

NEWTON STEWART FLOOD PROTECTION SCHEME**Reporter's Initial Questions/Requests to Dumfries & Galloway Council (Part 2 (2))**

11. Regulation 12(2) of The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 requires an objector having an interest in any land on which the proposed operations are to be carried out or which may be affected by any of the scheme operations, or by any alteration in the flow of water caused by any of the operations, to give (a) details of the land concerned and (b) the nature of the interest in the land. The Reporter notes that most objections do not give the information referred to at (a) and (b). Should the missing information be sought? What assumptions does the Council make, if any, as to an objector's interest in land in the absence of the information?

Response: Prior to issuing notifications in terms of paragraph 1(d) of schedule 2 to the Act, the Council carried out a land referencing exercise over all land within the Scheme boundaries to identify all those (i) who have an interest in any land on which the proposed operations are to be carried out, or (ii) who have interest in any other land may be affected by any of the proposed operations or by any alteration in the flow of water caused by any of the proposed operations. From this the Council were aware of the names and addresses of those who had an interest in land affected.

As the objections were received these were categorised into 2 groups – general objections and fishing objections (given a G or F reference). This was not to rank them in any way but to enable subsequent responses to be drafted accordingly.

With the general objections, the majority of these did not respond to the question to specify (a) or (b) and therefore these were 'mapped' on a plan of the Scheme boundary by the Project Team and cross referenced with the information already held as a result of the land referencing exercise. If the objector's address fell within the Scheme boundary then it was assumed they would fall into category (a) 'those affected'. A summary of each objection also referenced those within the Scheme boundary. A copy of the plans and summary are attached as reference Q11(1), Q11(2), Q11(3).

With regard to the fishing objections, emails were sent to each group and objector identified as a "fishing objector" requesting additional information about ownership, interests, rights etc. This is summarised in the attached table. See reference Q11(4)

The Project Team also gave details of these findings in the Communities Committee Report on 22 August 2024 (full report attached as part of response to Q13) with the specific paragraph as follows,

'Since the closure of the notification period, the Project Team has spent time reviewing all the representations. In total 58 representations were received. Of these 24 have been classed as 'general objections' (from property owners or individuals who object to the Scheme) and 34 'fishing objections' (from organisations or individual who object primarily on potential impact on fishing or fish species). Of the 24 general objections, 15 have an interest in land within the Scheme boundary. The Newton Stewart and District Angling Association also have an interest in land.'

Hopefully this satisfies the Reporter that the Council did try to ascertain (a) details of the land concerned and (b) the nature of the interest in the land. However, if the Reporter believes that there is missing information as to the nature of a relevant objector's interest the Council would suggest that the objector is requested to provide it to the Reporter through the Programme Officer.

15. Objection F4 by ██████████ for the River Cree District Salmon Fishery Board (RCDSFB) says the RCDSFB requires a "full EIA". ██████████ personal objection (F1) refers to the lack of consultation with the RCDSFB. The Reporter notes that prior to giving notice of the proposed scheme and presumably having determined that the scheme is not required to be subject to an Environmental Impact Assessment, the Council requested a screening opinion from consultative bodies, as required by Regulations 4 and 5. So far as the Reporter can see, the RCDSFB was not included in this request. The Reporter notes further that Regulation 2 defines consultative bodies to include "any other body designated by statutory provision as having specific environmental responsibilities which, in the opinion of the local authority proposing the flood protection scheme, has an interest in relation to the environmental effects of that scheme". It appears to the Reporter

that the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is a statutory provision giving the RCDSFB specific environmental responsibilities. So presumably the Council's opinion was that the RCDSFB does not have, in the words of Regulation 2, "an interest in relation to the environmental effects of that scheme". If that is the Council's opinion, the Reporter asks for reasons for that opinion. The Reporter surmises that, if the RCDSFB had been regarded as a consultative body and its screening opinion had been sought, the objections appear to indicate that that opinion would have stated that the scheme is required to be subject to an Environmental Impact Assessment. In those circumstances, Regulation 6(1) would have required the Council to prepare an Environmental Impact Assessment report. The Reporter seeks the Council's views, bearing in mind Regulations 2 to 6 inclusive, (a) on his interpretation and (b) the implications of that interpretation for the processing of the scheme (including the present plans for a hearing).

Response: The consultative bodies for screening in terms of regulation 5 were Scottish Environmental Protection Agency (SEPA), Scottish Natural Heritage (SNH), Scottish Water (SW), DGC Planning, and Galloway Fisheries Trust (GFT). This was on the following basis,

Sweco were appointed by the Council to develop the Flood Protection Scheme, and this included Environmental Scoping (and then either preparing an Environmental Statement or undertaking a full EIA). Once the draft screening report was ready for issue, in conjunction with DGC Planning, and the Project Team for this Scheme, the consultative bodies were identified. GFT were included as they were considered to be the overarching body with a role in ecology, fishing and the river environment.

Sweco have advised further on the selection of GFT, *'We consulted with the Galloway Fisheries Trust (response attached). We understand that there are six District Salmon Fishery Boards covering the six main river catchments in Galloway (Bladnoch, Kirkcudbrightshire Dee, Water of Fleet, Luce and Urr and the River Cree). The GFT is an environmental charity which was set up to support the local District Salmon Fishery Boards in the Southwest of Scotland with common problems and aims. The GFT assist a number of Salmon Fishery Boards including RCDSFB and provides services, scientific expertise, and practical efforts to support them in fulfilling their statutory duties. Together, they contribute to the well-being of the southwest of Scotland's aquatic ecosystems and communities. We received a very detailed and useful consultation response from GFT and on their website it highlights that they are there to provide expertise and advice on a wide variety of fishery related topics. This includes planning applications, forestry design plans and Environmental Statements and Impact Assessments.*

In addition to being asked for a screening opinion, the GFT were part of the 'Value Management' process from the outset. This process was part of the development of the Scheme, from the initial 25 design options through to the preferred outline design which was published. The Value Management include representatives from the Project Team, Ward Members, Community Council, SEPA, SNH and the GFT.

In response to the objections received from the groups with an interest in fishing (Anglers Association, GFT and River Cree District Salmon Fishery Board) when the Scheme was published (full copies of objections supplied previously), the Project Team reviewed the points that were raised by them and sent a formal response to outline the mitigations, additional survey work etc which would be undertaken with their help, both at the detailed design stage and pre-construction. Additionally, we set up a Working Group on this topic and held an initial meeting in Newton Stewart in early 2024 (this was attended by the River Cree District Salmon Fishery Board, Angling Association, and the GFT). These groups supplied us with additional information and documents. In response to this the Project Team are preparing 2 briefing notes, one to look at a potential intervention upstream to improve River Ecology, and one which will look at Fishing and the river environment along the length of the Scheme. Both are 'work in progress' but will include full details of surveys required, mitigation, restricted working months to coincide with spawning etc.

With respect to the specific points raised by the Reporter. The Council does not agree with the Reporter's interpretation that RCDSFB are a consultative body within the terms of regulation 2. As the Reporter has stated, regulation 2(e) sets out that a consultative body is ... any other body designated by statutory provision as having specific environmental responsibilities which, in the opinion of the local authority proposing the flood protection scheme, has an interest in relation to the environmental effects of that scheme. The test is twofold. It is not enough for the body to have an interest in relation to the environmental effects of that scheme, they must first have specific environmental responsibilities designated by statutory

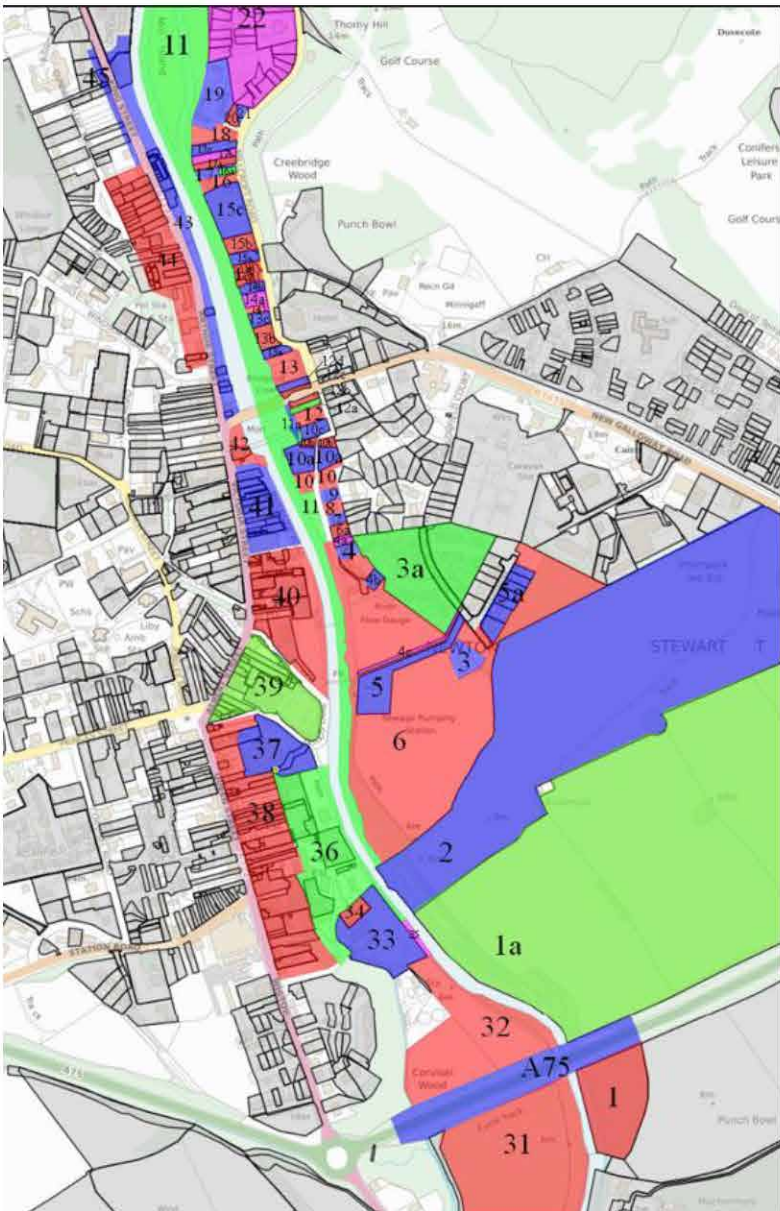
provision. The Council does not agree with the Reporter's suggestion that that the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (2003 Act) is a statutory provision giving the RCDSFB specific environmental responsibilities. As the Reporter will have read in the 2003 Act, a "fishery" and "salmon fishery" mean a salmon fishery in any river or estuary or in the sea and a "salmon fishery district" has the meaning given in section 34(1) being the area within the coastal limits of a district (within the meaning of the 1862 to 1868 Acts), and extending (a) seaward for 5 kilometres from mean low water springs; and (b) landward to include the catchment area of each river which flows directly or indirectly into the sea within the coastal limits of the salmon fishery district. In terms of section 43 of the 2003 Act, if the proprietors of salmon fisheries in a salmon fishery district (a) form an association for the purpose of the protection or improvement of the fisheries within their district; and (b) elect a committee to act for them, that committee shall be the district salmon fishery board for that district; and the purpose of such a board shall be the protection and improvement of the fisheries in respect of the association. The district salmon fishery board shall have the powers and duties conferred on them under the 2003 Act; and by any other enactment on a district board within the meaning of the Salmon Fisheries (Scotland) Acts 1862 to 1868. The powers and duties conferred on a district salmon fishery boards are contained in sections 44 and 45 and relate to the financial operation of the board and the protection and improvement of the fisheries. They do not have specific environmental responsibilities.

As the RCDSFB is not a consultative body they did not require to be asked for a screening opinion in terms of regulation 5 (1) and their opinion that a "full EIA" was required did not trigger the need for an EIA report in terms of regulation 6(1) (b) and the Council has complied with all the requirements of regulation 4(1). Notwithstanding this, as can be seen from the above, they have been consulted and their views taken into account in the development of the Scheme.

23. The scheme appears to be silent on whether it would materially alter any drainage works or protective works in an improvement order under the Land Drainage (Scotland) Act 1958. Can the Council confirm that it would not materially alter any such works? If not, how is it proposed to deal with any obligations to maintain such works?

Response: The Council has checked the title of the undernoted areas which are located within the Scheme boundaries and potentially those which would be the subject of an improvement order in terms of the Land Drainage (Scotland) Act 1958 and can advise that there are no improvement orders registered or recorded against them

[Plot No	Title Deed No / Search Sheet No
3a	KRK3147
6	6669, 4162
2	KRK11872 6137
1a	KRK684
1	KRK5721
31	10313
32	11147
33	WGN6036
11	9244



28. The Preliminary Ecological Appraisal Report recommends that the Council provides their data on non-statutory sites of scientific interest within 2km. Has this been done? Provide a copy.

(To assist in our response we noted that this comment relates to the following paragraph in the PEAR:

7.2 Non-Statutory Designated Sites, Ancient Woodland and NWSS Sites Non-statutory sites within 2km could not be identified as the local biological records South-West Scotland Environmental Information Centre (SWSEIC) did not respond to a data request and this information is not readily available online. It is therefore recommended that Dumfries & Galloway Council is contacted and a request is made for their non-statutory site data.)

Response: Relevant services within the Council have been approached and they do not hold this information nor are they under a duty to hold it. If the Reporter believes that this information is required, the Council suggest that SWSEIC are asked by the Reporter through the Programme Officer to provide this information.