

Agenda Item	9
Report No	ECI/11/2022

HIGHLAND COUNCIL

Committee: Economy and Infrastructure

Date: 25 August 2022

Report Title: Dingwall Business Park Flood Bund

Report By: Executive Chief Officer Infrastructure, Environment & Economy

1 Purpose/Executive Summary

- 1.1 The existing bund around the Dingwall Business Park provides some relief from flood risk associated with the River Peffery. This bund is not a formal Flood Protection Scheme and was not constructed under relevant flooding legislation as flood works. This results in new development within the business park being considered at flood risk and therefore impacting the potential for new business growth within the park.
- 1.2 Highlands and Islands Enterprise (HIE), who were responsible for the development of the Business Park, are undertaking design work to establish the full extent of works and costs that would be required to upgrade the existing bund to a condition to provide designed flood protection in accordance with planning guidance. Scottish Environment Protection Agency (SEPA) have indicated this would only be formally recognised if it was a consented flood bund (scheme or works in accordance with the Flood Risk Management (Scotland) Act 2009 and adopted by the Council), therefore unlocking potential development within the Business Park. Members are being asked to confirm if they are minded to approve, in principle, adoption of the upgraded flood bund, subject to the Highland Council's agreement over the construction and delivery of the flood bund and also agreement for the resulting liabilities associated with adoption.
- 1.3 Approval in principle to adopt the bund is required as without such approval the scheme has no prospect of benefit or success in delivering the required outcome.

2 Recommendations

2.1 Members are asked to:-

- i. **Note** the update relating to the Dingwall Business Park flood bund; and

- ii. to **approve in principle** the adoption of the flood bund subject to agreement over the construction and delivery of the upgrade to the flood bund and also agreement for the resulting liabilities associated with adoption.

3 Implications

3.1 **Resource** – This is approval in principle, subject to the agreement, any costs associated with either the construction or assessment and maintenance of the bund will be brought to a future committee for approval prior to formal adoption. If adopted as formal flood works, the ongoing inspection and maintenance of the flood bund would become the responsibility of The Highland Council.

3.2 **Legal** – There is no duty that requires the Council to provide improved flood protection, however, through the Flood Risk Management (Scotland) Act 2009, Councils have powers to enable them to promote Flood Protection Schemes or flood works.

There is no precedent within Highland or by other Councils to formally adopt flood works by others. All landowners (if land is not purchased by HIE and gifted to The Highland Council), would require to enter into legal agreements allowing both the construction of the works and the ongoing maintenance access. A legal memorandum of agreement will require to be agreed by all parties funding the works and maintenance and Highland Council would enter into such agreement when the terms had been so negotiated and agreed at committee.

3.3 **Community (Equality, Poverty, Rural and Island)** – No implications.

3.4 **Climate Change / Carbon Clever** – Adoption in principle would remove an obstacle in the upgrade to the flood bund, providing increased levels of protection from flood risk for existing units in the Business Park and protection from increased flooding risk due to climate change.

3.5 **Risk** – Failure to adopt the proposed upgrade to the flood bund would result in reduced capacity for future development of business units in the Dingwall area resulting in reduced investment and employment opportunities.

3.6 **Gaelic** – No implications.

4 Existing Business Park Flood Bund Layout

4.1 Dingwall Business Park lies on the River Peffery Flood Plain, and accordingly an embankment was erected around the perimeter of the Business Park as part of the development of the land for business purposes in the 1980s. The Business Park has since been extended to the west, and a further embankment erected around the newer section (around the year 2000). The Business Park currently hosts a variety of units, including a recycling centre, offices, a nursery and industrial units.

It has recently transpired that these embankments do not form a formal flood defence, although they do provide the properties within the park a certain degree of flood protection.

Scottish Planning Policy (SPP) requires that any new developments demonstrate that they avoid areas of flood risk, and any protection offered by informal flood defences is not considered when assessing development located behind or said to be benefitting from them.

- 4.2 A study of the current condition of the informal flood embankments around Dingwall Business Park and the level of protection they provide was commissioned by HIE in July 2021.
- 4.3 The results of this assessment show that the existing embankments do not offer the level of protection required for any future development. In addition, ownership of the flood bund lies with various adjoining landowners around the periphery of the park so maintenance cannot be controlled.
- 4.4 SPP says (para 263) that in medium to high flood risk areas (greater than 1:200 years) land in built up areas may be suitable for industrial and commercial development provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan. Informal flood defences should be considered as if the scheme did not exist. Furthermore, the planning system should prevent development which would have a significant probability of being affected by flooding.
- 4.5 Accordingly, any new commercial development proposals fail to comply with SPP and also fail to accord with Policies 30 and 64 of the Highland-wide Local Development Plan, since it lies within an area at risk of flooding. Although there are informal flood prevention measures in situ in the form of embankments which offer a degree of protection to existing property, these do not afford the required level of protection for future development. Furthermore, the embankments are within assorted ownership, with no effective measures in place to ensure their maintenance and prevent further deterioration. As such, any development behind the flood bunds could be vulnerable to flooding and accordingly cannot be supported.
- 4.6 The North Planning Applications Area Committee (NPAC) have recently agreed to recommend three applications for approval within Dingwall Business Park in January and March 2022. All three reports had been recommended for refusal on the basis that both SEPA and the Council's Flood Risk Management Team had objected. Given that SEPA had objected to all the applications on the grounds of flood risk they required to be notified to the Scottish Ministers, under Category 2 of Planning Circular 3 2009 of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009. All three applications have now been called in for consideration by Scottish Ministers.

5 Flood Bund Upgrade Proposals

- 5.1 In order to ensure the remainder of the remaining vacant sites within the Business Park are developed, HIE have engaged a consultant to design and cost works to upgrade the existing bunds to a standard that could be adopted by the Council as formal flood works. This work will involve ground investigations, modelling, detailed design, procurement of a Civils Contractor and planning consent for the flood bund with all landowner agreement.
- 5.2 Funding of the construction works has yet to be determined. Prior to any progression of the works, agreement over funding for both construction and an assessment of maintenance liability will be established and brought back to committee for consideration prior to agreement to formally adopt the works.

Works would not progress until agreements had been reached and approval to formally adopt the scheme on completion had been approved by a future committee. Approval in principle to adopt the bund is required as without such approval – the scheme has no prospect of benefit or success in delivering the required outcome.

6 Adoption in Principle of the Upgraded Flood Bund

- 6.1 In order to enable potential development within the Business Park, the proposed upgrade of the flood bund would require to be adopted by the Council. It is therefore necessary for HIE and any other potential investors to the upgrade works to establish that the principle of adoption is agreed by the Council, before committing to funding of the construction works.
- 6.2 It is only the principle of adoption that is being sought from Committee at this stage. To move onto adoption, the Council would require the upgrade works to be designed to an appropriate standard; construction work to be completed; access arrangements to be in place and ongoing maintenance costs to be established and all related agreements and consents to be in place.

Designation: Executive Chief Officer Infrastructure, Environment & Economy

Date: 28 July 2022

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