

## **THE MORAY COUNCIL**

### **MINUTE OF MEETING OF THE FLOOD ALLEVIATION SUB-COMMITTEE**

**9 DECEMBER 2009**

**COUNCIL OFFICE, ELGIN**

#### **PRESENT**

Councillors J Russell (Chairman), L Bell, J Divers, J Hogg, I Ogilvie, P Paul, D Ross, M Shand and D Stewart. Councillor A Wright (ex-officio) was also present.

#### **IN ATTENDANCE**

The Director of Environmental Services, the Consultancy Manager, Mr P Haslam (Senior Engineer, Consultancy), Mr B Strachan, Morrison Construction), Ms S Weir (EC Harris), Ms B Hellett (Royal Haskoning), Mr A McEachan, Principal Solicitor (Commercial & Conveyancing) and Mr R Ritchie, Senior Committee Services Officer, Clerk to the meeting.

#### **APOLOGIES**

Apologies for absence were intimated on behalf of Councillor G. McIntyre (ex-officio).

### **1. DECLARATION OF GROUP DECISIONS**

In terms of the relevant Standing Order 20 and the Councillor's Code of Conduct the meeting noted that there were no declarations from Group Leaders or spokespersons in regard to any prior decisions taken on how members will vote on any item on the agenda.

### **2. WRITTEN QUESTIONS**

A written question was submitted from Councillor Ross in the following terms:-

'To ask what plans the Council have for flood alleviation measures to protect the communities of Garmouth and Kingston'.

The Council response was:-

'The Council has been monitoring the situation on the west (left) bank of the River Spey for some time. In the past three years erosion on the left bank has been evident. Most of the flow used to be towards the right channel but it is now more evenly split. Each spate erodes the left bank more, increasing flood risk to properties.'

The Flood Alleviation Sub-Committee considered a report on this matter on 21 February 2007 and agreed that the Council had no powers to take action other than by promoting a Flood Prevention Order under the Flood Prevention (Scotland) Act 1961. At that time the increase in risk applied mostly to agricultural land.

The Council carried out a pre-feasibility study and reported to the Flood Alleviation Sub-Committee on 12 December 2007 that it was "highly unlikely" that there was business case for a Scheme. The Sub-Committee agreed to review the position in the context of proposed new flooding legislation and any changes in funding arrangements.

The Flood Risk Management (Scotland) Act 2009 is now in force and it gives Councils wider powers to reduce flood risk, including the power to carry out schemes with landowner agreement. However, Councils must be satisfied schemes represent good use of public money. These new powers are included in Part 4 of the Act, which is not expected to come into force until the latter half of 2010.

In summary, the Council has agreed to reconsider the situation in Garmouth under the new legislation and it is anticipated carrying out further studies and investigations to ascertain whether a scheme is feasible, economic and affordable. The study will be subject to the Council approving its funding.

The Flood Alleviation Sub-Committee considered a report on Kingston on 17 October 2007. It was agreed that further investment in the Kingston Coastal Protection Scheme represented too great a financial risk to the Council with a high risk that the scheme would not be deliverable and that consequently it would proceed no further.

It was also noted that monitoring would continue every three months and any significant variations in the shingle bank would be reported'.

Councillor Ross then sought responses to supplementary questions in regard to what had been done by the Council in the last three years to alleviate the situation, in particular, after each spate what was done, possibility of shoring up the west riverbank and dredging the River Spey. The meeting noted that there is no legal obligation on the Council to undertake works to alleviate the situation and it was a matter for the riparian owners to consider the provision of flood banks. In regard to dredging the Spey it was noted that the removal of the shingle would impact on wildlife in the area. It was also noted that given the environmental status it would be unlikely that a license could be obtained to carry out any dredging of the river in this area. In response to comment from Councillor Ross that he had been advised that according to Crown Estates the Council did have a legal responsibility the Consultancy Manager reiterated that having taken legal advice on the matter it was clear that the Council has no legal responsibility and, as intimated in the response to the original question, any consideration under new legislation will be a matter for consideration by the Policy and Resources Committee in due course.

### **3. MORAY FLOOD ALLEVIATION SCHEMES: FINANCIAL MONITORING SUMMARY**

There was submitted a report by the Director of Environmental Services updating the Sub-Committee on the Moray Flood Alleviation Schemes in respect of financial monitoring and of key factors affecting costs of schemes, details of which were set out in the Appendix to the report

Following consideration the Sub Committee:

- (i) noted the estimated capital cost of schemes that accords with the approved Financial Plan as far as can be ascertained at this point;
- (ii) noted that the Rothes Scheme is showing an underlying saving but it is prudent not to reduce the budget because there are considerable cost risks remaining; and
- (iii) noted that compensation costs for the Forres (Burn of Mosset) Scheme remain a concern at this time and will be decided by the Lands Tribunal for Scotland

### **4. ELGIN FLOOD ALLEVIATION SCHEME PROGRESS**

#### **(a) Progress**

There was submitted a report by the Director of Environmental Services updating the Sub-Committee on the progress of Elgin Flood Alleviation Scheme. A copy of an Executive Summary detailing what has been carried out in the past three months and what is proposed over the next three months was appended to the report.

Prior to considering the progress report and on the invitation of the Chairman, A McEachan, Principal Solicitor (Commercial & Conveyancing) advised the meeting that during the Public Local Inquiry proceedings the Reporter requested a report from the Council on the 4 September 2009 flood event. Parties to the Inquiry were invited to comment on the Council's report and the period for comments closed on 12 November 2009. A letter dated 1 December 2009 had recently been received on behalf of the Reporter indicating that there were two areas in which he required further information before he completed his report to Scottish Ministers. The Moray Flood Alleviation Team are considering the technical implications of the request and given that the requests raises some procedural concerns legal advice was currently being sought on how the Council should proceed. Mr McEachan also intimated that given the sensitivity of the matter he could provide a confidential briefing to the Sub-Committee, on the conclusion of business, if this was required. This was agreed.

Councillor Ross expressed the view that as the letter from the Reporter, a copy of which had been passed on to him, had been copied to a number of other interested parties the matter was in the public domain and for these

reasons moved that the correspondence be discussed in the public domain. This was seconded by Councillor Hogg.

Given that other members of the Sub-Committee had seen the correspondence a short adjournment was agreed to allow for the letter to be copied and circulated to members of the Sub-Committee to allow them the opportunity to consider the terms of the letter.

On reconvening and having had the opportunity to consider the terms of the letter Councillor Paul moved, as an amendment, to defer discussion of the letter to the special meeting of the Council on Wednesday 16 December 2009 to allow for the opportunity for legal advice on the terms of the letter and as to how the Council should proceed.

On a division there voted:-

For the Motion (2) Councillors Hogg & Ross.

For the Amendment (7) Councillors Bell, Divers, Ogilvie, Paul, Russell, Shand & Stewart

Abstentions (0)

Accordingly the amendment became the finding of the meeting and it was agreed to defer discussion of the letter to the special meeting of the Council on Wednesday 16 December 2009 to allow for the opportunity for legal advice on the terms of the letter and as to how the Council should proceed.

The meeting then proceed to consider the progress report and following consideration the Sub Committee agreed to:-

- (i) note the progress for Elgin Flood Alleviation Scheme for the period ending 23 November 2009; and
- (ii) report progress to the Council;

(b) **Project Execution Plan**

There was submitted a report by the Director of Environmental Services asking the Sub Committee to approve a revised issue of the pre construction phase of the Project Execution Plan (PEP) for the Elgin Flood Alleviation Scheme.

Following consideration the Sub-Committee agreed to:-

- (i) approve a revised issue of the Project Execution Plan (PEP) for the pre-construction phase of the Elgin Flood Alleviation Scheme;

- (ii) continue to monitor progress against the PEP and report to the Moray Council; and,
- (iii) note the proposal to look further into enabling opportunities once the outcome of the statutory process and financing arrangements are clearer.

#### **5. FORRES (BURN OF MOSSET) FLOOD PREVENTION SCHEME: PROGRESS**

There was submitted a report by the Director of Environmental Services updating the Sub-Committee on the progress of Forres (Burn of Mosset) Flood Prevention Scheme. There was appended to the report a copy of the Monitoring Report No 11 covering the period August to the end of September 2009.

Following consideration the Sub Committee agreed to:-

- (i) Note the progress for Forres (Burn of Mosset) Flood Alleviation Scheme for the period ending 26 November 2009; and
- (ii) report progress to the Council.

#### **6. FORRES (RIVER FINDHORN & PILMUIR) FLOOD ALLEVIATION SCHEME: PROGRESS**

There was submitted a report by the Director of Environmental Services updating the Sub-Committee on the progress of Forres (River Findhorn & Pilmuir) Flood Alleviation Scheme. A copy of an Executive Summary detailing what has been carried out in the past three months and what is proposed over the next three months was appended to the report.

The Consultancy Manager spoke to the report and the meeting noted that four of the objections to the Flood Prevention Order had been withdrawn and that the Public Local Inquiry will be held in June 2010.

Following consideration the Sub Committee agreed to:-

- (i) note the progress for Forres (River Findhorn & Pilmuir) Flood Alleviation Scheme for the period ending 26 November 2009; and
- (ii) report progress to the Council.

#### **7. ROTHES FLOOD PREVENTION SCHEME: PROGRESS**

There was submitted a report by the Director of Environmental Services updating the Sub-Committee on the progress of Rothes Flood Prevention Scheme. There was appended to the report a copy of the Monitoring Report No 6 covering the period for August and September 2009.

Reference was also made to the recent road traffic accident involving employees of the contractor working on the flood alleviation scheme and the meeting joined the

Chairman in wishing all those who had not already returned to work as speedy recovery.

Following consideration the Sub Committee agreed:

- (i) to note the progress for Rothes Flood Alleviation Scheme for the period ending 26 November 2009; and
- (ii) to report progress to the Council.

## **8. FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009 - IMPACT ON LOCAL AUTHORITIES**

There was submitted a report by the Director of Environmental Services updating the Sub Committee on the emerging impacts of the Flood Risk Management (Scotland) Act 2009 (the Act).

Following consideration the Sub Committee:

- (i) noted the provisions in the Act and the catchment based sustainable flood risk management approach it promotes;
- (ii) noted that the Act came into force on 26 November 2009 except the Part 4 - Local Authority Functions will not come into force until the latter half of 2010;
- (iii) noted that SEPA is responsible for defining sub-district and local flood risk management plan areas and that officials will discuss arrangements with SEPA and neighbouring authorities and report; and
- (iv) noted the financial and resource implications of the Act and agree that a report(s) will be submitted to this Sub-Committee in the first instance as more information comes available.

## **9. QUESTION TIME**

In response to a question from Councillor Paul in regard to the submission of a report on small flood alleviation schemes within Moray the meeting noted that a report thereon was included on the Agenda for the meeting of the Policy and Resources Committee meeting on Tuesday 15 December 2009.