

# REPORT

## **Millport Coastal Flood Protection Scheme: Environmental Statement**

### Chapter 2 Policy and Legislation

Client: North Ayrshire Council

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## Acronyms

<b>Acronym</b>	<b>Acronym description</b>
<b>EIA</b>	Environmental Impact Assessment
<b>ES</b>	Environmental Statement
<b>FEPA</b>	Food and Environment Protection Act
<b>FRMA</b>	Flood Risk Management (Scotland) Act
<b>MCFPS</b>	Millport Coastal Flood Protection Scheme
<b>NPF</b>	National Planning Framework
<b>SEPA</b>	Scottish Environment Protection Agency
<b>SAC</b>	Special Areas of Conservation
<b>SPA</b>	Special Protection Areas
<b>SPP</b>	Scottish Planning Policy
<b>SSSI</b>	Site of Special Scientific Interest

## Glossary

### Glossary Term

### Glossary Text

#### **Environmental Impact Assessment (EIA)**

A statutory process by which certain planned projects must be assessed before a formal decision to proceed can be made. It involves the collection and consideration of environmental information, which fulfils the assessment requirements of the EIA Directive and EIA Regulations, including the publication of an Environmental Statement.

#### **Environmental Statement (ES)**

A document reporting the findings of the EIA and produced in accordance with the EIA Directive as transposed into UK law by the EIA Regulations.

#### **Millport Coastal Flood Protection Scheme**

The scheme consists of offshore rock armour structures which will be built in the vicinity of the rock islets within Millport Bay. Onshore works will include flood walls, improvement works to existing coast protection structures, and works to raise the level of existing grass areas. Works on the foreshore include shore-connected rock armour breakwaters and rock armour revetments.

## 2 Policy and Legislation

### 2.1 Introduction

1. This chapter of the Environmental Statement (ES) identifies the key international, national and local legislative drivers and commitments in areas of flood risk management, which are relevant to the Millport Coastal Flood Protection Scheme (MCFPS) (the proposed scheme). It also outlines the key planning legislation under which consent for the Project would be delivered. The technical chapters (**Chapters 6 to 23**) outline any legislation which is specific to the relevant receptors.
2. The aims of this section are:
  - To demonstrate the alignment of the proposals with relevant national policies; and,
  - To identify the consents and licences required for the construction, operation, maintenance and removal of this type of project.

#### 2.1.1 Requirement for an Environmental Impact Assessment

3. Environmental Impact Assessment (EIA) is a tool for examining and assessing the potential impacts of a development on the physical, biological and human environment. This process allows management and mitigation measures to be identified to improve the environmental design of a project.
4. Flood protection schemes have deemed planning permission under the Flood Risk Management (Scotland) Act 2009. Flood protection scheme operations that constitute development will, pursuant to section 57(2B) of the Town and Country Planning (Scotland) Act 1997, be deemed to have been granted planning permission under the Act. A request must be submitted to Scottish Ministers for deemed planning permission to be granted, and the Scottish Ministers may attach conditions to the deemed planning consent.
5. Guidance for local authorities taking forward a flood protection scheme advises that they may benefit from following the normal planning guidance to ensure issues like the aesthetics of the scheme are properly taken into consideration and thus avoiding subsequent valid objections.
6. The requirement for EIA of projects requiring planning permission is considered under the Town and Country Planning (EIA) (Scotland) Regulations 2011, which came into force in June 2011. The requirement for EIA comes from European Directive 2011/92/EU, however in April 2014 Directive 2014/52/EU, amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, was published in the European Union's Official Journal. The requirements of Directive 2014/52/EU have been formally implemented in Scotland in the form of a revised set of regulations entitled The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.
7. Under Article 3(2) of the Directive, transposed by Regulation 60, the EIA Regulations 2017, where an Environmental Statement (ES) is submitted or where a scoping opinion has been sought before 16 May 2017, the project can benefit from transitional provisions to continue under the provisions of the EIA Regulations 2011. As such, North Ayrshire Council have commissioned an EIA for the

Millport Coastal Flood Protection Scheme and submit the findings within this Environmental Statement (ES) under the Town and Country Planning (EIA) (Scotland) Regulations 2011.

## 2.2 Consents and Licencing

8. In order to permit the proposed scheme, it is anticipated that the following consents and agreements will be required:
9. Marine Licence under the Marine (Scotland) Act 2010 (replacing Section 5 Part II of the Food and Environment Protection Act (FEPA), 1985 and Section 34 of Coast Protection Act, 1949 ) for works below MHWS to be granted by Marine Scotland.
10. In addition to the above, further consents may also include:
  - Harbour Works Licences from the North Ayrshire Harbour Authority. This may be required for works within the statutory Harbour Authority limits, and where authority has Works Licensing Powers (ability to regulate right of navigation and fishing within area);
  - Approvals from the Scottish Environment Protection Agency (SEPA) under Section 20 of the Water Environment & Water Services (Scotland) Act 2003 and Water Environment (Controlled Activities) (Scotland) Regulations 2005 for activities liable to pollute or significantly affect the water environment; and
  - A European Protected Species licence under The Conservation (Natural Habitats, & c.) Regulations 1994.

## 2.3 International Policy and Legislative Context

11. In 2017 the UK triggered article 50 of the Treaty on European Union (TEU) and commenced the negotiation of a withdrawal agreement for the UK to leave the EU. In its white paper considering the form and function of the EU (Withdrawal) Bill, there is a general commitment by the UK Government to maintain the body of environmental commitments and legislation already made following the departure of the UK from the EU. The European Union (Withdrawal) Act 2018 makes savings for EU-derived domestic legislation and the incorporation of direct EU legislation (however not all of the provisions of the Act are yet in force).
12. The vast majority of European environmental commitments have already been adopted by successive UK Governments and transposed into UK legislation, negotiations are ongoing at the time of writing. The detail of how existing UK environmental legislation may be amended and in particular the impact of the removal of European reporting and governing bodies is a material part of the negotiations regarding the UK's withdrawal from the EU.
13. The European Union (Withdrawal) Act is designed to ensure the following:
  - Keep in place all 'EU-derived domestic legislation', such as the many statutory instruments that implement EU environmental directives (section 2); and
  - Incorporate 'direct EU legislation' such as EU environmental regulations into our domestic law (section 3).

14. UK legislation relating to Flood protections and Climate Change Policy are underpinned by several international (e.g. EU and United Nations (UN)) agreements, which are outlined in this chapter.

## **2.4 National Planning and Legislative context**

### **2.4.1 The Flood Risk Management (Scotland) Act 2009**

15. Under the Flood Risk Management (Scotland) Act (FRMA) North Ayrshire Council is responsible for promoting a flood protection scheme for management of flood risk within its area. North Ayrshire Council is working closely with SEPA, Scottish Water and other local authorities to produce new national strategies and local plans. North Ayrshire Council must 'make' the scheme in accordance with Schedule 2 of the Flood Act and Regulation 11 of the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010. It is expected that approval from the Scottish Ministers will be required for the proposed scheme.

### **2.4.2 Marine (Scotland) Act 2010**

16. This Act provides a framework for the sustainable management of Scotland's seas and one of its key aims is to streamline and simplify the licensing and consenting process for marine projects. A co-ordinated application for planning consent and associated licences can be made via Marine Scotland Licensing Operations Team (MS-LOT), as part of a unified licensing and consenting process.

### **2.4.3 Environmental Assessment (Scotland) Act 2005**

17. This Act requires the responsible authority to secure the carrying out of an environmental assessment in relation to the plan or programme during the preparation of a qualifying plan or programme. In accordance with Part 2 of this Act, an environmental assessment requires:
  - The preparation of an environmental report;
  - The carrying out of consultations; and,
  - The taking into account of the environmental report and the result of the consultations in decision-making.

### **2.4.4 The Town and Country Planning (Scotland) Act 1997**

18. The Town and Country Planning (Scotland) Act 1997 is the principle legislation that governs the use and development of land in Scotland. The primary objectives of the Act are to promote sustainable economic development, encourage regeneration and to maintain and enhance the quality of the natural heritage and built environment.
19. Under Section 60 of the FRMA, flood protection schemes do not require separate planning permission. Section 57 of the Town and Country Planning (Scotland) Act 1997 (as amended by Section 65 of the FRMA) allows for deemed planning permission to be granted by Scottish Ministers on confirmation of a scheme. As part of the proposed scheme falls within the Millport Conservation Area, an application may be required under the Town and Country Planning (Scotland) Act 1997 and this will be confirmed in ongoing consultation with North Ayrshire Council. However, as noted

in Section 1, North Ayrshire Council, in consultation with the Scottish Government and in accordance with the Conservation Area Appraisal has advised that deemed consent would be appropriate and that planning permission would not be required.

#### **2.4.5 The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011**

20. The requirement for EIA for projects requiring planning permission is considered under the Town and Country Planning (EIA) (Scotland) Regulations 2011, which came into force in June 2011.

#### **2.4.6 Marine Works (EIA) Regulations 2007 (as amended) and Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013**

21. The Marine Regulations 2017 include transitional arrangements as set out in Regulation 34 that revoke The Marine Works (EIA) Regulations 2007 (referred to as the 'Marine Regulations 2007' Regulations'). The transitional arrangements set out the procedure for projects that began the EIA process before the 2017 Regulations came into force. Where, before 16th May 2017 an applicant has submitted an ES or requested a scoping opinion, the Marine Regulations 2007 will continue to apply. In respect of this, the screening conditions in Annex I and Annex II of the 2007 Regulations will continue to apply to requests for a screening opinion before 16th May 2017. The scoping opinion for the proposed scheme was submitted prior to 16th May 2017 and therefore the EIA falls under the Marine Regulations 2007.
22. The proposed scheme therefore requires EIA in accordance with the Marine Works (Environmental Impact Assessment) Regulations 2007 (2007 Regulations), and amendments made through The Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011.
23. Following Part 2 of the Marine Works (EIA) Regulations 2007 (as amended) and under Regulation 5 of the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013, an EIA screening request was submitted in 2017. It was then determined by Marine Scotland that the proposed scheme be subject to EIA under the Town and Country Planning (EIA) (Scotland) Regulations 2011.
24. This report is the ES prepared to support the Marine Licence application for the proposed scheme.

### **2.5 Nature Conservation Designated Sites**

25. There are several the designated sites located within the vicinity of the proposed scheme. All designated sites are Site of Special Scientific Interest (SSSIs). No Special Areas of Conservation (SACs), Special Protection Areas (SPAs) or Ramsar sites are present within this buffer. This is discussed further in **Chapter 16 Terrestrial Ecology** and the designated and non designated sites are shown on Figure 16.3.

### **2.6 National Policy Context**

26. Scottish national planning policy is currently set out through the following documents:
- National Planning Framework (NPF);

- Scottish Planning Policy (SPP) ;
- Designing Places - Designing Streets - A Policy Statement for Scotland; and,
- Circulars.

27. Statements within these documents represent material considerations to be taken into account in development planning decisions.

## **2.7 Scottish National Planning Framework 3**

28. The National Planning Framework (NPF) (Scottish Government, 2014a) is a long-term strategy for Scotland and is the spatial expression of the Government Economic Strategy, and their plans for development and investment in infrastructure. Part of the vision for Scotland is for it to be a natural, resilient place, with the environment and infrastructure to become more resilient to the impacts of climate change. It is highlighted that flooding issues will become increasingly important.

## **2.8 Land Use Strategy**

29. The Scottish Government's Land Use Strategy (Scottish Government, 2016) sets out key principles for the use and management of Scotland's land. It emphasises that land use should deliver multiple benefits, and encourages us to make best use of assets to support primary activities including flood management. The strategy highlights that rising sea levels, for example, are responsible for increasing coastal flood risk. Recent rates of sea level rise appear to be quickening, which is expected to increase erosion and flood risk. It notes that the collaborative approach to flood risk management planning that the Government advocates through the Flood Risk Management (Scotland) Act, will help communities to deal with these risks.

## **2.9 Scottish Planning Policy**

30. The Scottish Planning Policy (Scottish Government, 2014b) is the Scottish Government's policy on nationally important land use planning matters. The policy notes that the planning system should promote a precautionary approach to flood risk from all sources, including coastal, taking account of the predicted effects of climate change. It also states that the planning system should promote flood reduction by assessing flood risk and, where appropriate, undertaking natural and structural flood management measures, including flood protection.

## **2.10 Circulars**

### **2.10.1 Circular 1/2015**

31. Circular 1/2015 (The relationship between statutory land use planning system and marine planning and licencing) states the following under 'Coastal defences and flood risk management':
32. *'The marine environment, particularly in those areas close to shore, is a highly dynamic system, and there are relationships between physical works occurring in these areas and flood risk. There are*

*also close links between climate change and flood risk in coastal areas, particularly in relation to sea level rise.'*

33. *'The Flood Risk Management (Scotland) Act 2009 (FRMA) requires coastal areas at risk of flooding to be identified and objectives and measures to address flood risk to be coordinated across these areas. Ensuring close coordination between physical works occurring in coastal areas and actions to manage flood risk is essential.'*
34. *'The Scottish Environment Protection Agency's (SEPA) flood maps<sup>1</sup> identify areas at risk of coastal flooding. Areas at significant risk of coastal erosion and flood risk will be identified in Flood Risk Management Strategies prepared by SEPA. Where relevant, specific actions relating to coastal flood risk will be included in the 14 Local Flood Risk Management Plans which are prepared by local authorities.'*
35. *'The Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (as amended) require that when preparing strategic development plans and local development plans, planning authorities must have regard to any approved flood risk management strategy or finalised local flood risk management plan relating to the strategic development plan and local development plan area.'*
36. *'Under Section 60 of the FRMA flood protection schemes do not require separate planning permission. Section 57 of the Town and Country Planning (Scotland) Act 1997 (as amended by Section 65 of the FRMA) allows for deemed planning permission to be granted by Scottish Ministers on confirmation of a scheme.'*
37. *'Under the provisions of the Coast Protection Act 1949, local authorities have discretionary powers to carry out such coast protection work as may appear to them to be necessary or expedient for the protection of any land in their area against erosion and encroachment by the sea.'*

## **2.10.2 North Ayrshire Council Local Development Plan (2019)**

38. North Ayrshire Council adopted a new Local Development Plan on 28th November 2019 for North Ayrshire. This local development plan has several objectives which are relevant to the proposed scheme.
39. The new local plan states that "Development proposals should not result in damage to our coastal environment, particularly sensitive or remote coastal areas, unless the economic benefit arising from the proposal outweighs the environmental impact. The natural and environmental policies in this Plan set out areas of our coastline we will want to protect from development."
40. "A range of uses will be supported to support our coastal economy. In principle, we will support development proposals that:
  - a) *are consistent with Policy 24: Alignment with Marine Planning policy.*
  - b) *assist to develop and strengthen North Ayrshire's coastal economy and marketability.*
  - c) *improve accessibility to visit and explore North Ayrshire's coast and islands.*
  - d) *improve the physical connections between settlements for all abilities and multi user access.*

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<sup>1</sup> SEPA's flood risk map identifies Millport to be at high risk of coastal flooding

- e) *enhance existing strategic coastal marine assets and infrastructure – particularly where the development would address a qualitative deficiency in North Ayrshire’s coastal tourism infrastructure.*
- f) *provide improved step ashore facilities for marine activity and tourism.*
- g) *provide jobs to North Ayrshire communities.*
- h) *complement the function of our town centres and improve viability and vibrancy of town centres.”*

41. The Plan supports the implementation of the Millport Flood Prevention Scheme and associated regeneration opportunities that can provide or enhance tourism facilities, including step ashore facilities for marine activities.

42. Table 2-1 below shows relevant policies from the Local Development Plan.

Table 2-1 Relevant Policies from North Ayrshire adopted Local Development Plan

Policy	Summary
Strategic Policy 1: Spatial Strategy	The spatial strategy is based on the principle that we want to direct the right development to the right place. This means we want to direct most development to our towns, villages and developed coastline where we have infrastructure capacity to support new development.
Strategic Policy 3 Strategic Development Areas	North Ayrshire Council will support the development of the Strategic Development Areas identified (including Strategic Development Area 8: Cumbrae Millport). Proposals must demonstrate they do not adversely impact on the environmental quality of North Ayrshire by way of adverse impact on soils, water, air, population, human health, cultural heritage, material assets, climatic factors, landscape and biodiversity (flora and fauna). Proposals may require to be the subject of a separate strategic environmental assessment.
Policy 9: Preserving and Enhancing our Conservation Areas	Development within or adjacent to a Conservation Area, that preserves or enhances its character and appearance, and is consistent with any relevant Conservation Area Appraisal or Management Plan, will be supported providing it can be demonstrated that it retains appropriate scale, proportion, siting, massing, design, and use of materials whilst not inhibiting high quality innovative design.
Policy 14 Green and Blue Infrastructure	All proposals should seek to protect, create, enhance and/or enlarge our natural features and habitats which make up our green and blue infrastructure (including open space), ensuring no unacceptable adverse environmental impacts occur.  Green and blue infrastructure should be multi-functional, accessible and integral to its local circumstances.
Policy 15: Landscape and Seascape	We will support development that protects and/ or enhances our landscape/seascape character, avoiding unacceptable adverse impacts on our designated and non-designated landscape areas

Policy	Summary
	and features.
Policy 16 Protection of our Designated Sites	We will support development which would not have an unacceptable adverse effect on our valuable natural environment as defined by the following legislative and planning designations; <ol style="list-style-type: none"> <li>a) Nature Conservation Sites of International Importance;</li> <li>b) Nature Conservation Sites of National Importance;</li> <li>c) Nature Conservation Sites of Local Importance;</li> <li>d) Marine Protected Areas;</li> <li>e) Biodiversity Action Plan Habitats and Species; and</li> <li>f) Protected Species.</li> </ol>
Policy 22 Water Environment Quality	We will support development that helps achieve the objectives of the Water Framework Directive and the River Basin Management Plan for Scotland. Generally, development which would lead to the deterioration of the water environment will be resisted unless it would deliver significant social, environmental or economic benefits.
Policy 23 Flood Risk Management	We will support development that demonstrates accordance with the Flood Risk Framework as defined in Scottish Planning Policy and shown in schedule 7, relevant flood risk management strategies and local flood risk management plans. <p>Development proposals should:</p> <ul style="list-style-type: none"> <li>• Clearly set out measures to protect against, and manage, flood risk</li> <li>• Include sustainable urban drainage systems (SuDS) where surface water is proposed to be discharged to the water environment, in accordance with the Water Environment (Controlled Activities) (Scotland) Regulations 2011 as amended.</li> <li>• Include provision of temporary / construction phase SuDS.</li> <li>• Include appropriate long-term maintenance arrangements</li> </ul>
Policy 24 Alignment with Marine Planning	Developments on coastal areas with significant constraints will be supported, in principle, only where they would also contribute to the economic regeneration or well-being of communities whose livelihood is dependent on marine or coastal activities. <p>All marine proposals should identify environmental impacts and mitigate against these to ensure there are not any unacceptable adverse impacts.</p>

### 2.10.3 Ayrshire Joint Structure Plan

43. The Ayrshire Joint Structure Plan 'Growing A Sustainable Ayrshire' (North Ayrshire Council, East Ayrshire Council and South Ayrshire Council, 2007) establishes a framework that brings together the aspirations of communities with those of business and industry, and the area's many supporting agencies and organisations, to provide a strategic land use context to the year 2025.
44. The Plan recognises that the threat of flooding at the coast and in river valleys due to climate change is a matter of impending and serious concern. It is noted that sea level rise is likely to be small but is predicted to be accompanied by an increasing number of storms. This could affect tide levels that may give rise to more and higher floods in coastal communities.

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