

NEWTON STEWART FLOOD PROTECTION SCHEME

REPORTER'S INITIAL QUESTIONS/REQUESTS TO DUMFRIES & GALLOWAY COUNCIL

1. Has the Council given notice to all objectors of its preliminary decision on 22 August 2023 to confirm the scheme without modification (as required by the Flood Risk Management (Scotland) Act 2009 Schedule 2 paragraph 5(3)). If notice has been given, provide a copy.
2. Provide full-size hard copies of the published scheme plans. From the Council's website these are the plans numbered 118908/400/101 rev 11, 118908/400/102 rev 13, 118908/400/111 rev 12, 118908/400/112 rev 12, 118908/400/113 rev 13, 118908/400/114 rev 14, 118908/400/115 rev 14, 118908/400/116 rev 12, 118908/400/117 rev 11, 118908/400/150 rev 09, 118908/400/154 rev 08, and 118908/400/155 rev 08.
3. Can the Council's Flood Protection Scheme webpage be used for documents related to the Reporter's examination of the scheme? The Reporter would specify the relevant documents from time to time.
4. Does the Council consider that the Cree Valley Community Council or any other non-objector should be asked if it wishes to participate in the hearing?
5. There are references in several reports to a Flood Protection Order. The Reporter takes it that this means the Flood Protection Scheme. Is that correct?
6. The Council's collection of objections includes [REDACTED] email of 22 June 2023 (objection G19), but the Reporter does not have [REDACTED] "statement of reasons for objection" which his email indicated was attached. Please provide.
7. In the Council's collection of objections objection G17 from [REDACTED] consists of an email and a letter both dated 17 November 2021, some 18 months before the public deposit period of the published scheme. Given that date, how is that email and letter properly interpreted as an objection to the published scheme?
8. In the Council's collection of objections [REDACTED] email of 19 June 2023 (objection F17) says "Please see the attached letter". The item that follows [REDACTED] email in the Council's collection of objections is a letter from [REDACTED] dated 17 November 2021 which is unrelated to fishing issues. Is that the correct attachment? Has [REDACTED] objection been wrongly classified as an F objection?]
9. In the Council's collection of objections the email from [REDACTED] (objection F26), containing nothing on the nature of the objection, is followed by a letter from [REDACTED] already in the collection as objection F24. Was that letter by [REDACTED] really submitted by [REDACTED] as the latter's objection, or has there been an error in collation?
10. Is the representation received from SEPA shown as the last representation within the Council's Summary of Objections on the Council's website a verbatim copy? What is its date? If not verbatim, provide a true copy.
11. Regulation 12(2) of The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 requires an objector having an interest in any land on which the proposed operations are to be carried out or which may be affected by any of the scheme operations, or by any alteration in the flow of water caused by any of the operations, to give (a) details of the land concerned and (b) the nature of the interest in the land.

The Reporter notes that most objections do not give the information referred to at (a) and (b). Should the missing information be sought? What assumptions does the Council make, if any, as to an objector's interest in land in the absence of the information?

12. Provide a copy of the report on the scheme to, and minutes of, the 2 February 2023 meeting of the Council's Communities Committee.
13. Provide a copy of the report on the scheme to, and the minutes of, the 22 August 2023 meeting of the Council's Communities Committee.
14. Prior to requesting screening opinions from consultative bodies, the Reporter assumes that the Council will have formally determined in line with Regulation 5(1) as amended that the scheme does not require an Environmental Impact Assessment. Provide a copy of the report on, and minutes of, the committee meeting indicating the Council's determination on that point.
15. Objection F4 by ██████████ for the River Cree District Salmon Fishery Board (RCDSFB) says the RCDSFB requires a "full EIA". ██████████ personal objection (F1) refers to the lack of consultation with the RCDSFB. The Reporter notes that prior to giving notice of the proposed scheme and presumably having determined that the scheme is not required to be subject to an Environmental Impact Assessment, the Council requested a screening opinion from consultative bodies, as required by Regulations 4 and 5. So far as the Reporter can see, the RCDSFB was not included in this request. The Reporter notes further that Regulation 2 defines consultative bodies to include "any other body designated by statutory provision as having specific environmental responsibilities which, in the opinion of the local authority proposing the flood protection scheme, has an interest in relation to the environmental effects of that scheme". It appears to the Reporter that the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is a statutory provision giving the RCDSFB specific environmental responsibilities. So presumably the Council's opinion was that the RCDSFB does not have, in the words of Regulation 2, "an interest in relation to the environmental effects of that scheme". If that is the Council's opinion, the Reporter asks for reasons for that opinion. The Reporter surmises that, if the RCDSFB had been regarded as a consultative body and its screening opinion had been sought, the objections appear to indicate that that opinion would have stated that the scheme is required to be subject to an Environmental Impact Assessment. In those circumstances, Regulation 6(1) would have required the Council to prepare an Environmental Impact Assessment report. The Reporter seeks the Council's views, bearing in mind Regulations 2 to 6 inclusive, (a) on his interpretation and (b) the implications of that interpretation for the processing of the scheme (including the present plans for a hearing).
16. The EIA Screening Report (revised January 2023) indicates on page 5 "To date, a response is still awaited from Scottish Water." Provide a copy of any response received subsequently from Scottish Water. If no such response has been received, what is the Council's view of the implications?
17. Some of the screening opinions received from consultative bodies which indicated that no EIA is required were subject to qualifications. Can the Council confirm that all of those qualifications are met within the scheme as published in May 2023?
18. Provide a copy of SEPA's Flood Risk Management Strategy (Dec 2015) and any update of that.
19. To the extent that these are not covered by the Flood Risk Management Strategy referred to in question 18, provide the latest documents published by SEPA covering the Newton Stewart area on (a) flood risk assessment in accordance with sections 9 and 10 of Flood Risk Management (Scotland) Act 2009, (b) potentially vulnerable areas under sections 13 and 14, (c) flood hazard maps

and flood risk maps under sections 21 to 24, and (d) flood risk management plans under sections 27 and 33.

20. Provide a copy of the Local Flood Risk Management Plan published by the Council in 2016 and any published update of that.
21. Provide a list of those notified of the proposed scheme by the Council's letter dated 22 May 2023.
22. Provide a copy of any identification of commitment in the Council's programme of work or financial plan in accordance with section 2.2 of Flood Risk Management (Scotland) Act 2009: Local Authority Functions Under Part 4 Guidance (2015).
23. The scheme appears to be silent on whether it would materially alter any drainage works or protective works in an improvement order under the Land Drainage (Scotland) Act 1958. Can the Council confirm that it would not materially alter any such works? If not, how is it proposed to deal with any obligations to maintain such works?
24. The Overview and Summary (Design Justification) Report says that the Council appointed consultants in 2013 to undertake hydraulic modelling to produce flood inundation mapping for various return periods. Provide a copy of that inundation mapping.
25. Are there plans showing the extent of the flooding in Newton Stewart in 2012 and 2015? If so, provide copies.
26. The Preliminary Ecological Appraisal Report recommends pre-construction surveys are recommended for otter, badger, red squirrel and water vole and a bat emergence survey of the B7079 road bridge. Have any of those surveys been carried out? If so, with what result?
27. The EIA Screening Report says the Construction Environmental Management Plan will be submitted with the "Flood Order" documents. Is the CEMP now published? If so, provide a copy.
28. The Preliminary Ecological Appraisal Report recommends that the Council provides their data on non-statutory sites of scientific interest within 2km. Has this been done? Provide a copy.
29. The Preliminary Ecological Appraisal Report says it is a mandatory requirement that appropriate precautions must be taken, documented and implemented through a Pollution Prevention Plan (PPP) to safeguard the River Cree and Penkiln Burn from being detrimentally impacted during the preconstruction (e.g. ground investigation works), construction and maintenance phases of the project. Has a PPP been prepared? If so, provide a copy.
30. In summer 2023 the Council response to points raised in objections (general), under the heading "Bank erosion" was that a separate report on the riverbank on the west side of the Cree between the Sparling Bridge and the A75 road bridge was being prepared "and should be completed shortly." Is the report now complete? If so, provide a copy.
31. Has the Council adopted the Newton Stewart Conservation Area Character Appraisal and Management Plan as supplementary guidance under the Planning Acts? If so, were there any changes to the consultation draft?

██████████, Reporter

20 June 2024