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**FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009  
SECTION 38 FINAL REPORT ON PROGRESS OF ACTIONS  
DELIVERED IN THE TWEED, SOLWAY & FORTH ESTUARY  
LOCAL FLOOD RISK MANAGEMENT PLANS 2016 – 2022**

**Report by Director Infrastructure and Environment**

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**SCOTTISH BORDERS COUNCIL**

**29 September 2022**

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**1 PURPOSE AND SUMMARY**

- 1.1 This report proposes that the Council approves the Section 38 Final Reports for the Tweed, Solway and Forth Estuary Local Flood Risk Management Plans (LFRMP), as a true reflection of the progress made during the 6 year Flood Risk Management (FRM) cycle 2016 - 2022 to mitigate flood risk in the Scottish Borders.**
- 1.2 This approval is required to allow for the publication of the Section 38 Final Reports for each Local Flood Risk Management Plan in Scotland by December 2022.**
- 1.3 The inception of the Flood Risk Management (Scotland) Act 2009 (FRM Act) requires the production of Local Flood Risk Management Plans covering each Local Plan District (LPD) in Scotland. Scottish Borders Council's area falls within 3 of the 14 Local Plan Districts in Scotland. These are Forth Estuary LPD, Tweed LPD and Solway LPD.
- 1.4 There are two sets of complementary plans; Flood Risk Management Strategies which were approved by Scottish Ministers and subsequently published by the Scottish Environment Protection Agency (SEPA) on 22 December 2015 and Local Flood Risk Management Plans produced by Lead Authorities and published 22 June 2016. Scottish Borders Council is the Lead Authority for Tweed Local Plan District.
- 1.5 The Flood Risk Management Strategies and Local Flood Risk Management Plans have been developed through collaborative partnerships between Local Authorities, SEPA and Scottish Water.
- 1.6 The Flood Risk Management Strategies and Local Flood Risk Management Plans provide a framework for co-ordinating actions across catchments to deal with all sources of flooding. These plans ensure long term planning around flooding and under Section 41(2) of the FRM Act, Scottish Ministers must take them into account when allocating funding. This approach helps target investment to areas where there is the greatest risk of flooding and

where communities can receive the greatest benefit. This will help to maximise the benefit of public investment.

- 1.7 The Local Flood Risk Management Plans take the objectives and actions identified in the Flood Risk Management Strategies and set out who will be responsible for delivering the action, how the action will be funded, a timetable for when the action will be delivered and how it will be co-ordinated within the first FRM Cycle 2016 - 2022.
- 1.8 Section 38 of the Flood Risk Management (Scotland) Act 2009 requires that the Lead Authority of each Local Plan District reviews and publishes a Final Report on the progress made in implementing the measures to mitigate flood risk detailed in the relevant Local Flood Risk Management Plan during the first FRM Cycle 2016 - 2022.
- 1.9 There is now a need to obtain the Council's approval of the Section 38 Final Reports for the Tweed, Solway and Forth Estuary Local Flood Risk Management Plan for national publication by December 2022.
- 1.10 NOTE: *The content and progress of the final reports for the Tweed, Solway and Forth Estuary Local Flood Risk Management Plans are correct and agreed with all responsible authorities for the purpose of this Council Report. The final public version to be presented to Scottish Ministers and the wider public will be finalised prior to formal publication, only addition will be relevant updates from South Lanarkshire Council.***

## **2 RECOMMENDATIONS**

- 3.1 **I recommend that the Council approves the:-**
  - (a) S38 Final Report for the Tweed Local Flood Risk Management Plan;**
  - (b) S38 Final Report for the Solway Local Flood Risk Management Plan; and**
  - (c) S38 Final Report for the Forth Estuary Local Flood Risk Management Plan.**

### **3 BACKGROUND**

- 3.1 The Flood Risk Management (Scotland) Act 2009 (FRM Act) requires the production of Flood Risk Management Plans covering each Local Plan District in Scotland.
- 3.2 There are two sets of complementary plans required; Flood Risk Management Strategies produced by the Scottish Environment Protection Agency (SEPA), and Local Flood Risk Management Plans produced by the Lead Local Authorities.
- 3.3 The Lead Authority of each local plan district is responsible for leading in the production, consultation, publication and review of the Local Flood Risk Management Plan for their district.
- 3.4 There are 14 local plan districts in Scotland. The Scottish Borders falls within 3 of these local plan districts, namely the Forth Estuary, Tweed, and Solway. Falkirk Council is Lead for the Forth Estuary, Scottish Borders Council is Lead for the Tweed, and Dumfries and Galloway Council is Lead for the Solway.
- 3.5 The Flood Risk Management Strategies produced by SEPA identify the main flood hazards and impacts, set out objectives for reducing flood risk and prioritise actions to achieve these objectives.
- 3.6 To prioritise actions across Scotland, SEPA made a technical, risk based assessment of costs and impacts. This independent assessment was used alongside information from partner organisations to jointly agree priorities and identify indicative delivery dates for actions. A National Prioritisation Working Group was established to provide guidance to SEPA on the priority for flood risk management actions.
- 3.7 The Local Flood Risk Management Plans take the objectives and actions identified in the Flood Risk Management Strategies and set out who will be responsible for delivering the action, how the action will be funded, a timetable for when the action will be delivered, and how it will be co-ordinated within a six-year cycle.
- 3.8 The Tweed Local Plan District has 13 Potentially Vulnerable Areas, 12 which are within the Scottish Borders Council's authority area and one which falls within the South Lanarkshire Council's authority area, namely Biggar, (PVA13/07).
- 3.9 The Forth Estuary Local Plan District has 29 Potentially Vulnerable Areas, one of which is within the Scottish Borders Council's authority area, namely the Berwickshire Coast, (PVA10/26).
- 3.10 The Solway Local Plan District has 26 Potentially Vulnerable Areas, one of which is within the Scottish Borders Council's authority area, namely Newcastleton (PVA14/03).
- 3.11 Both the Flood Risk Management Strategies and the Local Flood Risk Management Plans were developed collaboratively by SEPA, Local

Authorities and Scottish Water. Both the strategies and plans were subject to a combined public consultation prior to publication on 22 June 2016

3.12 In addition, the engagement and support of local and national advisory groups has been sought during the development of the Flood Risk Management Strategies and Local Flood Risk Management Plans.

3.13 The Flood Risk Management Strategies and the Local Flood Risk Management Plans give details on a number of objectives and the actions to fulfil these objectives. The actions taken forward within the Local Flood Risk Management Plans are:-

- Flood protection schemes/works;
- Natural flood management works;
- New flood warning;
- Flood protection study;
- Natural flood management study;
- Surface water plan/study;
- Strategic mapping and modelling;
- Maintain flood protection scheme;
- Maintain flood warning;
- Flood forecasting;
- Property level protection scheme;
- Community flood action groups;
- Self help;
- Awareness raising;
- Maintenance;
- Site protection plans;
- Emergency plans/response;
- Planning policies.

3.14 In combination the Flood Risk Management Strategies and the Local Flood Risk Management Plans determine how flood risk will be managed across the Scottish Borders through the three appropriate Local Plan Districts, namely the Forth Estuary, the Tweed and the Solway during the first Flood Risk Management Cycle 2016 – 2022.

3.15 Section 38 of the FRM Act states that the Lead Authority must review the Local Flood Risk Management Plan and publish a report on the progress being made to implement the measures identified to mitigate flood risk in the plan and provide a summary of the current measures which were not implemented, with reasons for their non-implementation and a description of any other measures implemented since the plan was finalised which the lead authority considers have contributed to the achievements of the objectives summarised in the supplementary part of the plan.

3.16 Detail on the Section 38 Final Report review can be found in the following appendices and links.

- See Appendix 1 – Tweed LPD INTERIM REPORT Local Flood Risk Management Plan – V1.2 Draft.
- See Appendix 2 –Solway LPD INTERIM REPORT Local Flood Risk Management Plan, Newcastleton PVA datasheet

- See Appendix 3 –Forth Estuary LPD INTERIM REPORT Local Flood Risk Management Plan, Berwickshire Coast PVA datasheet
- See Appendix 4 - Other Actions delivered not specified in the Local Flood Risk Management Plans

## **5 IMPLICATIONS**

### **5.1 Financial**

- (a) Funding from Scottish Government for implementation of actions including flood protection schemes and associated studies is included in the national 10 year funding period 2016 – 2026, whereby £42 million each year is allocated across Scotland to deliver the actions in each Local Flood Risk Management Plan. This is split 80% toward development of flood protection schemes and a 20% top slice to the delivery of all other actions. The 20% is shared with each Local Authority in Scotland based on the degree of flood risk they have. The 20% top slice is distributed to Local Authorities as part of the Councils general capital grant from the Scottish Government.
- (b) This report does not have any immediate financial implications with respect to implementing the remaining measures highlighted in the Local Flood Risk Management Plans as funding is included in the Flood & Coastal Management Revenue and Capital Block Allocations.

### **5.2 Risk and Mitigations**

Currently there are no immediate risks to the completion of the actions detailed in the Local Flood Risk Management Plans. However this is based on the funding levels from the Scottish Government for flooding being maintained at their current level and that the allocation of budget within the Council to deliver the Local Flood Risk Management Plans is also maintained. There is no mitigation for this but there is a reputational risk to Scottish Borders Council if these actions are not delivered.

### **5.3 Integrated Impact Assessment**

Flood Risk Management and the Section 38 Reporting does not discriminate against any individuals or groups. The end of cycle reporting is a review of actions that are of a technical nature to help whole communities mitigate and reduce flood risk.

### **5.4 Sustainable Development Goals**

The development of the strategies and plans are being undertaken as part of implementing the Flood Risk Management (Scotland) Act 2009 which has, as its core principle, the need to act sustainably.

### **5.5 Climate Change**

The implementation of actions, in particular construction projects will be assessed in detail through detail design and delivery of such projects to ensure that these are delivered in a sustainable and climate friendly manner. The delivery of such actions will be offset by the benefits in reducing the impacts of flooding.

## 5.6 Rural Proofing

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

## 5.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

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

No changes required.

## 6 CONSULTATION

6.1 The following officers have been consulted Director (Finance & Corporate Governance), Chief Legal Officer, the Chief Officer Audit and Risk, the Director (People Performance & Change), the Clerk to the Council, Communications, Chief Executive and the Director (Resilient Communities) have been consulted and any comments received have been incorporated into the final report.

### Approved by

**John Curry**

**Director Infrastructure & Environment**

### Author(s)

Name	Designation and Contact Number
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### Background Papers:

[Tweed Local Plan District](#)

[Solway Local Plan District](#)

[Forth Estuary Local Flood Risk Management Plan 2016 - 2022](#)

[Forth Estuary Flood Risk Management Plan Interim Report](#)

**Previous Minute Reference:** Scottish Borders Council, 31 January 2019

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

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