ABSTRACT
This report provides an update on the progress being made on the proposed removal of the gravel bank from the River South Esk at Brechin opposite River Street and makes recommendations with respect to the progression of various associated matters. This report also updates the Committee on recent correspondence with Scottish Ministers in relation to the funding for flood prevention schemes generally.

1 RECOMMENDATION
1.1 It is recommended that the Committee:

(i) notes the current position in respect of the promotion of the gravel bank removal as set out in section 4.3 of this report;

(ii) decides whether it wishes to progress with the procurement of the works to remove the gravel bank on the basis set out in this report;

(iii) decides whether the balance of funding for the proposed works to remove the gravel bank be met either as set out in paragraph 5.4a) or 5.4b); and

(iv) instructs that a further detailed report be brought back to this committee after the summer recess regarding the capital funding options for the main flood alleviation scheme as published once the full implications of the recent ministerial correspondence and contact with COSLA have been considered comprehensively.

2 BACKGROUND
2.1 Reference is made to Article 17 of the minute of meeting of the Infrastructure Services Committee of 1 March 2011, where the Head of Roads was instructed:

- to submit immediately an application to SEPA for the Controlled Activity Regulations (CAR) licence required to undertake the removal of the gravel bank opposite River Street Brechin;
- to submit an application to the Scottish Government for a licence under Schedule 5 of the Wildlife and Countryside Act 1981, to undertake the removal of the gravel bank opposite River Street, Brechin as soon as possible after the CAR licence application, following preparation of the additional supporting Method Statement;
- to submit a planning application in support of the removal of the gravel bank as soon as practicable after the CAR licence application;
- to investigate the nature of the proposed excavated material (gravel bank) to narrow down the cost estimate of the proposed removal of the gravel bank;
- to bring a report back to committee before the summer recess detailing the outcome of the various statutory approvals, if known, and seeking procurement authority based on refined cost estimates and identified funding options for the removal of the gravel bank to allow the works to proceed in the appropriate season during 2011.
2.2 The previous update on the project as a whole was reported in March 2011 (Report No 181/11).

3 CURRENT POSITION

3.1 CAR Licence Application

3.1.1 A CAR licence application for the gravel bank removal was made to SEPA in March under the relevant Water Environment (Controlled Activities) Regulations 2011. The Regulations are intended to protect Scotland's water environment and must be complied with by law. Water Environment (Controlled Activities) Regulations 2011 came into force on 31st March 2011 replacing the Water Environment (Controlled Activities) Regulations 2005 (CAR 2005). The target decision time period for a complex licence is four months. Where applicants do not agree with the conditions and requirements imposed by a CAR authorisation or notice, an appeal can be made to Scottish Ministers. The submission of an appeal does not suspend the operations of all authorisations or notices and its conditions.

3.1.2 A Method Statement was submitted to SEPA with the application for a CAR licence, under the terms of the Water Environment (Controlled Activities) (Scotland) Regulations 2005, for the proposed removal of the gravel bank from a section of the River South Esk Special Area of Conservation (SAC).

3.1.3 The CAR licence application and associated Method Statement have been issued and a decision by SEPA is expected by the end of July 2011 based on their target response times. Interim discussions with SEPA have taken place, however, no indication of the application success could be ascertained. If approved, and subject to other statutory approvals, works to remove the gravel bank could take place in September and October 2011, within the environmental 'window of opportunity' as reported previously.

3.2 Licence Under Schedule 5 of the Wildlife and Countryside Act 1981

3.2.1 An application was made to the Scottish Government, under Schedule 5 of the Wildlife and Countryside Act 1981, to licence work in a Special Area of Conservation (Fresh water mussels). The Wildlife and Countryside Act 1981 ensures protection for a wide range of plants, animals and birds, including fresh water pearl mussels (Schedule 5).

3.2.2 Licensing administration is divided between Scottish Government and Scottish Natural Heritage (SNH). If any act is conducted, deliberately or recklessly, which could result in the disturbance of a protected species or, the obstruction, damage or destruction of their resting or breeding sites including fresh water mussels, a criminal offence may be committed. Licences can be granted in certain circumstances to permit those acts if they are intended for a specific licensable purpose, there is no suitable alternative and it will not harm the species overall.

3.2.3 A licence under Schedule 5 application has been submitted and we await the decision of the licensing authority. If the authority chooses not to approve the licence the gravel bank cannot be removed. There is no right of appeal or possibility of reapplying. The decision of the Scottish Government should be made by mid July 2011, the timing of which, if approved will not affect works starting this year.

3.3 Planning Application Under the Town & Country Planning (Scotland) Act 1997

3.3.1 The size of the gravel bank is substantial, and under the current planning legislation, a planning application is required if removal is sought. A planning application has been submitted, with a request for a screening opinion. This will allow the planning service to consult with SEPA and SNH in making their decision. The planning officers will prepare a committee report on the planning application, which should be considered at the Development Standards Committee on the 9 or 30 August 2011 in order to coincide with anticipated receipt of other statutory decisions. If approved at committee, works to remove the gravel bank could start in September for completion by the end of October 2011.
3.3.2 An appropriate assessment as is required to evaluate the likely impact of the removal of the gravel bank was produced and submitted for both the planning application and the licence application under Schedule 5 of the Wildlife and Countryside Act.

3.4 Nature of Excavated Material

3.4.1 Samples were taken from the gravel bank and tested to ascertain the nature of the material and the classification of the material under the Waste Acceptance Criteria (WAC). The classification has a direct impact on the disposal method or reuse of the material, and therefore the associated cost of, or value from, removing and disposing of the material.

3.4.2 Based on the results of the laboratory testing which show that the material is classified as ‘inert waste’, the scenario analysis presented previously in Report 181/11 has been reviewed as is now detailed in Section 3.6 below.

3.5 Scenario Analysis for Removal of Gravel Bank Material

3.5.1 A scenario analysis was previously undertaken on the possible implementation costs of such a proposal, including construction works, disposal and environmental protection measures, and was presented in Committee report No 181/11. Following the laboratory testing to WAC, more certainty can be applied to the cost estimate of disposing the material. In addition, the possibility of disposal of the material to a local source has been discussed further with local landowners.

3.5.2 Based on the above analysis, the estimated construction cost to remove the gravel bank is revised from a best estimate of £109,240 to £70,571. The figure of £70,571 can be broken down into the following principal components:

- Preliminaries £12,703
- Excavation £22,546
- Disposal £11,572
- Mitigation Measures £23,750

3.5.3 The staff costs, costs payable to third parties to investigate the gravel removal, and application fees have been revised to a total value of £34,830 since the last report. The estimated cost of the ecological Clerk of Works remains at £7,950. The total estimated cost to undertake the removal of the gravel bank inclusive of staff time cost is therefore revised from a best estimate of £159,424 to £113,351, of which approximately £10,600 has been expended to date as part of the work undertaken in support of the necessary statutory approvals and for application fees.

3.6 Cost, Benefits and Priorities

As reported to committee previously (reference Reports 181/11 and 603/10) and to council (reference Report 800/09), the removal of the gravel bank would give some benefit to the level of flood protection. The average maximum reduction in flood level for River Street immediately upstream of Brechin Bridge provided by the removal of the gravel bank has been estimated as approximately 114mm for the 1 in 17 year event, being that which is required to initiate flooding to neighbouring properties. In engineering and flood prevention terms this level of benefit is considered to be relatively modest, as previously reported. The value of this physical benefit needs to be balanced against the cost of undertaking the gravel removal works, now estimated to be £113,351 including staff time. Taking into account the above the committee will wish to consider the benefits of this project compared with the estimated cost and consider also the relative priority of this project compared with other demands for Council resources in deciding whether it wishes to progress with the procurement of these works as described in this report.
3.7 **Programme of Works**

Subject to funding and statutory approvals, the delivery timescale could be as follows:

<table>
<thead>
<tr>
<th>Task</th>
<th>Delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design and preparation of applications for statutory approvals</td>
<td>March – June 2011</td>
</tr>
<tr>
<td>(including CAR Application, Method Statement, Schedule 5 Licence</td>
<td></td>
</tr>
<tr>
<td>under Wildlife &amp; Countryside Act &amp; Planning Permission and</td>
<td></td>
</tr>
<tr>
<td>Appropriate Assessment)</td>
<td></td>
</tr>
<tr>
<td>Awaiting Statutory Approvals (CAR application has longest possible</td>
<td>March – July 2011</td>
</tr>
<tr>
<td>approval duration of 4 months, although SEPA have given assurances</td>
<td></td>
</tr>
<tr>
<td>that such an application would be dealt with swiftly.)</td>
<td></td>
</tr>
<tr>
<td>Tendering (Note: could run at risk concurrently with awaiting</td>
<td>July – August 2011</td>
</tr>
<tr>
<td>statutory approvals and therefore would include contingencies for</td>
<td></td>
</tr>
<tr>
<td>cost of mitigation measures rather than estimates) and appointment</td>
<td></td>
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<tr>
<td>of ecology Clerk of Works</td>
<td></td>
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<tr>
<td>Construction Phase* (6 weeks duration including Contract Management</td>
<td>September – October 2011</td>
</tr>
<tr>
<td>and ecology Clerk of Works)</td>
<td></td>
</tr>
</tbody>
</table>

*Construction works in the river are advised to be undertaken between June and October, and would be subject to specific conditions should the statutory approvals be granted.

3.8 **Land Access**

The Head of Roads has entered into negotiations with the landowner adjacent to the gravel bank in terms of access to the gravel bank and its removal. Approval and support in principle has been received from the landowner to remove the gravel, which will be subject to a formal access agreement to be arranged in the future, subject to securing the approvals necessary to remove the gravel bank.

4 **CURRENT PROPOSALS**

4.1 The committee is asked to consider progressing the works to the procurement stage and subject to granting of the necessary statutory consents.

4.2 Subject to the committee’s direction, it is proposed that tenders be issued by the Head of Roads to a select list of contractors for the works to remove the gravel bank, including provision for appropriate disposal of the dredged material as required. In order to meet the advised requirement that construction works in the river shall be undertaken within the period June to October, the procurement of these works would run concurrently with the later stages of the statutory approval application with a view to undertaking the works in September and October 2011. This introduces a risk of abortive staff costs for procurement work should the approvals not be granted.

4.3 Similarly it would be intended to procure the services of an ecology Clerk of Works over the same period. This clerk of works would supervise the contractor on site and also provide the contractor advice in the event of protected species being encountered on site.

5 **FINANCIAL IMPLICATIONS**

5.1 The funding and expenditure profile for the Brechin Flood Prevention Scheme project was most recently set out in Report 181/11.

5.2 The total cost of the removal of the gravel bank, as detailed in section 3.6.3 above, including the services of an ecology Clerk of Works, is estimated to be £113,351. The works costs relate to dredging and will therefore be classified as revenue expenditure.
5.3 The staff costs, costs payable to third parties to investigate the gravel removal, and application fees total £34,830. Of this sum circa £11,400 is payable to third parties and has been contained with the Roads Division Revenue Budget (Flood Prevention). The balance of cost (£23,430) relates to staff time associated with the project and is already allowed for within the Road’s Division revenue budget.

5.4 After allowing for these costs, this leaves a balance of £78,521 associated with the work, including the services of an ecology Clerk of Works. Potential funding options for these works costs have been identified as set below:

a) Utilisation of resources currently allocated to fund other short term flood protection measures detailed in report 181/11. These short term measures that are to be part funded from within the 2011/12 Roads Supplementary Capital Allocation (£200,000). These measures could in part be deferred to allow this funding to be utilised to meet the cost of removing the gravel bank. This would require some accounting adjustments to ensure that the necessary revenue resources can be freed up by utilising Roads’ existing capital allocation to fund works that are currently proposed to be funded from Capital Financed from Current Revenue (CFCR), currently £113,000 and capitalising some structural & cyclic roads maintenance works. This option would delay other short term measures, but would otherwise be cost neutral and would allow other programmed Roads works to proceed as planned.

b) Reprioritisation of the current programme of revenue works to accommodate the additional cost of removing the gravel bank, i.e. meet the cost of the other short term measures as outlined in Report 181/11 from the 2011/12 Supplementary Capital Allocation as planned, and reprioritise other programmed Roads works to accommodate the additional cost of removal of the gravel bank (£78,521) from within existing resources available to the Roads Division. This option is likely to result in a commensurate reduction in planned structural & cyclic road repairs to allow these additional revenue costs to be accommodated.

5.5 Funding Issues Associated with Flood Prevention Schemes

5.5.1 As reported to Committee previously (reference Report 181/11) the funding arrangements for the Brechin Flood Prevention Scheme is currently the subject of ongoing consideration in light of the revised method of distributing funds to flood prevention schemes, recognising that this project spans a number of financial years and there are a number of key milestones that require to be met to deliver this project. In order to clarify the council’s understanding of the capital funding of flooding schemes beyond the 2011/12 settlement, the Chief Executive wrote to the Scottish Finance Secretary, John Swinney MSP to seek clarification in this matter (see Appendix A).

5.5.2 The Council received a response by letter from Roseanna Cunningham MSP, the Minister for Environment and Climate Change (see Appendix B) advising inter alia that the government has committed to discuss with COSLA how funding for flood prevention schemes should be distributed to local authorities from 2012-13 onwards, and further urged Angus Council to feed in the questions posed in its earlier letter through COSLA to inform these discussions.

5.5.3 Subsequent discussions led by the Head of Roads, and supported by the Head of Finance, have been initiated with representatives from COSLA on how the Council might most appropriately make representations to Scottish Ministers through COSLA, in order that funding issues for capital intensive Flood Prevention Schemes can be raised formally as part of the anticipated Spending Review.
5.5.4 The full implication of this capital funding uncertainty requires to be considered within the context of the milestones in the progression of the Brechin flood alleviation scheme including specifically the statutory flood order, planning consent and potential compulsory purchase order as well as the subsequent procurement and delivery phases. Accordingly it is proposed that a further detailed report be brought back to this committee on these aspects following the summer recess period.

6 RISK MANAGEMENT

6.1 Each of the statutory consent processes for the removal of the gravel bank have the risk of not being granted or being delayed such as to jeopardise delivery of its removal within 2011.

6.2 The potential dredged material has been tested, and classified as ‘inert waste’, i.e. acceptable material, thereby increasing the certainty of removal cost.

6.3 As previously identified it is considered likely that if the established gravel bank is removed by dredging, it may re-establish itself in time thereby negating any benefit. It is not possible to predict with any certainty the likelihood or timescale of such re-establishment. Should that occur then evidently the benefit realised would be of limited duration.

7 HUMAN RIGHTS IMPLICATIONS

7.1 As reported previously to this committee (Report 603/10), the progression of a flood prevention scheme has potential implications for property owners and for occupiers in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). However, it is considered that any actual or apprehended infringement of such Convention Rights is justified in the public interest and in accordance with the council’s duty to carry out works to reduce the likelihood of flooding of land.

8 EQUALITIES IMPLICATIONS

8.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment has been undertaken.

9 SINGLE OUTCOME AGREEMENT

9.1 This report contributes to the following local outcome contained within the Single Outcome Agreement for Angus.

- Communities in Angus are safe, secure and vibrant
- The importance and benefit to society of the environment is recognised

10 CONSULTATION

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

11 CONCLUSION

11.1 Subject to statutory consents being granted and the committee’s consideration of relative priorities and funding, the gravel bank may be removed this year. The committee is asked to consider the procurement of the identified works.
11.2 The uncertainty regarding future funding allocations from Scottish Government raises very serious concerns over the future funding arrangements for the project as a whole and this needs continued careful consideration.

ERIC S LOWSON
DIRECTOR OF INFRASTRUCTURE SERVICES

NOTE:
No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

- Report 800/09 - Brechin Flood Alleviation Scheme – South Esk – Updated Position – Angus Council 5 November 2009
- Report 603/10 - Brechin Flood Alleviation Scheme – South Esk – Updated Position - Infrastructure Services Committee 24 August 2010
- Report 181/11 - Brechin Flood Alleviation Scheme – South Esk – Updated Position - Infrastructure Services Committee 1 March 2011

Roads/JG/WS
Letter from David Sawers, Chief Executive, Angus Council to Scottish Finance Secretary, John Swinney MSP

DSS/IL/JA/BAK 13 01 13

8 February 2011

Mr John Swinney, MSP
Cabinet Secretary
Finance & Sustainable Growth
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Mr Swinney

Future Funding Arrangements for Flood Prevention/Coastal Protection Schemes

I refer to the above subject and write seeking clarification on the future funding arrangements that will be in place for flood prevention/coastal protection schemes that local authorities are seeking to progress beyond 2011/12.

Angus Council currently has two substantial proposed flood prevention schemes included in its Financial Plan; one in Brechin and another related to Arbroath. Neither is scheduled to incur significant spend in 2011/12, but from 2011/12 onwards it is estimated that the Brechin project will incur a gross spend of £12.633 million and the Arbroath project a gross spend of £6.990 million. These projects are currently shown however with significant additional Government funding to be secured; £12.038 million and £5.440 million respectively, such that the net spend positions are considerably reduced from the gross positions (£0.595m and £1.550m respectively). This reflects the previous approach of supporting Flood Prevention Schemes with ring-fenced grants allocated via a bidding process.

The Council is seeking to progress these projects but the schemes, as currently presented, are considered unaffordable in the context of the capital resources currently available to the Council. This combined with the uncertainty that surrounds the future funding arrangements for flood prevention/coastal protection affects the Council’s ability to plan effectively for the medium to longer term.

It is recognised that under the current funding arrangements the Council, as part of its 2011/12 General Capital Grant (£10.980m), has been allocated a sum of £0.292 million in relation to flood prevention / coastal protection, some 0.7% of the total £42 million available nationally for this purpose. Whilst no specific detail has been provided with regard to the methodology used to distribute the £42 million in 2011/12, based on previous communications from the Government, it is assumed that the flood prevention / coastal protection funding has been allocated on the following basis:

- grant for committed projects is top sliced from the total sum available of £42 million – no allocation has been provided to Angus Council as part of the top slicing; and
- the uncommitted balance of grant is distributed to local authorities based on the number of properties in the area at risk from flooding - £0.292 million has been allocated to Angus Council from the uncommitted balance.
8 February 2011

The Council understands that as funding for any currently committed projects reduces this will potentially leave a higher uncommitted balance available for more general distribution. I would however appreciate confirmation of the distribution methodology applied in 2011/12 and whether the assumptions as set out above are indeed correct.

Notwithstanding that Angus Council may receive more than the £0.292 million in future years, distribution on the basis of the number of properties in the area at risk from flooding is unlikely to result in the Council receiving a significant amount of extra funding in this regard. On the basis of these assumptions therefore, it appears likely that funding received by Angus Council via the General Capital Grant for flood prevention / coastal protection works will fall significantly short of the funding required to achieve the net spend positions for the two flooding projects as set out above.

To date the Council has invested resources in the development of these two Schemes and a Flood Prevention Scheme (FPS) under the Flood Prevention (Scotland) Act 1961 has been promoted for the Brechin Scheme, based on the currently envisaged scope of the scheme. It is therefore essential as part of our medium term financial planning arrangements that there is clarity around the future funding arrangements for Flood Prevention / Coastal Protection projects.

The enactment of the new Flood Risk Management Act places new burdens on local authorities with regard to the proper management of flood risk. The Scottish Government has sought to support the implementation of the new Flood Risk Management Act by providing specific resources within each authority’s revenue grant support for 2011/12 and this is welcomed. The question however remains whether any specific funding, outwith the General Capital Grant, is or will be available to local authorities to allow specific flood prevention schemes to be progressed? If so, how much is available and what are the arrangements / criteria for accessing these resources? It is clear that in the absence of any specific resources to fund specific flood prevention / coastal protection schemes this will severely inhibit councils’ ability to deliver these critical projects.

I should be grateful if you would consider this issue and provide a response at the earliest opportunity.

Yours sincerely

David S Sawers
Chief Executive

Blind Copies:-

Eric Lowson, Director of Infrastructure Services
Jeff Green, Head of Roads
APPENDIX B

Letter from Roseanna Cunningham MSP, the Minister for Environment and Climate Change to David Sawers, Chief Executive, Angus Council

Ministear airson na h-Árainneachd agus Atharrachadh Aimsir
Minister for Environment and Climate Change
Roisin Chonailean BPA
Roseanna Cunningham MSP

F/T: 0845 774 1741
E: scottish.ministers@scotland.gov.uk

Mr David S Sawers
Angus Council
Angus House
Orchardbank Business Park
Forfar
DD8 1AX

Ur fadhail/Your ref: DSS/IL/JA/BAK 130113
Ar fadhail/Our ref: 2011/0005424
17 March 2011

Dear Mr. Sawers,

Thank you for your letter of 8 March 2011 to the Cabinet Secretary for Finance and Sustainable Growth seeking clarification on local authorities future funding arrangements for flood prevention/coastal protection schemes. I am replying as flood risk management is part of my Ministerial portfolio.

I can confirm that your understanding of the funding methodology used to distribute the General Capital Grant in 2011-12 is correct.

The rolling up of a number of former ring-fenced grants into the General Capital Grant from April 2008 significantly increases the flexibility available to local authorities to determine where they apply the resources available to them. By reflecting the differing distributions of the former ring-fenced grants the distribution of the General Capital Grant continues to reflect the varying needs of different local authorities, for example in relation to flooding. The Grant also includes a significant proportion, over 50% in 2011-12, that is not related to the former ring-fenced grants and reflects a general need for capital investment. It is the responsibility of individual local authorities to determine for themselves how they use the full range of the resources available to them.

The Scottish Government recognises that there are lessons to be learnt from the experience of funding flood protection schemes within the current local government settlement arrangements.

Continued/..
The Government has committed to discuss with COSLA how funding for flood prevention schemes should be distributed to local authorities from 2012-13 onwards.

I would urge Angus Council to feed in the questions posed by your letter through COSLA to help inform these discussions.

I hope you find this helpful.

Yours,

[Signature]

ROSEANNA CUNNINGHAM