

REPORT TO: THE MORAY COUNCIL ON 2 JULY 2008

**SUBJECT: ROTHES FLOOD PREVENTION SCHEME 2006:
CONSTRUCTION WORKS STAGE 1 (BACK BURN) PACKAGE
AWARD, PROGRAMME AND PROJECT BUDGET**

BY: DIRECTOR OF ENVIRONMENTAL SERVICES

1. REASON FOR REPORT

- 1.1 The Council is asked to authorise the acceptance of the Target Cost for the Rothes Flood Alleviation Scheme, and associated programme as submitted on 6 June 2008 to the Council in accordance with the Contract for Moray Flood Alleviation Schemes.
- 1.2 The Council is asked to note the intention to use the cost consultancy services of EC Harris under their Office of Government Commerce Framework Agreement for the Rothes Flood Alleviation Scheme.
- 1.3 The Council is asked to delegate to the Director of Environmental Services, in consultation with the Chief Financial Officer, and the Chair and Vice Chair of Economic Development and Infrastructure Committee:
- (i) authority to award works falling under parts of Stages 2 and 3 of the Scheme to Morrison Construction in advance of the Target Cost being set where this will provide clear financial / efficiency savings to the Council; and,
 - (ii) authority to instruct the diversion of utility apparatus in preparation for Stages 2 and 3.
- 1.4 The report is submitted to the Council 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 The Council : -

- **Authorise the acceptance of the Target Cost for the Rothes Flood Alleviation Scheme, and associated programme as submitted on 6 June 2008 to the Council in accordance with the Contract for Moray Flood Alleviation Schemes.**
- **Delegate to the Director of Environmental Services, in consultation with the Chief Financial Officer, and the Chair and Vice Chair of Economic Development and Infrastructure Committee:**

- (i) **authority to award works falling under parts of Stages 2 and 3 of the Scheme to Morrison Construction in advance of the Target Cost being set where this will provide clear financial / efficiency savings to the Council; and,**
 - (ii) **authority to instruct the diversion of utility apparatus in preparation for Stages 2.**
- **Approve the project budget for Stage 1 of the Scheme as set out in this report.**
 - **Note the intention to use the cost consultancy services of EC Harris under their Office of Government Commerce Framework Agreement for the Rothes Flood Alleviation Scheme.**

3. BACKGROUND

General

- 3.1 The Economic Development and Infrastructure Services Committee on 17 June 2008 approved the changed scope of Rothes Flood Alleviation Scheme Stage 1 and noted the programme to works start and noted indicative costs for Stage 1 of the Rothes Flood Alleviation Scheme and implications for the whole scheme (Agenda Item No 11(a) refers).
- 3.2 Flood Alleviation Sub-Committee on 18 June 2008 agreed to delegate to the Director of Environmental Services authority to ask the Contractor to order materials to enable a quick start on site at Glen Grant Distillery, taking advantage of the distillery's summer close down period.
- 3.3 The Sub-Committee also recommended that The Council delegate to the Director of Environmental Services, in consultation with the Chief Financial Officer, and the Chair and Vice Chair of Economic Development and Infrastructure Committee, authority to award parts of Stages 2 and 3 of the Scheme as opportune and advantageous to the Council, and to authorise advance diversions of utility apparatus in preparation for Stages 2 and 3. Where this involves award of further work to the Contractor, this will be in accordance with the approved target setting methodology.

Construction Contract

- 3.4 In accordance with EU procurement regulations, Morrison Construction Ltd was awarded the construction contract for Moray Flood Alleviation Schemes in November 2003. The contract provided for construction of the Lhanbryde Scheme, design/development support for other schemes, and a framework for developing a target cost for other schemes that demonstrated value for money. The stated intention was that Morrison Construction would be awarded further work subject to performance and value for money in accordance with the Contract.

- 3.5 The performance of Morrison Construction to date has been independently assessed by Faithful and Gould who concluded it was satisfactory in their report dated February 2007. Reports submitted to the Flood Alleviation Sub-Committee on construction of the Forres (Burn of Mosset) Flood Alleviation Scheme have resulted in the Council's independent advisors, EC Harris, confirming this satisfactory status to date.
- 3.6 The contract contains a pain/gain share mechanism whereby savings or excess costs are shared equally between the contractor and the Council, providing an incentive to work efficiently. It applies within 10% of the target cost. Costs in excess are borne by the Contractor.
- 3.7 The process for developing the target cost has been finalised. Independent Cost and Project Management Consultants, EC Harris have audited and benchmarked the target cost and agreed most amendments with Morrison Construction.
- 3.8 In doing so, however, EC Harris advised that the site overheads allowed for in the Target Cost were too high and represented poor value to the Council. The reason for high site overheads was future uncertainty on programming of Phases 2 and 3, which led to site overhead costs falling disproportionately into Stage 1. The impact would be to distort the operation of the contractual pain/gain share mechanism.
- 3.9 A solution has been devised such that site overheads would be removed from the Target Cost and allowed for in the project budget separately. This would prevent site overheads distorting the pain/gain share mechanism, reduce risk to both the Council and Contractor and remove a potential source of contractual dispute.
- 3.10 The above arrangement requires a change to the New Engineering Contract - Engineering Construction Contracts: Option C (Target Cost) that is the basis of the existing arrangement in respect of site overheads for all Stages of the Rothes Flood Alleviation Scheme. It is proposed that site overheads be subject to Option E – Cost Reimbursable. The Council cannot impose this change upon the Contractor. However, the Contractor has indicated that they agree that this is a logical and sensible arrangement to which they are minded to accept.
- 3.11 The Client Risk Register that will form the basis of the Council's risk allowance, has also been concluded for this stage (it is a live document so it will change regularly).
- 3.12 Following agreement of the Flood Alleviation Sub-Committee (para 3.2 above refers), Morrison Construction have been authorised to order materials up to £50,000 in value to enable a rapid mobilisation at Glen Grant Distillery. By carrying out work during the four-week close-down risk of disruption to the distillery, and attendant compensation costs to the Council, are both reduced.

- 3.13 There are opportunities to instigate utility diversion works for Stages 2 and 3 prior to works start, reducing risk of delay and disruption to the works. The Flood Alleviation Sub-Committee (Para 3.3 above refers) made recommendations to the Council in this regard. The cost, based on estimates from the utilities, is £300,000 and would be met from the allowance in the Financial Plan.
- 3.14 Some activities in Stages 2 and 3 can be carried out without, for example, Controlled Activities Regulations (CAR) Licences. In particular, this applies to construction of improved road drainage and sustainable urban drainage systems in the vicinity of the junction of the A941 and Land Street. In this case, flood alleviation benefits would be delivered earlier. The Flood Alleviation Sub-Committee (Para 3.3 above refers) made recommendations to the Council in regard of such works.

Stage 1 and Overall Scheme Costs

- 3.15 Stage 1 of the Scheme comprises a number of cost elements. These are similar to those presented to the Economic Development and Infrastructure Committee on 17 June 2008 except that site overheads are separate from the target cost. The cost elements are summarised below:

Cost Element	Amount £000
Development costs to 31 March 2008	1185
Third Party Costs	300
Utilities Diversion	345
Site Supervision	350
Council Staff and Miscellaneous Costs	150
Consultancy Fees	100
Site Overheads	Incl below
Audited Target Works Cost	3,936
Council Risk Allowance	600
Proposed Project Budget	6,966

- 3.16 The differences between the above and costs indicated to the Economic Development and Infrastructure Committee on 17 June 2008 are as described below.
- 3.17 Extrapolating costs for Stage 1 provides an unreliable indication of whole scheme costs. The best indication is that the above costs would result in the whole scheme costing £24 million, compared to £20.9 million in the Financial Plan. A Value Engineering exercise will look for cost savings to achieve this.

- 3.18 Independent Cost and Project Management Consultants, EC Harris were procured to audit and benchmark the Target Cost for the Forres (Burn of Mosset) Scheme and were retained to value the works and monitor costs (para 16 of the Minute of the Moray Council on 14 November 2007 refers). It is intended to use the cost consultancy services of EC Harris under their Office of Government Commerce Framework Agreement for the Rothes Flood Alleviation Scheme.
- 3.19 EC Harris have agreed rates with the Council similar to those existing under their current arrangement and below those applying to the OGC Framework.

Works Programme

- 3.20 A start date of 7 July 2008 is proposed. The works programme is dictated substantially by severe restrictions in working within the Burn as set out in the CAR licence. The completion date for Stage 1 is 5 October 2009.

Monitoring

- 3.21 This will a relatively high risk project given the congested working areas, working in watercourses and with environmental constraints. To this end, a Construction Management Plan is nearing completion and a Project Governance Manual will be agreed shortly with the Chief Financial Officer.
- 3.22 It is proposed that monitoring reports be submitted to the Flood Alleviation Sub-Committee in the same format as those for the Forres (Burn of Mosset) Scheme.
- 3.23 The proposed team structure is as follows:

Council Project Sponsor / NEC Project Manager – Peter A Haslam
 Scheme Manager (Construction) – Bob A Strachan, Morrison Construction:
 Site Supervisor – Bob G Bryce, Royal Haskoning
 CDM Co-ordinator – Mick J Newman, Royal Haskoning
 Design Office Support – John Wylie, Royal Haskoning

EC Harris will support the NEC Project Manager.

4. SUMMARY OF IMPLICATIONS

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

Delivering flood alleviation schemes is a Corporate Development Plan and Departmental Service Plan priority. The Moray Single Outcome Agreement Section 5 and National Outcome 12 states that providing effective flood alleviation is a priority.

(b) Policy and Legal

The policy and legal implications are explained in this report.

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

The proposed budget includes a Council risk allowance derived from the risk register. Key risks are managed by measures mentioned in this report, but extrapolation of the costs of Stage 1 to assess the cost of the whole scheme is unreliable and represents a risk. Measures are in place to manage costs of Stages 2 and 3 but residual risks remain. These schemes place a heavy workload on Council staff that is eased in part by appointment of EC Harris and by secondments. Vacancies are about to be advertised but the market is difficult at this time. There are no significant property implications, but compensation of affected landowners and the like is difficult to assess.

(d) Consultations

Alasdair McEachan, Principal Solicitor, (Commercial and Conveyancing) has been consulted and the comments received have been incorporated into the report.

The Chief Financial Officer has been consulted and the comments received have been incorporated into this report.

Sandi Pick, (Procurement Officer), has been consulted regarding the appointment of EC Harris and the comments received have been incorporated into this report.

5. CONCLUSION

- 5.1 **Award of the works package for Stage 1 of The Rothes Flood Alleviation Scheme under the framework contract for Moray Flood Alleviation Schemes to Morrison Construction is the next major milestone in the Council's programme of such schemes.**
- 5.2 **Making this award, with site overheads excluded from the target costs and separately reimbursable, requires the consent of Morrison Construction to amend the Contract. This measure manages the risk of distortion of the pain/gain share mechanism in the Contract.**
- 5.3 **It is advantageous to the Council to appoint EC Harris under the OGC framework contract to audit and benchmark all stages of the Rothes Flood Alleviation Scheme packages, and to monitor and report on progress of the works.**

5.4 It is advantageous for the Council to authorise Morrison Construction to order materials to enable a rapid mobilisation, and to authorise early utility diversions and advance some works from Stages 2 and 3.

Author of Report: Dave Gowans, Consultancy Manager

Background Papers: None

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