

**REPORT TO: THE SPECIAL MEETING OF THE MORAY COUNCIL ON 10
FEBRUARY 2011**

**SUBJECT: ELGIN FLOOD ALLEVIATION SCHEME – AWARD OF WORKS
CONTRACT**

BY: HEAD OF DIRECT SERVICES

1. REASON FOR REPORT

- 1.1 To ask the Council to agree the award of the works contract for Elgin Flood Alleviation Scheme, including start date, contract period, Target Cost, funding arrangements and arrangements to manage the works on site.
- 1.2 The Council is asked to note that the Flood Alleviation Sub-Committee will monitor progress.
- 1.3 This report is submitted to Committee in terms of the Council's Administrative Scheme in terms of Section G (20) of the Council's Administrative Scheme relating to the functions of the Council under the Flood Prevention (Scotland) Act 1961 (the Act) as amended by the Flood Prevention and Land Drainage (Scotland) Act 1997.

2. RECOMMENDATION

2.1 It is recommended that The Council : -

- **In accordance with the Contract for Moray Flood Alleviation Schemes, authorise the acceptance of the Target Cost for the Elgin Flood Alleviation Scheme, and associated programme as submitted by Morrison Construction, audited and adjusted by EC Harris then amended on 26 January 2011 at the final Risk and Value Management workshop.**
- **Agree the budget.**
- **Agree the start date of 4 April 2011 and that some works will be undertaken in advance of that date.**
- **Agree the Contract Period of three years and nine months plus eight weeks contractor's risk for the permanent works. Demobilisation and site tidying will take a further ten weeks.**
- **Note that progress will be monitored by the Flood Alleviation Sub-Committee.**
- **Note that there remains uncertainty regarding the level of Scottish Government Capital Grant support and the final amount of funding support will impact on other Council services.**
- **Agree in principle the management arrangements set out in this report including recruiting to the vacant post of Senior Engineer**

(Flood Risk Management) arising from these management arrangements, details to be reported to the Economic Development and Infrastructure Committee for approval.

3. BACKGROUND

General

- 3.1 The long-awaited Elgin Flood Alleviation Scheme is now ready to start on site. Elgin suffered severe flooding in July 1997, November 2002, and most recently, in September 2009. Flooding led to many families having to leave their homes, some for as long as a year, causing hardship, distress and loss of personal effects. People live in fear of flooding. Businesses were badly affected and cannot plan ahead and grow with confidence while they remain at high flood risk. The Scheme to protect Elgin is Scotland's largest flood scheme to date.
- 3.2 The main statutory consents for Elgin Flood Alleviation Scheme are in place, the design is ready for building, the programme and planning developed and the cost plan independently audited and checked. It is proposed to start construction on 4 April 2011 subject to funding arrangements being agreed.

Statutory Process

- 3.3 The Moray Council on 4 July 2007, in relation to the Elgin Flood Prevention Scheme: -
- (i) Agreed to note the outcome of the consultation exercise and the consequential amendments to the Scheme, and approve the Draft Flood Prevention Order (FPO) drawings on display at the meeting.
 - (ii) Agreed to note that the Technical Submission and full set of FPO documents will be sent to the Scottish Executive for review and comment in July 2007, and that a meeting will be held thereafter with the Scottish Executive to discuss these submissions.
 - (iii) That, subject to a positive response on the Technical Report and Investment Appraisal from the Scottish Executive (and therefore the principle of a grant award), agreed to: -
 - (a) Approve the draft Elgin Flood Prevention Order;
 - (b) Authorise the Director, in consultation with the Convener, as Chair of the Flood Alleviation Sub-Committee, to make such amendments that are necessary to the draft Elgin Flood Prevention Order based on the consultation with the Scottish Executive;
 - (c) Authorise the Chief Legal Officer to sign the formal Order;
 - (d) Authorise the Chief Legal Officer to publicise the making of the Order in the Northern Scot and the Edinburgh Gazette; and
 - (e) 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 Executive for confirmation.
 - (iv) Agreed the programme revision set out in the report.

- 3.4 The Elgin Flood Prevention Order was duly made on 26 October 2007.
- 3.5 There being objections to the Scheme that were not withdrawn, Scottish Ministers were required under the Act to cause a Public Local Inquiry, which was held in September 2009.
- 3.6 The Reporter required further studies. The Inquiry was reconvened for one day on 28 May 2010. Following consideration of the Inquiry Report, Scottish Ministers indicated their intention to confirm the Scheme subject to a modification proposed by the Council.
- 3.7 The Act requires that, where a Scheme is confirmed subject to modification, Scottish Ministers must give notified parties and parties affected by the modification opportunity to make representations. Scottish Ministers must consider any such representations.
- 3.8 Having considered representations, Scottish Ministers confirmed the Elgin Flood Prevention Scheme subject to modification on 17 December 2010.
- 3.9 In accordance with by Second Schedule of the Act, the Council published a notice stating that any person aggrieved by the Scheme desiring to question its validity in terms of the Act may apply to the Court of Session within six weeks of the notice (i.e., by 4 February 2011).
- 3.10 The Controlled Activities Regulations (CAR) licence application for works in and around watercourses is under consideration by SEPA who are expected to grant the licence in March 2011. The licence application was developed in consultation with SEPA so no significant problems are expected.

Costs

- 3.11 The Flood Alleviation Sub-Committee of 15 December 2010 was advised that the capital cost estimate was £90.19 million at that time (Para 8 of the Minute refers).
- 3.12 In accordance with EU procurement regulations, Morrison Construction (then AWG Construction Services Ltd) were awarded the construction contract for Moray Flood Alleviation Schemes as agreed by Environmental Services Committee on 26 November 2003 (paragraph 11 of the Minute refers). The contract provided for construction of the Lhanbryde Scheme, design/development support, 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.
- 3.13 The process for developing the Target Cost is documented in the Target Cost Setting Methodology that was approved by the Chief Financial Officer initially for the Forres (Burn of Mosset) and used again for the Rothes Scheme. Independent cost and project management consultants, EC Harris, audit the target cost and appraise it in relation to value for money.

- 3.14 Morrison Construction submitted their target cost and programme to the Council on 5 December 2010. It was based on the Works Information provided by Royal Haskoning and the risk allocation agreed at the risk management workshop on 8 October 2010.
- 3.15 EC Harris have reviewed the submission, and raised issues arising with Morrison Construction. The outcome was a reduction of £539k resulting from changes in how inflation is estimated. However this was more than offset by insurance premiums following a risk review by the Contractor's insurers. A top-up premium of £665k (£729k with fee) resulted.
- 3.16 The team, at an extra Value Engineering and Risk Management workshop held on 26 January 2011, considered several items where there were identified potential for further saving : -
- a) Better information on contaminated land from recent site investigation and analysis promotes a less risk-averse attitude. In place of a worst case scenario the amount has been reduced by £3 million with potential for further reductions as the site investigation, analysis and remediation strategy progresses.
 - b) The above applies similarly to the cost of dealing with invasive species – namely giant hogweed and Japanese knotweed – with a resulting target cost reduction of £320k arising from adopting innovative proprietary treatments.
 - c) Discussion with Planning colleagues clarified the implications of conditions attached to the Planning Consent and allowed the reconsideration of programming constraints shortening the hire period for temporary bridges. Net of mitigation, this saves £60k.
 - d) Review of quantities reduced the cost of a Scottish Water pumping station by £100k. Design changes could, subject to feasibility and Scottish Water's agreement, produce more substantial savings. This will be pursued but cannot, at this stage, be taken into account.
 - e) Various specification changes save £245k.
 - f) Reallocation of risk saving £216k (see paragraph 3.19 below)
 - g) Fee adjustment on items above savings and those in paragraph 3.15 above amount to a further reduction of £429k
- 3.17 EC Harris produced a report on the target cost and it concludes that in their professional opinion it represents value for money to the Council in accordance with the Contract, and that the revised target cost, in their opinion, represented value for money to the Council. A copy of the report is in **Appendix 1**.
- Risk**
- 3.18 The proposed Council risk register as updated on 26 January 2011 is in **Appendix 2**. This is a working document that will be used to manage the risk allowance through the life of the project. It will be monitored and reported to the Flood Alleviation Sub-Committee. The risk allocation is relatively conventional except as described below.

- 3.19 The construction period is three years and nine months, plus eight weeks contractor's time risk and ten weeks demobilisation and site tidying. Inflation projections for fuel and steel are difficult because they are contingent upon local and UK economies, and world markets for commodities such as steel, cement and fuel. The target cost includes for inflation at the Contractor's risk except for steel and fuel prices, where the Council will accept the risk. The effect is to move £216k from the Target Cost to the Council's risk register. A number of other risk items have been reviewed downwards and the net effect is an increase of £80k in Council risk allowance.

Cost and Risk Summary

- 3.20 Table 1 below shows the proposed budget headings taking into account the foregoing cost and risk information. The left hand cost column contains the figures reported to the Flood Alleviation Sub-Committee on 15 December 2010 (paragraph 8 of the Minute refers), while the right hand column contains the proposed budget.

Budget Heading	15 December 2010	Proposed Budget
Costs projected to 31 March 2011	£14.10m	£14.70m
Third Party Compensation Costs	£10.60m	£10.00m
Utilities Diversion	£1.20m	£1.20m
Site Supervision	£5.61m	£5.61m
Council Miscellaneous Costs	£0.20m	£0.30m
Audited Target Works Cost	£52.70m	£48.53m
Council Risk Allowance	£5.78m	£5.86m
Proposed Project Budget	£90.19m	£86.20m

Table 1 – Proposed Budget Heads and Amounts

Form of Contract

- 3.21 The works will be awarded as a "Compensation Event" under the Contract for Moray Flood Alleviation Schemes. In accordance with that Contract, Morrison Construction have contributed to scheme development, construction planning and have costed the Works. The Contract enables variations in contractual terms to suit each Scheme, and, by agreement, can be further varied to the same ends.
- 3.22 The Option C – Target Cost Contract with pain/gain sharing is appropriate for the construction Works. A 50/50 share of savings or overspend within 10% of the Target Cost for the construction works is proposed. Preliminary items such as site offices, contractor's site staff and general site overheads (£12.6

million) are excluded from the pain/gain share mechanism. This simplifies, and therefore reduces the cost of administration potential for disputes.

- 3.23 The Target Cost varies through the contract period, as does the contract period, according to eventualities. For example, unforeseen conditions might disrupt the works and increase the Target Cost, while deletions or favourable changes in scope might lead to reduction. The same applies to time. The risk register is used to draw down funds to meet the cost of risks that materialise. It will be reviewed and reported to the Flood Alleviation Sub-Committee as per practice to date.
- 3.24 The projected budget for Council miscellaneous costs has been increased by £100k for further site investigation in relation to contaminated land.
- 3.25 Funding issues (see below) mean that there remains uncertainty as to programme and therefore cost. However, on balance, these risks are more effectively managed through alternative funding scenarios than by contractual means. Disruption to programme increases cost, so it is better to manage the flow of funding than vary the Works.
- 3.26 The expenditure profile reported separately to this Meeting is as shown in Table 5 below.

Major Flood Alleviation Schemes	2011/12	2012/13	2013/14	2014/15	2015/16	
Elgin	£000	£000	£000	£000	£000	
Expenditure	21,800	22,500	15,700	8,700	2,800	77,500
Funding						
Scottish Government Grant - confirmed for 2011/12 - assumed for future years	13,668	13,668	13,668	13,668	0	
Prudential Borrowing	8,132	8,796	0	0	0	

Based on the above assumptions the prudential borrowing over the 5-year period will amount to council funding of 23.6%. Allowing for development costs and government grant received up to 31.3.11 the total council funding will be 28.5%. If the Scottish Government grant ends at 2013/14 then the council funding will be 44.4%.

Funding

- 3.27 The funding position is not clear at the present time. The financial plan report prepared by the Chief Financial Officer is based on the assumption that the Council will approve the Elgin Flood Alleviation Scheme. That report identifies the potential funding scenarios and the financial risks for the council. The most optimistic scenario is that the government will provide funding of 80% of the total costs in line with the funding scheme in place in 2007. The worst case scenario at present would appear to be funding of 55.6%. The council

will meet its share of the costs from additional borrowing, at 20% the total borrowing will be £17.2 million which will result in financing costs of £1 million per annum for 40 years and at 44.4% the total borrowing will be £38.3 million which will result in financing costs of £2.4 million per annum for 40 years.

Advance Works

- 3.28 In order to progress the programme it is intended to carry out certain activities, typically utility diversions and works with restricted seasonal windows in advance of the planned contract start date of 4 April 2011. The cost of these works is included in the Target Cost or Utilities budget headings in Table 1.

Management Arrangements

- 3.29 A site management team and office back-up arrangement has been drawn up. The costs of site supervision comprise consultants fees (Royal Haskoning and EC Harris mainly) and Council staff, whose payroll costs will be transferred from revenue to Capital for the duration. The Contractor's staff costs are included in the Target Cost.
- 3.30 The Senior Engineer (Flood Risk Management) is proposed as full-time "Project Manager" under the Contract. With increasing workload forthcoming to implement the Flood Risk Management (Scotland) Act 2009, it is proposed that arrangements be made to fill this post. Authorisation in principle is sought at this stage. Details would be reported to Economic Development and Infrastructure Committee for approval in due course.
- 3.31 The Council Engineer currently managing utilities for the Elgin Scheme will continue in that role.
- 3.32 There is provision for up to three further Council staff to be seconded to the site supervision in lieu of consultants. This is contingent on the availability of suitable people.

4. SUMMARY OF IMPLICATIONS

(a) Single Outcome Agreement/Service Improvement Plan

- (i) Promoting flood alleviation schemes is Local Priority 7 in the Single Outcome Agreement. This is relevant to National Outcome 12 – "We value and enjoy our built and natural environment and protect it and enhance it for future generations".
- (ii) The Corporate Development Plan 2011 – 2013 states that providing effective flood alleviation schemes is a priority, and the Community Plan reiterates this. The Departmental Service Improvement Plan sets out targets for the schemes.

(b) Policy and Legal

There are no extraordinary policy or legal issues identified.

(c) Financial implications

Financial implications are considered in paragraph 3.26 above.

(d) Risk Implications

The risk register details risk allowances at February 2011. The most significant risk identified outside project specific risks is funding uncertainty and this is discussed in paragraphs 3.26 to 3.32 above

(e) Staffing Implications

The management arrangements described in paragraphs 3.29 to 3.32 relate to proposed staffing arrangements. Authorisation is sought in principle to replace the Senior Engineer (Flood Risk Management) once he takes up the role of Project Manager. Details would be the subject of a report to the appropriate Committee.

(f) Property

Many properties are affected by the works, some of which have been acquired. The Council has worked with affected businesses and residents to minimise disruption and unnecessary cost. The Flood Prevention Order grants power to construct the works on land owned by others, but the land need not be acquired.

(g) Equalities

There are no equalities issues identified.

(h) Consultations

The Chief Financial Officer has been consulted and has contributed substantially to this report. Alasdair McEachan, Principal Solicitor (Commercial and Conveyancing), Grant Cruickshank, Principal Personnel Adviser and the Estates Manager have been consulted and comments received incorporated into this report.

5. CONCLUSION

5.1 The Elgin Flood Alleviation Scheme is long-awaited following major flood events in Elgin. Statutory consents are now in place and the construction works are ready to start.

5.2 The proposed budget set out in Table 1 includes a construction Target Cost that, in the opinion of independent cost consultants, represents value for money to the Council in accordance with the Contract for Moray Flood Alleviation Schemes. Subject to other considerations, it would be in order to authorise acceptance with an official start date of 4 April 2011 and contract period of three years and nine months, plus eight weeks contractor's time risk and ten weeks for demobilisation and site tidying.

- 5.3 The Council’s risk register was developed alongside that of the contractor and is considered to be appropriate. The register will be regularly reviewed and reported to the Flood Alleviation Sub-Committee which monitors progress.**
- 5.4 The form of contract is as per the original Contract model save for site preliminaries/overheads being excluded from “pain/gain” sharing incentivisation scheme. This makes administration more straightforward and reduces the potential for disputes. Savings or increased costs for the construction works will be shared equally with the contractor within 10% of the Target Cost.**
- 5.5 It is advantageous to the Council to instruct some operations be carried out before the official start date.**
- 5.6 There remains uncertainty regarding the level of Scottish Government Capital Grant support and the final amount of funding support will impact on other Council services.**
- 5.7 Management arrangements have been developed.**
- 5.8 This Scheme will be the largest project undertaken by the Council, and the largest flood scheme to date in Scotland. It meets the Council’s long-standing key priority of reducing flood risk to Moray’s communities as articulated in the Corporate Plan over the years.**

Author of Report: Consultancy Manager
Background Papers:
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