

FRIENDS OF POYNTON POOL



Economy and Growth Committee Response to a Petition - Poynton Pool

Friday, 26 January 2024

This paper is Friends of Poynton Pool’s (“FOPP”) response to Cheshire East Council’s (“CEC”) ‘*Response to a Petition – Poynton Pool*’ report to this committee. The left hand column of the table below replicates the CEC report, with the FoPP response provided on the right.

It should be stated and acknowledged that Council’s original decisions were based on information believed to be accurate in the engineers’ reports. But since these reports have been identified as containing inaccuracies and omissions, then it is our opinion that accurate information should be provided and scrutinised by committee before making any decisions.

Para. Ref	Cheshire East Council Report	Friends of Poynton Pool Comments
1	The purpose of this report is to receive a petition and to note that the matter is the subject of a current live planning application.	This petition was submitted on 4 October 2023. Q. Why has it taken almost 4 months for this petition to be heard? Q. Can CEC provide a rationale for submitting a related planning application on 3 November 2023 without considering the objections and wishes of the residents of Poynton?
Executive Summary		
2	The Council has received a petition regarding the proposed work to be undertaken at Poynton Pool.	As per point 1.
3	The petition requests that “ <i>Cheshire East Council reviews the Poynton Reservoir Flood Study (2019) and if that identifies that works should be carried out to the dam at Poynton Pool:</i> <ol style="list-style-type: none"> 1. <i>the most environmentally friendly identified solutions are employed, with the objective of causing minimal disruption to the landscape, the ecology and the public enjoyment of the Park.</i> 2. <i>any cost/benefit analysis of the project includes both a Capital Asset Value for Amenity Trees (CAVAT) to account for the loss of amenity, and the DEFRA biodiversity offsetting metric to calculate a biodiversity net gain resulting from the project.</i> 	Q. Why does the scheme fail to take account of the circa £3m CAVAT value of the trees? Q. Have costs been allocated for the additional cost of the 30-year Landscape Management Plan whereby the contractor only manages the first year for defects/liability? Is CEC is taking on a significant 29-year financial liability?

Para. Ref	Cheshire East Council Report	Friends of Poynton Pool Comments
	3. Any subsequent mitigation planting is within the town boundaries.”	<p>The proposed mitigation planning is in Woodford, Stockport on land that is not accessible to the general public.</p> <p>Q. Can CEC describe how this is replacing the lost amenity value to the residents of Poynton?</p>
4	In accordance with the Council’s Constitution, petitions signed by over 5000 petitioners may be submitted to Full Council or a Committee for consultation.	<p>This valid petition was lodged with the Council on 4 October 2023. It exceeded the 5% threshold of the local population which should trigger a public, full Council debate regarding residents’ concerns according to 2009 legislation and subsequent guidance in 2010.</p> <p>Q. Can CEC explain when this will take place, or why this is not happening?</p>
5	The report outlines that the subject of the petition is currently under consideration as a live planning application in which the Council is a participant, and it is an application that will be referred to the Strategic Planning Committee for a decision. Matters raised in the petition will be the subject of scrutiny from that planning committee.	As per point 1.
6	<p>The Economy and Growth Committee has previously considered a report on Poynton Pool at its meeting on 6 June 2023.</p> <p>RECOMMENDATIONS</p> <p>The Economy and Growth Committee is recommended to:</p> <p>1. receive and note the petition.</p>	<p>The Council’s original decisions were based on information considered to be accurate in the engineers’ reports.</p> <p>Previous representations to the Economy and Growth committee were made prior to:</p> <ul style="list-style-type: none"> • FoPP identifying gross errors in the Spillway Upgrade: Initial Options Report, 2021 • the amendment of reports to correct the errors we identified • release of the amended Summary Initial Options Report, 2023, Summary Options report, and other documents that only became available with the planning application. <p>All of which is another indication of the Council’s failure to consult with the community. FoPP have not hidden our interest in this project. It cannot be said that the committee has previously considered these issues, because they were not published or otherwise available.</p> <p>Q. Since June 2023 these reports have been identified as inaccurate. Is it not incumbent on CEC to ensure that the accuracy of the information is re-assessed and the original decision scrutinised to ensure that public funds are correctly used?</p>

Para. Ref	Cheshire East Council Report	Friends of Poynton Pool Comments
Background		
7	Poynton Pool is a large high-risk reservoir as defined by the Reservoirs Act 1975 (the Act). As a result, it is regulated and managed in accordance with the Act and the Council as the owner / operator has statutory responsibilities.	<p>Poynton Pool is a statutory reservoir and whilst it is mandatory that it is managed in accordance with the Act <u>it is not mandatory that the option 3C is implemented.</u></p> <p>Q. Given the errors in the original engineers' report, the overstatement of pool volume, the pool catchment area and lack of understanding of the pool dam structure, and that this scheme is not mandated why is CEC proceeding with this proposal?</p>
8	The Council must appoint qualified engineers from a DEFRA panel (all reservoirs panel) to supervise and inspect the reservoir. During its last inspection the Council was required to undertake a flood study and prepare a draw down plan. The flood study found that the reservoir did <u>not</u> meet modern standards.	<p>The flood study is based on data points that are incorrect.</p> <p>Q. Can CEC please explain what happens to the assessment if the correct data points are used in terms of water level and catchment area?</p>
9	Therefore, the Council is obligated to undertake works appropriate (either a full engineering solution or a risk-based solution) to address the issues, or permanently remove water, reducing its capacity to take it outside of the current legislation.	<p>Poynton Pool is a statutory reservoir and whilst it is mandatory that it is managed in accordance with the Act <u>it is not mandatory that the option 3C proposal is implemented.</u></p> <p>FoPP consider there are relatively straightforward options to upgrade the overflow capacity to pass the design flood whilst carrying out some nominal regulation and raising of the crest. These solutions would not have the adverse visual impact, or loss of social value, acoustic screening and carbon capture that comes with option 3C.</p> <p>Q. Would CEC consider these alternative options?</p>
10	Should the Council not progress with the remedial work required, an inspection under s10 of the Act would be progressed, notice served, and the Council would be compelled to undertake the work.	<p>4 years have now elapsed since the certificate 10(6) was issued and the spillway capacity has not been addressed so the Supervising Engineer can call for an S10 Inspection, this effectively brings the Inspection forward from August 2026.</p> <p>Q. Would CEC consider deferring this proposal and calling for a new S10 inspection, and if not, why not?</p>
11	Following initial concept development, a proposed solution went out for public consultation prior to the intention to submit a planning application. The Council received a very strong response from the public, which was not in favour of the proposal. The main concerns raised were whether the works are needed, the environmental and visual impact of loss of trees on the reservoir's dam and that other solutions should be considered.	<p>The proposed Option 3C scheme is fundamentally the same as that which went out for public consultation.</p>

Para. Ref	Cheshire East Council Report	Friends of Poynton Pool Comments
12	In considering this feedback the Council was receptive to any alternative solutions put forward and these were also tested. Work was undertaken to refine and amend the Council's proposal prior to the submission to planning.	Q. If the Council has tested alternative solutions can we have sight of the dated reports from these tests? Is there a fully costed analysis that can be shared?
13	Economy & Growth Committee noted an update report on this matter on 6th June 2023.	As per point 6.
14	Subsequently, discussions were held between the Council, (including its technical advisors / reservoir engineer), Poynton Town Council, and the community group, Friends of Poynton Pool, on 26th July 2023, and the meeting covered challenging technical details, data sources, and debate around alternative solutions.	<p>What has been described as discussions with Poynton Town Council and FoPP were not discussions, they were meetings where all suggestions for more proportionate solutions were dismissed.</p> <p>As stated at point 6, this meeting was predicated on the information originally supplied as <u>being correct</u>, if it was not, then the meetings and decisions taken are <u>invalid</u> at best.</p> <p>Q. Given the issues highlighted, is CEC not required to review and question the decisions taken to date?</p>
15	The proposal documentation was further updated following these discussions and a full planning application was submitted on the 3rd November 2023. The submission was registered and is now a live planning application with a likely Planning Committee date in early 2024.	As per point 1.
16	A further meeting was held on the 13th November 2023, attended by the Council, (including its technical advisors / reservoir engineer), Poynton Town Council, and the Friends of Poynton Pool. The meeting was also joined by the regulatory body, the Environment Agency. Again technical details, risk management, and works approach were discussed.	<p>At this meeting of 13th November, it was acknowledged by the Environment Agency that the guidance, and therefore the approach taken at Poynton Pool, needs to be updated to reflect current thinking on risk management and risk decision making as set out in the UK Treasury's Green Book (designed to provide for equitable decision making across government).</p> <p>Given the committee makes risk-based decisions on the allocation of resources, the least that might be expected is that, as advised to the council and Jacobs by Professor David Ball (Director of the Centre for Decision Analysis and Risk Management) you follow current guidance rather than the outdated court precedent relied upon by the Council's engineers, which was set in 1947.</p> <p>Q. Can CEC provide the justification as to why the Green Book decision making approach has not followed?</p>

Para. Ref	Cheshire East Council Report	Friends of Poynton Pool Comments
17	As referenced in the report to Economy & Growth Committee in June 2023, various options have been considered. These included not acting, drawing down the reservoir, a full engineering solution, a risk-based solution and a wide range of other options that have been either developed by the engineering team or presented by members of the public (including Friends of Poynton Pool).	Options presented by FoPP appear not to have been adequately considered, as discussed above in relation to point 14.
18	Do nothing. There is no credible 'do nothing' option. The Council is compelled to undertake the work because of its statutory duties as 'Undertaker' in accordance with the Act and its general responsibilities around health and safety as a landowner. Should the Council choose not to do this, the Supervising Panel Engineer is statutorily bound to take steps to compel the Council by serving notice, alongside the potential risks of consequential legal action.	<p>To state the Council is compelled to this work because of statutory duties is incorrect. Poynton Pool is a statutory reservoir and whilst it is mandatory that it is managed in accordance with the Act <u>it is not mandatory that the option 3C is implemented.</u></p> <p>Given FoPP findings that the embankment might be a permeable weir, doing nothing might actually be a credible option, but this will not be known without a competent assessment of the composition of the embankment.</p> <p>The Council could be spending c £1.38m of public money, and cause irreparable damage to a historic public asset, when the work may not be required.</p> <p>Q. Why at a time when the Council is planning significant cuts to local services is it not incumbent on CEC, to understand exactly what they are dealing with before allocating funding to a proposal that is not mandated and may not be required in its current form?</p>
19	Full engineering solution. The Council could adopt a full engineering solution, in effect bringing the reservoir up to modern standards. The Council has been advised that this is not required at this time, that it would be more expensive, and would be more environmentally impactful than the proposed solution.	As per point 18.
20	A risk-based solution minimises the environmental impact and amount of work that is done to the reservoir whilst also delivering the works needed to make the reservoir safe.	<p>The Council's risk-based solution does not minimise or adequately consider the environmental impact. The loss of mature healthy trees, destruction of wildlife habitats and irreparable damage to the landscape at Poynton Pool is a significant cost in any reasonable cost benefit analysis.</p> <p>Q. Is CEC fully aware of the permanent negative impacts this work will cause?</p>
21	Other options (i.e. proposals to amend the risk-based solution). A wide range of other options have been proposed by the public and have been fully considered.	As per point 9.

Para. Ref	Cheshire East Council Report	Friends of Poynton Pool Comments						
	These have centred around preventing tree loss and included increasing the size of the outlet pipework but not carrying out crest works, removing silt from the pool, creating flood storage in Poynton Pool and /or using alternative materials to construct the kerb.							
22	Each alternative proposed has been carefully considered by the Councils consultants. Unfortunately, none of the options would deliver a better outcome, with these either not providing the protection needed by the preferred option or they are more impactful to the park, including significantly greater tree loss.	Q. Did the assessment also detail what criteria were used to define “a better outcome”?						
Consultation and Engagement								
23	The Council has consulted with Ward Councillors and Poynton Town Council, since late 2022.	The consultation has been little more than a box-ticking exercise, as is evidenced by the public distrust of the Council. The approach taken by its officers is damaging the reputation of the Council. Q. How does CEC intend to address this aspect of the engagement?						
24	A public meeting was held in Poynton in October 2022. The Council has responded to numerous letters of enquiry and challenge. The Council has engaged positively with the community group, Friends of Poynton Pool, along with the Town Council, and substantive meetings were held recently in July 2023, and November 2023.	As per point 23.						
25	The proposal is now subject to a live planning application and all relevant parties will be engaged with under further consultation under the planning process and can make representation to the planning committee.	As per point 23.						
Reasons for Recommendations								
26	In accordance with paragraph 4.29 of Chapter 3 of the Constitution (July 2023) and Chapter 7 and the Petitions Scheme of the Constitution, petitions signed by over 5000 petitioners may be accepted at the start of a meeting of a committee.	No comment						
27	<p>1 Other Options Considered</p> <table border="1" data-bbox="213 1688 778 1783"> <thead> <tr> <th data-bbox="213 1688 384 1715">Option</th> <th data-bbox="384 1688 592 1715">Impact</th> <th data-bbox="592 1688 778 1715">Risk</th> </tr> </thead> <tbody> <tr> <td data-bbox="213 1715 384 1783">Do nothing</td> <td data-bbox="384 1715 592 1783">Council would be seen not to be open and transparent</td> <td data-bbox="592 1715 778 1783">The Council could be open to Challenge</td> </tr> </tbody> </table>	Option	Impact	Risk	Do nothing	Council would be seen not to be open and transparent	The Council could be open to Challenge	The fact that CEC even considered a ‘do nothing’ option in regards to a petition of 5,820 constituents is shocking. Q. Does CEC feel that the right tone was set at the outset of the engagement with the constituents?
Option	Impact	Risk						
Do nothing	Council would be seen not to be open and transparent	The Council could be open to Challenge						
Implications and Comments Monitoring Officer/Legal								

Para. Ref	Cheshire East Council Report	Friends of Poynton Pool Comments
28	In accordance with paragraph 4.29 of Chapter 3 of the Constitution (July 2023) and Chapter 7 and the Petitions Scheme of the Constitution, petitions signed by over 5000 petitioners may be accepted at the start of an ordinary Council meeting or a service a committee.	As per point 1.
29	A Petition should relate to an area or the functions of the Council or relate to a consultation exercises or be pursuant to specific legislation, may be accepted at the start of an ordinary Council meeting or a service committee.	As per point 1.
30	The petition organiser must register the petition with the Head of Democratic Services and Governance. The Petition must be signed either in person or electronically by at least 5,000 petitioners and contain the name and contact details of the petition organiser. Each signature must be supported with a clear indication that the signatory is a resident of the Borough and on the electoral register. Under the Councils Petitions Scheme it would be usual for the Committee to consider the matter and to determine if any further action should be taken, such as request that an officer report be submitted to the committee at a later date of if the petition is of significant importance to the whole borough can decide that the petition be debated at Full Council.	As per point 1.
31	It is noted that the proposal is subject to a live planning application to which the Council is a participant and therefore it may not be appropriate at this time for the Committee to consider the petition any further as this may prejudice the ongoing planning application.	<p>That the petition now relates to a live planning application is an irrelevance. We are petitioning the Council as landowner not as local planning authority. The Council is obligated to separate these functions where there is a potential conflict of interest.</p> <p>Q. If the proposal lacks factual accuracy, then the Council would be guilty of <u>wasting public funds</u>, particularly at a time when the Council has a significant financial deficit and is proposing multiple service cuts.</p> <p>Surely this is something that CEC should have debated fully before proceeding with a planning application?</p>
32	There are no other direct legal implications arising from the recommendations of this report currently. Any decision of the committee which gives rise to the need for a further report may have legal implications, which will be assessed at that time.	No comment.
Section 151 Officer/Finance		
33	Legal comments were provided previously for the report to Economy & Growth Committee on the 6 th June 2023.	No comment.

Para. Ref	Cheshire East Council Report	Friends of Poynton Pool Comments
34	There are no direct financial implications arising from the recommendations of this report. Any decision of the committee which gives rise to the need for a further report may have financial implications.	As per point 3.2.
35	Finance comments were provided previously for the report to Economy & Growth Committee on the 6 th June 2023.	As per point 23.
<i>Policy</i>		
36	There are no direct policy implications, however there may be such implications as a consequence of any further action taken.	No comment.
<i>Equality, Diversity and Inclusion</i>		
37	There are no direct equality implications, however there may be such implications as a consequence of any further action taken. Such matters will also be considered by the relevant planning committee.	No comment.
38	As identified under the previous report, the public right of way would be improved, and this may have benefits for residents with physical disabilities, however the existing path would be closed for the duration of the works, although there are alternative routes.	There is already an alternative tarmac pavement by the B5092 that runs adjacent to the path at the side of the pool.
39	While we acknowledge the removal of trees may be impactful on the mental health of some residents the Council also has a statutory duty to maintain a safe working area for those undertaking the works, has the requirement to comply with the reservoirs act and manage the asset in future years.	<p>This proposed scheme which involves the removal of mature healthy trees is not a mandatory requirement. 31 of the 86 mature trees recorded in the tree survey will be removed and the remaining mature trees will be "Compromised and likely lost."</p> <p>This will severely compromise the landscape and impact negatively on residents visiting the park and pool.</p> <p>Q. Why are the other less invasive proposals not suitable. Kindly share the findings of why?</p>
<i>Human Resources</i>		
40	There are no direct human resource implications, however there may be as a consequence of any further action taken.	No comment.
<i>Risk Management</i>		
41	The Council has to deliver a scheme which is unpopular with local residents but not to do so would see it contravene its statutory obligations. It has sought to mitigate this issue by engagement with the public and seeking alternative solutions, unfortunately these have not delivered a viable alternative. However, through this exercise the Council has received and tested proposed alternatives and also refined its proposals based on the comments and feedback it has received. This is now the subject of a live planning application, and full information is on the planning portal.	<p>The Council does not 'have to' deliver this scheme. It is within the gift of this Council to deliver a scheme that is proportionate to the risk, but first it would be necessary to carry out the aforementioned investigations to improve confidence in any decision. The current proposal is a 'belt and braces' approach because the current level of knowledge is insufficient to inform a confident judgement.</p> <p>The report is still written on the basis that all the detail contained in the engineers' report is correct, if this is not the case, then this statement is invalid and the statutory obligation is null and void.</p>

Para. Ref	Cheshire East Council Report	Friends of Poynton Pool Comments
		<p>Indeed, <u>is there not a statutory obligation to operate with accurate information</u> at all times when dealing with public funds?</p> <p>Q. How can CEC move forward with this proposal given the issues highlighted?</p>
42	<p>In compliance with the Reservoirs Act 1975 the Council has appointed appropriately qualified and experienced engineers from the DEFRA appointed all reservoirs panel. Both Panel engineers are from a very small cohort of expert engineers that are formally appointed to undertake this type of specialist work. Whilst there are on occasions, alternative outcomes for consideration, the engineers currently agree in this case with the risk-based approach that has been adopted for the proposed works.</p>	<p>Given that the engineers have been described by your officers as the ‘subject matter experts’ why have they advanced this catastrophic solution when contrary to guidance from their own professional body: <i>“The judgement of appropriate dam freeboard is then derived using this overtopping discharge, and knowledge of the condition and composition of the dam crest and downstream slope.”</i></p> <p>Q. If the engineers do not know the composition of the dam embankment, how is it possible to set the parameters for an engineered structure?</p>
43	<p>The Council has also tested its draw down plan in early May as part of the Council’s emergency planning process. This involved all the emergency services and the Environment Agency. This desk top exercising of the plan provided useful feedback which will be used to enhance the draw down plan.</p>	<p>No comment.</p>
44	<p>Undertaking work set out in this report would reduce the risk exposure of the Council as a reservoir undertaker. Drawing down the reservoir, thereby removing the risk or delivery of a full engineering solution may reduce this risk further but would have a greater visual and environmental impact than the proposed solution. Other proposed risk-based approaches would not deliver the risk management required to satisfy the Inspecting Engineer allowing them to satisfy their and the Council’s statutory obligations under the Act.</p>	<p>As per point 7.</p>
<i>Rural Communities</i>		
45	<p>There are no direct implications on rural communities, however there may be as a consequence of any further action taken.</p>	<p>No comment.</p>
<i>Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)</i>		
46	<p>There are no direct implications of the decision to receive the petition, however there may be as a consequence of any further action taken.</p>	<p>No comment.</p>

Para. Ref	Cheshire East Council Report	Friends of Poynton Pool Comments
<i>Public Health</i>		
47	There are no direct implications of the decision to receive the petition, however there may be as a consequence of any further action taken.	No comment.
<i>Climate Change</i>		
48	There are no direct implications of the decision to receive the petition, however there may be as a consequence of any further action taken.	No comment.

Together we must ensure that enough protection is in place to avoid making the wrong decisions. Friends of Poynton Pool believe we share the same objectives as the Council and could work collaboratively to achieve reasonable safety, while protecting our environment.

FoPP request the Council put the proposal on hold while further investigative work is carried and a more credible risk assessment is produced.

We would welcome the opportunity to work with the Council to develop a more reasonable and balanced solution for Poynton Pool, to use your council's strapline:

“working for a brighter future together”

On behalf of Friends of Poynton Pool