**AGENDA ITEM NO 18**

**REPORT NO 182/11**

**ANGUS COUNCIL**

**INFRASTRUCTURE SERVICES COMMITTEE - 1 MARCH 2011**

**NEIGHBOURHOOD SERVICES COMMITTEE - 14 APRIL 2011**

**RESERVOIRS ACT 1975 – BIENNIAL REPORT & RESERVOIRS (SCOTLAND) BILL**

**JOINT REPORT BY THE DIRECTOR OF INFRASTRUCTURE SERVICES AND THE DIRECTOR OF NEIGHBOURHOOD SERVICES**

**ABSTRACT**

This Report summarises the duties of the council as Enforcement Authority under the Reservoirs Act 1975; updates the Committee in respect of the Biennial Report for the reservoirs within Angus to be submitted to the Scottish Ministers under the 1975 Act; updates the Committee on the Reservoirs (Scotland) Bill and summarises the duties of the council as owner under the Reservoirs Act 1975 and those proposed in the Reservoirs (Scotland) Bill.

1  **RECOMMENDATION**

1.1 It is recommended that the each of the Committees for their respective interests:

   (i) notes that the Scottish Government have sought views on the Reservoirs (Scotland) Bill as Stage 1 of the scrutiny of the Bill, which is due for enactment later in 2011, and the implications of the Bill to Angus Council.

1.2 It is further recommended that the Infrastructure Services Committee approve the Biennial Report to Scottish Ministers as required of the council as enforcing authority and as is set out in Appendix 2 to this report.

2  **BACKGROUND**

2.1  **Statutory Duties Under Reservoirs Act 1975**

2.1.1 The statutory duties of Enforcement Authority under the Reservoirs Act 1975 (“The Act”) are exercised on behalf of the Council by the Head of Roads.

2.1.2 The Act places on the Enforcement Authority the responsibility to maintain a register of reservoirs within Angus and to ensure that the users or owners of reservoirs have undertaken the required inspections and supervision, and are complying with their duties under the Act.

2.1.3 Within the Angus area there are now a total of 16 large raised reservoirs as defined by the Act (detailed in Appendix 1 to this report). Six are privately owned, six are owned by Scottish Water and the remaining four are owned by Angus Council itself (Crombie, Monikie (Denfind) Clear Water Basin, Monikie North Pond and Monikie South (Island) Pond).

2.1.4 The council’s duties as an owner of reservoirs include arranging inspections of the reservoirs at least once every ten years and the implementation of any recommendations resulting from such inspections. Every reservoir is also required to have a Supervising Engineer who has a duty to check, at least once a year, that the reservoir is operating satisfactorily.

2.2  **Reservoirs (Scotland) Bill**

2.2.1 The Scottish Parliament’s Rural Affairs and Environment Committee (“the Committee”) sought views on the general principles of the Reservoirs (Scotland) Bill in October and November 2010. It was expected that the Rural Affairs and Environment Committee will be designated as the lead Committee for scrutiny of the Bill’s general principles.
2.2.2 At stage 1 of the Bill process, the Committee was concerned with the general principles of the Bill. The Committee hoped to hold evidence sessions to inform its scrutiny of the general principles during December 2010 and January 2011. To assist in its scrutiny, the Committee issued a call for written views inviting individuals and interested parties to comment on the stated purposes of the Bill and their likely impact.

3 CURRENT POSITION

3.1 Statutory Duties Under Reservoirs Act 1975

3.1.1 As part of the statutory duty under the Reservoirs Act 1975 (the Act), the council is required to maintain a ‘List of Reservoirs’ and to ensure that the owners, or utilities, using the reservoir comply with their duties under the Act.

3.1.2 Owners or undertakers duties include arranging an inspection of the reservoir at least once every ten years and the implementation of any recommendations resulting from such inspections.

3.1.3 Every reservoir is also required to have a Supervising Engineer who has a duty to check, at least once a year, that the reservoir is operating satisfactorily.

3.1.4 The council is not the Enforcement Authority for the reservoirs which it owns itself, although in practice the Head of Roads acts as quasi-Enforcement Authority and the Director of Neighbourhood Services acts as “owner” of the reservoirs on behalf of the council. The Head of Roads commissions the services of panel Supervising Engineers and arranges for required inspections as directed by the Director of Neighbourhood Services.

3.1.5 The Enforcement Authority (Angus Council) is required to submit a Biennial Report to Scottish Ministers detailing the action which has been carried out in the previous two years. The latest report is to be submitted to the Ministers by the due date of 1 April 2011 and is attached as Appendix 2 to this report.

3.1.6 In addition to the statutory information required in the submitted Biennial Report, as recorded in the Flooding Report 2009 (reference Report No. 739/09), the Monikie Reservoirs are managed by Leisure Services. During the flooding which occurred on 4 September 2009 an operational plan was enacted to reduce flood risk to the downstream watercourses which the reservoirs discharge to, namely Monikie Burn and Barry Burn (Pitairlie Burn) with SEPA’s agreement. This plan involved storing water in the reservoirs and included:

- Filling Denfind, Island and North Pond to their maximum operating levels.
- Controlled release from these reservoirs when conditions allowed.
- Close monitoring of the reservoirs and receiving watercourse water levels, weather conditions and weather forecasts.
- Liaison with Angus Council Roads Maintenance and Flood Prevention officers regarding when to allow a controlled release.

3.2 Reservoirs (Scotland) Bill: Future Reservoir Safety in Scotland

3.2.1 Introduced in the Scottish Parliament on October 6, 2010, the Reservoirs (Scotland) Bill represents a significant change in the way reservoirs will be regulated. The Bill includes measures to ensure increased protection of the public from the risk of flooding from reservoirs, whilst also ensuring that reservoir owners are fairly treated through a proportionate system.

3.2.2 The most significant change is the move from a capacity-based regime (currently only reservoirs greater than 25,000 cubic metres are regulated) to a risk-based approach;

3.2.3 This will result in some previously unregulated but higher risk reservoirs being brought under the regime, and other large reservoirs which do not pose any risk becoming subject to a lower level of regulation;
3.2.4 The Bill will provide greater security for people, property and critical infrastructure from the risk of flooding from reservoirs;

3.2.5 The Bill requires the production of flood plans for controlled reservoirs, setting out the action to be taken by the reservoir manager of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir;

3.2.6 A new Scottish panel of engineers will be created in consultation with the Institution of Civil Engineers (ICE);

3.2.7 The Bill retains the current system (which is well understood by all involved in the process) as a basic model but with a number of improvements in areas which have been identified as areas of concern including:

- New powers and duties for the enforcement authority.
- New duties on reservoir undertakers/owners.
- Additional requirements added to the role of panel engineers.

3.2.8 Panel engineers will have a key role in ensuring public safety, by supervising reservoirs which pose a risk to the public during construction and their operating life, by undertaking regular inspections, completing reports for the enforcement authority and advising on measures to be taken in the interests of safety.

3.2.9 Enforcement Authority

Within Scotland, the enforcement authority will transfer from the 32 Local Authorities who were responsible for the enforcement of the Reservoirs Act 1975, to SEPA (Scottish Environment Protection Agency) under the Flood Risk Management Act (Scotland) 2009.

3.2.10 The undertaking of reservoir safety regulation is new to SEPA and therefore requires new systems and staff resources to enforce the regime. Where appropriate, SEPA will look to incorporate these new systems and processes into current business operations to provide an effective and efficient service.

3.2.11 The proposed legislation includes provisions which place a requirement for all reservoirs above a minimum volume capacity (10,000 cubic metres) to be included on a SEPA register.

3.2.12 SEPA will then classify each reservoir according to whether they pose a threat to human life, property and critical infrastructure if they were to fail and the likelihood of an uncontrolled release of water occurring.

3.2.13 SEPA will classify reservoirs as being 'High', 'Medium' or 'Low' risk. Those sites deemed to pose a 'High' risk would have a greater level of regulation and control than one deemed to be 'Medium' or 'Low' risk.

3.2.14 Risk classification would be re-assessed every six years to tie in with the review cycle for the Flood Risk Management (Scotland) Act 2009 to ensure the most up-to-date information is used in assigning risk classification.

3.2.15 Undertaker/Reservoir Manager

The operator, user and/or owner of the reservoirs, Reservoir Managers (previously Undertakers) will have ultimate responsibility for the safety of their reservoirs. The council will be the Reservoir Manager for the four reservoirs detailed in section 2.1.3 of this report. It is considered that the proposal to change the minimum volume of reservoir subject to inclusion on the SEPA register, detailed in section 3.2.9 of this report, will not add to the number of water bodies owned by the council that are classified as ‘reservoirs’.
3.2.16 **Supervising Engineer**

The Supervising Engineer will supervise the operation and maintenance of the reservoir - the "eyes and ears" of the Reservoir Manager.

3.2.17 **Inspecting Engineer**

The Inspecting Engineer will be appointed to inspect the reservoir once every ten years, or more frequently if necessary, identify and make recommendations to be taken in the interest of safety when appropriate.

4 **PROPOSALS**

4.1 Angus Council submitted responses to the consultation on the Flood Risk Management (Scotland) Act 2009 from which arose the changes to the responsibilities for reservoir safety and its enforcement and where the general principles for future responsibilities were set out (Reference Report No. 410/08 and Report No. 1153/08).

4.2 The Head of Roads has reviewed the content of this latest request for views from the Scottish Parliament’s Rural Affairs and Environment Committee on the general principles of the Reservoirs (Scotland) Bill. Based on this review and responses to previous consultations on the overarching Flood Risk Management (Scotland) Act 2009, it is considered that the general principles and the stated purposes of the Bill are acceptable and that the likely impact on Angus Council is considered to be minimal. It was therefore considered that for this Stage 1 scrutiny of the Bill that no further response was required from Angus Council by the return date of 25 November 2010.

5 **FINANCIAL IMPLICATIONS**

5.1 **Revenue**

5.1.1 The staff costs associated with carrying out the statutory duty placed on the council by the Act have, to date, generally been modest and are allowed for in the Infrastructure Services Department Revenue Budget for Statutory Duties (Roads Division).

5.2 **Capital**

5.2.1 As it is expected that there will be no change to the number of reservoirs owned by the council, it is anticipated at this time that there will be are no capital funding implications arising from the requirement to discharge the statutory duty.

5.3 **Future based on Reservoir (Scotland) Bill**

5.3.1 Explanatory Notes were published by the Scottish Government to accompany the Reservoirs (Scotland) Bill introduced in the Scottish Parliament in October 2010, which detailed the savings and costs to local authorities for implementing the reservoir safety provisions.

5.3.2 Implementing the new reservoir safety regime could incur some additional costs mainly where previously unregulated reservoir are brought within the regulatory regime of supervision and inspection. There will also be savings to owners of reservoirs which are currently regulated but are classified as low or medium risk under the new system.

**Projected Savings for local authorities**

5.3.3 There will be small savings to local authorities as a result of the transfer of responsibility for enforcement of the Reservoirs Act to SEPA, which is likely to occur at the end of 2012.

5.3.4 The enforcement role is generally a part-time activity in local authorities, and removal of this role is unlikely to result in a reduction in staff numbers, as those staff currently involved in the process will continue to be required to cover other duties. However, local authorities will be
able to make some efficiency savings as these staff will be available to take on other duties and functions. Savings on administrative functions will be made as a result of no longer having to maintain a register of reservoirs, complete a biennial report for Scottish Ministers, carry out various administrative tasks involved with enforcement, or appoint engineers where reservoir undertakers have failed to appoint them. These efficiency savings are estimated to be approximately £7,500 per annum for each local authority.

**Projected Costs for local authorities**

5.3.5 The Bill will have cost implications for those local authorities who are also undertakers (reservoir managers) of reservoirs. Angus Council is currently undertaker of four reservoirs under the 1975 Act, and despite the qualifying size of a reservoir reducing from 25,000 to 10,000 cubic metres, will be reservoir managers for the same four reservoirs.

5.3.6 Of these four reservoirs, it is considered that these will be classed as medium risk under the new legislation. However, the categorisation will not be known until SEPA have classified the reservoirs.

5.3.7 The cost to Angus Council for managing the specific duties as reservoir undertaker under the 1975 Act are approximately £1,000 per annum, with further costs of around £7,000 every 10 years for a full inspection. These costs exclude any measures which have had to be taken in the interests of safety under the current legislation and have been met from the Neighbourhood Services budget in the relevant year.

5.3.8 The above consideration is based on the assumption that reservoirs falling under the current system of non statutory categories of “B – Where a breach could either endanger lives not in a community”, which applies to the four Angus Council reservoirs – will be classed as medium risk.

5.3.9 In general the collective costs of managing reservoirs, including mandatory maintenance costs but excluding any non-mandatory maintenance costs, for all local authority reservoirs in Scotland are expected to rise depending on the number of reservoirs and their risk category. However, it is not anticipated that the costs to Angus Council will rise. This is predicated on the expectation that there will be no increase in the number of reservoirs for which the council is reservoir undertaker and the risk categorisation under the new system being the equivalent to the categorisation under the current system.

5.3.10 There will however be one-off capital costs for the preparation of reservoir flood plans showing the area of land which, in the event of an uncontrolled release of water from the reservoir, would be likely to be flooded. This would apply to both Crombie and Monikie. There could also be additional costs to upgrade previously unregulated reservoirs to meet required safety standards if recommended by inspecting engineers, but it is not considered at this time that Angus Council will be responsible for any reservoirs other than those already managed under the 1975 Act. These costs cannot be quantified at this time, they will however require to be met by the Neighbourhood Services Department. In the event these are found to be significant a further report will be brought forward to the appropriate committee(s).

**Summary Position**

5.3.11 Overall, when the additional estimated costs incurred are compared with the estimated efficiency savings as a result of the removal of responsibility for enforcement, local authorities will make an annual saving. The total saving for all local authorities has been estimated by the Scottish Government to be £70,000 per annum. This equates to an average net saving of around £2,500 per authority per annum.

**HUMAN RIGHTS IMPLICATIONS**

6.1 There are no human rights implications arising from this report.
7 EQUALITIES IMPLICATIONS

7.1 The issues dealt with in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

8 SINGLE OUTCOME AGREEMENT

8.1 This report contributes to the following local outcome(s) contained within the Single Outcome Agreement for Angus.
   • We live our lives safe from crime, disorder and danger

9 CONSULTATION

9.1 The Chief Executive, Director of Corporate Services, Head of Finance, and Head of Law and Administration were consulted in the preparation of this report.

10 CONCLUSION

10.1 This Report summarises the statutory duties of the Council in respect of the Reservoirs Act 1975 and updates the Committee on the Biennial Report to be submitted to Scottish Ministers in accordance with the requirements of the Act.

10.2 This Report updates the Committee on the implications of the Reservoir (Scotland) Bill which is to be enacted later in 2011 and specifically Stage 1 of scrutiny of this Bill.

ERIC S LOWSON
DIRECTOR OF INFRASTRUCTURE SERVICES

RON ASHTON
DIRECTOR OF NEIGHBOURHOOD SERVICES

NOTE

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (and not containing confidential or exempt information) were relied on to a material extent in preparing the above Report:-


ROADS/JG/WS/FL
### ANGUS COUNCIL
### REGISTER OF RESERVOIRS

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<th>Reservoir Name</th>
<th>Grid Ref</th>
<th>Date</th>
<th>Owner/Undertaker</th>
<th>Supervising Engineer</th>
<th>Inspecting Engineer</th>
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ANGUS COUNCIL

RESERVOIRS ACT 1975 (REGISTERS, REPORTS AND RECORDS)
REGULATIONS 1985

Report to Scottish Ministers under Section 4 of Statutory Instrument 177/1985

March 2011

Under the above Regulations, at 31 March 2011, Angus Council is the Enforcement Authority for twelve, formerly thirteen, large raised reservoirs and undertaker for a further four, all of which lie within the Council’s boundary and are listed in the attached register.

Piperdam Loch was certified discontinued in December 2009 after work to reduce its capacity.

Of the reservoirs for which the Council is the Enforcement Authority six were due for inspection since the previous biennial report in April 2009.

Ledcrieff Loch was inspected in June 2009, and a certificate received. There were no issues with regard to safety in the inspection.

Glenogil was inspected in August 2009, and a certificate received. There were issues with regard to safety in the inspection to be carried out within three years.

1. Establish a cover of grass or short vegetation on the whole embankment to allow close surveillance.
2. Seal or shield the leaks into the valve tower sufficiently to facilitate access for maintenance and inspection.
3. Replace the brackets supporting the spindles with a more robust design.
4. Compile all available deflection and level data, prepare a statement on performance for inclusion in the record, and if the results indicate any matters of concern for reservoir safety, take any measures considered appropriate in this respect.
5. Assess the stability of the gravity dam section for the case of limited support from the earthfill, take account of the results in determining the ability of the dam to withstand overtopping and the corresponding Standard of Flood protection category appropriate to the dam, and make good any corresponding deficiency found in overflow capacity and freeboard.
6. Ensure that the supply branch off the scour/supply pipe has been capped or closed off, or otherwise made secure against any adverse consequences of charging the supply pipe by operation of the scour.
7. Provide further instrumentation for monitoring as directed.

The outstanding certificate and report for Backwater, inspected in October 2008, has now been received. There were issues with regard to safety in the inspection to be carried out.

1. Replace the joints sealants in the invert and walls of the spillway and the invert of the stilling basin and outlet channel with durable sealant systems appropriate to the joint location and anticipated future movement.
2. Review the amount and acceptability of overtopping that might occur under the current layout of the reservoir, and implement measures if necessary to remedy or mitigate inadequacy in freeboard.
3. Check the available drawdown capacity of the works, investigate means of augmenting discharge capacity based on the existing pipework and other available facilities, and implement appropriate measures accordingly for lowering the reservoir in an emergency.
It is recommended that measures 2 and 3 should be implemented within one year and measure 1 and any works arising from the studies under 2 and 3 should be implemented within four years of the date of the report.

The outstanding certificate and report for Kinnaird Lake, inspected in July 2007, has now been received. There were no issues with regard to safety in the inspection.

Undertakers or supervising engineers have been contacted to confirm that all the reservoirs for which the council is Enforcement Authority have currently appointed engineers.

It has been assessed that no further studies are required at the Monikie and Crombie reservoirs, following the completion of remedial works in 2007. The inspecting engineer was due to carry out an inspection of these reservoirs in 2010. Due to unforeseen illness and adverse weather conditions the scheduled inspections were not possible until February 2011.

Of the reservoirs where the council is the undertaker, there is currently a supervising engineer appointed and there are no outstanding issues in respect of measures in the interests of safety.