

## PRIORS AND OAKLEY FLOOD ALLEVIATION SCHEME

<b>Cabinet Date</b>	1 February 2017
<b>Highways and Flood</b>	Councillor Vernon Smith
<b>Key Decision</b>	Yes
<b>Background Documents</b>	Individual Cabinet Member decision - 12 <sup>th</sup> October 2016 Gloucestershire Local Flood Risk Management Strategy Annual Implementation Plan Location Plan and associated Drawings reference numbers 652358/001, 652358/002, 652358/003 and 652358/200
<b>Location/Contact for inspection of Background Documents</b>	David Parish 01452 426033 <a href="mailto:david.pariah@gloucestershire.gov.uk">david.pariah@gloucestershire.gov.uk</a> GCC Local Flood Risk Management Strategy and Implementation Plan 2016/17; <a href="http://www.gloucestershire.gov.uk/LFRMS">http://www.gloucestershire.gov.uk/LFRMS</a>
<b>Main Consultees</b>	Residents, Cheltenham Borough Council, Tewkesbury Borough Council, Local County and District Councillors  3 <sup>rd</sup> May 2011; Letter drop to affected residents in the Priors/Oakley area informing them of the findings from the Surface Water Management Plan (SWMP) and of planned "drop in" session with copies to local District Councillors.  31 <sup>st</sup> May 2011; "Drop in" session held at Lynworth and Priors Partnership Centre. Feedback received from residents including video recordings of recent floods.  21 <sup>st</sup> October 2015; Email to local County Councillors informing them of forthcoming press release and details of intended ground investigations at Noverton Farm and Priors Farm area and the start of the scheme.  11 <sup>th</sup> July 2016; Briefing papers of proposed FAS sent to local County Councillors.  September 2016 CH2mHill commenced consultation with Tewkesbury BC and Cheltenham BC on their requirements for an Environmental Impact Assessment through pre application planning enquiries.
<b>Planned Dates</b>	Tender Award April 2017 (subject to planning permission)  Civil Engineering Work start May 2017 (subject to planning permission)  Civil Engineering Work completion November 2017 (subject to planning permission)

<b>Divisional Councillors</b>	<p>Cllr. David Prince, Pittville and Prestbury.</p> <p>Cllr Colin Hay, Allsaints and Oakley</p> <p>Cllr. Roger Wilson, Winchcombe and Woodmancote</p> <p>Cllr. Paul McLain, Battledown and Charlton Kings</p>
<b>Officer</b>	<p>David Parish 01452 426033 <a href="mailto:David.Parish@gloucestershire.gov.uk">David.Parish@gloucestershire.gov.uk</a></p>
<b>Purpose of Report</b>	<ul style="list-style-type: none"> <li>(i) To approve the use of legal powers under section 64 of the Land Drainage Act 1991 to enter private land to undertake the construction of a flood alleviation scheme at Priors/Oakley, Cheltenham, and;</li> <li>(ii) To delegate authority to the Commissioning Director for Communities and Infrastructure to designate a Flood Risk Management asset on completion of the works under the Flood and Water Management Act 2010 (FWMA).</li> </ul>
<b>Recommendations</b>	<ul style="list-style-type: none"> <li>(i) Subject to the granting of planning permission, to approve the use of Section 64 of the Land Drainage Act 1991 to issue a notice on the relevant landowners for the purpose of undertaking the construction of a flood alleviation scheme in relation to the land outlined red in the planning application 17/00017/FUL;</li> <li>(ii) To settle compensation claims from affected landowners arising from the interference in their use of land affected by the work if it can be shown that injury is sustained by reason of the exercise of the Council to construct the flood alleviation asset, the periods of time when the storage basins fill with surface water and the occasions when maintenance and inspection is undertaken, and;</li> <li>(iii) To delegate authority to the Commissioning Director for Communities and Infrastructure in consultation with the Lead Cabinet member for Highways and Flood and the S151 officer, to undertake such ancillary steps necessary to; <ul style="list-style-type: none"> <li>(a) exercise the powers contained in the FWMA 2010 to approve the designation of the flood risk management asset on completion and, subject to the granting of planning permission,</li> <li>(b) Undertake such ancillary steps necessary to implement the recommendations set out above in paras (i), (ii), (iii)</li> </ul> </li> </ul>
<b>Reasons for recommendations</b>	<p>To approve a legal strategy to enable the implementation of a flood alleviation scheme at Priors/Oakley Cheltenham, approve the proposal to designate the completed flood risk management asset and identify the scale of risk and costs including possible claims for compensation.</p>
<b>Resource Implications</b>	<p>DEFRA has earmarked £1.693 million flood grant in aid and a contribution of £50k from the Regional Flood and Coastal Committee Local Levy, this was approved by DEFRA's Project Approval Board in October 2016. GCC has allocated a £243k contribution from the Flood Alleviation Capital budget as</p>

	<p>partnership funding. Total funding identified; £1.986 million The procurement of the civil engineering work, associated design costs, and site supervision is estimated to be within the overall budget available. The estimated valuation of compensation (if payable) and the budget available is referred to in the annex to this report. There is sufficient in house officer resource to oversee the preparation and implementation of this contract.</p>
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## MAIN REPORT CONTENTS

### 1. Background

- 1.1 In 2010 DEFRA awarded GCC a grant to undertake a Surface Water Management Plan (SWMP) in Cheltenham. Flood risk was identified through historic flooding, modelling and mapping, the plan was completed in December 2011. The SWMP identified possible flood alleviation measures in Oakley and these were the subject of feasibility studies in 2012. The feasibility study recommended the development of a scheme comprising two flood storage areas (FSAs) upstream of the urban area.
- 1.2 Following further site investigation and design a viable flood alleviation scheme has been developed and is identified in the Gloucestershire Local Flood Risk Management Strategy Annual Implementation Plan for 2016/17. The scheme should benefit the owners/occupiers of 213 properties known to be at risk of flooding from surface water and watercourses from the Cleve escarpment. The scheme has been designed with the intention that after the works have been completed the land will continue to be available for its current use and purposes. It is acknowledged that during the period when the works are in progress, when the attenuation areas fill with excess surface water and when the completed asset is subject to annual inspection and maintenance, might cause the landowners some inconvenience. However, this has been considered in the context that the landowners may claim compensation if it can be shown that injury is sustained by reason of the exercise of the Council exercising its powers to enter the land for the purposes of carrying out the work and that the scheme will provide benefits for the owners/occupiers of at least 213 properties that would otherwise be at risk of flooding in the future.
- 1.3 The scheme involves the formation of an earth bund, two attenuation basins, and the creation of diversion channels together with some widening and realignment of existing watercourses. A key aspect of the design of these assets is that, on completion, the topsoil will be replaced and restored to its original condition albeit the levels will have changed. It will still be possible for the land to continue to be used for its present agricultural uses. The sides of the bund forming the new attenuation basin will be inclined gradually such that the area can continue to be grazed on or used for silage.
- 1.4 The scheme design is being undertaken by CH2MHill and this work is nearing completion. The total estimated cost of the scheme is just under £2 million with £1.693 million DEFRA Flood Grant in Aid, GCC contributing £243k and a contribution of £50k from the Regional Flood and Coastal Committee Local Levy. The design work to date has been funded from the GCC contribution.
- 1.5 The implementation of the scheme will be subject to planning approval from both Tewkesbury BC and Cheltenham BC, applications were submitted in January 2017.

- 1.6 Officers have been negotiating with the owners for their agreement to allow us to construct the scheme on their land. The site straddles the Tewkesbury BC and Cheltenham BC district administrative boundaries and Cheltenham BC is a partner in delivering the scheme. In designing the scheme, Officers have worked with the owners to ensure the proposed location of the structure has the least impact on the agricultural use of the land. The original design of the attenuation basin on the land known as Noverton Farm was located in a field further north. However, following discussions with the landowner, the Council redesigned and relocated this structure to an adjacent field further south in the same ownership and used for grazing. This enabled the landowner to maintain an area to develop in the future should that owner wish to do so.
- 1.7 The scheme received final approval from the Environment Agency's Project Approval Board (PAB) in October 2016.
- 1.8 The procurement of the construction work is the subject of a tender using the Environment Agency's Water and Environment Management Framework Lot 4. This was the subject of a separate Individual Cabinet Member's Report and signed off by the Cabinet Member for Highways and Flood on 12<sup>th</sup> October 2016. Tenders are expected to be received in February 2017 and contract award in March 2017.

## **2. Options**

- 2.1 Option 1. Use powers vested in the Land Drainage Act 1991 and the FWMA 2010 to implement a flood alleviation scheme and reduce the level of risk of flooding for 213 properties. Section 64 of the Land Drainage Act 1991 provides the required power to serve a notice on the owners of the land to enable the Council (or its authorised agents) to enter land for the purpose of undertaking the development of a flood alleviation scheme. Section 4 of the FWMA 2010 confirms that the Land Drainage Act powers continue to exist for the purpose of flood risk management in relation to the Council exercising the power to serve a notice under Section 64 and for these powers to be used by the County Council as Lead Local Flood Authority. There is no right of appeal under these powers other than through judicial review.
- 2.2 Option 2. Use compulsory purchase powers to acquire the site from the land owners. The effect of using a compulsory purchase power would be to acquire an interest in the land and such powers are to be used as a last resort. In considering the exercise of these powers the Council has to balance the overall benefits to the owners in them retaining ownership and enabling the continued use of their land against the Council's power to compulsorily acquire the land. If the Council exercises its compulsory purchase powers it would deprive the current owners the opportunity to continue to work the land and provide wider benefits of this for the local community. The County Council has no desire or need to own the land and it is unnecessary to deprive the current owners from having use of the land. For this reason it is proposed that it would be appropriate to exercise the Council's power under Section 64 of the Land Drainage Act 1991

to serve a notice to enable construction of the structure and allow the owners to continue to own and use the land. This option is therefore not recommended.

2.3 Option 3. Do nothing and 213 properties remain at risk of flooding at the present level. The Council has received substantial external funding to carry out this work and the proposed structure will reduce the risk of flooding for residents of Oakley and Priors estates whilst enabling the landowners to continue to use the land. Again, this option is therefore not recommended.

### **3. Risk Assessment**

3.1 The financial risk exists from settling reasonable claims for compensation from landowners affected by the works; this risk will be mitigated by designing the scheme to enable the current land use to continue after completion of the works.

3.2 The risk of the scheme not receiving planning permission. This has been mitigated by ensuring all appropriate measures have been taken to carry out preliminary surveys and gather sufficient evidence to support a comprehensive Environmental Statement and included within as part of the application.

3.3 The risk that tender prices exceed the estimated budget. This risk is mitigated by careful design and planning and the inclusion of contingency sums in the scheme's budget.

### **4. Resource Implications**

4.1 DEFRA has earmarked £1.693 million flood grant in aid and a contribution of £50k from the Regional Flood and Coastal Committee Local Levy, this was approved by DEFRA's Project Approval Board in October 2016.

4.1 GCC has allocated a £243k contribution from the Flood Alleviation Capital budget as partnership funding.

4.2 Total funding identified; £1.986 million.

4.3 The procurement of the civil engineering work, associated design costs, site supervision and compensation payments to landowners (if required) is estimated to be within the overall budget available.

4.4 There is sufficient in house officer resource to oversee the preparation and implementation of this contract.

### **5 Officer Advice**

5.1 Officer's advice is to use the powers under the Land Drainage Act 1991 and the FWMA 2010 to access the land required to construct the flood alleviation scheme shown on the attached plan. The owners will be compensated if it can be shown

that injury is sustained by reason of the exercise of the Council exercising their powers to enter the land for the purposes of carrying out the work..

- 5.2 It is acknowledged that the landowner will not be able to use part of his land during the 6 month period when work is being carried out and possibly for short and infrequent periods when the ground has been affected by the temporary storage of flood water. Following rainfall events of greater than 1 in 100 year probability the basins should drain within 24 hours. For lesser events occurring once per year on average the basins should drain in 4 to 6 hours.
- 5.3 The civil engineering work is estimated to cost around £1.5 million. The works will be procured through the Environment Agency WEM Framework Lot 4. This framework delivers projects for Flood and Coastal Risk Management including a specific Lot for construction works and expires in July 2019. The contractors in Lot 4 of the framework have been subject to rigorous selection processes and scrutiny by the Agency for their level of competence across a range of criteria, all consistent with GCC policies. The contract award will not be made until after the scheme has been granted planning permission.
- 5.4 The site supervision and attendance to the Construction Design and Management Regulations will be addressed by the appointment of a consulting engineer using the ESPO framework under a separate procurement.
- 5.5 Once the asset has been constructed it is proposed for the Commissioning Director for Communities and Infrastructure to consider the statutory powers to designate the asset under the FWMA 2010 to ensure the protection of the asset and provide right of access to undertake maintenance. This will comprise an annual inspection and cleaning of inlets and outlets, typically 3 days of work per year, this would not interfere with the use of the land to any significant extent.
- 5.6 The compensation of landowners will be a matter for negotiation between the Council's land agent and the representatives of the land owners. The estimated value and scale of risk is described in more detail in the exempt annex to this report. If these negotiations fail to meet an amicable conclusion it will be referred to the Land Tribunal for a decision.

### **Equalities considerations**

- 5.7 A "Due Regard" statement is not considered to be required for the purpose of this report as key decision.

### **Consultation feedback**

- 5.8 Consultation has been undertaken with the local Parish Council and local members. All of these stakeholders are supportive of the scheme.
- 5.9 One of the two landowners has expressed opposition to this scheme.

### **Performance Management/Follow-up**

5.10 Financial performance will be monitored through the capital programme reporting system.

5.11 The Environment Agency monitor the scheme on a monthly basis and report progress to DEFRA.



<b>Report Title</b>	Priors and Oakley Flood Alleviation Scheme
<b>Statutory Authority</b>	Land Drainage Act 1991, Flood and Water Management Act 2010
<b>Relevant County Council policy</b>	Local Flood Risk Management Strategy
<b>Resource Implications</b>	<p>DEFRA has earmarked £1.693 million flood grant in aid and a contribution of £50k from the Regional Flood and Coastal Committee Local Levy, this was approved by DEFRA's Project Approval Board in October 2016.</p> <p>GCC has allocated a £243k contribution from the Flood Alleviation Capital budget as partnership funding.</p> <p>Total funding identified; £1.986 million</p> <p>The procurement of the civil engineering work, associated design costs, site supervision and compensation payments to landowners (if required) is estimated to be within the overall budget available.</p> <p>There is sufficient in house officer resource to oversee the preparation and implementation of this contract.</p>
<b>Sustainability checklist:</b>	
Partnerships	This scheme is being undertaken in partnership with Cheltenham BC and the Environment Agency
Decision Making and Involvement	The implementation of this scheme is dependent upon planning approval from Tewkesbury BC and Cheltenham BC. Local consultation has been undertaken with the local Parish Council and local members. All of these stakeholders are supportive of the scheme. One of the two landowners has expressed opposition to the scheme.
Economy and Employment	The scheme will create temporary employment opportunities for the duration of the contract. It is likely that materials and plant hire will be purchased from local suppliers.
Caring for people	The scheme will reduce flood risk to 213 residential properties
Social Value	The scheme will reduce flood risk to 213 residential properties
Built Environment	The flood alleviation scheme will provide benefits for the owners/occupiers of 213 homes in Priors and Oakley.

<p>Natural Environment including Ecology (Biodiversity)</p> <p>Education and Information</p>	<p>The design of the scheme has taken full account of all relevant ecological issues as part of the planning application submission and is subject to scrutiny as part of the approval process.</p>
<p><b>Tackling Climate Change</b></p>	<p>The approved contractors on the Environment Agency WEM Framework Lot have been subject to scrutiny of their climate change management policies as part of the evaluation process to be accepted on the framework. The flood alleviation scheme is designed to cope with a 1% annual event probability and includes allowance for increases in rainfall intensity arising from climate change.</p> <p>Emissions Implications? Neutral</p> <p>Vulnerable to climate change? No, because the design has built in allowance for increases in annual rainfall for the next 100 years.</p>
<p><b>Due Regard Statement</b></p>	<p>Has a Due Regard Statement been completed? A “Due Regards” statement is not considered to be required for the purpose of this report as key decision.</p>
<p><b>Human rights Implications</b></p>	<p>Human Rights issues have been considered. Article 6 (1), and the 2<sup>nd</sup> of Article 1 of the 1<sup>st</sup> Protocol provides that every person is entitled to a fair and public hearing; and, secondly, that every natural or legal person is entitled to the peaceful enjoyment of his possessions. However, the serving of a Section 64 notice is an administrative act dependent on matters of judgement and discretion and, on this basis, the decision would not be sufficient to engage rights under article 6. With regard to Article 1 we consider there is no deprivation of property, it is proposed that it is a matter of control of use. In any event, assuming that it should be regarded as a deprivation of property, this will be dealt with by the ability of the landowner to claim proper compensation and the owner’s ability to continue to use the land.</p>
<p><b>Consultation Arrangements</b></p>	<p>It is proposed that the local community will be invited to attend a public meeting to receive notification of the details of the scheme during the weeks leading up to the commencement date.</p>