

Economy and Growth Committee

6 June 2023

Poynton Pool

Report of: Peter Skates Interim Executive Director Place

Report Reference No: EG/13/23-24

Wards Affected: Poynton West & Adlington, Poynton East and Pott Shrigley

Purpose of Report

- 1 The Council, acting as the landowner, is proposing to deliver works at Poynton Pool to comply with the Reservoirs Act 1975. This report is to inform members of current progress and set out the next steps that the Council, as the landowner, will take to address this matter. Taking this approach will demonstrate that the Council is an open and enabling organisation.

Executive Summary

- 2 Poynton Pool is a large high-risk reservoir as defined by the Reservoirs Act 1975 (the Act). As a result, it is regulated and managed in accordance with the Act and the Council as the owner / operator has statutory responsibilities.
- 3 The Council must appoint qualified engineers from a DEFRA panel (all reservoirs panel) to supervise and inspect the reservoir. During its last inspection the Council was required to undertake a flood study and prepare a draw down plan. The flood study found that the reservoir did not meet modern standards. Therefore, the Council could either undertake works (either a full engineering solution or a risk-based solution) to address the issues or permanently remove water, reducing its capacity to take it outside of the current legislation.
- 4 The choice of removing the water from the reservoir was discounted for obvious environmental reasons. This left works on the dam as the only

step the Council can take. The main options considered were to undertake a full engineering solution or a risk-based solution. A risk-based solution was chosen.

- 5 Following initial concept development, a proposed solution went out for public consultation prior to submission of a planning application. The Council received a very strong response from the public, which was not in favour of the proposal. The main concerns raised were whether the works are needed, the environmental and visual impact of loss of trees on the reservoir's dam and that other solutions should be considered. The proposal also included off site mitigation works at a location within Borough, but this proved to be unpopular. In considering this feedback the Council was receptive to any alternative solutions put forward and these were also tested. Work was undertaken to refine and amend the Council's proposal for submission to planning.
- 6 Presently the Council as the landowner is preparing to submit a planning application with the intent of works commencing in the financial year 2023/24, subject to the outcome of the planning process. Decisions on allocation of funding and submission to planning have yet to be taken. The Director of Growth and Regeneration will consider whether to submit planning applications related to this scheme and a virement for £780k will be considered by the Director for Finance and Customer Services in consultation with the chair of Economy and Growth Committee and the chair of the Finance Sub-Committee. It is anticipated that a planning application, subject to these approvals, would be submitted in July.
- 7 Should the Council not progress with the remedial work required, an inspection under s10 of the Act would be progressed and the Council would be compelled to undertake the work.

RECOMMENDATIONS

The Economy and Growth Committee is recommended to note that:

1. The Director of Growth and Regeneration will consider whether to submit planning applications related to this scheme;
2. A virement for £780,000 will be considered by the Director for Finance and Customer Services in consultation with the Chair of the Economy and Growth Committee and the Chair of the Finance Sub-Committee. A £580,000 allocation is required from the approved Strategic Capital Project and £200,000 from an earmarked reserve previously set aside for this matter.

Background

- 8 All large high-risk reservoirs are regulated under the Reservoirs Act 1975 (the Act). The Act places a statutory duty on owners of reservoirs to keep them in a safe condition. Poynton Pool (the Reservoir), created as an ornamental pond in the 1700s, is classed as a large high-risk reservoir under the Act. Reservoirs holding more than 25,000 CuM, held back by a human made structure (a dam) are defined as large. High risk reservoirs are large reservoirs where an uncontrolled release of water could endanger human life.
- 9 Under the Act the Council is defined as a reservoir undertaker because it owns and operates the Reservoir. It must appoint specialist reservoir engineers (termed the Supervising Engineer and the Inspecting Engineer under the Act) to undertake inspections. These must be drawn from the DEFRA appointed 'All Reservoirs Panel' and are commonly called 'all panel engineers'. The Council has a statutory duty to ensure that the works identified within these inspection reports are done. Failure to do so would see the Council been served a notice compelling it to undertake the works under the Act. If still did not carry out the works enforcement action would likely be taken by the Environment Agency, which has the statutory responsibility to enforce the Act. Although employed by the undertaker, the Engineers also have a statutory duty. Should an undertaker not progress works that are required, the Engineers and ultimately the Environment Agency, as regulator, have the powers to compel the undertaker to do work, to ensure reservoir safety.
- 10 In the most recent ten yearly safety inspection, the Council was directed by the inspecting engineer to undertake a flood study and a draw down plan. Work associated with the draw down plan has been completed and the Council recently tested the plan as part of its cycle of emergency planning with emergency services and other partners, including the Environment Agency.
- 11 The flood study was also completed, however it found that the Reservoir does not pass the design and safety check for a flood event and therefore does not meet the current standards required of a large high-risk raised reservoir. In effect the Reservoir has failed its 'MOT'. Works are therefore required to bring the Reservoir back into compliance. It found that the crest of the dam was not level, the freeboard of the dam was too small, and the spillway capacity is not sufficient. In the event of an overtopping incident, water would flow over the dam at a low point, potentially eroding the earthen dam, which in turn could lead to a collapse of the dam and an uncontrolled release of the water in the reservoir.
- 12 As part of the exercise to progress this matter the Engineers have developed a proposed scheme. This will follow the normal statutory

process for any construction and a next step is seeking planning permission. The detail of the proposed solution is set out in the options section of this report.

- 13 In the development of the scheme a full set of options has been considered, including a full engineering solution. This would see the same works as above been undertaken, but also further work done to reduce risk. The Council could choose to take this option, however the inspecting engineer is of the view that the Council does not need to take this step, at this time, although it may wish to take this step should it wish to mitigate risks it faces further. The chosen option does not mitigate the risk of over topping, but it does mitigate the risk of an uncontrolled release of water due to dam failure following an overtopping incident.
- 14 Further work was undertaken to consider differing options ranging from increasing the height of the dam, developing a flood area, changing the location of the level kerb on the crest of the dam, changing the type of level crest (for example a timber kerb, or a gravel path), removing the dam or drawing down the water level to take the pool out of the definition of a large, raised reservoir. The Council has been advised that none of these options are cheaper or offer a better solution (reducing tree loss whilst also achieving the work needed to mitigate the risk to the dam) to the one that is been presented.
- 15 Following initial concept development, a proposed solution, was publicly consulted upon before the formal submission of a planning submission. The Council received a very strong response from the public, which was not in favour of the proposal. The main concerns raised were whether the works are needed, the environmental and visual impact of loss of trees on the dam of the reservoir and other solutions should be considered.
- 16 In considering this feedback the Council as the landowner is not wedded to any specific solution, save it addressing the issue of reservoir safety. Therefore, it was receptive of any alternative solutions put forward and these were also tested alongside alternative options already tested as part of the design and development process.
- 17 Work was also undertaken to refine the Council's proposal by its consultants, based on the feedback of residents the Council as a landowner now plans to put forward what it believes is a comprehensive package of mitigations, whilst also working within the confines of addressing reservoir safety under the Act.
- 18 The Council as the landowner will be ready shortly to submit relevant applications with the intent of works commencing in the financial year 2023/24, subject to the outcome of the planning process.

- 19 The Council will have to take the following steps to progress the works: virement of funds into the budget for this work, submit an application to Stockport Metropolitan Council relating to mitigation land and submit a planning application to Cheshire East Council as LPA. These are delegated decisions under the constitution.
- 20 Separately the Council as LPA will have to take a decision regarding the work. That decision is outside the scope of this report.
- 21 A public footpath (Poynton with Worth FP 89) runs along the top of the dam, this will need to be temporarily closed for the duration of the works. The scheme proposes re-provision of the footpath as it is anticipated this will be affected by the works and will require reinstatement as a public footpath.

Consultation and Engagement

- 22 The Council as the landowner has engaged with local members in late 2022 setting out the issues and has also engaged with the local Town Council. The Council's agents have undertaken a pre planning engagement exercise and the Council as the landowner has also engaged in a public meeting with residents, chaired by the local Town Council. In addition to these steps the Council has also engaged with the local MP.
- 23 It was very clear that there was a very strong response that the public is not supportive of the Council's proposal.
- 24 Following this the Council has remained open to any proposals put forward by members of the public. The Council as the landowner does not have a fixed view on the solution and therefore welcomed these suggestions. These were tested by the council's agents regarding technical feasibility of these proposals. To date none of these proposals have provided a solution which is better than the proposed scheme. However, it has been a very helpful exercise to validate the current proposal. In addition, some features of these proposals have been worked into the Council's revised solution, for example a more adaptive approach to the development of the replacement public footpath to minimise tree loss.
- 25 Although the works are required for health and safety reasons, and the Council is required to progress the matter because of the Act, the Council as the landowner has instructed its agents to review the approach taken, consider alternatives and seek mitigations where these are possible. Public feedback along with further information and support from environmental colleagues has meant a more refined proposal has been

developed, although the main features of the proposal remain. A key consideration has been to minimise the impact on trees, and this has been achieved, although there will still be tree loss as part of the proposal.

Reasons for Recommendations

- 26 As a reasonable landowner the Council must act. The Council has statutory duties under the Reservoirs Act 1975 around reservoir safety. The Council has been given professional advice by subject matter experts with specialist knowledge of reservoirs. The Council has been made aware of the deficiency of Poynton Pool, has been properly advised of the implications of not proceeding with the work. The Reservoir's freeboard is too low, the crest of the dam is not regulated, and the spillway capacity is not sufficient.
- 27 The Council is required under the Reservoirs Act 1975 to arrange for supervision of the reservoir by a DEFRA approved specialist engineer and also that a 10-year inspection is carried out on the reservoir by a DEFRA approved specialist engineer. The 10 year inspection has to be carried out by an all reservoir panel engineer, of which there are 31 listed in the UK, although not all practice. Both the inspecting and supervising engineer for Poynton Pool are from the all reservoir panels list.
- 28 The flood study and the Inspecting Engineer's recommendations do not in themselves constitute a statutory direction under the Act to undertake the work. The Inspecting and Supervising Engineers do have statutory responsibilities and can, under the Act, serve notice on landowners who do not comply with their directions; however, their preference is not to exercise these powers. Should the Council, as undertaker, undertake works, it has been advised an inspection will be arranged and a notice under s10 of the Reservoirs Act 1975 will be served on the Council. The Council would be obliged to pay for this inspection and relevant service of notices. In addition, if enforcement action is taken by the Environment Agency, and the Council still fails to carry out the necessary works, the Environment Agency can carry out the works and recharge the costs of the works back from the Council. The Council would also face the risk of prosecution under the Act.
- 29 Several options have been considered. The option presented offers the least environmental impact whilst complying with the direction given by the Inspecting Engineer. Other options are possible, for example drawing the reservoir down or delivery of a full engineering solution, but these would be more impactful to the environment and would be more expensive to implement and the Council is not currently advised to take these steps to comply with the Act.
- 30 The Council has been receptive to alternative proposals to address the issue. These have been tested by the Council's consultant, which are

specialist design engineers supervised by the all reservoir panel engineer where appropriate and necessary. The team have found that there is no other solution which would meet the objective of compliance with the Act whilst reducing tree loss. The full engineering solution would be superior in terms of compliance but would be more impactful on tree loss and would be more expensive to deliver.

Other Options Considered

- 31 Several options have been considered. These include not acting, drawing down the reservoir, a full engineering solution, a risk based solution (the preferred solution) and a wide range of other options that have been either developed by the engineering team or presented by members of the public.
- 32 **Do nothing.** There is no credible 'do nothing' option. The Council is compelled to do work because of its statutory duties under the Act and its general duties around health and safety as a landowner. Should the Council choose not to do this the Supervising Engineer is statutorily bound to take steps to compel the Council by serving notice.
- 33 **Full engineering solution.** The Council could adopt a full engineering solution, in effect bringing the reservoir up to modern standards. The Council has been advised that this is not required at this time, that it would be expensive, and would be more environmentally impactful than the proposed solution. It would however mitigate the risk of overtopping, but it would not reduce the impact on trees and the environment on the top of the dam.
- 34 **A risk-based solution.** This is the preferred option as it minimises the environmental impact and amount of work that is done to the reservoir whilst also delivering the works needed to make the reservoir safe. This would see:
 - (a) Install a level crest marker (a low-level concrete kerb) along the top of the dam to ensure the waste flows over the dam evenly in the event of overtopping. The kerb will include a positive cut off to prevent water flowing underneath the kerb through the dam structure.
 - (b) Slightly raise and regulate the path to remove low spots. The ground each side of the path would be infilled to provide a shallow fall so that water flows away from the kerb.
 - (c) Widened the path to two metres in most places and resurface with compacted gravel. Path width reduced locally to retain specific trees.

- (d) Align the path on the upstream side of the crest, so it follows the existing path route as far as practicable, to reduce the impact on trees on the dam crest and the existing reservoir rim slope and vegetation.
- (e) Create two 40m wide clearings, which will further increase resilience, so if trees and shrubs block any overflow of water, there are at least two points where floodwater can safely spill across the bank. The location of these two clearance areas has also been reviewed and adjusted to further reduce tree loss.
- (f) Construct a 2m-wide clay verge covered in grass which will create a buffer to prevent tree root growth from damaging the new kerb and allow the water to flow away.
- (g) Since the pre planning engagement exercise, further work has been undertaken to mitigate the impact of the scheme and develop off site environmental mitigation. The current proposal sees fewer trees been lost on the dam than the original proposal, this has been reduced from c80 trees at risk to c35 trees identified for removal. The current proposal would see off site mitigations delivered on Council owned land.

35 **Other options (proposals to alter the risk-based solution).** A wide range of other options have been proposed by the public and been considered. These have centred around preventing tree loss and included increasing the size of the outlet pipework but not carrying out crest works, removing silt from the pool, creating flood storage in Poynton Pool or using alternative materials to construct the kerb. Each alternative proposed has been carefully considered by the Councils consultants. Unfortunately, none of the options would deliver a better outcome, with these either not providing the protection needed by the preferred option or they are more impactful to the park, including greater tree loss.

36 A table below sets out a summary of the main options:

Option	Impact	Risk
Do nothing	Inaction is not an option. The Council would be compelled to undertake the work, with potential risk of litigation as set out in legal comments.	Without work done and in the event of overtopping the dam is at risk to an uncontrolled release of water.

Non-approval.	Inaction is not an option. The Council would be compelled to undertake the work, with potential risk of litigation as set out in legal comments.	Without work done and in the event of overtopping the dam is at risk to an uncontrolled release of water.
Full engineering solution.	This would have more environmental impacts and would be more expensive.	It would reduce the risk of over topping,
A risk-based approach (The preferred option)	Minimises the environmental impact and cost of the proposal whilst also addressing the issue.	Will not eliminate the risk of over topping, but will manage the risk of uncontrolled release of water.
Other options	Other options are more environmentally impactful, more expensive and or don't address the basic issue that needs to be addressed.	Other options are more environmentally impactful, more expensive and or don't address the basic issue that needs to be addressed.

Implications and Comments

Monitoring Officer/Legal

- 37 The Council as the owner of the reservoir have a statutory duty to ensure that the works identified within the safety and flood reports are carried out, a failure to do so could result in the council being served with a notice which obliges them to carry out the works, if they are not carried out the Environment Agency could carry out the works and reclaim the costs of doing so from the Council. In addition, the Council may be liable to be prosecuted for the failure to act. If legal proceedings are commenced against the Council, this may have a negative effect on the reputation of the Council.
- 38 If the proposal were to be brought forwards with works being carried out on the public right of way, they will need to consider a temporary closure of the route for the duration of the works, advice will be required from the public right of way department.

39 The Council has various legal duties, namely:-

(a) The Council must act in accordance with its statutory duties and responsibilities.

(b) The Council must act reasonably. The Council must act in accordance with the principles set out in the case of *Associated Provincial Picturehouses Limited -V- Wednesbury Corporation*, that is, it must take into account relevant considerations, it must not have regard to irrelevant considerations, and it must not reach a decision which is unreasonable in the sense that it is so irrational that no reasonable authority could have reached it.

(c) The Council must not act in breach of its fiduciary duty to the residents of Cheshire East. A fiduciary duty will probably include the following considerations: -

(i) Prudent use of the Council's resources, including the raising of income (such as rents and other charges) and the control of expenditure;

(ii) Awareness of the financial consequences of any proposal on the residents of Cheshire East;

(iii) Financial prudence both in the short and long term;

(iv) Striking a fair balance between the interests of Council taxpayers and ratepayers on the one hand, and the community's interest in adequate and efficient services on the other hand;

(v) Acting in good faith with a view to complying with statutory duties and exercising its statutory powers for the benefit of the community.

Section 151 Officer/Finance

40 There is currently £600,000 set aside for this project as part of Estates service budget and an earmarked reserve of £200,000 was set aside in 2020/21. A further £580,000 is required to be allocated to the scheme to provide a total estimated scheme cost of £1.380m, the reason for this increase is construction cost inflation.

Policy

41 There are no policy implications arising from this report. The Council is following the steps it is statutorily obliged to do under the Act and is following the process required to submit a planning application to the

relevant LPAs. The provision of this report demonstrates the Council is an open and enabling organisation, ensuring that there is transparency in all aspects of council decision making. The work supports the corporate objective of a thriving and sustainable place and the priority of ensuring a welcoming, safe and clean neighbourhoods.

Equality, Diversity and Inclusion

- 42 It has been assessed that there are no direct impacts on those with protected characteristics. Because of the scheme, the public right of way would be improved, and this may have benefits for residents with physical disabilities, however the existing path would be closed for the duration of the works, although there are alternative routes.
- 43 While we acknowledge the removal of trees may be impactful on the mental health of some residents the Council also has a statutory duty to maintain a safe working area for those undertaking the works, has the need to comply with the reservoirs act and manage the asset in future years.
- 44 In balancing these competing statutory duties and following consultation the design was reviewed. Changes to the proposed design have been made to reduce the number of trees to be removed to circa 35. mitigation planting is proposed to be undertaken to address biodiversity.

Human Resources

- 45 There are no Human Resources implications arising from this report. Sufficient resources are in place to manage the project.

Risk Management

- 46 The Council has to deliver a scheme which is not popular with local residents but not to do so would see it contravene its statutory obligations. It has sought to mitigate this issue by engagement with the public and seeking alternative solutions, however these have not delivered a viable alternative. However, through this exercise the Council has received and tested proposed alternatives and also refined its proposal based in the feedback it has received.
- 47 In compliance with the Reservoirs Act the Council has appointed appropriately qualified and experienced engineers from the DEFRA appointed all reservoirs panel. Both engineers are from a very small cohort of expert engineers that undertake this type of specialist work. These engineers agree with regards to the work.

- 48 The Council has also tested its draw down plan in early May as part of the Council's emergency planning process. This involved all the emergency services and the Environment Agency. This desk top exercising of the plan provided useful feedback which will be used to enhance the draw down plan.
- 49 Undertaking work set out in this report would reduce the risk exposure of the Council as a reservoir undertaker. Drawing down the Reservoir, thereby removing the risk or delivery of a full engineering solution may reduce this risk further but would have a greater visual and environmental impact than the proposed solution. Other proposed risk-based approaches would not deliver the risk management required to satisfy the Inspecting Engineer allowing them to satisfy their and the Council's statutory obligations under the Act.

Rural Communities

- 50 There are no issues relating specifically to rural communities arising from this report. However, the works will change the nature of the environment along the top of the dam. Although trees will remain on the dam, two 40m sections will be removed and other works to trees will be undertaken to allow the levelling of the crest of the dam to take place. Undergrowth will also be managed along the dam. Although a new path will be established (following temporary closure) these works will alter the appearance of the dam.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 51 No implications for Children and Young People/Cared for Children arising from this report.

Public Health

- 52 The path will be closed for a period during the construction works, although alternative pedestrian routes are available. It would be reopened following the works, with an improved surface which will make the path more accessible. There will be a loss of trees in the immediate area on the dam, but off-site mitigation would be put in place as part of the planning process.

Climate Change

- 53 This proposal, if progressed, will see the loss of trees on the dam of Poynton Pool. Due to the feedback in the pre planning engagement exercise further work has been undertaken to reduce the number of trees affected. It is proposed that the Council as landowner will develop off site mitigation to address this issue and also provide biodiversity net gain.

The location of this mitigation has also been refined as part of the proposal. This will be tested in the planning process.

Access to Information	
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Appendices:	None
Background Papers:	None