ITEM 11

SELKIRK FLOOD PROTECTION SCHEME 2012

Report by Director of Environment & Infrastructure

SCOTTISH BORDERS COUNCIL

29th March 2012

1 PURPOSE AND SUMMARY

1.1 This report requests that the Council makes a preliminary decision to confirm the proposed Selkirk Flood Protection Scheme 2012 with a modification. It also proposes the delegation of further authority to continue the statutory approvals processes and the scheme’s detailed design.

1.2 The Statutory Approvals processes were commenced in December 2011. This was on the basis of authority received from Council on 24th November 2011. Within these processes the Scheme will achieve approval under the Flood Risk Management (Scotland) Act 2009 (2009 Act); Deemed Planning Consent; and its CAR Licences.

1.3 The processes through which the CAR Licences and Deemed Planning Consent are being obtained are reported on within this report to update members on progress. The Council is requested to acknowledge this progress, which is in accordance with the authority provided during the Council’s November 2011 meeting, and to delegate authority to the Scheme’s Project Board to continue these processes to completion.

1.4 As part of the Scheme being approved under the 2009 Act it was required to give notice of the Scheme in accordance with paragraph 1 of schedule 2 of the Act. The date the new notice was first published under paragraph 1 (1) (a) was on 22nd February 2012.

1.5 Any person is entitled to object to the Scheme in accordance with paragraph 3 of schedule 2 of the 2009 Act. The formal 28 day objection period began on the date the new notice was first published and concluded on 21st March 2012.

1.6 One objection was received to the Scheme. This objection was deemed to be a ‘valid objection’ therefore the project team engaged with the objector in an effort to resolve the matter of their objection. The outcome of these discussions was that it was deemed necessary to modify the Scheme. The objector will be offered an opportunity to withdraw their objection further to the Council making a preliminary decision on the Scheme (and as required by regulation 13 of the 2010 Regulations).

1.7 The modification is considered not to be a significant change to the Scheme. It is fully detailed in this report and otherwise the Scheme
remains identical to the Scheme presented to Council on 24th November 2011. The following points are noted in relation to the modification:

(1) It does not require the Environmental Statement to be revised;

(2) A section of earthen embankment protecting Bannerfield from the Ettrick Water has been re-aligned but this is within the proposed Scheme’s Limit of Land Affected; and

(3) The Limit of Land Affected at the area identified in 1.7 (2) of this report has been reduced in size.

1.8 Before making a preliminary decision on a flood protection scheme with an environmental statement the Council must consider the environmental information to comply with regulation 10 (3) of the 2010 Regulations. They must also state in their decision that they have done so.

1.9 The environmental information for the Scheme consists of: the environmental statement; the one valid objection; and representations made by Historic Scotland, SEPA, the Council’s Landscape Officer and the River Tweed Commission. The objection and representations are fully considered within this report. The Environmental Statement however is a comprehensive document and will be available in the members support office for members to consider before taking a preliminary decision.

1.10 On 24th June 2010 after considering the revised Strategy for Implementation of Flood Protection Schemes the Council approved Selkirk Flood Protection Scheme to be advanced to the end of Stage 5 (termed Order Stage at the time and since more correctly termed the Statutory Approvals Stage) and that thereafter it is progressed in discrete elements within the funding available.

1.11 It is proposed that rather than progressing elements of whole town defences in Selkirk in discrete elements that the next stage of the Scheme’s design (Detailed Design) is undertaken within the existing Consultancy Contract for the Scheme as a whole leading to a tender document for a single Main Works Contract.

2 RECOMMENDATIONS

2.1 I recommend that the Council:

(a) Agrees to make a preliminary decision to confirm the proposed Selkirk Flood Protection Scheme 2012 with a modification as detailed in section 6 of this report; and

(b) Confirms that it has taken into account the environmental information as detailed in section 7 of this report; and

(c) Acknowledges progress with the Statutory Approvals processes and delegate authority to the Scheme’s Project Board to continue to advance these processes; and

(d) Provides the Scheme’s Project Board with the authority to authorise the project team to commence Stage 6 of the Scheme’s design (Detailed Design).
3 BACKGROUND

3.1 Selkirk has suffered a number of significant floods in the recent past, notably the following:

- In 1926 a major flood event on the Ettrick Water caused a breach in the old Selkirk Cauld and significant flooding;
- In October 1977 a major flood event on the Ettrick Water caused a collapse of Selkirk Bridge and inundation of the Philiphaugh, Riverside and Lindean areas;
- In May 2003 intense rainfall on the Long Philip Burn led to serious flooding in Bannerfield and Philiphaugh;
- A similar but less serious flood event occurred on the Long Philip Burn in August 2004; and
- In November 2009 a flood event almost solely from the Yarrow Water caused flooding and bank erosion in the Yarrow Valley and Lindean and came very close to overtopping the existing flood protection defences in Selkirk.

3.2 The design of Selkirk Flood Protection Scheme (Selkirk FPS) commenced on 15th October 2009 when Halcrow Group Limited (Halcrow) were awarded a contract to provide consultancy services to develop the Scheme’s design.

3.3 The project is managed by a Project Board under the PRINCE2 Project Management System.

3.4 On 24th November 2011 the Director of Environment & Infrastructure presented the final outline design for the Selkirk FPS to Council and the Council:

(a) Approved the final outline design for the Selkirk Flood Protection Scheme;
(b) Authorised the project team to commence the Statutory Approvals processes identified in the Flood Risk Management (Scotland) Act 2009; and
(c) Instructed the project team to present the Selkirk Flood Protection Scheme to Council for a decision (as detailed in the Flood Risk Management (Scotland) Act 2009) as soon as possible after the end of the formal 28 days objection period.

4 UPDATE ON PROGRESS WITH THE STATUTORY APPROVALS PROCESS

4.1 With the Council’s approval of the final outline design for the Selkirk Flood Protection Scheme the project team achieved completion of the design during Stage 4. This final outline design became the Scheme design for the Statutory Approvals process and it was this design that was made available for public viewing from 19th January 2012.

4.2 The final outline design has since been revised to incorporate the proposed modification. This modification is fully detailed in section 6 of this report.
4.3 The new Flood Risk Management (Scotland) Act 2009 (2009 Act) superseded the Flood Prevention (Scotland) Act 1961 in December 2010. There are not yet, however, any issued guidelines on developing a Flood Protection Scheme under the new Act. The following points are noted:

(1) Selkirk FPS is the first major Scheme to seek approval under the 2009 Act. There is therefore no precedent on which to base the Scheme’s preparations;

(2) Moray Council did submit a very minor scheme under the new Act in 2011. This scheme did however not have an Environmental Statement therefore this Scheme did not provide any real precedent for the project team;

(3) The project team drafted a report on the Statutory Approvals process and liaised closely with the Scottish Government’s Flooding Policy Team to ensure the Scheme’s design was acceptable under the 2009 Act and to those in the Scottish Government who are currently drafting the guidelines for the 2009 Act. The Scottish Government are planning to distribute a Statutory Approvals document based on the report generated by the project team, as a piece of supplementary guidance to the 2009 Act; and

(4) The project team continues to consult the Scottish Government’s Flooding Policy Team in interpreting the 2009 Act as the Statutory Approvals process advances.

4.4 The Statutory Approvals process consists of a number of discrete processes through which the Scheme can obtain legal powers for the delivery of the works. The main approvals are:

(1) **The Scheme Approval:** under the 2009 Act; and the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Districts) (Scotland) Regulations 2010 (2010 Regulations);

(2) **Deemed Planning Consent:** under the 2009 Act; the 2010 Regulations; and section 57 of the Town and Country Planning (Scotland) Act 1997; and

(3) **The CAR Licenses:** under the Water Environment (Controlled Activities) (Scotland) Act 2011, also known as CAR.

4.5 **THE SCHEME APPROVAL:**

As part of the Scheme being approved under the 2009 Act it was required to give notice of the Scheme in accordance with paragraph 1 of schedule 2 of the 2009 Act. It is noted that notice of the Scheme had to be given twice

4.6 The first notice was published under paragraph 1 (1) (a) of the 2009 Act on 19th January 2012 however in early February the Scottish Government identified to the project team that the notice omitted some information relating to the environmental statement and to the decision making process. The requirement to include this information is contained in regulation 7 of the 2010 Regulations and the absence of this information from the notice made the notice non-compliant and because of this the Scheme could not have been approved under the 2009 Act.
4.7 A new notice was published to ensure that due process was achieved. The new notice was first published under paragraph 1 (1) (a) of the 2009 Act on 22nd February 2012. A copy of the new notice is included in Appendix A of this report.

4.8 Under paragraph 3 of schedule 2 of the 2009 Act any person is entitled to object to a proposed scheme. The process through which this is to be achieved is further detailed in regulation 12 of the 2010 Regulations and a full description of the process was included in the new notice. There are various criteria that determine whether or not an objection is valid and the objections period expires 28 days after the date notice of the scheme is first published.

4.9 The first 28 day objection period closed on 21st February 2012. Two objections to the Scheme were received during the first objection period both of which related to the same matter and were from a developer and his Architect. These objections were carried forward to the second objection period.

4.10 During the second 28 day objection period the two objections identified in section 4.8 of this report were consolidated into one single objection. This second objection period closed on 21st March 2012. This objection was deemed to be a ‘valid objection’ as defined in paragraph 3 of schedule 2 of the 2009 Act.

4.11 At the end of the 28 day objection period there are a number of different routes through which the Scheme can achieve approval. The route chosen is not optional but dependant on the specifics of, initially, the objection and, thereafter, the actions taken in dealing systematically with the objection. For example:

(1) In the event that no valid objections were received then the Council must make a decision as detailed in paragraph 4 of schedule 2 of the 2009 Act. As one valid objection was received this route was not possible.

(2) Paragraph 5 of schedule 2 of the 2009 Act provides for a situation where a preliminary decision must be made by the Council due to a valid objection being received. This is the current position and this report requests that the Council made that preliminary decision. This process is fully detailed in section 7 of this report.

4.12 **DEEMED PLANNING CONSENT:**

Where a Scheme is confirmed under the 2009 Act the Scottish Ministers direct that planning permission for any development described in the scheme is deemed to be granted. This is detailed in section 65 of the 2009 Act and regulation 14 of the 2010 Regulations.

4.13 In order that the project team fulfil the requirements of regulation 14 of the 2010 Regulations the project consultant, Halcrow, is current assembling the information required by the Scottish Ministers. SBC Planning are also currently undertaking a full review of the Scheme from a planning perspective and will produce a report for submission to the Scottish Ministers to assist them in their consideration of whether conditions are appropriate.
4.14 At this point there is no action required of the Council in relation to this approval therefore it is not proposed to discuss it further within this report.

4.15 **THE CAR LICENSES:**

There are three CAR Licence applications required by the Scheme which will be approved by SEPA and are considered by their processes. These applications were submitted to SEPA on Friday 2\(^{nd}\) December 2011 and were confirmed as received by SEPA on Monday 5\(^{th}\) December 2011. Notices were published on 19\(^{th}\) January 2012 and the associated objection period closed on 21\(^{st}\) February 2012. These applications are ongoing and it is currently estimated that a decision on the applications will be made in May 2012.

4.16 At this point there is no action required of the Council in relation to this approval therefore it is not proposed to discuss it further within this report.

5 **THE OBJECTION TO THE SCHEME**

5.1 As detailed in section 4.10 of this report one objection was received during the second objection period. The objector was Berand Homes Limited (Berand), a developer, and the objection related to the overlap between the proposed Scheme and their proposed development on land adjacent to Linglie Road on the north-eastern end of Bannerfield. A copy of the objection is provided in Appendix B of this report. A site location map that highlights the position of the Berand site and the Limit of Land Affected by the Selkirk FPS is provided in Appendix C of this report. There are two grounds for objecting used by Berand:

1. That the site Berand own is not within the area of protection of Selkirk FPS even though the site is designated on the adopted local plan. The site, ESE10B, has been identified as an area suitable for residential use; and

2. That the position of the flood protection embankment within the proposed Selkirk FPS would conflict with the layout and siting of their planning application, 10/01344/PPP.

5.2 This objection was deemed to be a valid objection, by the Council’s legal section, therefore the project team engaged directly with Berand to fully understand the reasons for their objection.

5.3 In relation to the first ground for the objection, as detailed in section 5.1 (1), of this report the project team do not consider this to be an appropriate reason to object to the Scheme for the following reasons:

1. Within the design of the developer’s proposed application for a planning permission in principle is a requirement to generally raise the site to a level deemed to be above flood risk. The level chosen is generally 115.200m above Ordnance Datum (A.O.D.) as detailed in their drawing: Title = Outline Planning Application Site Layout; No. = 2008/21/P01. This is only 1mm different from the level of the top of the Scheme’s proposed flood protection embankment at that location i.e. 115.201m A.O.D. In this instance the Scheme’s design has determined that 115.201m A.O.D. is the level required
for the top of the flood defences to protect against the 1 in 200 years (plus climate change) flood event. This level includes an allocation for freeboard above the theoretical flood level. Therefore, the project team have concluded that unlike the adjacent residential areas in Bannerfield this site does not require any flood protection to protect it against this flood event due to its proposed ground level being above the design flood event level; and

(2) As the site is the location of a proposed development rather than an existing development it is not appropriate for a publicly funded flood protection scheme to provide flood protection to that location. During Stage 3 of the Scheme’s design this was a theoretical consideration that the project team explored (during 2010) with the Council’s planning section and the Scottish Government and was in part due to the large number of undeveloped sites in the Selkirk area designated on the adopted local plan. At that point the Scottish Government clearly identified to the project team that including such development sites where private individuals / organisations stood to gain from such publically funded development would be inappropriate. It was on this basis that the Selkirk FPS was designed without such potential development sites being included inside the line of defence. This logic was applied both here and elsewhere in Selkirk.

5.4 The project team have discussed the first ground for the objection with representatives of Berand and have clearly identified the reasons stated in section 5.3 of this report that the project team do not consider it to be an appropriate reason to object to the Scheme. It is the current understanding of the project team that Berand accept the project team’s position on this matter and that they will withdraw the first ground for the objection once invited to do so by the project team. This invitation will be after the Council make a preliminary decision on the modified Scheme.

5.5 In relation to the second ground for the objection as detailed in section 5.1 (2) of this report the project team consider this to be an appropriate reason to object to the Scheme.

5.6 Further to various meetings and communications with representatives of Berand the project team have developed a modification to the Scheme that is considered to allow the Scheme to retain its technical integrity yet facilitate Berand to advance their proposed development unimpeded by the Scheme.

5.7 It is the current understanding of the project team that Berand consider the modification to be acceptable (in principle) and that they will withdraw the second ground for the objection once invited to do so by the project team. The project team recognise that discussions about some of the details associated with the overlap between the proposed Scheme and proposed planning permission in principle are ongoing and that there are a number of issues that are not yet resolved to the satisfaction of both Berand and the Council.

5.8 The invitation to withdraw their objection will be made by the project team after the Council make a preliminary decision on the modified Scheme. This is in accordance with regulation 13 of the 2010 Regulations.
6 THE MODIFICATION TO THE SCHEME

6.1 The Scheme drawing WNSFPD-EWB-003 – Bannerfield Sheet 2 is provided in Appendix D to this report. This drawing details the proposed Scheme in the location of the Berand site in the final outline design of the Selkirk FPS. This is the drawing that Berand reviewed through the public inspections process before making their objection to the Scheme.

6.2 The drawing WNSFPD-EWB-sk003 – Berand Homes Modification is provided in Appendix E to this report. This is not a formal Scheme drawing but was produced to facilitate consideration of the objection. This drawing details:

(1) The proposed Scheme and the proposed development such that the overlap between the proposals can be considered. It can be seen that the proposed flood protection embankment and the proposed Limit of Land Affected both run right through the proposed development site and more importantly through a proposed residential unit; and

(2) The proposed modified Scheme and the proposed development. It can be seen that the new horizontal alignment of the flood protection embankment lies approx. 5m to the south-west alongside the proposed development thereby avoiding any overlap. This new alignment of the embankment sits completely within the original Limit of Land Affected. The new line of the Limit of Land Affected is completely within the original Limit of Land Affected however on the north-east side alongside the proposed development it has been pulled back such that it aligns with the edge of the proposed development thereby avoiding any overlap.

6.3 The Scheme drawing WNSFPD-EWB-003 – Rev A – Bannerfield Sheet 2 is provided in Appendix F to this report. This drawing supersedes the Scheme drawing WNSFPD-EWB-003 – Bannerfield Sheet 2 (which is provided in Appendix D of this report). This Scheme drawing details the proposed modified Scheme in the location of the Berand site. This is a Scheme drawing as defined by regulation 11 of the Regulations and supersedes the final outline design Scheme drawing previously approved by Council on 24th November 2011. The proposed Berand development is not detailed on this drawing as that development is only a proposed development and is still subject to both planning approval and thereafter actual construction. This drawing details the proposed modified Scheme in relation to the existing environment and it can be clearly seen that the proposed modification is almost imperceptible.

6.4 The project team wish to note the following about the proposed modification:

(1) An Environmental Impact Assessment was produced with respect to the Scheme. This assessment was undertaken throughout 2010 and 2011 and the Scheme was notified in accordance with regulation 7 of the 2010 Regulations (i.e. a scheme with an environmental statement) on 22nd February 2012;

(2) As part of the modification process the project team considered the environmental impact of the proposed modification in accordance with regulation 4 of the 2010 Regulations. It is considered by the project team that the environmental impact of this modification is imperceptible and that the environmental statement does not
require to be amended;

(3) Further to section 6.4 (2) of this report, regulation 5 of the 2010 Regulations requires that a screening opinion is requested from each of the consultative bodies where:

At any of the stages referred to in regulation 4 (1), (of the 2010 Regulations) a local authority consider that a proposed flood protection scheme is not likely to have a significant effect on the environment.

In this case the project team consider that the proposed modified Selkirk FPS does not have a significant effect on the environment. The consultative bodies are specifically detailed in regulation 2 of the 2010 Regulations. Responses have been received from all consultees in relation to the modification to the Scheme and none are of the opinion that the modification will have a significant effect on the environment; and

(4) The project team do not consider the proposed modification to impact in any perceptible way on anyone other that the objector.

6.5 The proposed modification allows the modified Selkirk FPS to retain its ability to provide full protection to the Bannerfield area against the 1 in 200 year (plus climate change) flood event. Notwithstanding this the other complex question identified by the objector is in relation to the possible timing of the delivery of the proposed Scheme and the proposed development. There are two (main) possible scenarios:

(1) The proposed Selkirk FPS is built first. In this scenario the developer’s site is still a field and the contractor engaged by the Council to deliver the flood protection scheme’s defences in this area is unimpeded by the proposed development in any way. This allows all Scheme Operations to be constructed in full at this location. The developer is then unimpeded to construct his development at any point thereafter. The developer would undertake his required land raising to the same level as the Scheme’s embankment and run his site into the embankment; and

(2) The proposed development is built first. In this scenario the developer’s timescales would see them constructing their development before the Council are ready to construct the Selkirk FPS defences at this location. This provides a requirement for Scheme Operation EWB 12 (the required seepage protection alongside the edge of the development) to be provided in advance of the development’s construction works commencing. This Scheme Operation could be delivered by either the Council or the developer. The developer would then be unimpeded to construct their development. The Scheme Operation EWB 11 (the required flood protection embankment, alongside the edge of the development) would not then be required. Instead the Scheme would simply key the Scheme Operation EWB 10 into the developer’s site at the northern end of this operation.

6.6 In order that the Council and the developer agree responsibilities associated with the various permutations identified in section 6.5 of this report, the project team (and thereby the Council) are currently drafting a letter of understanding.
7 MAKING A PRELIMINARY DECISION FOLLOWING OBJECTIONS

7.1 The process through which the Scheme is being approved is contained within the 2009 Act and its 2010 Regulations. There is no clear path through these pieces of legislation and at each stage the next step needs to be determined. The process is summarised in the Scheme’s new notice, a copy of which is provided in Appendix A of this report. In arriving at a point where the Council must make a Preliminary Decision the following points are notes:

(1) The Scheme has been notified and has had a 28 day objections period, as is required of the process;
(2) If no valid objections had been received then the local authority must make a ‘decision where no valid objections are received’ in accordance with paragraph 4 (1) of section 2 of the 2009 Act;
(3) As one valid objection has been received this is not possible;
(4) Therefore the local authority (the Council) must make a ‘preliminary decision following objections’ in accordance with paragraph 5 (1) of section 2 of the 2009 Act and as detailed in this section 4.11 of this report;
(5) Once the Preliminary Decision is made the Council must notify the objector and offer them the opportunity to withdraw that objection in writing.

7.2 The following is a direct copy of paragraph 5 (1) of schedule 2 of the 2009 Act:

Where, in relation to a proposed flood protection scheme, the local authority receives a valid objection, it must make a preliminary decision to –

(a) Confirm the proposed scheme without modifications,
(b) Confirm the proposed scheme with modifications, or
(c) Reject the proposed scheme.

7.3 Paragraph 5 (2) of schedule 2 of the 2009 Act instructs the local authority to consider any valid objections to the Scheme. Consideration of the one valid objection by the project team was undertaken and this is fully reported on in sections 5 and 6 of this report so that the Council can consider this objection before making the preliminary decision.

7.4 Regulation 10 of the 2010 Regulations identifies that a local authority may not make a decision in relation to a flood protection scheme with an environmental statement unless they have taken into account the environmental information referred to in Regulation 10, paragraph (3) of the 2010 Regulations. They must also state in their decision that they have done so.

7.5 For the proposed modified Scheme the environmental information consists of:

(1) The environmental statement for the Scheme;
(2) Representations made by persons referred to in paragraph 1 (1) (f) of schedule 2 of the 2009 Act and consultative bodies referred to in regulation 2 of the 2010 Regulations; and
(3) Any valid objections to the Scheme.
7.6 **THE ENVIRONMENTAL STATEMENT:**

This is a comprehensive document and it is considered to detailed and complex to summarise it in this report. A decision has therefore been taken to make the Environmental Statement available to members such that they can consider the environmental impact of the proposed Scheme before taking a preliminary decision. It will be available in the members support office for members to review.

7.7 **THE REPRESENTATIONS:**

In the region of 25 representations were made on the Scheme during the objection period. The origin and nature of these representations varied widely. In each case the project team have reviewed the representation and as appropriate consulted with the person / organisation to understand fully the point that they wished to convey. The project team will deal with these representations on an individual basis. Some have immediate relevance for the Scheme, some will be reviewed again during the detailed design stage of the Scheme and some will be passed to other organisations / sections within the Council for their consideration / action.

7.8 Four of these representations were from persons / consultative bodies stipulated in the 2009 Act and the 2010 Regulations and their representation must therefore be considered by members as environmental information as detailed in section 7.3 of this report. These representations are provided in Appendix G to this report and were from:

1. The River Tweed Commission;
2. The Council’s Landscape Officer;
3. Historic Scotland; and
4. SEPA.

7.9 In their letter of representation the River Tweed Commission state: that they have been consulted throughout the design process for the Scheme; that their points have been considered by the project team and addressed as appropriate; and that they are content with the Scheme and its proposals.

7.10 In his letter of representation the Council’s Landscape Officer confirms that he is content with the principles of the design of the Scheme. He further provides five observations that are for the project team to consider during the detailed design of the Scheme. These observations have no bearing on the decisions to be taken during the Scheme’s approval process.

7.11 In their letter of representation Historic Scotland note and concur with the findings of the Environmental Statement and furthermore they do not consider that any issues of national significance are raised (in relation to their statutory remit).

7.12 In their letter of representation SEPA record their support for the principle of the Scheme as it will reduce the flood risk to over 600 properties. They go on to detail their understanding on the Scheme’s key flood protection measures and confirm their understanding that the Scheme will not increase the flood risk downstream because of the mitigating effect of the St. Mary’s Loch Flood Storage Option. They welcome the opportunity to
remain involved in the Scheme’s design as we advance to the detailed design stage.

7.13 **THE VALID OBJECTION:**

The one valid objection is detailed fully in section 5 and 6 of this report.

7.14 Once the preliminary decision is made by the Council notice must be given to every person who submitted an objection that is considered. This is in accordance with paragraph 5 (3) of schedule 2 of the 2009 Act. In this instance only one objection was received and considered, therefore notice will be provided to Berand. It is within this notice that an offer to withdraw their objection will be made in accordance with regulation 13 of the 2010 Regulations. It is the response of the objector to that offer that will determine the remaining processes through which the final decision on the proposed modified Scheme will be made.

7.15 If Berand withdraw their objection the Final Decision, in accordance with paragraph 9 (1) of schedule 2 of the 2009 Act, will be made by the Council.

7.16 If Berand do not withdraw their objection the Scheme will be provided to the Scottish Ministers in accordance with paragraph 6 of schedule 2 of the 2009 Act.

8 **COMMENCING PROJECT STAGE 6 (DETAILED DESIGN)**

8.1 The project is being run through the PRINCE2 System for managing projects and in accordance with this system a Project Board is in place to manage the project.

8.2 The Project Board was established in October 2009 immediately after the project commenced on 15th October 2009. The full board formally meets approximately every two months but members of the board meet on an ad-hoc basis as required to allow the Project Manager to advance the project. A schematic of the Project Board’s structure is provided in figure 8.2.

![Figure 8.2 – The Scheme’s Project Board](image-url)
8.3 The project is being advanced in discrete stages, which is in accordance with the PRINCE2 System, and these stages have been designed to align with the major stages in advancing a flood protection scheme. A schematic programme is provided in figure 8.3 that both illustrates the eight discrete stages for the Selkirk FPS but also the timescales associated with each of these stages.

![THE STAGES OF SELKIRK FLOOD PROTECTION SCHEME (SELKIRK FPS)]

8.4 On 24th June 2010 the Acting Director of Technical Services presented a report to Council detailing the revised Strategy for Implementation of Flood Protection Schemes. Council approved Selkirk FPS to be advanced to the end of Stage 5 (termed Order Stage at the time and since more correctly termed the Statutory Approvals Stage). The following is an extract of the Councils recommendations in relation to Selkirk:

The Council (b) Agreed that the Council should adopt the revised strategy to:

(1) Continue to progress the priority Flood Protection Scheme for Selkirk to Order Stage; and

(2) Thereafter look to progress elements of whole town defences in Selkirk in discrete elements within the funding available.

8.5 It is proposed that rather than progressing elements of whole town defences in Selkirk in discrete elements that the next stage of the Scheme’s design (Stage 6 – Detailed Design) is undertaken within the existing Consultancy Contract for the Scheme as a whole leading to a tender document for a single Main Works Contract. This is due primarily to the following points:

(1) The Scottish Government reinstated Scheme specific funding for flood protection schemes in December 2011;

(2) Sufficient funding is available within the current Flood Protection Programme budget to fund Stage 6;
(3) Advancing the design of Selkirk FPS within the existing Consultancy Contract as whole scheme design offers the Council best value and ensures the experience gained to date by the project team is retained; and

(4) Once the Scheme design is completed it is a relatively simple exercise to break down the single Main Works Contract into multiple works contracts if that is deemed appropriate at a later date.

8.6 It is proposed that the Council devolve responsibility for commencing State 6 (Detailed Design) to the Scheme’s Project Board such that the project team do not require to return to Council for permission to continue the design. This is intended to facilitate continuity of design. The Project Board would only provide this approval within the constraints of available funding and after acceptance of the Stage 6 Plan.

9 IMPLICATIONS

9.1 Financial

(a) This report recommends that the Council: (1) makes a preliminary decision to confirm the proposed Selkirk FPS with modifications; (2) confirms that they have taken into account the environmental information; (3) acknowledges progress with the Statutory Approvals processes and delegates authority to the Scheme’s Project Board to continue to advance these processes; and (4) provides the Scheme’s Project Board with the authority to authorise the project team to commence Stage 6 (Detailed Design). It does not, therefore, have any immediate financial implications as all of these actions are covered within the existing flood protection programme budget.

(b) The Flood & Coast Protection programme budget from the Council’s Capital Financial Plan between the financial years 2012/13 and 2021/22 is included in Appendix H of the report. The line relating to Selkirk FPS has been highlighted for ease of reference.

(c) In the longer term the financial implications relate to the overall Scheme cost. Delivery of the Scheme as set out will require significant support from the Scottish Government.

(d) If the whole project does not proceed there may by some element of capital cost already incurred that will have to be written off to revenue.

(e) In section 6.5 and 6.6 of this report is was identified that depending on the timescales that develop, in relation to both the Selkirk FPS and the Berand development, there are a number of scenarios that are appropriate to consider in relation to how the Scheme’s Operations in this location are delivered. This is specifically in relation to the provision of seepage protection which is detailed as EWB 12 in the modification. In the event that the Berand development is constructed first then the Construction Cost of Scheme Operation EWB 12 will require to be accelerated to ensure that the window of opportunity to deliver this Scheme Operation is not missed.
9.2 Risk and Mitigations
(a) There is a risk of a Public Local Inquiry (PLI) if Berand do not remove their objection to the proposed Scheme. This PLI would have to be decided by Scottish Ministers. This risk is being mitigated by the following:

(1) By engaging with Berand to fully understand their objection to the proposed Scheme; and
(2) By modifying the proposed Scheme to take account of the issues raised by the Berand objection.

9.3 Equalities
(a) It is anticipated there will be no adverse impact due to race, disability, gender, age, sexual orientation or religion/belief arising from the proposals contained in this report.

(b) The outline design has been undertaken in compliance with the requirements of the Disability Discrimination Act.

9.4 Acting Sustainably
(a) Economic Growth

The outline design has considered economic growth and this was fully detailed in the report presented to Council on 24th November 2011. The following points are however worth noting:

(1) The Council’s Economic Development and Regeneration section are currently undertaking a full revision of the Selkirk Regeneration Strategy;

(2) The Council’s Flood Protection Programme Manager (and Scheme’s Senior User) participated in this process and specifically in their Community Action Plan Workshop held on 20th March 2012;

(3) It is considered that the Selkirk FPS provides a huge opportunity for this Council, and for Selkirk, in relation to regeneration and potential economic growth. The Selkirk FPS is a major infrastructural project and was estimated as being a £24.6M project in Q3 2011. When delivered the Selkirk FPS will reshape the environment of the town (adjacent to the river) and will effectively eliminate the risk of flooding. The flood defences to the Riverside area will provide protection against the 1 in 500 year (plus climate change) flood event. It is understood that this will be the highest level of protection provided under a publicly funded flood protection scheme in the UK. The Riverside is the largest business area in the Borders and is currently in need of regeneration; and

(4) It is noted that there are past examples of other Councils’ seizing an opportunity like this (e.g. Woking Borough Council and the Environmental Agency’s joint delivery of a £40M flood alleviation and regeneration scheme in Surrey’s Hoe Valley).
(b) **Social Cohesion**

There are no specific implications in relation to this report.

(c) **Protection of the Environment**

There are no specific implications in relation to this report and the only area where the regulations required formal consideration is further detailed in section 6.4 of this report.

(d) **Integration**

There are no specific implications in relation to this report.

### 9.5 Carbon Management

(a) There are no specific implications in relation to this report.

### 9.6 Rural Proofing

(a) There are no specific implications in relation to this report.

### 9.7 Changes to Scheme of Administration or Scheme of Delegation

(a) There are no changes required to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

### 9.8 Formal Approval of the Scheme under the Legislation

(a) Under the 2009 Act either the Local Authority or the Scottish Ministers will approve the Scheme.

(b) This report requests that the Council make a preliminary decision as specified in the 2009 Act.

(c) Once the preliminary decision has been made there are a number of possible future scenarios however the most likely is that the Council will approve the Scheme under paragraph 9 (1) of schedule 2 of the 2009 Act. The current programme has identified the Council meetings in June 2012 as the most likely date for this decision.

### 10 CONSULTATION

10.1 The Scheme was developed within an ongoing framework of consultation with key project stakeholders and the people of Selkirk.

10.2 The final outline design for the proposed Selkirk FPS was approved by the Council on 24th November 2011.

10.3 Notice of the proposed Scheme was given in accordance with the 2009 Act and the 2010 Regulations on 22nd February 2012. This process involved:

- Publishing the notice in the Southern Reporter, Edinburgh Gazette, Selkirk Weekend Advertiser and Border Telegraph;
- Posting notice to approx. 1,700 people; and
- Displaying the notice in 65 strategic public locations.
10.4 The Scheme documents were made available for public inspection at both SBC Headquarters and Selkirk Contact Centre.

10.5 The Chief Financial Officer, the Head of Legal and Democratic Services, the Head of Audit and Risk, the Head of Social Work, the Clerk to the Council and Corporate Communications have been consulted and their comments have been incorporated into the report.

Approved by:

Director of Environment & Infrastructure

Signature ..............................................

Author(s)

<table>
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<tr>
<th>Name</th>
<th>Designation and Contact Number</th>
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<tbody>
<tr>
<td>David Green</td>
<td>Flood Protection - Programme Manager – 01835 825180</td>
</tr>
<tr>
<td>Conor Price</td>
<td>Selkirk FPS - Project Manager – 01835 826765</td>
</tr>
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Background Papers:

- Flood Risk Management (Scotland) Act 2009
- Flood Risk Management (Flood Protection Scheme, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010
- Selkirk FPS project report – A summary of the processes involved in submitting Selkirk Flood Protection Scheme (FPS) for approval under the statutory process

Previous Minute Reference:

- Scottish Borders Council, 24th November 2011

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.