



FLOODING AND COAST PROTECTION POLICY

Coast protection powers

The Coast Protection Act 1949 (hereafter referred to as 'the Act of 1949') defines the Council as the Coast Protection Authority for Shetland. The Act of 1949 sets out the Authority's powers in relation to the protection of the coast. Coast protection work is defined in the Act of 1949 and "means any work of construction, alteration, improvement, repair, maintenance, demolition or removal for the purpose of the protection of any land, and includes the sowing or planting of vegetation for the said purpose". Works may consist of new projects or repairs or maintenance of existing works.

There is no requirement that coast protection work be carried out, but the Authority may:

- a) carry out such coast protection work as appears to be necessary or expedient for the protection of any land in its area.
- b) enter into agreement with others in relation to such work (which can be carried out by the Authority or by the other party and be on such terms as to payment as may be specified in the agreement).
- c) acquire land for, or associated with, such coast protection work.
- d) grant consent to coast protection works to be carried out by others (and contribute to the cost of such works if appropriate).
- e) require owners (etc.) to repair or maintain existing coast protection works (or repair them themselves and recover the reasonable costs of such repairs).
- f) carry out work which appears to be urgently necessary for the protection of any land in its area; and
- g) prevent excavation of materials from the seashore.

Notes

- All Coast Protection works require to be authorised by the Council as Coast Protection Authority (other than repairs and maintenance or emergency works).
- Small-scale new works carried out by bodies other than the Council may be eligible for a grant from the Council.

Priorities for action

Coast Protection is a discretionary power; nevertheless, there will almost certainly be circumstances in which the Council feels obliged to act, either because its own assets are at risk or because of the particular case. There might also be circumstances where the Council has common law duties of care in respect of prevention of damage caused by erosion of land owned by the Council

Coast protection work for the protection of public roads is carried out by the Council as roads authority. Costs are met from the Roads budget as the Council has a duty to maintain public roads under the Roads (Scotland) Act 1984.

Procedure

Works would normally be carried out by the Council in accordance with the guidelines as set out in Schedule 2 of the Flood Risk Management (Scotland) Act 2009 “Flood Protection Schemes: Procedure etc”

New coast protection works – to be carried out by the Council

As there is no overall budget for Coast Protection projects, each new scheme seeking funding will require its own report to be submitted to the Council through the Capital Programme Gateway Process for consideration and programming, however, in emergency situations works could proceed under the scheme of delegation.

Each case would initially be appraised using

Service need Report Template
Service need Appraisal Template
Feasibility Study Template
Feasibility Appraisal Template

Such assessments place the Council in a much better position to consider the overall financial and engineering merits of works and their place in the 5-year programme.

Once it has been decided that coast protection works are appropriate, and that an appropriate scheme has been devised, a notice of the intention to carry out the works has to be placed in a local newspaper and The Edinburgh Gazette. The local authority must also display a notice of the proposed flood protection scheme in a prominent position in the locality in which the operations are to be carried out. A similar notice has to be served on persons or bodies with an interest in the land or likely to be affected by the work. (The list of bodies includes a range of statutory bodies, as well as the affected landowners). The notices must also state the cost of the works and that objections to the proposal must be made within 28 days of publication or service.

The project can then be carried out following formal tender and contract letting procedures.

Existing coast protection works – Council and Private projects

Repair and maintenance of coast protection works is the responsibility of the landowner except where government grant was made available for their construction. Accordingly, it is in landowners’ best interests to insure any such works situated on their land.

The Council can carry out repairs and maintenance to existing coast protection works in the following circumstances:

- a) where the works were constructed by the Coast Protection Authority with government grant (no contribution is to be sought from the landowner in such cases);
- b) where the landowner has failed to carry out repairs or maintenance following the service of a notice by the Council requiring repairs or maintenance to be carried out (the Council would normally seek to recover the reasonable costs of carrying out such work); and
- c) where the Council is the landowner (the costs of such works are met from existing maintenance budgets).

Coast protection carried out by other bodies

Coast protection can be carried out by other bodies. The Council's permission as Coast Protection Authority is required. In addition, planning permission and a works licence under The Zetland County Council Act 1974, may also be required. When determining any such applications the Council also has a duty to request and consider an Environmental Assessment if required to do so by The Environmental Assessment (Scotland) Regulations 1988). An applicant may also require a licence from the Scottish Government under the Food and Environment Protection Act 1985 (FEPA).

The Council is empowered to assist with the cost of projects carried out by others. No direct payment is received from the Scottish Government to cover such expenditure, and any grant assistance is discretionary. There may be cases where it would be more efficient to offer grant assistance to individuals to undertake the work to their property, rather than for the Council to do the work itself. Alternatively, other bodies might carry out smaller scale projects without a grant being sought.

Emergency arrangements

Cases sometimes arise where work needs to be undertaken quickly because of imminent threats to property or public safety. The Council has powers, under S 5(6) of the Act of 1949 to undertake such works without the need to obtain the usual consents.

Agreements to undertake works

Persons who will benefit from coast protection works (including urgent works) must normally enter into an agreement with the Council prior to the works being undertaken, although this may not be appropriate in the case of large or complex schemes. The agreement will include an undertaking from the affected property owner to the effect that (s)he will make a contribution to cost of the works, with that contribution to be in line with those levels set out under Individual Coast Protection Grants