

Q2. Do you think the definition is clear and simple to understand?

See previous response

Q3. Do you agree with the conclusion as set out in paragraph 3.17?

Do not agree.

North Ayrshire Council has concerns about the proposed designation of a single competent authority with a national remit for implementing the Floods Directive. The Floods Directive does not require a single competent authority and this Bill extends beyond the implementation of the Floods Directive. The conclusion does not sufficiently recognise that the identification of areas at greatest risk of flooding and implementation of flood management responses will require an integrated planning approach principally involving SEPA, local authorities and Scottish Water. There is a real sense of top down micromanagement in the proposal for a single competent authority.

Local authority involvement will be required in all parts of the process from Preliminary Flood Risk Assessment, the production of Flood Hazard and Risk Maps to the preparation and implementation of Flood Risk Management Plans. Fuller recognition needs to be given to the importance of integrated action, primarily at the local level. There is a need for a clearer focus to be provided on outcomes and how they are to be achieved. The extent of local authority engagement in the process and need for an integrated approach requires as a minimum that both SEPA and local authorities be designated as competent authorities and that a duty be placed on Scottish Water to participate in the process. SEPA should have an overseeing and strategic role and function primarily as a national reporting, co-ordinating and review body.

Q4. Do you agree that there should be a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?

Do not agree.

The Council accepts that it may be desirable to have a national body to co-ordinate and report to the Scottish Government particularly in the designation of significant areas of flooding in the first phase of the process and to review progress. SEPA are obviously well placed to provide that function and their nomination is supported by their experience in providing flood warning and flood maps. They should not, however, be the sole competent authority.

Local authorities will be significantly involved in the production of Flood Hazard and Risk Maps and Flood Risk Management Plans and, at a local level; they will input the needs of people into local plans and deliver the outputs of the plans. They should also be designated as competent authorities. Local authorities have the engineering expertise required to deliver on flood management measures. This was noted in the recent Pitt Report, which emphasised the need to have people competent in flooding disciplines in charge of flood management processes. Local authorities also have the experience of dealing with the public, or in undertaking the in depth consultation and participation exercises needed for both individual flood schemes and flood policies and most importantly, democratic accountability.

SEPA's present role in flood management is focused primarily on the provision of advice on fluvial issues. It is questionable whether SEPA has the depth and breadth of knowledge to deal with more complex issues related to urban drainage, overland flow and surface water management. In contrast, local authorities through their roles in watercourse management, roads drainage asset management, development planning and development management and building standards have extensive knowledge and expertise in relation to these matters.

In terms of coastal flooding, SEPA have no current input to this other than the 1st generation flood maps. This is of particular concern to North Ayrshire Council, where the experience is that the flood maps can be extremely misleading in that they take no account of storm surge or wave heights nor do they include the effect of existing coast defences. The Council's two major flood prevention schemes to date have dealt with coastal flooding.

Q5. Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not what alternative do you propose?

Do not agree.

The differentiation between strategic Flood Risk Management Plans and local Flood Risk management Plans is confusing. There is no requirement for such separate arrangements in the Floods Directive, apart from where international river basin districts exist. This two-stage approach to flood risk management planning appears unduly bureaucratic.

The Preliminary Flood Risk Assessment should provide the opportunity for collaborative working principally between SEPA and local authorities. For the preliminary assessment to be of value, it would need to be informed by some initial flood hazard mapping undertaken at the local authority level. With this information, the results of the assessment, in addition to identifying areas at significant risk of flooding, could provide a national strategic framework for flood risk management. Within this context, local authorities could lead on Flood Risk Management Plans for those catchment areas identified as being at significant risk. The above proposals would simplify and expedite the process and provide a clearer focus on outcomes.

The proposed duty on local authorities to prepare a local Flood Risk Management Plan where significant flood risk has been identified should be modified to reflect a single stage flood risk management planning process. Local authorities should have responsibility both to prepare and lead on the preparation of all Flood Risk Management Plans. Where areas of significance have cross boundary implications local authorities should have the responsibility to combine, act jointly and lead on preparation of Flood Risk Management Plans. For major cross boundary issues, joint committee structures akin to those set out for Strategic Development Plan purposes could be adapted for this purpose. A co-ordinating role for SEPA in the preparation of Flood Risk Management Plans would not be necessary for a single stage approach to plan production undertaken at local authority level as SEPA would be directly involved in the preparation of the plans.

There would be no requirement for future regulations to specify the scope, structure and content of Area and Local Flood Management Plans and measures to ensure integration of plans. Advice on a single Area flood Risk Management Plan should suffice

Further consideration should be given to funding arrangements. The suggestion is made that funding should be based on the level of significant flood risk in each local authority informed by preliminary flood risk assessments and the hazard and risk mapping. This is not a reasonable basis as funding should be dependent on cost of dealing with flood risk not the actual flood risk.

The Council would suggest that initial allocations of funding would be required for local authorities to contribute to preliminary risk assessment and also to the preparation of flood hazard and risk maps. Furthermore, the main resource allocation should be informed by the actual content of the Flood Risk Management Plan and progress in the implementation of flood prevention measures.

Q6. Should Ministers or SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?

This should be left to partners to decide although Ministers should be required to adjudicate if partners are not able to agree.

Q7. Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?

See also response to Q3 and Q4. The competent authorities should comprise the local authority (or authorities acting jointly) and SEPA, acting as a national umbrella. In this instance, the Council would agree that Scottish Water, the Forestry Commission and SNH should be identified as responsible authorities. It is particularly important that Scottish Water has duties placed upon it, to co-operate, participate and assist in the delivery of SFM.

Q8 Which other bodies should be identified as responsible authorities?

The obvious bodies are Transport Scotland, Network Rail, RSPB and British Waterways Authority.

Q9. Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

Agree.

In light of the response to Q.5 recommending a lead role for local authorities as competent authorities, the Council would suggest that the relationship between the local authorities and other responsible authorities should be similar to that of local planning authorities and key agencies under the Planning etc (Scotland) Act 2006. This intends that through full and early engagement planning authorities will have early access to much of the key information they need to produce effective plans. "The plans will therefore be realistic and deliverable and tie in with the strategic objectives of other agencies, with these agencies "buying - in" to the strategy and proposals of plans and assisting in their delivery." (see Draft Regulations on Development Planning, Oct 2007, para 88).

Q10. Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

The Council is of the view that wider stakeholder and community engagement in the flood risk management planning process would be facilitated by giving the lead role to local authorities that are democratically accountable to local communities and have established local consultation and communication structures already in place.

Q11. Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for the preparation by SEPA of area flood risk management plans?

Do not agree.

As discussed in response to Q5, the Council does not agree with preparation of strategic Flood Risk Management Plans by SEPA nor the two-stage approach envisaged. It is questionable whether the RBMP process, which is focussed on providing national comprehensive coverage for all water bodies, is appropriate for a process more focused on catchment areas of significant flood risk. There is no requirement for the all-embracing approach of the RBMP when only

catchment areas of significant risk will require Flood Risk Management Plans. The RBMP process suits SEPA. It will not suit the public as represented by local councillors.

The Floods Directive does not require a process similar to that for RBMP, it only requires that Flood Risk Management Plans be co-ordinated at the level of the River Basin District. The Council is of the view that it would be preferable to focus on local authorities as competent authorities for the purpose of FRMPs, liaising with SEPA at the national level to achieve co-ordination where this is required.

Q12. Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?

Agree.

The Council considers it appropriate that Scottish Ministers have the power to approve, reject or modify Area Flood Risk Management Plans. It is essential that, when doing so, Scottish Ministers provide justification for their proposed actions and provide the competent authority/authorities and others with an interest with the opportunity to comment on any proposed modifications.

Given the importance of the Area Flood Risk Management Plans in delivering SFM, it is essential that, when approving the plan(s), there is adequate funding in place to implement the measures considered as essential in the plan(s).

Q13. Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?

Strongly agree.

North Ayrshire Council consider it essential that issues associated with urban drainage are integrated fully into Flood Risk Management Plans. The key flooding concern within the Council's urban areas relates to the lack of capacity in the sewerage system and local watercourses (culverted or open) exacerbated by overland flow. The recent impetus for catchment-based approaches to flood management is founded on the need for a holistic view of the urban water drainage system (watercourses, the sewer network and roads drainage) and the promotion of integrated surface water management. The approach recognises that unattenuated conveyance of extreme rainfall events within buried infrastructure is not practical and the future drainage network requires a combination of attenuation and conveyance to suit the developed sub-catchment. As the consultation points out it represents an alternative, cost effective solution to renovation of the sewerage system.

The approach requires a clear planning direction to ensure integrated investment by responsible bodies in their asset management of sewers and roads and in their watercourse management functions. It also relies on concurrent and supporting investment, levered in from new development and redevelopment via the planning process. As the consultation points out these are significant planning issues for urban areas of the future. Development sites in North Ayrshire have been unable to proceed in the absence of comprehensive drainage schemes e.g. in the gamock Valley. There are issues relating to both current and future land allocations. Forward programming of development is compromised if this investment is not aligned.

There may also be the need to address the Housing Act in respect of integrated asset management regimes where significant areas of social housing drainage could be better managed.

The term urban drainage plans may however be a misnomer since action may well be required in urban/rural catchments. A more general reference to integrated, surface water management plans might be more appropriate.

Q14. Should Flood Risk Management Plans inform the way that development plans are prepared, or should there be a stronger linkage such as a requirement on planning authorities to show that they have regard to the FRMPs?

The local authority in its role as planning authority has a significant part to play in flood avoidance and flood alleviation by influencing the development and use of land. Planning is required to prevent development, which would have a significant probability of being affected by flooding or which would increase the risk of flooding elsewhere. The probability of flooding from all sources and risks involved together with the design of "neutral or better" drainage regimes require to be taken into account in the preparation of development plans and in determining planning applications.

Scottish Planning Policy SPP 7: Planning and Flooding (2004) and its accompanying Planning Advice Note 69: Planning and Building Standards Advice on Flooding (2004) have assisted improved integration of flooding issues within development plan policy and development management at local authority level. This is essential given the implications of flooding and availability of drainage infrastructure for future land allocations and need for control over design detail to ensure appropriate finished floor levels, flood flow routing and source control for SUDS. More generally in relation to catchment management, the planning process has potentially key roles in facilitating integrated partnership working, levering in a substantial proportion of investment for non-structural responses to flooding from the development industry and achieving wider environmental benefits from sustainable flood management.

Furthermore, the Council considers that a local FRMP must be available to inform the Local development Plan process which will be commenced as soon as Regulations on Development Plans are published in late 2008/early 2009. Adequate resources must be in place to allow this process to proceed.

At present, the Draft Regulations for Strategic Development Plans and Local Development Plans make reference to the need to have regard to River Basin Management Plans. Given the importance of development plans in providing long term perspectives, achieving multiple benefits particularly related to the wider environment and in facilitating non-structural solutions from the development industry, a similar linkage should be made between development plans and Flood Risk Management Plans. There should be a requirement on planning authorities to have regard to Flood Risk Management Plans. Indeed, it is to be expected that Flood Risk Management Plans will play a key role in the identification of land for development.

The designation of a local authority as a competent authority and lead authority for the purposes of FRMP, as suggested in response to Q.4 and Q.5, would facilitate the necessary integration at local authority planning level which Flood risk Management Plans are dependent upon.

Q15. Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

Do not agree.

The Council is not in favour of the option of Ministerial approval with deemed planning consent for flood risk management measure. The proposal for granting deemed planning permission at the end of the statutory process for flood risk management may deliver a more streamlined process, but also a less democratic one. The Council also has doubts as to how this can be

achieved in relation to other permissions that may be required such as Listed Building Consent, Conservation Area Consent etc.

With the deemed consent process for local authority developments now removed under the Planning etc (Scotland) Act 2006, such developments are now subject of planning applications and subject to the wider reforms of the land use planning system. This change also means that such developments are required to follow the same environmental impact assessment process as any private development. It would seem perverse for the Scottish Government to go in a different direction for flood prevention measures. The process in relation to electricity generation, provided as a comparative example of the proposed process, is considered to be exceptional.

The approach would also be contrary to the hierarchy of planning applications introduced by the 2006 Act and which defines the role of Scottish Ministers in relation to national developments. For example, Ministers have identified the Glasgow Strategic Drainage Plan as a national development in the Draft National Planning Framework recognising its strategic importance and assisting its early delivery. The project will still require planning permission, but any subsequent examination of the detailed planning implications at inquiry should not be concerned with the principle of the development.

The new planning procedures related to development management seek to make the planning application process fit for purpose and responsive to different types of development, improve the efficiency of the system and improve public involvement in the consideration of proposals requiring planning permission. Development of flood management measures should be integrated rather than separated from the new system. As development, flood management measures should be fully assessed within the planning system

Q16. Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?

No.

It is difficult to envisage features of a scheme, which are not subject to planning permission or Controlled Activities Regulations, which would be of a significance requiring Ministerial approval.

Q17. Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?

The present statutory processes for flood prevention schemes are long and exacting, but the easiest components are the engineering approval by the Scottish Government (excepting cost/benefit analysis) and planning approval. With regard to the Controlled Activities Regulations (CAR), it is the understaffing of regime by SEPA that holds matters up, not the CAR itself. The planning and FPS process are run concurrently with the same or similar details.

The whole process requires streamlining. The proposed flowchart issued by the Flooding Bill Advisory sub-group has merit.

Q18. Do you think that the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?

Most certainly yes.

Now that Ministers no longer award central grant to a flood scheme, confirmation under the 1961 Act has lost a significant part of its purpose. A local authority based procedure has much merit. However, further consideration requires to be given to issues surrounding compulsory purchase. The Flood Order is a powerful statute enabling the local authority on confirmation by the Scottish Ministers to "squat" on land necessary for the proper construction of flood works. It combines the approvals normally sought by a planning application and a compulsory purchase order. It is important to retain the right of landowners to be heard at an independent inquiry. For this purpose, it is suggested that the link between planning approval of project and compulsory purchase be decoupled and compulsory powers be maintained as under 1961 Act.

Q19. What would be the appropriate timescales for notification and response?

There needs to be a single timescale for all processes. The Council would suggest that timescales and notification arrangement should be aligned with those set out for planning applications under the Planning etc (Scotland) Act 2006. For purposes of CPO, the existing procedures of 1961 Act should be modified to focus solely on those with an interest in land.

Q20. Would it be appropriate for such a process to carry deemed planning consent?

In general, the Council does not consider this to be appropriate for the reasons stated in the response to Q.15. With the deemed consent process for local authority developments now removed under the Planning etc (Scotland) Act 2006, it would seem perverse for the Scottish Government to go in a different direction for flood prevention measures. Development of flood management measures should be integrated rather than separated from the new planning system.

It is considered that the flood prevention measure consistent with the definition of development should be incorporated within the new hierarchy of planning applications. This would involve definition of national projects by the Scottish Ministers (e.g. GSDP) and definition under regulation of the thresholds for major and local flood risk management developments and adherence to appropriate planning procedures.

The planning and building standards procedures would provide the process for assessing the acceptability of flood prevention measures in terms of technical and environmental aspects.

However, should this be the outcome of the consultation, there should be a safeguard for larger schemes by reference to Scottish Ministers or a Public Local Inquiry.

Q21. How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed, be addressed?

The suggestion put forward in the consultation that local authorities in each Flood Risk Management Area contribute to a pool of flooding engineers for technical scrutiny of proposals has some merit. Such a group could be integrated within Flood Liaison and Advice Groups. It should also be noted the local authority currently vets all forms of major construction proposals including engineering works, e.g. in its Building Standards role and in relation to Road Construction Consent. This should be used in conjunction with the planning system to provide technical assessment of the project.

It should be noted that there is a national shortage of skilled staff and this requires to be addressed.

Q22. Are there any additional alternatives to the options outlined above which would simplify procedures?

Small scale works and works which have the backing of all interested parties should be able to be fast tracked.

Q23 Do you consider local authorities' powers are sufficient to take necessary action to avert danger to life and property?

No.

The maintenance and management powers of the local authority under the 1961 Act as amended are very limited in their scope. There are no powers to enable local authorities to carry out emergency flood prevention measures. If local authorities do not have statutory power to act, then they cannot spend public money. There should be scope to recharge riparian landowners who fail to maintain their watercourse. An example being in an urban situation where the back gardens are fenced off on either side of the watercourse and this may require to be cleared/dredged and could involve a licence fee to SEPA under CAR.

See also response to Q22. Currently there is no provision to allow local authorities to make small-scale improvements, which could avert danger to life and property. Improvements such as increasing pipe size; re-aligning a system; installation of a pumping system; wall; bund; grid or manhole would require the promotion of a flood prevention scheme. If small-scale works etc could be carried out to an agreed threshold, this would assist.

None of the 'non flood' acts such as the Roads Scotland Act 1984 can be used to pro-actively manage flooding.

This section of the consultation document appears to relate only to the Flood Prevention Act 1961. There is no mention of the Coast Protection Act 1949. It would be helpful if powers in relation to coastal flooding and the effect of the Coast Protection Act were fully addressed in the new Bill.

Q24. Do you agree that streamlining the CAR and flooding/planning processes can be managed through better guidance?

Do not agree.

It would be better if this were defined in statute. While it is important to streamline all processes, CAR depends on actual design and construction method of the contractor, which normally is not known until contract award stage and this may mean that streamlining may not be possible.

Q25. Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?

There is no clear consistent approach from SEPA in the application of CAR over the country. The proposal to make SEPA the lead competent authority may help them focus and share ownership of schemes rather than being a pedantic and unpredictable obstacle as they have been to some local authorities.

The Scottish Government should be taking the lead on the promotion of joined up regulation, as it is the only body with the ability to ensure that all regulations are consistent. Furthermore, it is the only body with the power to change the regulatory regime to ensure the consistent approach across all sectors, which is required to ensure sustainable flood management, becomes a reality.

Q26. Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the Government should consider?

The Council would generally agree that the approach is reasonable, however, it would have been beneficial if a perceived organisational structure had been presented. Essentially, the approach needs to be one of enabling local authorities by ensuring that all bodies that are part of the Scottish Government assist at all levels.

Q27. Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?

The form of the biennial report should be left to the local authority, however the content e.g. instances of flooding and measures taken should be prescribed and should form part of the Flood Risk Management Plan and be stored in local authority GIS. The Council would consider it helpful if the recommendations in the report by Professor Werrity of the University of Dundee were implemented.

Q28. Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

North Ayrshire Council agrees that, overall, the proposals are a reasonable attempt to improve flood risk management in Scotland as the existing legislation is not designed for the current situation. They are not, however, adequately address all of the issues and it is important that due consideration is given to the comments and recommendations expressed in this response and the responses submitted by other experienced practitioners in Scotland.

The general power for local authorities to carry out flood risk management measures identified in the Flood Risk Management Plan as it appears to be necessary or expedient, for the purpose of protection of any land or property in their area, would appear to provide sufficient flexibility to enable sustainable flood management. It could however be extended to Scottish Water and other bodies, where mutual benefit is determined, and demand reduction can be demonstrated.

Q29. Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?

The primary responsibility for flood mitigation should remain with the property owner. Unless the identified measures can be accurately costed and funded then powers should remain permissive can be adequately assessed and funding identified existing powers should remain permissive. There is little to be gained in changing the power to a duty.

The maintenance of buried watercourses as a duty needs to be amended. It is likely that the more regular sedimentation problems would be better dealt with by deculverting. It may be preferable to remove this measure from requiring a full FPS, if such measures are subject to appropriate public scrutiny.

Local authorities should have the power to instruct riparian owners to maintain existing flood alleviation works, after requesting them to do so. This should include any man-made (modified) watercourse such as a culvert (fabric not flow capacity).

RESERVOIR SAFETY

Q30. Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?

No. The recent merging of the three previous water authorities to form Scottish Water and the obvious need to ensure consistency of application of the Regulations nationally appear to make a strong case for the formation of a single enforcement authority for Scotland. However this does not take account of the recent pattern of change in ownership and types of undertaker being identified over recent years.

There are 17 reservoirs located within North Ayrshire that fall within the scope of the Act. When North Ayrshire became enforcement authority West of Scotland water owned and acted as undertaker for 16 of the 17. The remaining reservoir was owned by an angling club who also acted as undertaker.

Currently however, Scottish Water own and act as undertaker for 11 of the 17 and appear to be committed to disposing, where possible, of a number of those remaining in their ownership if the opportunity arises. The remaining reservoirs are owned and operated by a combination of local businessmen, local landowners and an angling club and are primarily used for recreational angling on a small-scale commercial basis.

In the Council's experience a disproportionate share of our activities as enforcement authority has involved the non-public owners and undertakers all of whom are based within the Council's area. It is therefore our view that given these patterns of change of ownership and use continues that there is value in the local enforcement of the Act and that Local Authorities should remain as at present the enforcing authorities for this legislation.

As local authorities need to know all the problems of the reservoirs, there is no cost saving to pass the enforcement role to SEPA. What is required however, is that owners of reservoirs, need to address matters raised in the issue of safety as soon as practicable, or have it done for them and be recharged. This may affect Scottish Water as the biggest undertaker, but if the WIC is obliged by the Scottish Government to consider demand reduction, then the full benefits of potential flood attenuation could be actioned by Scottish Water in parallel with any identified outstanding measures in the interests of safety. The local authorities currently report to the Scottish Government, and it is expected to guide Scottish Water in respect of reducing risks of reservoir failure.

The benefits of a duty to reduce demand for water supply would maximise the benefits pertaining to reservoirs and flood management.

Q31. If so, should it be SEPA or another as yet unidentified body?

See above response.

Q.32 Are you content with the proposals for dealing with reservoir flood maps under the provisions of the Floods Directive, or do you think that there should be a statutory duty on reservoir undertakers to prepare reservoir inundation maps and plans, similar to the duty in the 2003 Water Act for England and Wales?

No. There should be a statutory duty on reservoir owners.

Q33. Do you agree that enforcement powers be extended and post incident reporting included as an additional requirement?

Yes. There should be a reservoir panel that the enforcement authority can refer difficulties / concerns to. The panel should be able to provide recommendations that the enforcement authority can demand be undertaken or undertake itself and recharge.

Q34. Views on Crown application and any other comments?

A duty of demand reduction as referred to in response to Q.21 would be useful.

Additional Comments

Lack of Infrastructure Investment.

The consultation highlights the importance of reducing flood risk as part of the key objective of increasing sustainable economic growth. It also emphasises the need to deal with increased future flood risk arising from climate change. North Ayrshire Council considers that of equal importance particularly in relation to urban drainage issues is the need to deal with the substantial legacy of infrastructure under investment.

Lack of Co-ordination.

In its identification of problems with the current system, the consultation suggests that the lack of co-ordination is due to a lack of national framework. The Council considers the lack co-ordination is equally the result of the lack of a national funding framework, to cover flooding across the various return period storm events which different bodies are responsible for, as well as those flooding matters no responsible body is coherently funded to deal with.

Lack of Defined Drainage Responsibilities.

The limited land drainage responsibilities of the local authority under the 1961 Act prevent Councils from fully and effectively dealing with flooding issues arising from overland flow and extreme rainfall events. There is a legislative gap in the provisions available to deal with such flooding issues. At present, Scottish Water is responsible for dealing with flood events up to 1 in 30 return period in new development. There is no clear responsibility for dealing with flood events in excess of the 1 in 30 years extreme rainfall event and for overland flow. The new legislation must clearly apportion responsibilities for flooding.

The Role of the Water Industry.

The lack of integration in flood prevention of water industry infrastructure with other drainage and flooding infrastructure is also identified as a key problem with the current system. The Council considers this is exacerbated by the financial controls placed upon Scottish Water by the Water Industry Commission (WIC) and a required remit to focus on its core business. The WIC considers that demand management or even demand reduction is not part of its brief, and restricts funding to core business. Similarly, the lack of SEPA water quality regulation where surface water enters a combined sewer network inhibits a co-ordinated approach. It would be useful for the Scottish Government to ensure the objectives of Scottish Water's investment programme and SEPA's River Basin Management Plan (RBMP) are aligned with sustainable flood management principles.

Investment.

Alignment of investment plans between responsible authorities on the basis of Flood Risk Management Plans is essential for integrated responses.

Catchment Responses.

The Flood Prevention (Scotland) Act 1961 does not specifically require large engineered solutions, but in effect the cost benefit funding control of the Scottish Government has encouraged such responses rather than sustainable catchment based responses. It is to be welcomed that the principles of sustainable flood management and a focus on multiple benefits are now being seen as the way forward.

Local authorities not having flood hazard reduction mapping in place have also limited progress on sustainable catchment wide approaches. This was not funded within the 1997 amendment to the 1961 Act, which required authorities only to assess watercourses. Wider responsibility is required to be given to local authorities to enable them to undertake the integrated drainage modelling required for Flood Hazard and Flood Risk Maps and promote sustainable catchment approaches.

Potential Planning Role.

The focus on SPP7: Planning and Flooding omits to make reference to the key drainage guidance which refers to "flooding from all sources" and achieving "neutral or better" drainage regimes. It is these items that have enabled local authorities to incorporate sustainable flood management measures within the planning process. The planning process has potentially key roles in leveraging in a substantial proportion of investment in non-structural responses to flooding from the development industry, maximising environmental benefits and facilitating partnership working. As the consultation recognises, surface water management and urban drainage are significant planning issues for urban areas of the future. A strong connection between the proposed Local Flood Risk Management Plans and Development Plans is required. The Council considers that a local FRMP must be available to inform the Local development Plan process which will be commenced as soon as Regulations on Development Plans are published in late 2008/early 2009. Adequate resources must be in place to allow this process to proceed.

Notwithstanding the constraints, which have operated to date, exemplary integrated working on sustainable flood management has been demonstrated by the Glasgow Strategic Drainage Plan and in the Renfrewshire Interreg III B Urban Water Project. The loosening of the funding controls from the Scottish Government will allow the most forward looking local authorities, together with Scottish Water and SEPA, to further develop and deliver locally, co-ordinated catchment planning. In the past, development sites in North Ayrshire have been unable to proceed in the absence of comprehensive drainage schemes. There are issues relating to both current and future land allocations. Forward programming of development is compromised if investment is not aligned.

Landowners

There does not appear to be any reference to landowners in the proposals. In particular the issue of landowners who are not directly impacted by flooding but who may be required to take action or assist with SFM should be addressed in the 'duties' contained in the new legislation.

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22nd April 2008.

Consultation on "The Future of Flood Risk Management in Scotland."

Q1. Yes

Q2. Yes

Q3. Yes

Q4. Yes and Yes. At the present moment the experience of this Board is that SEPA is understaffed and underfunded. Our experience since the introduction of CAR's is that SEPA make every excuse under the sun for not prosecuting blatant breaches of these Regulations and are equally not capable of monitoring operations carried out under licences which have been granted. To a large extent the problems are not with those who jump through the many hoops to get a licence but with the "cowboys" who dive into the rivers when and where they want in the now virtually common knowledge that they are unlikely to be prosecuted. If the Scottish Government really does intend to address flood risk at the levels set out in this consultation document, then SEPA will have to recruit personnel with adequate qualifications and in adequate numbers as a matter of some urgency not just to meet their current obligations but also if the timescales set out are to be met. This will be a significant burden for the taxpayer.

Q5. Yes.

Q6. Ministers should retain the power to designate a lead authority where there is an unwillingness or disagreement as to which responsible authority should take the lead role.

Q7. Yes, except for SNH, which should only hold an input role, as and when necessary.

Q8. Cannot suggest any others.

Q9. Yes most definitely.

Q10. No. The proposals in 3.36 and 3.37 are too vague. A non exclusive list of potential stakeholders should be included. E.g: Community Councils, District Fishery Boards, Fisheries Trusts, Local interest Groups etc. Fishery Boards and Trusts hold data sets on fish stocks and habitat in their catchment areas as well as other valuable local information. These organisations along with Community Councils, whilst not being nominated as responsible authorities, should perhaps be listed as being expected to contribute to the development of these plans.

Q11. Yes

Q12. Yes.

Ness District Fishery Board
A Statutory Body constituted under the Salmon Act 1986

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Clerk : Fred H C Kelly email: [REDACTED]

Q13. Yes. The comments in 3.43 to 3.46 make this essential. 3.45 partially addresses some of the obvious problems which we see in urban expansion. Buildings follow the contours and occasionally green zones are included which also follow the contours. Field drains which worked well for very many years are dug up with little thought as to their function. Furthermore, little thought and apparently no provision is made for zones which follow the route which water must take – downhill!

Q14. There must be a requirement on planning authorities to show that FRMP's have been taken into account. Planning consents must contain a condition that SUDS is an automatic requirement which may be removed if good reason is provided. However, any one seeking its removal should be required to provide an indemnity for a period of years after completion of the development. (This would prevent developers leaving any flooding problems which arise in that period to be paid for either by the purchaser or the taxpayer).

Ensuring Compliance with the Flood Risk Management Plans.

Flood risk management plans will be affected on a continuing basis particularly by urban development, with local councils operating on the fact that responsibility for providing the necessary infrastructure to support these developments will be provided by others such as Scottish Water and the developers. This we believe is another grey area which lacks joined up thinking. The comments in 3.41 and 3.42 acknowledge this but fail to grasp the opportunity to tackle it. We have seen the Convener of Highland Council admit in public, twice, that many of the Council's planning approvals over the past few years have been "blunders". It would be sensible to have a competent authority in place to ensure that Planning Departments provide details to Councillors of all aspects of planning proposals including those which are not directly within its actual remit – the provision of water, sewage, urban drainage, flood management, schools, shops, etc. and that where failure to do so can be shown to have a detrimental impact on the firm then appropriate sanctions can be applied. Similarly, if the comment attributed to the erstwhile director of planning that CAR's do not need to be considered as they can be ruled out under socio-economic claims, is true, then it is little wonder that blunders were and will continue to be made. We have seen approval given to various significant developments along the A96 yet there is little or no infrastructure to support them. The recently published A96 Corridor development plan is a classic example of the grey areas which abound in such plans.

The Highland Council for example has several outstanding "Flood Prevention Orders" to start and fulfil costing at some £40 million.

These were granted pre CAR so given that work has not actually started on them will they now be expected to be reviewed in light of the requirements under discussion in this document and the WEWS Act?

One particular Order costing at £10/12 million uses hard engineering in line with 1961 Act to move water from the water course of one catchment into the water course of a neighbouring one.

Does this comply with achieving "good ecological status" or indeed with FIAC definition of sustainable flood management?

Q15. Yes

Q16. Yes

Q17. Yes

Q18. No. The blunders admitted by Highland Council plus the recent farce in the Donald Trump development proposals support this answer.

Q19. No comment because of the reply to Q18.

Q20. As in Q19.

Q21. In Chapter 4 mention is made of "Panel" engineers. Given that there is unlikely to be a vast number of engineers suitably qualified to review and approve FRMP's, perhaps the establishment of a similar "panel" could be the way forward.

Q22. No comment.

Q23. Yes.

Q24. Yes

Ness District Fishery Board
A Statutory Body constituted under the Salmon Act 1986

Chairman : J R G Menzies email: [REDACTED]
Clerk : Fred H C Kelly email: [REDACTED]

Q25. Yes. Given the number of Flood Prevention Orders which have been granted under the 1961 Act, mostly to rectify flooding problems caused by inadequate planning studies, exacerbated by lack of supervision of construction, it is time to look at each of these particular instances so that lessons can be learned and a system developed which will ensure that planning and development regulations join up with FRMP's, WEWS and CAR's. SEPA and the Scottish Government should take this forward as many of the schemes promoted under the aforementioned orders may well not have been necessary had the risks been properly assessed (it is acknowledged that hindsight has perfect vision). The savings to the Scottish Government and its taxpayers as well as to individuals and insurance companies would be significant.

Q26. Whilst minimising unnecessary delays in procedures may be a good idea it is nonetheless vital that shortcuts be totally avoided in the promotion of such schemes. Poorly prepared schemes will be counterproductive.

Q27. Yes.

Q28. The proof will be in the detail and whether funds are available, not just to draw up the plans but to implement them.

Q29. As flood risk and its management is closely linked to the requirements of the WEWS Act then local authorities must have a new duty to promote measures to alleviate flooding.

Q30. Yes

Q31. Yes again provided that SEPA is adequately funded.

Q32. Yes

Q33. Yes

Q34. There should be no exceptions.

General Comments.

I am both surprised and dismayed on reading the list of consultees that it would appear that during the initial deliberations on drawing up this document it was not seen as necessary to consult with any organisation whatsoever with hands on knowledge of the aquatic environment and the creatures which live in it.



J.R.G. Menzies
Chairman
Ness District Salmon Fishery Board.

RESPONDENT INFORMATION

Name and Address : As above.

Q1. Responding on behalf of an organisation

Q3. Yes

Q4. Yes

Responding to BOTH

Ness District Fishery Board
A Statutory Body constituted under the Salmon Act 1986

Chairman : J R G Menzies email: [REDACTED]
Clerk : Fred H C Kelly email: [REDACTED]

**Response by Angus Council to the Scottish Government's consultation on
"The Future of Flood Risk Management in Scotland"**

By: Director of Infrastructure Services

1 Introduction & Executive Summary

- 1.1 The European Parliament and Council of the European Union introduced the Directive on the Assessment and Management of Flood Risks (the Flood Directive) in December 2007. The Scottish Government is seeking to transpose this into Scots Law by the deadline of December 2009.
- 1.2 Concurrently the Scottish Government has been considering the effectiveness of Flood Management in Scotland. Over the past ten years a series of investigations led to a report in April 2007 to Ministers on the adoption of a new philosophy of the management of flood risk based on a new definition of "Sustainable Flood Management" (SFM). As part of the report the need to revise existing legislation was recognised as being fundamental to the new approach.
- 1.3 Therefore the Scottish Government is proposing to introduce a new "Flooding Bill" which will fulfil both of these objectives.
- 1.4 It has issued a consultation document on the proposals to be contained in the draft Bill which is intended to:
- reform the current legislation covering flood protection and prevention;
 - transpose the Flood Directive into Scots Law;
 - simplify procedures necessary to develop and implement measures to manage flood risk;
 - create a framework for a sustainable catchment focused approach to flood risk management;
 - set out proposals to transfer responsibility for enforcement of the Reservoirs Act 1975 in Scotland from local authorities to a single enforcement authority.
- 1.5 Officers from the majority of Local Authorities (LA's) have been involved during investigations conducted over the past 10 years and provided evidence and lobbied for specific changes to the current position. The basic objectives of the "Flooding Bill" are welcomed by most authorities, however concerns exist that the proposals in the consultation document are not the best way to achieve SFM in Scotland, and indeed there are some proposals which Angus Council do not consider as workable. These are detailed in the response to the questions, but in essence are:
- a) the hierarchy of Flood Risk Plans is to be based on the same "national catchment"/"sub catchment" approach adopted for River Basin Management Plans (RBMP), but with a further tier at "local or single catchment level". It is questionable if this three tier approach is necessary in a small country such as Scotland. The sub catchment layer does not match geographically with water course catchments, and it is contended that it is unnecessary.
 - (b) The process of Flood Risk Management is fundamentally different from the RBMP. A bottom up approach is needed, because the real focus of delivery is at a much finer grain than the water quality management focus of RBMP. In reality managing flooding is about reducing impacts on people in localised areas, albeit that preventative measures may be located elsewhere higher in

the catchment. The information needed to determine outputs of flood plans is much greater than that needed for RBMP outputs.

Therefore an alternative, simplified two tier approach is suggested in this response:-

- National Flood Risk Assessment & Mapping at national level based on two catchments
 - Local Flood Risk Management (LFRM) Plans – based on local authority areas
- c) The proposal that SEPA be the only competent authority is not agreed. This appears to be predicated on the above hierarchy adopted from the RBMP process in which local authorities have little or no role at the implementation stage other than to comply with regulations enforced by SEPA. Local Authorities will continue to have a majority stakeholder's role in delivering flood management and flood schemes on the ground. This interest includes funding, development potential, protection of people and property and being democratically accountable to the public.

The Flood Directive only requires a competent authority at national catchment level. Thereafter LA's either individually or in partnership groups in the case of cross boundary catchments, should be nominated as the lead authority at the local catchment level. It is proposed that SEPA be the competent authority for the (National) Area Plan but that Local Authorities be the competent authority for Local Flood Risk Management Plans and these plans should be based on local authority areas, with cross boundary working as required.

The alternative two tier approach suggested in this response is predicated on how best to develop and achieve the outputs at local level, recognising LA's represent the interests of the majority of stakeholders.

- d) The council does not support the role envisaged for Scottish Water (SW) as having the prime responsibility for integrated urban drainage. This response proposes that the LA's be funded to deal with "outflows" from all drainage systems which might include outflows from SW systems, as part of flood risk management projects.
- e) Landowners do not appear in the proposals. In particular the issue of landowners who are not directly impacted by flooding but who may be required to take action or assist with SFM should be addressed in the "duties" contained in the new legislation.
- f) The council suggests that Fisheries Boards, Emergency Services, Network Rail, Regional Transport Partnership and Trunk Road Maintenance Contractors should be added as responsible bodies, who have a "duty" to work together to produce plans.
- g) The council is concerned at the degree of democratic scrutiny and stakeholder involvement proposed. The alternative two tier arrangements with LA's taking the lead in LFRM plans incorporate these as a matter of course.
- h) The proposal seeks views on how to amend the current situation of three different approval processes; a) Flood Prevention Orders (FPO) and Coastal

Protection Orders (CPO) b) Planning; c) Controlled Activities Regulation (CAR).

This response suggests an amendment to the current 1949 Coast Protection Act and the 1961 Flood Prevention (Scotland) Act to supplement the powers they give LA's to take entry to land, with a Compulsory Purchase process. This would allow a different view to be taken on Ministers making FPO's and CPO's which could be given to individual projects as part of Ministerial approval of a LFRM plan. The FPO/CPO could be contingent on statutory planning approvals being achieved. In addition where "projects" require a full Environmental Assessment (EA) for planning approval, the need for separate CAR approvals should be relaxed.

- i) The Ministerial approval of LFRM plan should be the trigger for block allocations of funding to LA's based on the "expenditure" cash flows in the plans.
- j) The council supports the need for integrated guidance on the various regulatory regimes which impact on SFM and delivery of projects.
- k) The council does not support a new "duty" on LA's to promote measures to alleviate flooding, preferring the existing situation of permissive powers.
- l) The council supports the proposal of a single national enforcement body for responsibilities under the Reservoirs Act 1975. However it suggests the Health & Safety Executive would be a better alternative than SEPA. The council supports a new duty on plans to deal with reservoir undertakers to prepare and share emergency situations.

2 Detailed Responses to Specific Questions

Q1. Do you believe the definition of SFM is helpful and of practical benefit to flood risk management?

(Definition proposed by Flooding Issues Advisory Committee (FIAC) reads:

"Sustainable flood management provides the maximum possible social and economic resilience against flooding**, by protecting and working with the environment, in a way which is fair and affordable both now and in the future."*

* *'Resilience'* means: 'ability to recover quickly and easily'. The Scottish Government uses it to deliver the 'four As': Awareness + Avoidance + Alleviation + Assistance.

** Flooding means all types of flooding: surface water run-off (pluvial), sewer, river, groundwater, estuarine and coastal.

FIAC proposed the following overall objective of Sustainable Flood Management (SFM):

- **Meet needs for flood resilience**

and that to meet this overall objective it must be integrated with four further objectives:

- A social objective to **enhance community benefit with fair access for everyone;**
- An environmental objective to **protect and work with the environment, with respect for all species, habitats, landscapes and built heritage;**
- An economic objective to **deliver resilience at affordable cost with fair economic outcomes;** and
- A future generation's objective to **allow for future adaptability, with a fair balance between meeting present needs and those of future generations.**

A1. **Yes – the definition has been subject to very intense deliberation and consulted on widely as part of the investigation into the introduction of SFM in Scotland. The inclusion of all types of flooding in the definition is very important.**

Q2. Do you think the definition is clear and simple to understand?

A2. **Yes**

However one policy option needs to be considered - that of "Abandonment".

The Scottish Government policies are centred on the four A's as mentioned above. There is in fact a fifth A which should now be included as part of an overall sustainable flood management in Scotland, that of Abandonment. For example the coastal management strategy of managed retreat is often really abandonment. In some cases this might be the most sustainable policy in the long term.

Since this strategy is already included in coastal policies it is vital that consideration is given to the inclusion of this term in the above definition, otherwise it will be precluded as a viable option when preparing flood plans.

Q3. Do you agree with the conclusion as set out in paragraph 3.17?

"3.17 The Scottish Government therefore believes that a single competent authority with a national remit for implementing the Floods Directive should be identified, and that the important role of local authorities in implementing flood defence works and engaging at a local level should be maintained. This approach will ensure that the national and catchment focused approach to flood risk management planning is underpinned by local co-ordination and delivery of measures by those bodies with direct experience of implementing flood risk management measures in Scotland.

A3. No - see also the answer to Question 4.

Do not agree that there needs to be three levels of plans:

National Flood Risk	=	RBMP – national catchment
Area Flood Plans	=	RBMP - sub catchment
Local Flood Plans	=	No provision in RBMP.

This appears to artificially introduce a level of planning which is not needed and will lead to a complex interaction between bodies and confusion for the public. Suggest only two levels are needed:

National Flood Risk	-	SEPA – national area plan on at national geographical basis
Local Flood Plans	-	LA's – local flood plans principally on local authorities area

The three tier approach appears to be predicated on an apparent need to integrate the two processes but there are major differences between RBMP and Flood Plans.

RBMP

- a) before the Water Environment & Water Service (Scotland) Act 2003 (WEWS) there was no RBMP activity and therefore the system and structures could be devised from scratch to suit the needs of the main players.
- b) SEPA are responsible for the implementation of the outcomes of the RBMP process, mainly through their regulatory regimes such as controlled activity regulation and control of pollution regulation. The responsible bodies who have a duty to assist SEPA have little to do by way of direct action other than to comply with regulations. This is considered a properly constructed process, in which the implementer has primary responsibility for the planning and development stage.
- c) The public have no direct interface with RBMP process and therefore local elected members are comfortable with this process being distant from local scrutiny.

- d) **There are no major direct capital expenditures associated with the delivery of the RBMP.**
- e) **RBMP have little implication for development potential as part of land use planning procedures.**

Flood Plans

- a) **There are already comprehensive, well established arrangements for flood prevention and coastal protection which result in coherent policies and programmes within Local Authorities, this represents 90% of such activity in Scotland.**
- b) **These programmes are already integrated with other statutory duties within LA's who are responsible for their delivery.**
- c) **The public are directly impacted by flood management processes and local elected members have a very strong interest in these issues.**
- d) **The schemes as presently developed involve massive capital expenditures, involving long lead in times requiring not only technical expertise but programme management capabilities related to major projects.**
- e) **Flood Plans have major influences on development potential.**

Given these fundamental differences adopting the 3 level hierarchy simply to match the RBMP process is not a practicable arrangement. It will not streamline the process as intended.

Applying the same philosophy of planning by a body that delivers, then Local Flood Risk Plans being prepared by LA's should be the model. The EC Flood Directive requires a competent body only at national level. Below that the national government can select its own arrangements. It is contended that the three tier hierarchy is cumbersome and will lead to the same degree of confusion/friction as currently exists. For example it is difficult to see how councillors with the democratic mandate and the spending power would respond if SEPA disagreed with their intentions regarding a proposed scheme, which could release economic development potential.

It is proposed that SEPA's activities be focused at a national strategic level, where they would be the "competent" authority preparing the national strategic direction as required by the EC Flood Directive. The "Area" plan would thus be on a Scottish wide basis. There is no need for intermediate artificial sub catchment level, which does not correspond geographically to actual watercourse catchments.

Below the Scottish wide plan or (Scottish Area Plan) – would sit the Local Flood Risk Management Plans. The LA should be the "competent" body at this level. This arrangement in fact mirrors the current format of SEPA producing flood risk maps on a national basis, with LA's promoting schemes locally. Angus Council considers these arrangements of responsibilities are working effectively and there is no need for change.

What is not effective is the legislative restriction and constraints on LA's to promote schemes which meet the definition of SFM, and the new legislation should address these shortcomings.

Cross boundary catchments/boundaries may appear to present difficulties, but in fact local authorities have no real problems in working together to ensure flooding issues are dealt with both at the micro level e.g. where a burn may be blocked near to a boundary and at the macro level.

These arrangements would recognise and give focus to the duties and permitted powers LA's have to discharge in terms of flood management and would preclude the inevitable loss of clarity and transparency, with attendant loss of public accountability if the current proposal is adopted.

Q4. Do you agree that there should be a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?

A4. No, for a number of reasons, which relate to the answer for question 3 and the alternative proposal for a two tier hierarchy is needed and practicable.

- a) SEPA could function at the national level as the competent authority, and indeed there is a strong case for this based on their current work in providing flood warning and flood maps.**

However they should not be the sole competent authority. As elaborated on above LA's are far better placed to take on this role, at the local scale especially as they will input needs of people into local plans and deliver the outputs of the plans. This together with them holding the purse strings, is perhaps enough reason for their nomination as a competent authority.

- b) It is not evident that SEPA currently has personnel with the engineering expertise required to successfully deliver major capital programmes. This expertise is found within LA's who have long and in depth experience of how to control and manage such programmes. Pitt in his recent report emphasised the need to have people competent in flooding disciplines in charge of flood management processes, and points to the lack of engineering experience in some of the responsible authorities as a factor which exacerbated recent floods. The current proposals in the consultation have not heeded that report. (Learning lessons from the 2007 floods in England and Wales. Interim Report by Sir Michael Pitt to Ministers of State, published December 2007).**
- c) SEPA have no real experience of dealing with the public, or in undertaking the in depth consultation and participation exercises needed for both individual flood schemes and flood policies.**
- d) In terms of Coastal Protection and inundation from the sea, SEPA have no current input to this other than the first generation flood maps. The expertise on coastal flooding lies solely with LA's. They have demonstrated the ability to take the strategic overview as well as deliver and maintain defences. For example the long standing North East Coastal Group involving Fife, Dundee, Angus & Aberdeenshire. It is no coincidence that two out of three Shoreline Management Plans (SMP) in Scotland cover this section of coastline.**

[An SMP is in effect an "Area Plan" for coastal matters for the individual LA's containing strategic overviews, policies for management strategies and direction for specific intervention.

This is a model which could be considered in place of the top down "regulatory" model being proposed for "Area Plans" encompassing all forms of flooding.]

- e) The proposals also need to be strengthened regarding the integration of Scottish Water (SW) provision which has major impacts on flooding particularly in the most vulnerable urban area.**

There are two cases to be considered; firstly when SW have systems which can deal with their design rainfall event of 1:30 year. This can be termed a competent sewer system. Secondly when the system cannot deal with this type of 1:30 year rainfall event; i.e. an incompetent system. The current legislative regime prevents the overspill from an incompetent system from being dealt with sensibly.

The new legislation should put the onus on SW to deal with the excess from an incompetent system, where it causes or contributes to flooding. At present the Water Commission and SW appear to regard this excess water as someone else's problem. Funding should be available either directly to SW or through funding of LA's to deal with the excess.

In either case the excess storm water overflows or surcharges from the system onto adjacent surfaces/ground, or into adjacent water courses or SUDS and has to be considered as part of the management of this flood water.

LA's have long argued that this "gap" between the legislation for wastewater dealing with a 1 in 30 year rainfall event and that for flooding dealing with 1 in 100 year flooding event needs to be addressed in any new legislation.

The simplest way would be to place a duty on SW and LA to agree how to deal with any excess storm water whether from a competent or incompetent system as part of flood management activities and to fully fund the LA's to reduce/attenuate or otherwise deal with it, as part of flood management measures. This is in essence what "integrated" urban drainage is about and is elaborated in Answer 13. Only the LA's have the position and knowledge to ensure integrated drainage is realised and this is another reason why LA's should be nominated competent authorities.

- f) In the past SEPA's regulatory role has been one of the catalysts for integrated urban drainage but the main drivers have undoubtedly been construction/property professionals within LA's operating as agents of regeneration processes which would have been otherwise constrained by the lack of capacity in old drainage and sewers. Only the LA's have the "strategic" capacity to take this overview in terms of economic, social and environmental aspects of regeneration i.e. sustainable development and it is only within the LA that the capacity exists to develop a multi-discipline approach to take forward such programmes.**

- g) **There is a real danger that imposing the single focus of regulators such as SEPA on flood management processes, would limit the ability of LA's to integrate it with its other mainstream activities.**

The real question is where to place the break in authority and responsibility between SEPA and the Local Authorities. For the reasons given in A3 & A4 it is contended that the sensible point is where the activity changes from when a regulatory function is paramount to one when delivery dominates. It is suggested that the present point is more suitable than that proposed in the consultation and that the alternative two tier approach places the break correctly. Therefore nominating LA's as a competent authority leading on LFRM plans is a better option.

- Q5. **Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not what alternative do you propose?**

- A5. **No. Refer to answers 3 and 4. It is contended that three tiers of planning before getting to the implementation of measures is too many.**

The tier at "area level" is not needed. Much of the information in Area Plans is available elsewhere, and would merely duplicate information for example flood policies, plans and schemes are already given in Structure Plans and Local Plans under the Planning Acts.

The proposals fail to recognise that the majority stakeholder at this level will be the LA's and not SEPA. Indeed LA's will have the greatest input to make in the formulation of any of these plans including the very first Preliminary Flood Risk Assessment at national level.

A revision to the proposals is suggested in the same format as in Box 7 of the consultation document.

The proposed duty on LA's to prepare a LFRM Plan should be based on a single stage process at that level.

The proposed revision would see intervention measures and schemes as outcome of the LFRM plan and not as a separate part of the process.

It must also be recognised that the level of assessment that will be required for LFRM is much greater than at present. The LFRM plans are major strategy documents and will require extensive research and consultation by the lead authority. As an example the Shoreline Management Plan (SMP) for the Angus coastline took five years and cost in excess of £200,000. Whoever is required to be involved will require the resources issue to be addressed.

The scale of the input will very much depend on the decision made regarding the streamlining of the current statutory processes and at what stage Ministerial approval will be given, (see Answer 18).

If Ministerial approval is to be given only to LFRM plans then the plans and projects therein obviously will have to be more detailed. If approval is still at the individual project stage then the LFRM could be less detailed (see Answer 12).

The process envisaged as set out in revised Box 7 would undoubtedly involve approval of the LFRM plan by Ministers as elaborated in Answer 18. This

would implicitly become the first stage approval of embryonic projects contained in the plan.

It is suggested that the expenditure identified against the projects in the LFRM plan would represent the amount of "block allocation" required by LA's to deliver projects over the term of the plan. Provision of a block allocation at this stage would also answer previous criticisms by LA's that funding should be made available much earlier in the gestation period of major capital projects. This process would be in alignment with the process for approving Local plans under the Planning Acts.

BOX 7 Flood Risk Management Planning

The Scottish Government believes that the hierarchical planning process summarised below would ensure that national objectives for flood management are underpinned locally by targeted measures that are organised within and across catchments.

	Area Flood Risk Management Plan (National)	Local Flood Risk Management Plan	Projects
<i>Operating scale</i>	These are large-scale national plans intended to cover the two individual river basin catchments in Scotland (as established for the RBMP process), but including coastal areas.	These plans would be geographically based on current local authority. They would cover the natural drainage area of rivers or watercourses in that area and contain potential actions at the scale of a single catchment of a watercourse or river. Where required they would contain cross boundary measures based on agreements between the lead authorities, and measures would be included in both plans.	Operate at the scale of a single scheme or a combination of measures/schemes (e.g. flood defences) across a catchment.
<i>Overall purpose</i>	A high level plan that sets the strategic framework for flood risk management in Scotland. These plans would set the framework in which measures are delivered or planned for at a local level.	These plans translate the strategic objectives and measures set out in the Area Flood Management Plans into locally focused sets of measures to address flood risk.	Projects would comprise the action identified in the Local Flood risk Management Plan and would be used to deliver the preferred flood risk management measures for a specific location within a catchment. Would include research projects.
<i>Example Tasks</i>	<ul style="list-style-type: none"> Identify areas at significant flood risk. Map of flood hazards (likelihood of flooding) and flood risks (impacts of flooding). Set objectives to manage flood risks. Prioritise flood risk at a national level. Outline broad-scale measures to address flood risks, e.g. improved flood warning and/or flood alleviation. Establish links and integration with other aspects of land and 	<ul style="list-style-type: none"> Assessment of local catchment characteristics. Detailed appraisal of flood risks to inform selection of measures. Appraisal of management options and selection of preferred measures. - could include traditional flood defences, natural flood management techniques and urban drainage plans. Submit plan for 1st stage approvals. Coordination with catchment management plans; RBMP; Local plans (Planning Acts); community plans; emergency plans. Coordination with current investment plans of responsible 	<ul style="list-style-type: none"> Pre-project monitoring and assessment. Full stakeholders consultation/participation. Confirm final option Secure final funding Plan delivery Final hydrology and Design. Environmental Assessment. Complete statutory process.

	<p>water management (e.g. WFD).</p> <ul style="list-style-type: none"> • Coordination with plans under the Planning Acts etc.; strategic investment plans of responsible bodies. 	<p>bodies to explore potential to integrate funding streams.</p> <ul style="list-style-type: none"> • Prioritise flood risk management measures locally. • Forward planning for funding and implementation. • SEA • Initial stakeholders consultation 	<ul style="list-style-type: none"> • Implementation of the preferred approach. • Prepare long term maintenance and environmental management plans • Post project appraisal and monitoring.
<i>Outputs</i>	<ul style="list-style-type: none"> • Risk Maps for all forms of flooding and coastal erosion. • National warning systems for flood and coastal events. • National framework for and guidance on prioritisation criteria. • National guidance on promotion of projects. • Research into national issues and emerging best practice. • Coordination with RBMP; Regional plans (Planning Acts); strategic investment plans of responsible bodies • National education and publicity campaigns 	<ul style="list-style-type: none"> • Forward plans of action for implementation. • Outline cash flows coordinated with investment plans of responsible bodies. • Commitment to long term central and local government funding for these action plans. • 1st stage approvals for projects • Biennial reports. • Research into issues at area level e.g. innovative techniques; knowledge transfers; emerging best practice. • Local education and publicity campaigns 	<ul style="list-style-type: none"> • Delivery plan and cash flow for projects. • Secured funding • Final Statutory approvals • Delivery of measures as finally agreed. • Implementation of long-term maintenance and management regimes. • Monitoring reports.
<i>Lead</i>	Competent Authority (SEPA)	Competent Authority (Local Authorities)	Appropriate organisation or individual depending on type of works being undertaken

- Q6. Should Ministers or SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?
- A6. **The LA should undoubtedly be designated as the lead authority by Ministers. Indeed from the foregoing answers there is an unassailable case for LA's to become the competent authority at this level with SEPA reverting to a responsible authority.**
- Q7. Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?
- A7. **No. This council is prepared to support SEPA being nominated at national level as discussed previously. However the case for Local Authorities to be the primary player at local level is overwhelming. It is proposed that LA's are nominated as the competent authority for Local Flood Risk Management Plans, with SEPA reverting to a responsible body and alongside SNH, Scottish Water, the Forestry Commission etc.**

Concerning the need for Advisory Groups the alternative two tier approach being proposed in this response would only require a single advisory group at local level operating much as the voluntary Flood Liaison Advisory Groups do at present.

It should also be permissible for LA's as the competent authorities to set up cross boundary Advisory Group for discrete areas of interest, which do not fit neatly with geographic boundaries. For example the North East Coastal Group comprising Fife, Dundee, Angus, Aberdeenshire and Aberdeen has been a good example of this form of partnership working. It is regularly attended by SEPA, SNH and Network Rail.

- Q8. Which other bodies should be identified as responsible authorities?
- A8. (1) **Fishery Boards, who have a large part to play in the management of watercourses and can be very knowledgeable about their rivers. This would also ensure that they have input to the development of plans in their area taking account of fishery interests.**
- (2) **Emergency Services, as part of the overarching Strategy of the management of flood risks in "assistance" which often involves these services. They have historical data which would be useful at all stages of the processes envisaged, together with expertise which could influence plans and details of projects.**
- (3) **Network Rail have major assets along the coast and in river valleys which are impacted by flooding. Often the assets are a major component of the value of benefits. Additionally Network Rail undertake work to protect their assets which should be in the action plans of the LFRM Plans.**
- (4) **Regional Transport Partnership (RTP's) in the same way RTP's should have a duty to contribute to the process.**
- (5) **Trunk Road Maintenance Contractors (TRMC) in the same way TRMC's should have a duty to contribute to the process.**
- Q9. Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

A9. Yes.

Q10. Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

A10. Not as presented. The proposal do not seem to allow any form of democratic scrutiny in the important planning activities of the LFRM Plans. Also SEPA have no depth of knowledge or expertise in dealing with the one important stakeholder actually impacted by flooding – members of the public.

For both these reasons the alternatives proposed in this response to place LA's as the primary agent in this part of the process are recommended.

This will offer the better vehicle for stakeholder and community engagement, which are already embedded in delivery of services by LA's.

One group of players appears to have been missed in the proposals, i.e. Landowners who are not directly impacted by flooding but who by their actions or inactions, who can markedly effect flood risk management. The proposals should consider to what degree a duty should be placed on landowners to participate in the processes and thereafter comply with the delivery of the "projects".

Q11. Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for the preparation by SEPA of area flood risk management plans?

A11. No. As discussed previously there are too many fundamental differences between RBMP and FRMP for these processes to be the same. This is best described in a table:-

	River Basin Management Plans	Local Flood Risk Management Plans
Inputs	Driven by SEPA, research, and best practice; minor input from other responsible bodies.	Driven by local councillors on behalf of public, advised by LA officers and central government.
Outputs	Used to inform development and operation of SEPA's regulatory regimes.	Used to prevent or reduce risk of harm to people and damage to their property. Used to release development potential. Used to fulfil strategic ability to ensure wellbeing.
Impacts	Internal with SEPA indirect on public through regulations.	External on a wide population and on the environment.
Geographical Focus	Very wide for inputs, while outputs may be more focused actions, these are on a wide area basis.	Very small focus on small (usually urban) areas at severest risk. Although measures may be on a wider basis the target is the people in the small area.
Time Pressures	Imposed by EC directive.	Imposed by people at risk.
Major Stakeholders	SEPA	Public and local councillors.
Funding	SEPA	LA's
Consultation Process	Internalised at officer level; straight forward consultation.	Externalised requires major public participation.

The differences require different approaches. As contended before the process should be predicated on how best to serve the interest of the major players and stakeholders.

The RBMP process suits SEPA. It will not suit the public as represented by local councillors. In recognition of this the alternative approach in this response is predicated on LA's being the primary player in the development of the LFMP's.

Q12. Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?

A12. This response sets out an alternative proposal whereby the "Area Flood Risk Management Plans are at a national geographical basis with only "Local Flood Risk Management Plans" thereafter based on the geographic area of the LA's.

Certainly the Ministers should approve the (National) AFRMP.

The question on whether Ministers need to be involved after that depends on how the statutory processes are re-arranged by the new Bill and how and when

block funds from central government are made available to the LA acting as the deliverers of the LFRM Plans.

This council would prefer that commitment to funding is made on the basis of the LFRM Plans. This would undoubtedly require prior approval of plans by Ministers as a precursor to funding allocations.

See Answer 18 regarding approval processes.

Revised Box 8

BOX 8 Proposed roles and responsibilities for flood management in Scotland	
<i>Flood risk assessment</i>	SEPA would fulfil the role of flood risk assessment authority; this would include a duty to assess and map flood risks and identify areas at significant flood risk.
	Responsible authorities would have a duty to collaborate in the production of risk assessments. This would include sharing and reviewing data and information.
<i>Strategic and catchment planning</i>	<u>Area Flood Risk Management Plans.</u> SEPA acting as the nominated competent body for this activity would fulfil the role of strategic flood planning authority; this would include a duty to produce the two Area Flood Risk Management Plans, one for each of the main catchments in Scotland that set out the strategic framework for flood risk management.
	<u>Local Flood Risk Management Plans</u> Local Authorities acting as the nominated competent authority for this activity would fulfil the role of local catchment planning authority; this would include a duty to prepare catchment focused Local Flood Risk Management Plans for each river or watercourse in their area. The LFRM plans would coordinate delivery of measures to address flood risk.
	Responsible authorities would have a duty to collaborate in the production of these plans. This would include contributing through advisory groups convened by Local Authorities.
	<i>FLOOD ALLEVIATION (e.g. flood defences, natural flood management measures, new and retrofitted suds, integrated urban drainage management, non structural measures, measure to make properties resilient, revised land management regimes)</i> Local Authorities would have primary responsibility for flood alleviation and would be responsible for coordinating and implementing flood alleviation measures, including all forms of such measures. Local Authorities shall be responsible for dealing with outflows from all urban and non urban drainage systems, where these outflows contribute to flooding, including outflows from drainage systems such as sewer systems, private suds, road drainage, overland flows. All measures would be contained in Local Flood Management plans.

<p><i>Implementation of measures to manage flood risks</i></p>	<p>Scottish Water (in collaboration with Local Authorities) would be responsible for implementing measures associated with their infrastructure to prevent "sewer flooding " where the infrastructure does not cope with the design standard for rainfall events required under the legislation governing their operations. All measures would be coordinated through Local Flood Management plans.</p> <p>Forestry commission would be responsible for bringing forward measures associated with forestry management. All measures would be coordinated through Local Flood Management plans.</p> <p>Land owners impacted by flood measures contained in the LFRM plans would be obliged to participate in the delivery of measures, these might include construction of components of schemes on their land or changes to land management regimes or setting aside areas of flood plain to act as infrequent storage basins. All measures would be coordinated through Local Flood Management plans.</p> <p>[N.B. If other parties are made Responsible Bodies then their duties should be enumerated here]</p> <p>Responsible authorities would exercise their duties to support implementation of measures to reduce flood risk.</p>
<p><i>Implementation of measures to manage flood risks</i></p> <p><i>(Continued)</i></p>	<p><u>FLOOD AWARENESS AND AVOIDANCE</u></p> <p>SEPA would fulfil the role of flood warning authority; in fulfilling this role, SEPA would have a duty to provide flood-warning services to those areas of Scotland at significant flood risk.</p> <p>Local Authorities (and statutory Consultees) would use development control to ensure that flood risks are minimised for new developments. Local authorities would use building standards to promote measures to improve resilience of buildings built in flood risk areas</p>
<p><i>Responses to flooding</i></p>	<p>Responsible authorities would exercise their duties to support implementation of measures to reduce flood risk.</p> <p>Responses to flooding would continue to be coordinated through the framework established under the Civil Contingencies Act 2004.</p>

Q13. Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?

A13. Undoubtedly yes.

Reference answer (4) where SW approach to "outflows" from their system and with the need for sensible means of dealing with these flows, was highlighted.

Sensible of course includes properly funded. It is not at present because it falls outwith any legislation. This council does not support the proposal to make SW "responsible for implementing measures associated with urban drainage infrastructure, even if "all measures would be co-ordinated through LFRM Plans".

SW have never demonstrated an appetite to take on this role as it is very questionable if it would ever be given any degree of priority in their spending profiles. This would inevitably lead to major difficulties in the integration of budgets and be a massive constraint in delivery of measures and schemes.

There is a need to differentiate between incompetent and competent drainage systems. Only in the first case would this council consider it appropriate that SW be made responsible for dealing with the outflows impacting on flooding. However, this council would prefer to be funded directly to deal with all types outflows from either incompetent or competent systems in the same way as it has to deal with other overflows, as part of an integrated approach to urban catchments. These include culverted natural watercourses, road drainage, land drainage, private SUDS as well as systems adopted by SW.

Q14. Should Flood Risk Management Plans inform the way that development plans are prepared, or should there be a stronger linkage such as a requirement on planning authorities to show that they have regard to the FRMPs?

A14. Planning authorities already need to take regard of RBMP and undoubtedly given the ever greater degree of integration needed between flood management and the development process, then planning authorities should be required to show they have regard of LFRM plans.

Q15. Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

A15. No – see answer 18.

Q16. Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?

A16. No see answer 18.

Q17. Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?

A17. See answer 18.

Q18. Do you think that the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?

A18. **Yes, but with the following proviso. The current Acts give LA's the power to build on land owned by others once the "order" has been approved by Ministers, whether or not the owner agrees. LA's do not have to invoke Compulsory Purchase Orders for coastal or flood schemes.**

Accordingly the appeal system under these Acts is different to other Acts under which the LA's operate. The need to maintain the "rights" of owners is the main obstacle to rationalising the process.

It is contended that these powers should be supplemented so that the Compulsory Purchase Process, which applies to all other situations where LA's require land for construction projects may be an alternative route to acquiring the necessary land.

This would allow:

- **Ministerial approval of LFRM Plans to be deemed as approval of the projects contained in the plan (FPO or CPO under Acts).**
- **The development control processes to be used as the primary control on the detailed scheme.**

Control Mechanisms could be developed whereby:-

- **The LFRM Plan would be subject to public consultation instituted by the LA's as the competent authority.**
- **If a scheme deviates significantly from the project approved in the LFRM then objectors at the "Planning approval" stage could ask the Minister to call in the project. (Significant deviation is already well understood in development control processes).**
- **The individual projects would be subject to full consultation under the Planning Acts.**

Many advantages would follow:

- (a) **Approval of the LFRM Plan would release block funds from central government to LA's. This would cut the shackles on how LA's produce develop and deliver scheme.**
- (b) **No need for a separate second approval process parallel to planning processes at local level solely for "Flood" projects. The current planning system would be utilised.**
- (c) **Existing system is (fairly) well understood by public, practitioners and other stakeholders.**
- (d) **One system of formal objections at the planning stage on "projects" could be instituted.**

- Q19. What would be the appropriate timescales for notification and response?
- A19. **Same as current situation, six week in the case of consultation on LFRM Plan, 28 days on planning approval.**
- Q20. Would it be appropriate for such a process to carry deemed planning consent?
- A20. **See answer to Q18 and use of two stage approval process which would include planning procedures.**
- Q21. How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed, be addressed?
- A21. **This council does not share the concerns that it would be somehow unfair to make it as the Planning Authority responsible for vetting such projects. It already vets all forms of major construction proposal including major engineering works.**

This council has no concerns about the technical capacity within its staff to check these schemes, and the council would be prepared to share this in house capacity if required.

- Q22. Are there any additional alternatives to the options outlined above which would simplify procedures?
- A22. **Refer to answer 18 which details an alternative.**
- Q23. Do you consider local authorities' powers are sufficient to take necessary action to avert danger to life and property?
- A23. **No. The contention that LA's are no longer constrained by reliance on central funding and may therefore undertake "non 1961 Act" activities needs to be fully elaborated in the proposals. It is vital for clarity to know which other legislation is being referred to here.**

Reference paragraph 3.76 and paragraph 3.77, finance is still a constraint for two reasons:

- a) **If LA's do not have express statutory power to act, they may be cautious about taking action in the face of potential vires issues particularly in urgent situations.**
- b) **If funding is insufficient or uncertain this will hamper the development of projects contained in LFRM plans.**

LA's have argued this uncertainty about the disjointed nature of legislation and regulations has caused problems in the past. The 1997 Flood Prevention and Land Drainage (Scotland) Act which amended the 1961 Act in parts and introduced new duties, has received particular criticism for being imprecise in its drafting, which has led to severe difficulties in its implementation. The Act was intended to allow LA's to take action but they are still constrained in being proactive since they had to be prepared to bear the cost of any such actions where there is no specific direct funding, even although it might be considered that LA's have powers in terms of the Local Government in Scotland Act 2003, Section 20 – Power to advance well-being.

Regarding the statement that LA's have extensive powers to act to protect life and property again action is still reactive after an event using powers from "non flood" Acts for example:

- 1) - Emergency planning
- 2) - Dangerous building provisions
- 3) - Provisions in the Roads (Scotland) Act 1984

None of which can be used to pro-actively manage flooding.

For these reasons the statement in 3.77 that LA's should be fully empowered in new legislation is welcomed. However empowerment should apply not only to urgent remedial actions with cost recovery. For pro-active catchment management which is central to achieving SFM then LA's should be empowered to deliver agreed LFRM plans, where necessary on private land, including agricultural, forestry etc not directly impacted by floods. Only then will integrated SFM be achieved.

Of course proper compensation arrangements for private landowners would be vital. Such compensation should be properly considered as part of the funding in block allocations to LA's. It should also be noted that such compensation may include long term commitments to achieve changes in environmental management plans and management regimes.

A definition of private landowners would have to be given, which might be any party not defined as a responsible body in the new legislation. The expectation would be that responsible bodies would have a duty to assist in the delivery of the "projects" in the LFRM plans without compensation. Cross reference A18 concerning using compulsory purchase powers in place of the right of entry under the 1949 and 1961 Acts.

This section of the document appears to relate only to the 1961 Flood Prevention (Scotland) Act, no mention is made of the Coast Protection Act 1949. Angus Council would propose that the same intentions apply to the provision of that Act, i.e. for SFM to be delivered, proactive powers need to be available to LA's for "coastal management" on private land.

- Q24. Do you agree that streamlining the CAR and flooding/planning processes can be managed through better guidance?
- A24. Yes. In part better guidance regarding for example the need for CAR to be applied to large scale schemes which under the Planning Acts would require a full Environmental Assessment. SNH & SEPA are statutory consultees to these planning processes and have input to all stages, through scoping, to final report. The needs of CAR can be incorporated by SEPA. Guidance could be that where a "scheme", which could be on a catchment basis, is subject to an EA then either CAR authorisations are automatic or relaxed.
- Q25. Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?
- A25. Yes, where LA can demonstrate it has developed a scheme under the requirements of SFM then application of CAR to such schemes should be reconsidered. There are two scales of operation. For large scale schemes

which require environmental assessment, (see Answer 24). For small scale projects, CAR measures may be more appropriate. Angus Council has developed an in-house assessment process which incorporates SEPA's internal measurement criteria. This assessment could be applied to small flood schemes to gauge any "environmental" impact and ease the passage through the CAR approvals. If other LA's adopted the same approach the reliance on CAR to control the implementation of flood measures might be relaxed in due course.

Q26. Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the Government should consider?

A26. This response is made on the basis of an alternative to the current proposals.

Q27. Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?

A27. One area where a consistent approach might be of benefit is in the collation of historic data and inclusion of contemporary information on flood incidents during the reporting period.

This council is aware of several pieces of research into these issues and would welcome a standard, user friendly format for the collation of data which might form an addendum to the biennial report.

Otherwise the content and format of the report should be left to LA's to decide.

Q28. Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

A28. No.

28.1 Flood Management is welcomed as is the helpful definition of what constitutes a flood which now includes all flood types.

28.2 The move to a multi criteria evaluation methodology is welcome as the over reliance on benefits to cost ratios which has been a severe constraint on moving to SFM.

28.3 The recognition that SFM requires a "helicopter" view of the flooding process which includes the entire catchment and that all forms of measures should be considered as "flood risk management" and that such measures should be on a catchment wide basis is welcomed.

28.4 It is clearly recognised that one of the major constraints in the ability to deliver SFM lies in the current legislation. But it is not yet clear how these constraints will be removed.

28.5 The administrative arrangements contained in the consultation have not been discussed before with LA's. This council does not support the proposed three tier system of flood planning/delivery. The council is aware that other councils share similar concerns on practicalities, accountability, transparency, deliverability. Appropriate capacity and knowledge at the correct point in the system (Pitt) is also not recognised.

Therefore an alternative two tier system has been proposed, which is considered to be a better, more effective administration mechanism. This places LA's at the heart of the process, which as argued previously is their correct position in that they will remain the major stakeholder in all phases of activity. Clearly LA's will need to fund both for the upfront of planning and development stage as well as the project delivery stage. This needs to be more clearly recognised.

- 28.6 Enumerating roles and responsibilities for various public bodies is helpful. The council has an alternative proposal in this respect, because it is not content that other bodies will be able to integrate their actions and funding at the appropriate time.

As an alternative the council has proposed that where actions/measure interventions/managements/regimes/maintenance regimes are required or require to be altered that funding for these is

- a) rightly considered as part of the cost of providing flood risk management;
- b) directed through the local authority.

It will not be effective or efficient to rely on a plethora of disparate funding sources to deliver SFM in Scotland. This will merely cause disruption and delays.

A set of major players seem to have been lost sight of in the proposals - individual landowners, who are not directly at risk of flooding but whose actions/lack of actions can impact on flooding elsewhere, on a large or small scale. The proposals should consider how to set out duties, obligations, responsibilities for them.

- 28.7 It is not clear how the various approvals will be streamlined. The council supports the move to a local approval and has presented a detailed methodology for a two stage approval.

Stage 1 Ministerial approval of Local Flood Risk Management Plan gives FPO or CPO, for named projects conditional upon Planning Approval being granted.

Stage 2 Appropriate planning approval when projects have been finally detailed.

This requires fundamental change to the 1949 and 1961 Acts concerning the power to enter land owned by a third party which should be supplemented by Compulsory Purchase Process in association with development control procedures.

- Q29. Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?

- A29. LA should not be placed under a duty to promote measures, the present arrangements or permissive powers are sufficient. If LA's were to be given a "duty" then they would almost certainly want to be in control of the whole process, including the initial risk assessment.

RESERVOIR SAFETY

Q30. Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?

A30. **Yes**

Q31. If so, should it be SEPA or another as yet unidentified body?

A30. **No. this would place a new burden on SEPA in an area of engineering where they have limited capacity.**

Suggest the Health and Safety Executive (HSE) are better placed to deal with this enforcement issue in that they already exercise control over reservoirs that form part of a workplace and therefore already have the required expertise.

Q32. Are you content with the proposals for dealing with reservoir flood maps under the provisions of the Floods Directive, or do you think that there should be a statutory duty on reservoir undertakers to prepare reservoir inundation maps and plans, similar to the duty in the 2003 Water Act for England and Wales?

A32. **Undertakers should have a duty to prepare inundation maps and draw up emergency plans for dealing with breaches. These maps and plans should be shared with the relevant emergency services and local authorities in terms of their duties under the emergencies planning duties.**

Q33. Do you agree that enforcement powers be extended and post incident reporting included as an additional requirement?

A33. **Yes**

Q34. *Views on crown application and any other comments?*

A34. **None.**

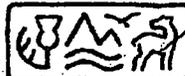
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Frances Conlan
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21 April 2008

Dear Frances

**PF 254/07-08: The Scottish Government – The Future of Flood Risk Management in Scotland - a consultation document
Strategic Environmental Assessment - Environmental Report**

Thank you for consulting SNH on the above Environmental Report.

We have a few comments on the report itself in relation to the natural heritage.

Relationship with other plans and projects – in our response to the scoping report we drew your attention to a recent government publication setting out a new framework for work on biodiversity - “Conserving Biodiversity – the UK approach”. A key underlying principle to this new framework is the Ecosystem Approach. This is particularly relevant to flood risk management because it draws together biodiversity benefits and the ecosystem services that habitats and species provide. So for example the multiple benefits of restoring wetlands for biodiversity benefit and for storing water in a catchment to alleviate flooding can be recognised. Following on from this is the consideration that restoring these wetlands and hence restoring these ecosystem services may assist in adapting to climate change and possible increases in flooding by increasing the natural resilience of a catchment.

The role of biodiversity in providing ecosystem services in relation to flooding could then have been highlighted in Table 3.2 for example. Currently the section of the table in relation to biodiversity focuses on the protection of biodiversity, with the possibilities of enhancement being mentioned as possible additional benefits of SFM proposals. We would prefer to see the restoration of habitats and ecosystem services put forward as a mechanism for providing for flood risk management. Whilst welcoming the statements on protection and enhancement of biodiversity, we would have liked to have seen an appreciation of the contribution that the natural heritage can make to alleviating flooding.

Monitoring – Table 5-1 lists possible indicators to monitor significant environmental effects of implementation of the proposals. We do not see how monitoring the number and size of designated landscape areas would be an appropriate indicator for landscape. A change in number or size of designated landscape areas is likely to be the product of changes in policy or legislation.

Appendix 2 – Material Assets – the effects of the EU Floods Directive are stated as being difficult to predict until the directive is finalised. The EU floods directive came into force on 26 November 2007 and so this part of the Environmental report needs updated.

Other – Sustainable Development and the Natural Heritage – The SNH approach – we would argue that delivery mechanism 3 is also relevant. SFM proposals need to ensure that financial incentives are properly targeted to allow for measures that maintain and restore ecosystem services to be selected.

Appendix 4 Assessment of the proposals – we would argue that biodiversity, flora and fauna are relevant to the overall need for flood resilience (see comments on ecosystem services above), the social objective in relation to recreation and access in green space, and future generations (see also comments above in relation to climate change). There is also a link to the economic objective as it can be argued that soft engineering measures in SFM are relatively low cost measures in relation to hard engineered defences and have multiple benefits associated with them.

If you wish to discuss any of the comments in this response then please contact [redacted]; Tel: [redacted].

Yours sincerely

[redacted]

John Thomson
Director, Strategy and Communications

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SCOTTISH GOVERNMENT CONSULTATION ON THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND

Background

- 1) NFU Scotland recognises that the framework for the Flooding Bill is the EC Floods Directive, which was formally adopted by the European Council on 18 September 2007. The Scottish Government must transpose the Directive into Scots law by November 2009. The purpose of the Directive is to establish a framework for the assessment and management of flood risks. It requires action by Member States in three main areas
 - production of preliminary flood risk assessment
 - production of flood hazard maps and flood risk maps
 - production of flood risk management plans
- 2) Therefore, NFU Scotland appreciates that the Bill intends to introduce new measures to reform the current legislation, the Flood Prevention (Scotland) Act 1961, transpose the planned EU Directive on the Assessment and Management of Flood Risks and provide a portfolio of responses for managing flood risk. The Bill intends to allow a modernised and sustainable approach to flood prevention with streamlined decision making.

Summary

- 3) NFU Scotland broadly supports the principles the Scottish Government has set out in the consultation paper.
- 4) NFU Scotland must reserve judgement on the practice and effectiveness of measures that might flow from this framework.
- 5) NFU Scotland supports the concept of establishing ways of co-ordinating catchment flood management planning to ensure a national approach, delivered locally.
- 6) NFU Scotland will be seeking to play a key role in such an approach – given that many of the measures to be implemented will have a direct impact on NFU Scotland members and the agricultural industry.
- 7) NFU Scotland considers that ‘soft’ engineering solutions include the use of flood plains, and therefore productive agricultural land, and may therefore result in reduced agricultural output and/or farm incomes.

- 8) NFU Scotland seeks assurance that any proposed measures are fully costed to properly assess the economic, as well environmental and/or social, benefits of taking such an approach.
- 9) NFU Scotland is firmly of the opinion that any proposed measures as a result of this legislation must recognise the agricultural productivity or economic value of flood plains.
- 10) Consequently, NFU Scotland considers that flood risk management measures that depend upon agricultural land must be extremely well thought out, and any associated payments must not simply be based on 'income foregone' founded on standard gross margins over the short to medium term.
- 11) NFU Scotland considers that maintaining flood defences on rivers is not always incompatible with good environmental and social policies.
- 12) NFU Scotland supports the concept of 'slow the flow' over land within catchments, but is firmly of the view that flow must not be impeded once in surface watercourses. If they are kept clear, then river carrying capacities would not be compromised, land would not be unnecessarily flooded and the protection for towns and cities would not be adversely affected.
- 13) NFU Scotland believes there may be a direct conflict here between the intentions of this flooding legislation and the excessive demands of the Controlled Activities Regulations (CARs) as part of the implementation of the Water Framework Directive.

General Comments

- 14) NFU Scotland broadly supports the principles the Scottish Government has set out in the consultation paper. However, NFU Scotland must reserve judgement on the practice and effectiveness of measures that might flow from this framework. The proposals are clearly designed to establish a framework within which 'sustainable flood risk management' in Scotland might operate more effectively than the current hard and blunt approach to 'flood prevention'.
- 15) NFU Scotland agrees that there must be no duplication of effort, and that the flood risk management process should be simplified and better co-ordinated. However, NFUS has its doubts as to whether local authorities, who should be accountable to all local interests, are best able to judge the needs of their areas. Therefore, NFU Scotland does not necessarily agree that local authorities should continue to be responsible for implementing flood alleviation measures.
- 16) In addition, NFU Scotland agrees that individual local authorities cannot operate in isolation. Therefore, NFU Scotland supports the concept of establishing ways of co-ordinating catchment flood management planning to ensure a national approach, delivered locally.
- 17) Indeed, NFU Scotland will be seeking to play a key role in such an approach – given that many of the measures to be implemented will have a direct impact on NFU Scotland members and the agricultural industry.
- 18) Scotland's agricultural land is a national asset not a liability, and may become an even greater asset with the onset of climate change and other significant influences on global

food supplies. Given its importance in food production and environmental services, its use in 'sustainable flood management' must be very carefully considered.

- 19) Agricultural land alongside rivers has often been cultivated through centuries of investment to protect it from flooding and to improve drainage. Compromising important areas of agricultural production could have serious impacts on rural economies and food production.
- 20) NFU Scotland acknowledges that there is now a clear intention, within the proposed legislation, to move away from exclusive use of 'hard' engineering to prevent flood events to increased use of 'soft' solutions to manage flood risk.
- 21) In those catchments where there is a high risk of flooding, NFUS considers that targeted re-establishment and restoration of floodplains may contribute to a sustainable approach to managing flood risk. Restoration of floodplains would require capital investment (e.g. to remove embankments). This would then affect agricultural incomes, varying on the type of agricultural land and the frequency of floods.
- 22) Therefore, NFU Scotland must express concern that the use of such soft engineering solutions includes the use of flood plains (and therefore good agricultural land) and may therefore result in reduced production and/or farm incomes.
- 23) Economic viability is essential for farming and other land-based businesses across rural Scotland, in order that they can continue to play their positive role in managing the countryside. Unnecessary and unplanned flooding of agricultural land - and roads and other property - benefits neither business nor environment. If land is prematurely flooded at times when further heavy rainfall is expected it may not be able to absorb excess water just when its capacity to do so may be most needed.
- 24) A planned and adequately resourced approach to using agricultural land as a flood plain, for managed flooding, in agreement with the farmers (and other land managers) concerned, is required – and must be at the heart of any legislation or measures in relation to sustainable flood risk management. If done on a catchment or floodplain scale to protect settlements downstream, then the financial and production trade-offs must be properly accounted for in the final analysis.
- 25) Therefore, NFU Scotland seeks absolute assurances that any proposed measures are fully costed to properly assess the economic, as well environmental and/or social, benefits of taking such an approach. Related to this must be responsibility for planning and the siting of new developments within catchments or flood plains.
- 26) NFU Scotland believes that this is an area where the balance between public and private liability/cost needs to be debated. It is highly likely that a significant level of public financial support would be required, as improved management of flood risk would clearly be of public benefit.
- 27) NFU Scotland supports the intention that the proposed Bill (and the aims of the Floods Directive) should enable information and mapping of flood risks. This is essential in order that a range of appropriate measures can then be employed to manage that risk and mitigate the impacts of floods, rather than seek to prevent floods.

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Scottish Environment LINK is the forum for Scotland's voluntary environment organisations representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

The future of flood risk management in Scotland

A response by the Freshwater Taskforce¹ of the Scottish Environment LINK

23 April 2008

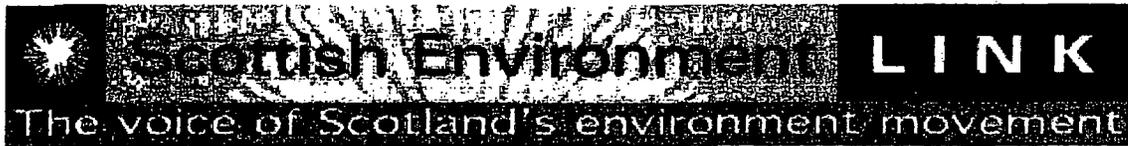
Summary

The Freshwater Taskforce of the Scottish Environment LINK welcomes the consultation on the future of flood risk management in Scotland. We see this as an opportunity to make progress from the current fragmented approach to flooding towards a more sustainable, modern approach that works with, rather than against the natural processes. Benefits will not be restricted to people and economy, but will also benefit biodiversity and the wider environment.

We believe that the new Bill should address the following key areas:

- **Review, streamline and where necessary amend the existing legislation that contradicts the aims of sustainable flood management**
- **Establish strong decision making structures to address flooding, nationally and regionally, that run in parallel with structures established by the Water Framework Directive**
- **Clarify and strengthen the responsibilities for flood management and ensure better co-ordination between 'responsible' authorities**
- **Transpose the requirements of the EU Directive on the Management of Flood Risk, ensuring that Flood Hazard Maps and Flood Risk Maps are completed by 2010, flood risk assessment is done by 2011 and flood risk Management Plans are established by 2015 with the active involvement of public**
- **Ensures fairness and transparency in decision-making**
- **Introduce duty on responsible authorities to integrate decision making processes and funding streams that have relevance to flooding**

¹ The Freshwater Taskforce has the following members: RSPB Scotland, WWF Scotland, Scottish Wildlife Trust (SWT), Buglife and National Trust for Scotland (NTS)



Introduction

Scottish Government is committed to sustainable flood management and to introduce in Parliament a Bill on flooding in June 2008. LINK Freshwater Taskforce welcomes this commitment and sees this as an opportunity to make progress towards a more sustainable, modern approach to flood risk management. **However, we feel that such important legislation should have been presented for consultation as a draft Bill.** The Bill provisions presented here will obviously not cover the full wording of the Bill, which we feel should have been open for consultation.

The EU Directive on the Management of Flood Risk (the Floods Directive) is part of the same family of European Directives as the Water Framework Directive (WFD) that Scotland transposed in 2003, through the Water Environment and Water Services (Scotland) Act 2003 (WEWS Act). The Floods Directive is ready to transpose. It provides a good framework for the Scottish legislation. In particular, we recommend that the Scottish legislation aims to:

- Promotes the concept of integrated catchment flood management
- Requires a long-term planning approach to reducing flood risks
- Makes flood management a key part of river basin management
- Places emphasis on non-structural measures such as using natural floodplains to store or slow water during floods.

Scotland led the way in the transposition of the WFD, legislating for the structures to enable meaningful participation and deliver Good Ecological Status, to safeguard the quality and health of Scotland's precious water environment. The transposing legislation – the WEWS Act set out a good framework to build upon to deliver sustainable flood management. By enhancing and clarifying the current roles in flood management, and by using the structures that already exist under the WEWS Act, Scotland is well placed to put in place smart, effective and efficient arrangements to plan for and manage flood risk.

The WEWS Act duty on sustainable flood management and the designation of responsible authorities

Sustainable flood management is not a new concept in Scotland. A duty on sustainable flood management (SFM) has been in place for some time. The Water Environment and Water Services (Scotland) Act 2003 (the 'WEWS Act) introduced this duty on Scottish Ministers, SEPA and responsible authorities:

'The Scottish Ministers, SEPA and the responsible authorities must – so far as is consistent with the purposes of the relevant enactment or designated function in question –

(i) promote sustainable flood management

and,

c) so far as practicable, adopt an integrated approach by co-operating with each other with a view to co-ordinating the exercise of their respective functions. '

(Water Environment and Water Services Act section 2 (4) (b) (i))

However, to this date, no further changes to flood policies have been made as a result of this new policy. However, the designation of 'responsible authorities' under

the WEWS Act should be used to inform the designation of 'responsible' authorities for the purpose of flood management.

Integration

The challenge and strength of SFM lies in the recognition that many human activities within a catchment, and historic and current land use affect flooding. This means, that integration between the different land uses is essential to the success of SFM implementation. Integration should be achieved at three levels:

- **The need to address all forms of flooding**

All forms of flooding contribute to the overall flood risk – surface water, river flooding, coastal and groundwater. All forms of flooding must be addressed in an integrated way.

- **Need for integration of policy and funding**

If SFM is to be achieved, there will need to be policy integration, particularly between water and land use policy.

- **Need for integrated working between relevant authorities**

Many different authorities will be involved in implementing the SFM. Important aspect of achieving integration will be through placing duties on relevant authorities to work together to secure compliance. We welcome inclusion of some of these duties in the Bill Provisions. In some cases, we have suggested additional powers or duties that we feel would strengthen the legislation.

Answers to specific questions

Q1. Do you believe the definition of SFM is helpful and of practical benefit to flood risk management?

Yes, it is helpful as a legal definition but a simpler, interpreted version would be of practical benefit to flood risk managers and lay people.

Scottish Environment LINK has been instrumental to the production of the Flooding Issues Advisory Committee's (FIAC) definition on Sustainable Flood Management. As such, we strongly support the work of the Committee, and the principles behind the definition. In particular, we stress the importance of the wording of "*by protecting and working with the environment*", which highlights the importance of the environment to deliver resilience against flooding.

Q2. Do you think the definition is clear and simple to understand?

It is clear but not simple to understand. The definition sets our clear principles of sustainability – but it does not inform practitioners of the steps needed to achieve SFM in practice. The guidance needs to recognise that SFM can only be achieved by:

- taking a strategic approach,
- by using a wide range of options to reduce the risk of flooding

- taking a long-term view
- openness and transparency
- taking the view of multiple benefits

We agree that these are the principles of SFM and should form the baseline of the new statutory guidance. We stress that any guidance should aim to provide practical advice on how to best achieve SFM. It should be subjected to full public consultation and testing for clarity and interpretation and usefulness prior to its release.

Q3. Do you agree with the conclusion as set out in paragraph 3.17?

We believe that a competent authority needs to be identified for the purpose of the implementation of the Floods Risk Directive, and that the authority should be SEPA. Appropriate funding from the Government will be needed to support SEPA in this new role. The Scottish Government should also aim to address the current issue of capacity and expertise, and support the role of universities and educational establishment in producing the flood managers of the future.

Q4. Do you agree that there should be a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?

As stated above, we support the designation of SEPA as the competent authority for the implementation of the Floods Directive. However, we recognise that SEPA does not currently have the resources or expertise to lead on all aspects of the Directive's implementation. This must be addressed through adequate resourcing and placing of duties on other relevant authorities.

Q5. Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not what alternative do you propose?

We understand that under the revised proposals, local authorities will be responsible for the production of local plans. We agree and support the revised proposals to have one district plan which would be influenced by guidance and national priorities identified through the national planning process. We also support the top-down and bottom-up approach to the development of district and local plans, and the creation of advisory groups to support the production of local plans. Advisory groups should consist of appropriate senior representatives from responsible authorities, as well representatives from organisations with relevant expertise.

We strongly recommend that the Scottish Government considers an intermediate type of plan between District and Local. These **Area plans** could be applied where required in large, urban areas with complex flood risk scenarios, administered by multiple local authorities and other Responsible Authorities. We have agreed that local authorities should retain their role in local flood management and lead on the production of local plans. However, in order to ensure a truly integrated approach, the Bill should introduce a requirement on Local Authorities to form '**flood committees**' where catchments cross one or more local authority boundaries. Local authorities will be required to work together and share funds within these committees.

The production of local or Area plans should be supported with appropriate guidance and practical advice. Local authorities should have a statutory duty to ensure that local and Area plans are consistent with the District plan, and that the plans contribute towards meeting the District plan's objectives. These intentions should be made clear in the biennial reports produced by local authorities.

In addition to the above, we propose the introduction of a **call-in procedure for local plans**, by which SEPA (as the competent authority) and the Responsible Authorities have a statutory role in confirming that local plans are consistent with the aims of the District Plan. Ministers should be notified where local plans fail to adhere to the requirements of the District Plan.

Q6. Should Ministers or SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?

The revised proposals indicate that Local Authorities will be in charge of producing local flood risk management plans. Whilst we support this development, we believe that the local process must ensure:

- local accountability
- integration with key policies
- local authorities working together within catchments
- integration of funds

A detailed process for the production of local and Area plans, as well as a call-in procedure is set out in the answer to question 5.

Q7. Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?

Yes, we support the identification of the above authorities as responsible authorities.

Q8. Which other bodies should be identified as responsible authorities?

The Scottish Executive's Flooding Issues Advisory Committee (FIAC) has begun the work to consider the roles of public bodies other than Local Authorities, and of Scottish Ministers, in promoting sustainable flood management. Rural land use issues (e.g. forestry, agriculture, deer management, conservation) were identified as being particularly relevant, as well as housing, economic development, water and sewerage, rail transport, etc. We understand the difficulty in engaging land users, particularly farmers and sporting estates, at a district and local level but suggest that it must be explored.

The Freshwater Taskforce representatives believe that in addition to the proposed and suggested bodies, the following should be considered for designation: Scottish Ministers, the Water Industry Commission, Network Rail and Energy and Rail industry regulators, Fisheries Research Services (as part of Ministerial functions).

Scottish Ministers have a range of strategic, appeal, approval and funding roles, and as such, Scottish Ministers should be made the responsible authority for the delivery of SFM. Key functions include:

- town and country planning (e.g. appeals, inquiries, guidance, strategic development plans);
- agriculture (e.g. making regulations which are the basis of payments to farmers, setting priorities for the Scottish rural Development Plan);
- policies for/decisions on water and sewerage investment;
- transport (e.g. trunk roads; railway infrastructure; ports & harbours; coastal navigation);
- regulating inshore and inland fisheries;
- energy;
- licensing activities affecting protected species which depend on the water environment;
- building standards, housing & community regeneration;
- Historic Scotland (built heritage in/near water)

Designation of the Water Industry Commission as responsible authority

Under the Water Services (Scotland) Act 2005, the Water Industry Commission (WIC) has duties to determine the maximum charge limits within a framework of standards and objectives set by Scottish Ministers. The work of the WIC in assessing Scottish Water (SW) expenditure and SW customer charges influences the degree to which issues of sustainability can be addressed in SW's investment programme. The restricted focus of the WIC on reducing SW's costs risks creating a short term, cost-cutting culture in the water industry encouraging bad practice in construction, inhibiting consideration of long-term sustainable solutions and reducing the water industry's sustainable development performance. Scottish Water will only be able to deliver SFM, if it is given adequate funds to fulfil its new role. We would therefore strongly recommend the designation of the WIC as a responsible authority.

Fisheries Research Services are currently responsible for consenting engineering activities under the Fisheries and Foods Act. As part of this function, FRS should have duties towards sustainable flood management. In addition, we suggest that it could make a significant scientific contribution to linking the aims of the Floods Directive with the related Water Framework Directive, particularly in the context of restoration and remediation works linked to flood management projects at a river basin level. FRS is a Scottish Government agency, and therefore its functions need to be designated as part of the functions of Scottish Ministers.

Q9. Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

Yes, there will be many different authorities involved in implementing SFM. An important aspect of achieving integration will be through placing duties on relevant authorities to work together to secure compliance. However, we believe that additional requirements should be placed on responsible authorities (RAs), and these include:

- RAs should be required to contribute to the implementation of the District and local plans
- RAs should be required to share appropriate funds with the aim of contributing to the achievement of the aims of objectives of District and local plans

In addition, local authorities should be required to:

- Form 'Flood Committees', where a particular catchment area crosses one or more local authority's boundaries, to share expertise, knowledge and funds with the aim of developing and implementing a flood plan within that area.
- The need for the establishment of 'Flood Committees' should be identified in the district, local or Area flood risk management plan. Please refer to the answer to question 5.

Q10. Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

A real issue concerning public participation is securing ownership of the Plan. There are substantial benefits to be gained by promoting genuine participation, not least of which is the cost effectiveness of identifying and solving conflicts at an early stage.

We believe that stakeholder engagement will be essential to the success of both District and Local Plans. We would therefore strongly recommend that the Bill introduces a requirement to engage, listen to and work with the local community and appropriate stakeholders in the plan preparation, as is the case with the RBMP.

Q11. Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for the preparation by SEPA of area flood risk management plans?

Yes, we reiterate our support for Flood Risk Management Plans being statutory documents, with the District Plan being endorsed by Ministers. We also regard stakeholder involvement as one of the ways of ensuring the accountability of the plans. We firmly believe that full participation will save time and resources in the long term, by reducing conflicts and the number of "unresolved" issues submitted to Ministers.

We recommend a slightly different approach to developing local plans by local authorities to ensure better accountability – as set out in the answer to question 5. We propose to introduce a **call-in procedure for local plans**, by which SEPA (as the competent authority) has a statutory role in confirming that any local plan is consistent with the aims of the district plan. We also recommend that Responsible Authorities have access to a similar call-in procedure where they have identified issues requiring resolution by Ministers.

Q12. Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?

Yes, Ministerial approval will be essential part of this process. As emphasised above, we believe that Ministers should be required to approve district plans, and where necessary, call-in local plans on advice from SEPA or Responsible Authorities, and in cases of unresolved objections.

Q13. Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?

We recommend that a requirement for a national assessment of surface water drainage is introduced as part of the implementation of Floods Risk Directive.

The development of local flood risk management should include integrated appraisal of sewerage, watercourse and sustainable drainage options. Such appraisal should also include opportunities for the enhancement of urban watercourses, city landscapes and also aim to improve water and habitat quality for biodiversity. We recommend that each major city/town at risk of flooding in Scotland should aim to produce an integrated drainage plan by 2015, as part of catchment flood management planning.

In addition, the flood standard for surface water drainage in Scotland is currently designed for 1:30 flood events. We recommend that a consideration is given to introducing a new standard for dealing with surface water run-off which includes the use of sustainable urban drainage schemes and porous surfaces to deal with excess water run-off before it enters the drainage system. This will reduce the pressure on drainage system and help with the management of 1:100 or even 1:200 year flood events in line with flood scheme standards, and particularly within the context of climate change adaptation.

Q14. Should Flood Risk Management Plans inform the way that development plans are prepared, or should there be a stronger linkage such as a requirement on planning authorities to show that they have regard to the FRMPs?

Yes, the National Planning Framework should aim to inform strategic development on SFM. This should include full integration with the District FRMP in terms of avoiding development in areas of significant flood risk and in identifying suitable areas for floodwater retention. Local Authorities should therefore be required to have regard to, and integrate with FRMP in development planning or any other appropriate planning process.

Q15. Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

We recommend that the requirement under the Planning (Scotland) Act for approval of planning applications is retained, and local authorities are required to advertise, seek objections and resolve objections as necessary.

Ministerial call-in procedure will be required in cases of unresolved objections and where SEPA advises Ministers that the proposal is not consistent with the requirements of the District Plan.

Q16. Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?

In such cases, CARs authorisation may be adequate. However, the Bill must ensure that the principles of SFM have been adhered to in any plan even if Ministerial confirmation is not required.

Q17. Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?

We are unable to answer this question specifically, for capacity reasons. However, in principle, time taken from the identification of a flood issue to the implementation of solutions should be minimised by the encouragement of an inclusive, integrated and transparent process in flood plan and project delivery.

Q18. Do you think that the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?

Much debate has already taken place over the issue of local transparency in the planning system during the passage of the Planning Act through the Scottish Parliament. We believe that the process set out in the answer to question 5 ensures better accountability, whilst retaining local authority lead in proposing local flood management measures. However, the issue of knowledge and experience within Responsible Authorities, and in particular Local Authorities, must be dealt with in this transition phase created by the modernisation of Scotland's flood legislation and policy. We strongly recommend that professional courses in SFM are created for today's flood practitioners.

Q19. What would be the appropriate timescales for notification and response?

These should be set in line with the requirements under the Statutory Planning system.

Q20. Would it be appropriate for such a process to carry deemed planning consent?

No – planning application process should be obtained as required under the Planning (Scotland) Act.

Q21. How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed, be addressed?

Even in Scotland, which is credited with leading on the SFM approach, the concept of SFM working in practice is new and many parts of it are still developing. It is natural

A submission by the Freshwater Taskforce of the Scottish Environment LINK

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that knowledge on how to achieve the SFM approach should be relatively limited within Responsible Authorities and others. Therefore, the Scottish Government should provide support to Scottish Universities to produce flood managers of the future. Capacity already exists within SEPA (hydrologists and engineers), consultancies and educational establishment. It is therefore particularly important that SEPA and other experienced organisations are involved in the development of all local projects and plans, and to provide guidance and advice at all stages of the development of local flood risk management plans. SEPA's role (and that of a FIAC type group) will be crucial until local authorities are able to recruit flood managers with the relevant expertise.

Q22. Are there any additional alternatives to the options outlined above which would simplify procedures?

We have outlined our preferred option in our answer to question 5, but would emphasise early engagement with stakeholders.

Q23 Do you consider local authorities' powers are sufficient to take necessary action to avert danger to life and property?

We do not consider ourselves as having enough capacity to answer this in depth but would support the establishment of a stronger duty to take action to avoid danger to life and property, and to recover the costs of such action. We suggest that this could be a role for insurance companies or their professional bodies. They are extremely knowledgeable on flood risk and associated issues.

Q24. Do you agree that streamlining the CAR and flooding/planning processes can be managed through better guidance?

We agree that there is scope to streamline the CAR and the planning process through better guidance and that the CAR procedure should be retained as a stand-alone procedure.

Q25. Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?

Scottish Government is responsible for a number of policies that have direct relevance to the success of SFM. These include, for example, the Water Environment Water and Services (Scotland) Act, town and country planning, agricultural policies and regulation, policies and decisions on water and sewerage investment, transport, energy; licensing of activities affecting protected species which depend on the water environment; as well as building standards, housing & community regeneration. Integration of relevant policies and decision making processes on flood management will be required across many Government departments and its agencies, administrative structures and processes should reflect this approach.

Q26. Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the Government should consider?

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Yes - as discussed in the answer to question 5.

Q27. Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?

Yes, we agree. We recommend that biennial reports include the following:

- Description of how the proposed measure contributes towards meeting the aims of a District or area flood risk management plan
- Description of measures undertaken to consult with responsible authorities, wider stakeholders and the public
- Measures undertaken to ensure integration of objectives and funding with other plans and policies

Q28. Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

The outlined proposals will go some way towards achieving SFM. However, the proposals only create a framework; the delivery will be strongly influenced by the processes put in place at district and local level. Two of the major challenges for implementing SFM will be:

- Convincing local communities and landowners that breaching coastal and river embankments on their land is a sustainable solution to the flood management and sea level rise, in addition to providing a range of environmental and socio-economic benefits.
- Replacing the reactive and structural-based flood scheme mindset with the integrated, catchment approach, process-based methods fundamental to SFM.

The members of the Freshwater Taskforce have some experience in dealing with such difficulties, and much effort will be required by local (and responsible) authorities to convince landowners of the benefits of using their land as flood storage. **Appropriate financial incentives for long-term management and compensation for the loss of land/production must be put in place in time for the development of first local flood management plans.** We further advocate the setting up of local demonstration projects and pilot projects to test the effectiveness and the benefits of the new approach.

Q29. Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?

Managing the risk of flooding is a shared responsibility, and the achievement of SFM will require a truly integrated approach. Scottish Government has a key role to play – in ensuring that all current policies (agriculture, planning, forestry, climate change) reflect the need for an integrated approach and encourage cooperation between those responsible for flooding.

RESERVOIR SAFETY

We do not have the capacity to answer the questions on Reservoir Safety in a useful way.

Q30. Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?

Q31. If so, should it be SEPA or another as yet unidentified body?

Q32. Are you content with the proposals for dealing with reservoir flood maps under the provisions of the Floods Directive, or do you think that there should be a statutory duty on reservoir undertakers to prepare reservoir inundation maps and plans, similar to the duty in the 2003 Water Act for England and Wales?

Q33. Do agree that enforcement powers be extended and post incident reporting included as an additional requirement?

Q34. Views on crown application and any other comments?

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**Fire Brigades Union
Scotland**

**Flooding
Consultation
Response**

April 2008

Introduction

This paper sets out to highlight and discuss a number of issues surrounding the Scottish Fire Services commitment to incidents involving flooding. It hopes to look at potential problems and suggest solutions. It will present an honest and open appraisal of the current situation across Scotland and will look at the range and types of incidents attended and likely to be attended in the future.

The hope is to make a positive contribution to the discussion on the future shape of Fire Service commitment and to try and provide solutions to any obstacles.



Background

The Fire Service has long been called upon to assist members of the public during times of flooding. This has ranged from calls to deal with water coming through ceilings, burst pipes and leaking washing machines to catastrophic flooding on a huge scale caused by rivers bursting their banks in built-up areas.

The availability of skilled professionals with extensive knowledge of working with water and pumps has been used to assist people salvage possessions, protect their homes and businesses, to reduce the impact of flood waters both to the general population and to the environment and in some cases to prevent the loss of life in rising waters.

Over many years the public have been used to calling on the Fire Service as a "can do" organisation and that expectation now extends – in part due to extensive television coverage – to major flooding incidents. What the service must do is bring the commitment to this type of incident into the regular work of the service and both plan and train for these occurrences, so that when required to attend the Fire and Rescue Service brings the level of skill and professionalism that is normally expected of it.

Historically much of this work has been done on an "ad-hoc" basis with no pre-planning and no specific resources allocated to it. Very often the work was seen by firefighters as little more than a PR exercise with them achieving little other than pumping water from one place to another, often with no strategy or overall plan. No-one wants to feel useless but when a river floods a house and the only place to pump the water to is back into the river, the effect is as demoralising as it is useless.

A modern fire and rescue service approach to this issue must look at the risk to the communities it serves. It must plan in conjunction with other agencies for a range of eventualities, it must equip its personnel to be able to do a worthwhile job at an incident and it must suitably train and protect those personnel. This currently is not happening within individual fire authorities and there is no common approach to this across authority boundaries. There is little or no recognition of, or planning for the impact on local resilience, on cross border assistance or in national or UK terms.

This situation is clearly flawed and should be addressed.

Legislation

Fire (Scotland) Act 2005

The above act does not confer a principal function to Authorities to deal with flooding, these being restricted to **8** – Fire Safety, **9** – Fire-fighting and **10** Road Traffic Accidents.

However chapter 3 part **13** does give "Power to respond to other eventualities". This section allows an authority to take actions it considers appropriate to deal with a situation likely to cause; a person to die, be injured or become ill; or harm the environment (including the life and health of plants and animals and the fabric of buildings).

Although flooding is not mentioned specifically this is the section of the act most likely to cover an authority when acting to deal with flooding incidents.

The Fire (Additional Function) (Scotland) Order 2005

The above order places additional functions on authorities and in particular part **5** under the sub-heading of "Serious Flooding" directs each authority to "make provision for the purpose of –

- (a) Rescuing people trapped, or likely to become trapped, by water; and
- (b) Protecting them from serious harm

In the event of serious flooding in its area.

The "Interpretation" of the order **2** defines serious flooding as meaning flooding that causes or is likely cause one or more individuals to die, be seriously injured or become seriously ill and which results from –

- (a) Natural causes; or
- (b) An escape of water

With the introduction of the Fire (Scotland) Act, the Scottish fire services adopted the use of "Integrated Risk Management Planning" is setting their resources and strategic goals. Unfortunately in IRMP's to date there has been little regard paid to the ongoing commitment and resource impact of incidents of flooding, many of which have previously been protracted and substantial events.

The current legislation of the Fire Act, Additional Functions Order and the Fire & Rescue Framework do not place any significance on the impact or cost of flooding on fire and rescue services, despite the fact that it is the fire and rescue service that is at the front line in incidents of flooding as has been seen recently south of the border.

Current Commitment

Scottish fire and rescue services currently respond to flooding incidents on a regular basis and these might usefully be broken down into a number of categories.

- 1) Minor domestic – such as burst pipes, burst water tanks, overflowing sinks, leaking washing machines etc. These will continue to be dealt with by services as determined by each authority and do not impact on what is being discussed.
- 2) Water Management – As witnessed recently in England and on numerous occasions previously across Scotland the destructive effect of flooding cannot be disregarded. The financial, social, economic and environmental damage caused by flooding can be extreme. Vast quantities of water passing through built up areas causes massive damage, brings health hazards and leaves a trail of destruction that can take months if not years to repair.
- 3) Rescues – On the majority of occasions that someone is in peril it is the fire brigade which is called, often by passers by and often by the Police. The range of skills and versatility of the fire and rescue service has garnered a reputation for being able to do most things. The fact that Scottish fire brigades have been renamed as fire and rescue services emphasises the expectation of the public. The inclusion of rescues from flooding in the Additional Functions Order will now place a burden on the fire authorities to provide a fully resourced, fully trained, safe rescue capability.

For the purposes of this paper items 2 and 3 will be further discussed.



Water Management

Pre-planning - Historically the fire service has been called to assist during times of flooding. This usually consisted of turning up with a number fire engines and using the vehicle pumps to try and prevent an area becoming affected or to reduce the impact of rising water levels. This attendance was usually determined simply by the nearest available appliance and was unplanned. Flooding appears to be seen as an 'extra' service so there is no predetermined attendance or any real integration into the day to day running of the service. For example a flash flood could tie up a number of appliances for an indeterminate time with little or no regard for the impact on other aspects of the service.

One of the key problems when working with floodwater is where to put that water. As stated earlier it is often seen as a pointless task simply moving it out of one area to allow it to re-appear later. Part of the problem is that no specific training is given to firefighters or to managers to help them understand the dynamics of water in a flood setting. In order to adopt the correct strategy early on in an Incident co-ordination is required with other agencies such as SEPA, the local authority, the Maritime Coastguard Agency and Police. This can allow a plan to be made to protect certain areas (for example with sandbags) and make best use of resources.

Recommendation – Each F&R service co-ordinates with SEPA to identify areas most likely to be affected and establish a pre-flooding plan.

IRMP - With the adoption of the Fire (Scotland) Act the standards of fire cover were withdrawn and replaced by Integrated Risk Management Planning. F&R services were to identify the risks in their area and provide sufficient resources to deal with these eventualities. However the IRMP's within Scotland almost exclusively concentrate on Fire and the risk of Fire. Given the number of warnings that have been made regarding changes to the climate and the possible impact, along with advice from the government agency responsible it would be appropriate that flooding be regarded as a risk within most communities and should be an integral part of the IRMP process.

The previous Scottish Executive estimated [Climate Change: Flooding Occurrences Review (2002)] that some 77,000 properties are at risk from the Inland Floodplain. This figure refers to rising river levels. Add to this the potential for urban flooding to strike when city drainage cannot cope with a sudden downpour and the numbers will rise further. There are on average 7000 cases of sewer flooding each year in the UK, in large conurbations overloaded sewers account for around 50% of that total. In addition there is also an estimated 94,000 properties at risk from coastal flooding, which can affect large areas up-stream from open water, such as the Clyde through Renfrew and the Forth at Grangemouth.

Like fire the result of flooding can be devastating on individuals and their property, furniture, possessions and even the fabric of a property can be lost or severely damaged. The main difference is that when fire strikes it is regularly contained within one room by the fire service, however floodwater can strike not just one but many properties in a street, a village or town.

Recommendation – The risk of flooding should be an integral part of any F&R service IRMP.

Tactical plan - The potential for flooding and the service response should be considered at a local, national and UK wide levels. Each F&R service should prepare a plan to tackle flooding that utilises enough equipment to deal with the incident whilst having regard for the continued resilience of the service throughout its area. This may involve the use of pumps that are not part of a standard fire appliance, high volume pumps and additional personnel. Given the often-protracted nature of these incidents consideration should also be given to utilising equipment from other F&R services. Thought must also be given to health and welfare arrangements including accommodation, on and off-site welfare, provision of meals and refreshments, payments and rotation of crews. Immunisation programs must be available for all FRS personnel, as particularly in the urban environment flood water has to be regarded as contaminated by at the very least sewage and even in the rural setting most water will still contain potentially hazardous level of bacterium

Recommendation – A plan be formulated to allow each F&R service to undertake response to flooding without detrimental impact on the normal service delivery levels across its area. This should utilise local, national and UK equipment and personnel where necessary, in sufficient numbers and with adequate health and welfare arrangements.

PPE - Incidents of flooding also bring with them a range of operational considerations and hazards. Long hours in difficult working conditions will impact on personnel and there are numerous hazards for those on site such as water borne diseases, hidden currents and unseen debris. Currently most firefighters in Scotland will attend flooding incidents wearing personnel protective equipment designed for use in structural firefighting. High-tech fibres may be the latest in protection technology for firefighting but they are totally unsuitable for working in water.

Recommendation – Crews involved in flooding incidents should be immunised and properly equipped with suitable PPE.

Training – Limited specific training is currently undertaken with regards incidents of this nature. Clearly the ability to use the various pieces of equipment is a pre-requisite, however this does not cover the wider issues of hazard awareness, tactical management and water dynamics. The scope and length of these incidents makes them significant in terms of command and control with large numbers of personnel, large amounts of equipment and multi agency working. It would be appropriate for fire service personnel to receive training specifically on flooding, reflecting on previous experience and developing standard operating procedure (SOPs), techniques and understanding for future incidents. Furthermore it is our belief that firefighters entering the water at an incident should be trained to a minimum standard and that that standard should be “water rescue – from moving water”

Recommendation – A range of training specific to flooding incidents (SOPs) be provided appropriate to the various roles within the fire & rescue service.

Recommendation - A suitable training module is developed by the Scottish Fire Service Training College and all Firefighters who may be called to attend flooding incidents shall attend and become qualified. This module will ensure a commonality of approach in Scottish Fire & Rescue Services.



Rescues

Review – Flooding is the leading cause of weather related death worldwide. Rescuers who lack proper swiftwater / flood rescue training and equipment are at risk of serious injury and loss of life. – [Cornwall County Fire Brigade July 2005]

Such has been the number of rescues involving the fire & rescue service that it was felt necessary that this should be included as an additional function order to the Fire (Scotland) Act. As has been mentioned already, the fire service is usually in attendance at incidents involving flooding. At these incidents there are often members of the public who have become stranded or trapped by rising water levels. Sometimes they only require assistance to make it back to dry land but on other occasions they find themselves in deadly peril. There is now not only a moral pressure on the fire and rescue service to act as a rescue service but also the obligation placed on them by legislation.

Defining Responsibility – The first members' debate of the new session of Parliament was on the topic of rescues from moving water. During his response to the debate the Minister, Fergus Ewing, defined for the first time where flooding occurred. He stated that it was "water on what was normally dry land." This clarified the position where F&R services were mobilising firefighters to undertake rescues from rivers, canals and lochs and claiming the Additional Function Order gave them an obligation to do so. It was made clear that the responsibility for rescues of this nature lay with the Police and not the fire service. However if the rescues were from water that was deemed to be flooding it now appears that the responsibility rests with the fire service.

Given that the skill set required to deal with flooding rescues would be the same as for rescues from most water incidents there is clearly the potential for cross over of operational scope. This is confusing as theoretically control operators will be required to ascertain what kind of water a person is trapped by before deciding whom to mobilise to assist. It should be the case that anyone trained to carry out a rescue from flood water would possess the skills required to carry out a rescue from other water ways. It would therefore seem illogical that they should not utilise those highly specialised skills whenever or wherever someone needed them.

Recommendation – A review of current legislation should be carried out to clarify the responsibility for conducting rescues from inland waterways.

Confused Terminology – One of the difficulties in discussing this issue is the range of terminology used. When is a water rescue not a water rescue? Does rescue from floodwater constitute a rescue from water? Take the scenario that a river bursts its banks. Part of the water will be flooding and part will be the normal river channel. Part the responsibility of the Police, part of the Fire & Rescue Service. Terminology used includes 'water awareness', swiftwater, still-water, moving water and water rescue at various levels.

There appears to be an assumption that floodwater is still-water, i.e. not moving and that the skills required to operate in it are less than that required when working in moving water - they are in fact different. Quite simply floodwater has arrived at the flooded area by moving into an area of previously dry land and on receding it will move out of that area. It cannot then be termed still-water.

Experts will highlight that water which appears still on the surface may well have currents of movement at lower levels. Sometimes two levels can be moving in different directions and there are also subsurface obstacles and varying levels of subsurface to contend with. Returning to the river bursting its banks, there may be an area that appears still whilst a short distance away there may be a raging torrent.

Fire services have traditionally taught 'water awareness' to operational personnel. Primarily for working close to water, for example when pumping from a river and this consisted of using appropriate PPE, life vest, safety lines etc but generally insisted that no-one enter the water or at least - with some FRS's - not over the depth of the fireboot. This is entirely different from the lowest level of water rescue, Level 1 which consists of the Shout, Reach, Throw idea where rescuers remain on dry land at the waters edge. This clearly constitutes a rescue system and not safety awareness input.

Recommendation – A clearly defined set of standard terms should be adopted by all Scottish F&R services.

IRMP – Like other aspects of a F&R services work the attendance at rescues of this nature should appear in the service IRMP. In this way the impact on the service can be recognised and a reflection of the benefits to the community made. IRMP was designed to allow for local variations in risk to be addressed locally, giving in this case, an area with a history of, or foreseeable risk of rescues and/or flooding an opportunity to create an appropriate response to the risk. This will inevitably involve some regional if not national or UK wide response. That response must be properly resourced however and it is unacceptable that in addressing one form of risk, a fire service plans to expose the community to another risk by simply robbing Peter to pay Paul. It may not be necessary for each F&RS to provide the full range of resources, especially if proper Scotland wide co-ordination occurs, however if a service is giving the community additional resources to cover additional functions these should be supported by proper assessment of budget requirements.

Recommendation – An assessment of incidents of this nature should appear in an IRMP with reference to local, national and UK wide events and where these are over an above existing service delivery levels, this must be supported by the necessary budget.

PPE – It is quite simply unacceptable to send firefighters to an incident without the appropriate personal protective equipment. To see firefighters working at a water incident wearing structural firefighting kit must become a thing of the past. The unsuitability of this modern fire kit for use in water incidents is unquestionable. Similarly the use of boots designed for fire fighting for protracted periods of walking in water is unacceptable. It is incumbent on an employer to provide suitable PPE for the work being undertaken, as set out in the Management of HSW Regulations (1999) parts 3,5,8 and 9. The lack of commitment to providing suitable PPE for water incidents reflects the low priority fire services have previously put on this work and its ad hoc arrangements for dealing with incidents are unsuitable and in fact constitute a direct danger to firefighters. Some progress is being made in this area but it varies across the country which is unacceptable.

Recommendation – PPE designed for the task should be available to all those committed to entering the water at an incident