make communities safer, through a reduction in flood risk. The draft Flood Risk Management (FRM) Strategies and Local FRM Plans have been subject to public consultation.

- Equality & Diversity:-
Refer to Item 3.3 (above).

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

- Consumption & 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 may be a short term increase in consumption during the implementation of the selected actions, e.g. the construction of new flood defences, but a future reduction due to reduced flood risk.

Mitigation:

- The efficient use of resources is to be considered on an individual project basis.
- Under the 2009 Act, the Council has a duty to manage flood risk in a sustainable way and to act in the best way calculated to contribute to the achievement of sustainable development. The actions identified in the Council's local FRM plans comply with these requirements.

Legal and Governance

- 3.10 The Head of Legal and Governance has been consulted on this report.
- 3.11 The legal basis for the proposals set out in this report is the Flood Risk Management (Scotland) Act 2009.

Risk

- 3.12 The risks associated with any actions to manage flooding will be identified and managed through individual projects.

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.

External

- 4.2 The key outputs from the Flood Risk Management process were subject to public consultation between December 2014 and June 2015. This was a joint web-based consultation carried out by SEPA and local authorities. The responses to the public consultation was previously reported to the Environment Committee on 9 September 2015 (Report No. 15/359 refers) and were used to inform the published FRM strategies and local FRM plans.
- 4.3 The Local FRM Plans and Interim Reports were developed through Local Plan District Partnerships by SEPA and the relevant responsible authorities (local authorities, Scottish Water, Forestry Commission Scotland, the Loch Lomond & the Trossachs National Park Authority and the Cairngorms National Park Authority).
- 4.4 Consultation continues to be carried out with relevant external stakeholders on any individual proposals set out under the Local FRM Plans.

5. Communication

- 5.1 The communications arrangements for the publication of the Interim Reports have been set out at 2.12 in the main report.
- 5.2 Communication with relevant external stakeholders continues to take place on any individual actions proposed to manage flood risk in the future.

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 – Environment Committee – 27 January 2010, Flood Risk Management (Scotland) Act 2009 (Report No. 10/51)
- 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 – 21 January 2015, The Flood Risk Management (Scotland) Act 2009, Public Consultation Arrangements (Report No. 15/16)
- 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)

3. APPENDICES

- 3.1 None.