

EAST AYRSHIRE COUNCIL

DEVELOPMENT AND PROPERTY SERVICES COMMITTEE – 28 JUNE 2005

PROGRESS REPORT ON THE GALSTON FLOOD PREVENTION SCHEME

Report by the Executive Director of Development and Property Services and Executive Director of Education and Social Services

1. PURPOSE OF REPORT

- 1.1 To inform the Committee of the progress on the Council's proposed flood prevention works for Galston.

2. BACKGROUND

- 2.1 At the Development and Property Services Committee of 14 December 2004, the Committee:

- a) noted the progress on the Council's proposed flood prevention works for Galston;
- b) authorised the submission of the Galston Flood Prevention Scheme to the Scottish Executive for confirmation;
- c) approved Council funding of an estimated cost of £1.5M for the Galston Flood Prevention Scheme.

- 2.2 At the Development and Property Services Committee of 9 March 2005, the Committee:

- a) noted the progress on the Council's proposed flood prevention works for Galston.

3. PROGRESS

- 3.1 The Galston Flood Prevention Scheme has been prepared by the Council's Consultant, Scott Wilson Scotland Limited, and following publication of the Notice for the Scheme for two consecutive weeks in the Kilmarnock Standard and Edinburgh Gazette, 11th and 18th February 2005, the Scheme was formally submitted to the Scottish Executive by East Ayrshire Council's Legal Department on the 28th February 2005.

- 3.2 For a period of three months from the first publication of the Notice, any person may by notice to the Scottish Ministers object to the confirmation of the Scheme. If any such objections are received and cannot be resolved, the Scheme would be subject to a Public Inquiry. Any Public Inquiry would delay any programme of works for construction of the Scheme. There is also no guarantee that the Reporter to the Public Inquiry would find in favour of the Council. Three such objections were received by the Scottish Ministers:

Mr and Mrs Thompson, 23 Polwarth Street, Galston;
Q8 Filling Station, A71, Galston;

Allseasons (via their Consultant, 'W.A.Fairhurst & Partners').

- 3.3** The Council and their Consultant, Scott Wilson, have had meetings with all three objectors, Mr and Mrs Thompson on the 12th May, Allseasons Consultant on the 27th May, and Q8 Filling Station on the 31 May 2005. Following these meetings the Scottish Executive has confirmed in writing to the Council that Mr and Mrs Thompson and the Q8 Filling Station have withdrawn their objections. As Allseasons Consultant is on holiday from the 28th May until 16th June, feedback from the meeting will not be available until after the 16th June 2005.
- 3.4** In addition, The Council's Legal Department received a letter dated 11 April 2005 from 'WSP' acting on behalf of 'Messrs Wiseman Dairies Limited' objecting to the Scheme. The Council's Legal Department responded on 13 April and again on 11 May requesting copies of correspondence referred in their letter and stating the Council's position with respect to the status of the land upon which the works are to be constructed that is in the ownership of 'Messrs Wiseman Dairies Limited' (the objector appears to view the land as being fit for residential development, the Council does not, this affects the value of compensation due). 'WSP' responded briefly on 18 May 2005 and as a result the Council's Legal Department is currently endeavouring to arrange a meeting to resolve.
- 3.5** It should be noted that the Galston Flood Prevention Scheme cannot be confirmed by the Scottish Ministers until all objections are resolved. As 'WSP' did not write to the Scottish Ministers within the statutory three month period for lodging objections, it appears from advice given by the Council's Legal Department, that their objection has no legal status under the Flood Prevention(Scotland) Act 1961.
- 3.6** Scott Wilson Scotland Limited submitted the application for the Notice of Intention to Develop (NID) to the Council's Planning Department on 10 February 2005. This is currently being processed with no problems being anticipated.
- 3.7** If the Scheme is confirmed by the Scottish Ministers, this is also published. Any person aggrieved by the Scheme may, in accordance with the provisions of Paragraph 9 of the Second Schedule to the Flood Prevention (Scotland) Act 1961, by application to the Court of Session within six weeks from that published date of confirmation, question the validity of the Scheme on the grounds (i) that it is not within the powers of the 1961 Act or (ii) that any requirement of the 1961 Act has not been complied with in relation to the making or confirmation of the Scheme.
- 3.8** Providing all objections can be resolved at any stage of the process, the Contract for the Galston Flood Prevention Scheme can be put out to tender circa September/October 2005. This represents a delay, currently, of approximately two months due to objections. The tender timing could be brought forward to August/September 2005 if the Council presumes that there would be no likelihood of objections under paragraph 3.7 above.

4. FINANCIAL IMPLICATIONS

- 4.1** The flood prevention measures at Galston will exceed costs which could readily be met from within the Council's own resources.
- 4.2** Although the Council's contribution to the Galston Flood Prevention Scheme will amount to an estimated cost of £1.5M, the Council will have to commit initially the £7.2M. The balance of £5.7M is funded by the Scottish Ministers through interim grant aid payments when construction starts.

5. LEGAL IMPLICATIONS

- 5.1** The Council has powers to carry out flood prevention works. Major schemes undertaken directly by the Council on privately owned land require submission of a Flood Prevention Scheme to the Scottish Ministers under the Flood Prevention (Scotland) Act 1961.
- 5.2** A confirmed Scheme gives the Council powers of entry into land as required to implement the Scheme, subject to any appropriate compensation payments to land owners.

6 RECOMMENDATIONS

- 6.1** It is recommended that the Committee;
- i) Note the progress of the proposed flood prevention works for Galston.

James Lavery
Executive Director of Development
and Property Services
X June 2005

BACKGROUND PAPERS

Nil

If further information required please contact: John McRobert on 01563 – 576356.