

NEWTON STEWART FLOOD PROTECTION SCHEME

Reporter's Initial Questions/Requests To Dumfries & Galloway Council - Part 2(1)

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: The SEPA response was received on 30 June 2023 (they had asked for a short extension to submit their representation). Copy attached as requested.

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: With respect to the request for a report and minutes of a committee meeting indicating the Council's determination on the need for an Environmental Impact Assessment, in terms of the Scheme of Delegation and Responsibilities to Officers and Statutory Appointments in operation at the time, all powers which were not specifically reserved to Council, Committee, Sub-Committee or Joint Boards were delegated to Officers. Under the same Scheme, the Director of Communities and Head of Roads and Infrastructure were authorised to exercise the strategic planning and operational management of functions detailed in the Flood Risk Management (Scotland) Act 2009 and any subordinate legislation made under it such as the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010/426 (Scottish SI). The Scheme further provided that powers delegated to specific Officers could be further delegated by them.

The Project Team operating under delegated authority in terms of the said of Scheme of Delegation appointed Sweco in 2017 to develop a sustainable Flood Protection Scheme for Newton Stewart. This appointment included undertaking Environmental Scoping, based on the outline design, and preparing an Environmental Statement and Environmental Impact Assessment (if required). Sweco drafted the Environmental Screening Report and undertook the scoping exercise in 2018 with none of the responses requesting that an EIA was needed. Sweco advised that this process concluded that the proposed Scheme was considered to be low impact and would generate no significant adverse impact through its development and therefore it did not qualify as requiring an EIA. As a result of this the Project Team, acting in accordance with its delegated powers, took the decision that an EIA was not required. Officers reported their determination as part of the Communities Committee Report in February 2023 (seeking approval to publish the Scheme) advised Members as follows,

'3.3.9 It has been determined, following the Environmental Scoping process (where impacts of a proposed Scheme are analysed to determine if a full assessment is required), that the Scheme does not require an Environmental Impact Assessment. An Environmental Statement will however be published as part of the Scheme documents.'

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: The 'qualifications' included in the consultee responses are matters which will be addressed during the detailed design stage or pre-construction (including being a requirement of the appointed contractor) and are not required to be undertaken for publication. Sweco acknowledged this in the EIA Screening Report when they stated,

The following opinions and comments were received as part of the screening,

Galloway Fisheries Trust

An Opinion and advice was received from the Galloway Fisheries Trust by email on 12th December 2018 which stated that "Therefore, if the above advice is adhered to and included in the

development of the Construction Environmental Management Plan, GFT do not believe an EIA would be required for the construction of Newton Stewart Flood Protection Scheme”.

SNH

A response and advice was received from SNH by email dated 19th December 2018. The response provided advice in reference to requirements for the CEMP and detailed design stage to address the potential impacts on species and supporting habitat; relating works to avoid sensitive periods and locations; mitigation measures and European Protected Species licensing and confirmed that the report correctly identifies the potential environmental and ecological impacts and receptors from the construction and operation of the flood protection scheme.

SEPA

A response and advice was received from SEPA by email dated 22nd January 2019. The response confirmed that SEPA are supportive in principle of the proposed scheme and have no objection on flood risk grounds. They provided advice in reference to works in the water environment and the regulatory provision of a CEMP. The response also confirmed “We have considered the information provided and can advise that whether or not an EIA is required we will require sufficient information to be prepared and presented alongside the scheme to describe the effects of the works on flood risk and the water environment”.

Dumfries & Galloway Council (DGC) Planning Service

A Screening Opinion (Reference 18/1913/SCR) was received from DGC Planning Service by email dated 29th January 2019. The Opinion confirmed that the proposed development was considered unlikely to have significant impacts on the environment and will therefore not require EIA.

General Note on Qualification and Recommendations

Recommended surveys, applications for licences etc are not carried out until later in the Scheme, either at detailed design or pre-construction/construction so they can be based on final design and construction detail and because they are time sensitive or have a limited shelf-life. (For example water vole surveys must be undertaken during mid-April to June and others eg bat and otter surveys need to be undertaken within 3 months of the start of works). If qualifications, recommended surveys etc were done at outline design, and therefore 2 years before construction they would either have to be repeated or refreshed. All surveys, plans, and applications will be undertaken in line with standard practices, based on guidance and regulations from the appropriate bodies (SNH, SEPA etc) and in accordance with the relevant legislation.

With specific reference to the SEPA qualification that ‘we will require sufficient information to be prepared and presented alongside to describe the effects of the works on flood risk and the water environment’, the statutory and supporting documents prepared and published with the Scheme contained further information and enabled SEPA to respond to the published Scheme without objection (as per the letter attached at Q1)

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: Recommended surveys do not need to be undertaken until later in the Scheme, either at detailed design or pre-construction/construction so they can be based on final design and construction detail and because they are time sensitive or have a limited shelf-life. (For example water vole surveys must be undertaken during mid-April to June and others eg bat and otter surveys need to be undertaken within 3 months of the start of works). All surveys will be undertaken in line with standard practices, based on guidance and regulations from the appropriate bodies (SNH, SEPA etc) and in accordance with the relevant legislation.

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: This is an error – the CEMP will not be produced until later in the Scheme. either at detailed design or pre-construction/construction so it can be based on final design and construction detail. It will be

a requirement in the Tender Scope and for a prospective Contractor to complete in line with standard practices, based on guidance and regulations from the appropriate bodies and in accordance with the relevant legislation.

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: A PPP will not be produced until later in the Scheme. either at detailed design or pre-construction/construction so it can be based on final design and construction detail. It will be a requirement in the Tender Scope and for a prospective Contractor to complete in line with standard practices, based on guidance and regulations from the appropriate bodies and in accordance with the relevant legislation.