

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.

Yes. An email or letter was sent to all objectors on 21 September 2023. A copy of the letter is attached (the email contained identical text).

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.

A3 copy of all plans printed and passed to Programme Officer on 26 June 2024.

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.

Yes. The Flood Risk Management Team will update the Project Webpage to advise of the Hearing Process and include a specific page for Hearing documents.

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?

This hearing is being held in terms of paragraph 8 of Schedule 2 to the Flood Risk Management (Scotland) Act 2009. The Council requires to invite each objector who has made a valid objection (unless withdrawn) and may also invite person who have lodged late objections. The Council also requires to give notice of the hearing. In light of this the Council does not consider that Cree Valley Community Council (CVCC) or any other non-objector should be specifically asked if they wish to participate in the hearing.

It should be noted that when the Scheme first started DGC and Sweco met with the CVCC, and CVCC put forward options which could be included in developing a Scheme. These options were added to the long list of options which were investigated and reviewed by a Value Management process to prepare a short list, and then to a preferred option. CVCC had 2 Members on the Value Management 'Team' and were fully involved throughout the development of the Scheme.

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?

Yes, there are several references to 'Flood Order' or 'Flood Notification' which has been incorrectly used and the correct wording should be publishing the Scheme, confirmed Scheme etc.

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.

Copy attached.

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?

[REDACTED] had originally sent the letter dated 17 November 2021 to the Council but unfortunately this was not received (and therefore not actioned). During the publication period [REDACTED] spoke to the Flood Risk Management Team and was advised that if he could send an objection (and a copy of his original letter from 2021) we would include the details contained in that letter as part of his objection. A copy of his objection sent

on 22 June 2023, and the original letter, have been combined into a single PDF for ease of reference, and is attached.

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?]

Apologies, the letter attached to [REDACTED] email was incorrect. The correct attachment is now attached.

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?

Apologies, incorrect attachment. Corrected version attached.

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.

RESPONSE TO FOLLOW

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?

RESPONSE TO FOLLOW

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.

Attached.

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.

Attached.

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.

RESPONSE TO FOLLOW

15. Objection F4 by [REDACTED] for the River Cree District Salmon Fishery Board (RCDSFB) says the RCDSFB requires a "full EIA". [REDACTED] 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).

RESPONSE TO FOLLOW

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?

A response was received from Scottish Water on 4 March 2019. The final version of the Screening Report was issued in October 2018, and subsequently reviewed and revised in January 2023 (which was the version issued for publication). Unfortunately, the SW was not added at this stage which was an oversight. A copy is now attached, which did not raise any objection.

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 those qualifications are met within the scheme as published in May 2023?

RESPONSE TO FOLLOW

18. Provide a copy of SEPA's Flood Risk Management Strategy (Dec 2015) and any update of that.

Attached, together with the 2021 Strategy.

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.

Contained in 2015 and 2021 documents (Attached as Q18).

20. Provide a copy of the Local Flood Risk Management Plan published by the Council in 2016 and any published update of that.

Attached, together with the Cycle 1 Interim Report, Final Report and the Cycle 2 Plan 2022.

21. Provide a list of those notified of the proposed scheme by the Council's letter dated 22 May 2023.

Attached. (PDF copy of the spreadsheet listing all property and land owners within the Scheme boundary, as well as utilities, key stakeholders, and known 3rd party interests).

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).

Attached (Copy of Full Council Budget Approval in February 2024).

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?

RESPONSE TO FOLLOW

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.

Included in Kaya's Hydraulic Modelling Report (August 2022). Copy attached.

25. Are there plans showing the extent of the flooding in Newton Stewart in 2012 and 2015? If so, provide copies.

Maps showing the approximate flood extents attached.

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?

RESPONSE TO FOLLOW

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.

RESPONSE TO FOLLOW

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.

RESPONSE TO FOLLOW

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.

RESPONSE TO FOLLOW

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.

This is a technical report which was commissioned to look at a section of riverbank which is within the Scheme boundary. The riverbank here has erosion protection (gabion baskets) which is failing in places and the bespoke report will consider if it is feasible, or necessary, to undertake works here earlier than the estimated Scheme construction in 2026/27. This technical report is still in early draft but will be reviewed and finalised as soon as possible.

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?

This plan was adopted on 25th November 2022 following consultation and amendments were presented to the Councils Economy & Resources Committee, followed by the 28 day consultation period with Scottish Government. The Committee Report, Appendix with the consultation responses and Minutes are attached.