

**REPORT TO: THE MORAY COUNCIL ON 26 MARCH 2008**

**SUBJECT: FORRES (RIVER FINDHORN AND PILMUIR) FLOOD ALLEVIATION SCHEME – DRAFT FLOOD PREVENTION ORDER (“F.P.O.”)**

**BY: CHIEF LEGAL OFFICER**

**1. REASON FOR REPORT**

- 1.1 To ask the Council to agree to make the Flood Prevention Order as shown on the drawings on display at the Meeting, and subject to a positive response on the Technical Submission (a Scottish Government funding assistance condition), authorise the Chief Legal Officer to commence the statutory process contained in the Flood Prevention (Scotland) Act 1961 for the Forres (River Findhorn & Pilmuir) Flood Prevention Scheme.
- 1.2 The report is submitted to the Committee in terms of Section D (23) of the Council's Administrative Scheme relating to the functions of the Council under the Flood Prevention (Scotland) Act 1961 as amended by the Flood Prevention and Land Drainage (Scotland) Act 1997.

**2. RECOMMENDATION**

- 2.1 **It is recommended that subject to a positive response on the Technical Report and Investment Appraisal from the Scottish Government (and therefore the principle of Scottish Government funding assistance), that the Council agree to: -**
- (i) Approve the draft Forres (River Findhorn & Pilmuir) Flood Prevention Scheme and make the formal order.**
  - (ii) Authorise the the Director of Environmental Services, in consultation with the Convener, as Chair of the Flood Alleviation Sub Committee, to make such amendments that are necessary to the draft Forres (River Findhorn & Pilmuir) Flood Prevention Scheme based on the consultation with the Scottish Government;**
  - (iii) Authorise the Chief Legal Officer to sign the formal Order;**
  - (iv) Authorise the Chief Legal Officer to publicise the making of the Order in the Forres Gazette and the Edinburgh Gazette; and**
  - (v) Authorise the Chief Legal Officer to serve notice of the making of the Order on affected persons and to submit the Order to the Scottish Government for confirmation.**

### 3. **BACKGROUND**

- 3.1 Environmental Services Committee agreed the preferred scheme for the Forres (River Findhorn and Pilmuir) Flood Alleviation Scheme on 22 November 2006 (para 10 of the Minute refers). It included two options for the River Findhorn east embankment north of the Aberdeen to Inverness railway, which were to be investigated further.
- 3.2 On 27 February 2008 the Flood Alleviation Sub-Committee agreed a sub-option for the above embankment, and that it be included in the Flood Prevention Order to be submitted to this Meeting for approval.
- 3.3 A series of drawings comprising the Flood Prevention Order, together with accompanying descriptions of the scheme and each operation within it, will be on display at the Meeting.
- 3.4 The Scottish Government has reviewed the drawings and textual information and comments have been taken into account. As is normal practice, the Scottish Government has advised that the Council not to make the Order until they have reviewed the Technical Report and Investment Appraisal. This was sent to the Scottish Government in December 2008, with supplementary information forwarded late in February 2008. A response is awaited.
- 3.5 The Scottish Government and Planning Advice Note PAN69 recommend that the objection period for FPO and Planning Application should be concurrent to avoid the requirement for "holding" objections from statutory consultees. Given that the objection period for the FPO is 3 months and, that for the Planning Application 4 weeks it is possible to meet this request without delaying either submission.
- 3.6 The programme remains: -

<b>Date</b>	<b>Event</b>
26 March 2008	The Moray Council considers approving the Flood Prevention Order. The Chief Legal Officer makes the Order subject to Scottish Government approving the Investment Appraisal (para 3.4 above refers).
2 April 2008	Objection Period Commences
May 2008	Planning application submitted to The Moray Council
2 July 2008	FPO Objection Period ends

- 3.7 The approved programme envisages the scheme progressing to detailed design without delay.

#### 4. **SUMMARY OF IMPLICATIONS**

##### **(a) Corporate Development Plan/Community Plan/Service Improvement Plan**

Delivering effective flood alleviation schemes is a priority in the Corporate Development Plan 2004 – 2007 and this is taken forward to the Environmental Services Department Service Improvement Plan for 2006 – 2007 as Priority 1.1. Promoting schemes is a key action for the Council in the draft Moray Single Outcome Agreement - National Outcome 12 – “We value and enjoy our built and natural environment and protect it and enhance it for future generations”.

##### **(b) Policy and Legal**

The FPO, following confirmation by the Scottish Ministers, provides the Council with power to carry out the operations included in the Scheme. Further consents and approvals are required, including Planning Approval, Controlled Activities Regulations Licences and various licences and traffic orders.

##### **(c) Resources (Financial, Risks, Staffing and Property)**

There are no staffing issues associated with the proposals contained in this report. Financial projections, including those contained in the Investment Appraisal, contain allowances for risks. However the most significant risk relates to the new Scottish Government funding arrangements for Local Government. The Council's allocation for years 2008 to 2011 is insufficient to cater for this scheme in addition to those at Forres (Burn of Mosset) and Rothes, both of which are confirmed. The programme for this scheme will be constrained by the statutory processes, and if there are objections that delay the scheme for some time, funding in the next 3-year period may be more relevant. Should the scheme progress through these processes quickly, the Council will have to address the funding shortfall, including consultation with the Scottish Government and possibly CoSLA. There are no unusual property implications.

##### **(d) Consultations**

The Director of Environmental Services has been consulted and comments have been discussed and included in the report as appropriate.

The Chief Financial Officer has been consulted and has no comment on the report.

The Principal Planning Officer (Development Management) has been consulted and emphasises that approval of the FPO by the Council is entirely without prejudice to consideration of any other statutory or regulatory requirement, including the Planning Application.

**5. CONCLUSION**

- 5.1 The Forres (River Findhorn and Pilmuir) Flood Prevention Scheme forms part of the programme of Schemes prioritised by the Council.**
- 5.2 The approved programme requires the Council to authorise the Chief Legal Officer to commence the statutory process contained in the Flood Prevention (Scotland (Act) 1961 for the Forres (River Findhorn and Pilmuir) Flood Prevention Scheme, as shown on the drawings on display at the meeting, subject to Scottish Government acceptance of the Technical Submission and review of the FPO.**
- 5.3 The programme provides for the FPO and Planning Application to run concurrently, as recommended by the Scottish Government. The programme milestone for the Planning Application remains unchanged at May 2008.**
- 5.4 There may be insufficient funds available to progress this scheme to construction stage in the financial years 2008 to 2011, in which case the Council may wish to take the matter up with the Scottish Government and CoSLA.**

Author of Report:	Consultancy Manager
Background Papers:	None
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