
**JEDBURGH (SKIPRUNNING BURN) FLOOD PROTECTION
SCHEME
CONFIRMATION OF THE SCHEME UNDER THE FLOOD RISK
MANAGEMENT (SCOTLAND) ACT 2009**

**Report by Service Directors of Capital Projects & Service Director
Commercial Services**

Scottish Borders Council

19 February 2015

1 PURPOSE AND SUMMARY

- 1.1 This report requests that the Council makes a decision to confirm the proposed Jedburgh (Skiprunning Burn) Flood Protection Scheme 2014. It also seeks authorisation to continue the statutory approvals processes and commence the procurement and construction stages of the project.**
- 1.2 The Statutory Approvals processes were commenced in November 2014. This was on the basis of authority received from Council on 30 October 2014. Within these processes the Scheme will achieve approval under the Flood Risk Management (Scotland) Act 2009 (2009 Act); Deemed Planning Permission; and its CAR Licence.
- 1.3 As part of the Scheme approval process it was required to give notice of the Scheme in accordance with paragraph 1 of schedule 2 of the 2009 Act. The notice was first published on 13 November 2014.
- 1.4 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 notice was first published and concluded on 10 December 2014.
- 1.5 There were no objections to the proposed Scheme therefore the Council must now make a decision to confirm or reject the Scheme in accordance with paragraph 4 (1) of schedule 2 of the 2009 Act.
- 1.6 Once the decision has been made the project team will publish notice of that decision in accordance with the relevant parts of the 2009 Act. The Scheme will become operative 6 weeks after notice is published unless an appeal is made.

- 1.7 The Council's decision to confirm the scheme will also allow Deemed Planning Permission to be obtained and enable the project team to finalise the detailed design before progressing to procurement and construction during financial year 2015/16.

2 RECOMMENDATIONS

2.1 I recommend that the Council:-

- (a) Makes the decision to confirm the proposed Jedburgh (Skiprunning Burn) Flood Protection Scheme 2014;**
- (b) Authorises the Service Directors of Capital Projects & Commercial Services to continue the Statutory Approvals processes identified in the Flood Risk Management (Scotland) Act 2009; and,**
- (c) Authorises the Service Directors of Capital Projects & Commercial Services to commence the procurement and construction stages of the project.**

3 BACKGROUND

- 3.1 The Skiprunning Burn is a minor tributary of the Jed Water and flows beneath Jedburgh town centre through a culvert. The burn has a history of causing flooding in the town and there are at least five recorded flood events which could be attributed to this watercourse, with four occurring since 1984. The most severe being the high profile event which occurred on 5 August 2012 when around 50 properties were estimated to be affected. The burn flooded most recently on 21 December 2013.
- 3.2 Following the flood event of 1984, the then Borders Regional Council promoted and implemented the (Jedburgh - Skiprunning Burn Culvert) Flood Prevention Scheme 1985 under the Flood Prevention (Scotland) Act 1961. This scheme aimed to mitigate flooding by improving conveyance through the culvert and included work to limit overland flow from the culvert inlet.
- 3.3 Survey and analysis work was undertaken by consultants appointed by the Council immediately after the 5 August 2012 flood event. This concluded that the principal cause of flooding was debris blocking the culvert inlet trash screen rather than the culverts inability to convey the flow.
- 3.4 Over 20 separate options that would mitigate the impacts of flooding were identified as part of this analysis work.
- 3.5 The Director of Environment and Infrastructure presented the outcome of the analysis of the 5 August 2012 flood and set out the possible flood risk management options to the Environment and Infrastructure Committee on 8 November 2012. Approval was given by the Environment and Infrastructure Committee for the project team to take forward the works in 3 phases.
- 3.6 The exact detail of the options being taken forward and the phasing of the works have been developed during 2013 and 2014.
- 3.7 Phase 1 (early implementation) works were completed in March 2014.
- 3.8 Phase 1A (streetscape and other flood resilience measures) works are effectively an extension of the Phase 1 works and these are being taken forward during financial year 2014/15. These works are not included within the formal Flood Protection Scheme (FPS) as they do not require complex planning and statutory approvals.
- 3.9 Phase 2 (FPS) is being taken forward under a formal FPS due to the fact that there will be a number of affected landowners and the work is of a more complex nature. Phase 2 is programmed for implementation during financial year 2015/16

- 3.10 Phase 3 repair works to the main town culvert has been incorporated into Phase 2 and is therefore now included in the Flood Protection Scheme.
- 3.11 On 30 October 2014 the Council approved the final outline design for the Jedburgh (Skiprunning Burn) Flood Protection Scheme, authorised the commencement of the statutory approval processes identified in the 2009 Act and Instructed the Service Directors of Capital Projects & Commercial Services to present the proposed Scheme to Council for a decision as soon as possible after the end of the formal 28 day objection period.
- 3.12 Notice of the proposed Scheme was given on 13 November 2014 and no objections were received during the 28 day objection period.

4 UPDATE ON PROGRESS WITH THE STATUTORY APPROVALS PROCESS

4.1 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 Permission:** 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.

4.2 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. This notice was given on 13 November 2014.

- 4.3 The final outline design, which was approved by Council on 30 October 2014, became the Scheme design for the Statutory Approvals process and it was this design that was made available for public viewing from 13 November 2014.
- 4.4 The 28 day objection period expired on 10 December 2014. No objections to the Scheme were received.
- 4.5 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 whether or not there are any valid objections. As no objections were received in this case, the Council must make a decision to confirm or reject the proposed Scheme as detailed in paragraph 4 of schedule 2 of the 2009 Act. This is the current position and this report requests that the Council make that decision. This process is fully detailed in section 5 of this report.

4.6 **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.

4.7 In order that the project team fulfil the requirements of regulation 14 of the 2010 Regulations, SBC's Design Services and the project consultant, CH2M Hill, are 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.

4.8 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.

4.9 **THE CAR LICENCE:**

There was one CAR Licence application required for the Scheme and this has been approved by SEPA. The application was submitted to SEPA on 13 November 2014 and authorisation was granted on 13 January 2015.

4.10 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 MAKING A DECISION WHERE NO VALID OBJECTIONS RECEIVED

5.1 The process through which the Scheme is being approved is contained within the 2009 Act and its 2010 Regulations.

5.2 As no valid objections have been received during the 28 day objection period, 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.

5.3 The following is a direct copy of paragraph 4 (1) of schedule 2 of the 2009 Act:

4 (1) Where, in relation to a proposed flood protection scheme, the local authority receives no valid objections the local authority must, after the expiry of the period referred to in paragraph 3(2)(c), either –
(a) confirm the proposed scheme, or
(b) reject the proposed scheme.

6 CONCLUSION OF THE APPROVALS PROCESSES

- 6.1 Once the Council makes the decision to confirm the Scheme under paragraph 4 (1) of schedule 2 of the 2009 Act the Council must give notice of that decision in accordance with paragraph 10 of the Act. It is intended to undertake this activity as soon as possible after the Council decision.
- 6.2 Regulation 14 of the 2010 Regulations states that, where a Council confirms a scheme under paragraph 4 (1) of schedule 2 of the 2009 Act, the local authority must request that the Scottish Ministers direct that planning permission for any development described in the scheme is to be deemed to be granted. It is intended to undertake this activity as soon as possible after the Council decision.
- 6.3 The Council's Planning Officer for Jedburgh is currently undertaking a full review of the proposed Scheme and is producing a report summarising that review. This report will be provided to Scottish Ministers as part of the process to obtain deemed planning permission.
- 6.4 Paragraph 11 of schedule 2 of the 2009 Act confirms that a 'Scheme' becomes operative 6 weeks after notice of its confirmation is published in accordance with paragraph 10 of the Act.
- 6.5 Paragraph 12 of schedule 2 of the 2009 Act confirms that the decision to confirm the scheme may be appealed by any person affected by the confirmed scheme. The grounds of appeal are restricted to those specified in the 2009 Act and relate more to points of law rather than the contents of the Scheme. This process is however outside of the control of the project team therefore this section is intended to identify that this process exists and that in the event that someone makes an appeal then the project team will deal with it in the appropriate manner and report back to Council as appropriate thereafter.

7 IMPLICATIONS

7.1 Financial

- (a) This report does not have any immediate financial implications as funding for the implementation of this project is included in the current capital plan.
- (b) The scheme will provide the following benefits:
- a) Reduced flood risk to approximately 50 properties (residential, retail, community etc.) in the centre of Jedburgh;
 - b) The potential for serious harm to individuals will be reduced;
 - c) Jedburgh town centre will become a safer and more attractive place to undertake business;
 - d) The Council will have greater protection against the significant costs that a major flood event on the Skiprunning Burn causes.

- (c) There are also many other potential social benefits which are difficult to quantify: the reduction in fear associated with living in an area that floods and the associated improvement in health due to the removal of that stress; a reduction in insurance premiums and insurance excesses; the protection of essential infrastructure etc.

7.2 Risk and Mitigations

- (a) Floods can happen at any time and there is a risk that a flood event occurs before the proposed works are implemented. This risk is mitigated by the following:
 - a) Progressing with flood protection works as quickly and efficiently as possible;
 - b) Phasing the works to reduce the impact of flooding, as soon as possible;
 - c) Undertaking watercourse clearance work upstream of the main trash screen;
 - d) Continuing to monitor and clear the grilles;
 - e) Continuing operation of local flood warning group based on grill sensor;
 - f) Promoting flood awareness; and
 - g) Providing assistance to help those at risk to be prepared for a flood event.

- (b) Due to the nature of the Skiprunning Burn and the fact that the principal risk of flooding is due to debris blocking the culvert inlet rather than the capacity of the culvert/inlet, there remains a risk that a flood event caused by debris occurs after the proposed works have been implemented. There is also a risk that a flood event occurs after the proposed works have been implemented which exceeds the capacity of the culvert itself. These risks are mitigated by the following:
 - a) Phase 1 and Phase 1A works which sees flood risk management measures downstream of the culvert inlet which reduce the flood risk to the most vulnerable properties and direct any escaped flood waters to areas and zones where less damage occurs;
 - b) Designing of the flood protection works to minimise the risk of debris reaching and completely blocking the main culvert inlet trash screen;
 - c) Designing the main culvert inlet trash screen and associated bypass culvert to be more easily and safely cleared in an emergency situation;
 - d) Continuing to undertake watercourse clearance work upstream of the main trash screen;
 - e) Continuing to monitor and clear the grilles;
 - f) Continuing operation of local flood warning group based on grill sensor;
 - g) Continuing to promote flood awareness; and
 - h) Continuing to provide assistance to help those at risk to be prepared for a flood event.

- (c) There is a risk that someone may make an appeal against the decision to confirm the Scheme, which delays the implementation of the Scheme. The potential for this risk to manifest itself is considered to be low however the impact of such a risk is high. This risk is being mitigated by the following:
 - a) Phasing the works to introduce early implantation measures to reduce the impact of flooding, as soon as possible;
 - b) Extensive consultation with key landowners and stakeholders; and
 - c) Ensuring that the correct processes were followed at all times and that an appropriate record of all decisions / actions was kept in case it was necessary to provide proof that such process was followed.

- (d) If the project does not go ahead there will remain a significant risk that further flood events will occur which will again damage houses and businesses within the town. There is also the potential for personal injury due to steep gradients and the consequential high velocity of flood flows. Much damage was caused by the 2012 flood event to local houses and businesses. The public agencies had to dedicate a significant resource to manage the event and aftermath, and repair costs to damaged public infrastructure were significant. In addition many householders and businesses suffered financial loss.

7.3 **Equalities**

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.

7.4 **Acting Sustainably**

- (a) The implementation of the proposed works will reduce the risk of flooding in Jedburgh and promote the personal wellbeing of the residents of the town.

- (b) The proposed works will have an environmental impact but this will be offset by the reduction in environmental impact that would arise as a result of reacting to and recovering from future flood events.

7.5 **Carbon Management**

There are no significant effects on carbon emissions.

7.6 **Rural Proofing**

It is anticipated there will be no adverse impact on the rural area from the proposals contained in this report.

7.7 Changes to Scheme of Administration or Scheme of Delegation

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.

8 CONSULTATION

8.1 Extensive consultation with key landowners and stakeholders has taken place during the development of the scheme. These include the following:

- a) Statutory consultees such as SEPA and SNH;
- b) Emergency services;
- c) Local residents and housing associations;
- d) Local Councillors;
- e) Various Council Officers and Services; and
- f) Public utility companies.

8.2 The Cheviot Area Forum has been kept up to date throughout the process and articles have been included in The Jed Eye and SBConnect.

8.3 A public exhibition was held in the Jedburgh Town Hall on 28 and 29 August 2014 to present the draft outline design to the people of Jedburgh.

8.4 The Chief Financial Officer, the Service Director Regulatory Services (as Monitoring Officer), the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR, and the Clerk to the Council have been consulted and their comments have been taken into account in the final report.

8.5 The Depute Chief Executive Place, Service Director Neighbourhood Services and Communications & Marketing have been consulted and their comments have been taken into account in the final report.

Approved by

Service Director of Capital Projects **Signature**

Service Director of Commercial Services **Signature**

Author(s)

Name	Designation and Contact Number
David Murphy	Design Team Leader (Engineering) - 01835 826665
David Green	Flood and Coastal Management Team Leader - 01835 825180

Background Papers: None

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Contact us at Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, Scottish Borders, TD6 0SA tel 01835 826665 fax 01835 825431 e-mail PLACEtransrequest@scotborders.gov.uk