26. Para 3.35. Where there is a unitary authority which can deal with a whole river catchment – as in the case of the Scottish Borders – i.e. where the Area LRMP and Local LRMP are coincident, then the erection of an extra tier to support the production of Local FRMPs seems to pose unnecessary expense and delay. **If there are additional items for consideration of LFRMPs for which the Local Authority has specific and over-riding interest, then co-option of appropriate Local Authority representation can be made to the overseeing Responsible Authority (recommended as the AAG).**

27. Similarly the establishment of stakeholder fora, (para 3.36) is sensible, especially at the early draft stage, but such fora should not be in a position to block objective, scientific hydrological data and the implications of these. Such fora should have a finite timescale for their input response to draft plans and must never be allowed to delay the implementation and executry of the plan, without Ministerial approval.

28. Para 3.41 et seq. & Box 8. Agreed SEPA **must** be the authority ensuring compliance within their role on WFD: AAG.

29. Para 3.43. **Yes; agree.** See especially Comments 1, 4, 5 (above).

30. **Para 3.44 to 3.46**

31. **Para 3.56 Agreed the double process is unnecessarily complex, expensive and delaying. This must be resolved.**

    (N.B. The nature and factual basis of assessing and dealing with significant flood risk is likely to change quickly. It involves issues of essential remedy for a local/national emergency – no less than issues elating to terrorism or war. As such the usual democratic process of Public Inquiry may require to be circumvented. It important that the public and Local Authorities understand this.)

32. Para 3.81. This does not adequately address the issue of cross-Border integration and co-operation, as in the Solway (Esk/Eden), and Tweed (Till) – all lowland "floody" rivers and likely to be affected immediately. The issues are highlighted by the relevant English legislation affecting fisheries on the Esk in Scotland, the River Tweed Acts, applying, under Scots Law, on the Till, and by differences in the laws of abstraction and impoundment on each side of the Border.
    This has to be addressed now at the time of the Bill, with the Westminster Government and Environment Agency. It is no use hoping that the problem will solve itself.

33. Paras 3.83/3.84. Agreed, but only in consultation with SEPA/EA/AAG.

34. Paras 3.85 *et seq.* There should, nonetheless be some effective and considered guidance (**Planning Advice Note** perhaps?) prepared by the Scottish Government, SEPA and other appropriate authorities which can assist Local Authorities in the assessment and development and implementation of suitable flood management and monitoring works.

Detail of Consultation Questions:

Q1. The definition of Sustainable Flood Management (FIAC) (para 2.7) embraces the requirements of social and environmental justice, for the present and for the future. It is the latter, and the overall measure of sustainability which has been lacking hitherto in the piecemeal development of flood "control". Doubtless the wording may be quibbled with, but in general it is a helpful and practical overarching statement for developers, local authorities and regulators.

Q2. Yes – but the implications have to be spelled out for Local Authorities, planners, and developers - including agencies such as Scottish Water who have not necessarily had to purview this fully in their existing remit.

Q3. Yes – cautiously. The single competent body as identified will require some "teeth" however, to ensure that the local scenarios duly fit the national and EC legislation. It should also be suitably resourced to provide guidance, advice, training and awareness-raising for use at a local level; to ensure "*responsibility*" and "*democracy*".

Q4. Absolutely. See the first point **under Comment 2** above. But there will have to be transparency, reporting and possibly appeal procedures in place for some of the measures at least.

Q5. The Responsible Authority must have the final say in testing the adequacy of Local Flood Management Plans, and the power to refuse approval of these if they are not up to an adequate standard. **See Comment 22 above.**

Q6. The lead authority within a local area should be established under the existing framework of Area Advisory Groups – through SEPA and incorporating the various River Trusts and other authorities and agencies for the implementation of the Water Framework Directive (see also **Q7/8 and Q11** below).

Q7. Yes - (**+Q8**). and inclusion, where appropriate, of the Scottish Agricultural Colleges, Scottish District Salmon Fishery Boards. National Park Authorities with Planning powers should also be included where these are germane. Ditto the Crofter's Commission in the Crofting Counties. Ideally the responsible authority should consist of those official bodies and agencies represented on the Area Advisory Group for implementation of the Water Framework

Directive. **There is need to consider cross-Border issues carefully here with the appropriate involvement of the Environment Agency/ Forestry Commission England/ DEFRA etc.**

Q8. See **Q7, Q 11** etc.

Q9. Yes absolutely, by mandate if necessary and within specific time frames for establishment, reporting and adequate review, but always subject to those considerations made in **Comments 24 to 28 above.** *(q.v.)*

Q10. Extreme care has to be taken that the objectivity, science and executry of the Responsible authorities – whoever they are - are not compromised or delayed by the very laudable need for wider stakeholder and community engagement. As for **Q9** see **Comments 2, 24 – 28** etc.

Q11. Yes, and through the Area Advisory Groups as set up for the implementation of the Water Framework Directive.

Q12. Yes, but only where there are matters of scientific inaccuracy requiring correction, or decision on any ambiguous balance between over-riding social and economic considerations, both positive and negative, e.g. opportunity cost, Consequences of not implementing an appropriate action within the FRMP, etc.

Q13. Yes, in appropriate areas. It is impossible to adequately define and so separate out geo-hydrological matters affecting urban drainage from those affecting wider areas. Implicit in this is the need for Local FRMPs to be a subset of Area FRMPs and approved by the Responsible Authority (SEPA: AAG). While the incorporation of all urban drainage systems into developing FRMPs, by renovation, is not an immediate option, because of cost, (e.g., Para 3.45) it is essential that a vision and strategy for such renovation is set out for the longer term and that all new and planned drainage systems are developed to fit only this long-term model.

Q14. Both apply. There must be a requirement for appropriate Planning Authorities including those of National Parks, including cross-Border authorities (affecting Cumbrian Esk (Solway); Northumberland Till (Tweed); Northumberland National Park, etc) to have regard for and help to implement approved Area and Local FRMPs in the production of **all** their Development Plans, and policies, as well as the budgets and actions resulting from these. Where the current Area or Local FRMPs precede the Development Plans, the latter must be informed by the former.

Q15. Yes, but some allowance must be made for modification after deemed Planning Permission if new/incoming statutory provision requires. Even with deemed Planning Permission it would probably be useful/courteous to have Local Authority comments available to the LFRMP/AFRMP at the time of drafting.

Q16. Ministerial confirmation/decision should only be required where there is a serious difference of opinion between the draft AFRMP and the draft LFRMP, or where there is similar serious difference of opinion between the Responsible Authority (AAG) and the Local Authority. (See para 3.40)

Q17. Not qualified to comment.

Q18. NO - unless there is prior agreement with AFRMP and Responsible Authority

Q19. This answer requires some prior knowledge of the issues and timescales likely. This should be agreed between the Responsible Authority (SEPA/AAG), the Local Authority and Ministers.

Q20. Yes.

Q21. All technical data, its assessment, local relevance and its interpretation must come through the Responsible Authority (SEPA/AAG). This has implications for their involvement in the preliminary data collation, discussion and drafting of LFRMPs as well as for AFRMPs.

Q22. None foreseen.

Q23. Not competent to respond on this. The advice of SEPA must be included with the Local Authority assessments – which goes to strengthen the idea that present Flood Emergency Groups and Committees must now be overseen through SEPA and the AAG of the WFD. The members of such groups already know each other and have a sound working knowledge of the remits of the constituent authorities and agencies. Such familiarity is a powerful tool in speeding-up and simplifying communications at the inception and duration of any flood emergency.

Q24. Yes, properly promulgated.

Q25. The CAR regulations require review to permit consideration of the predictive modelling of rainfall patterning across Scotland, and, especially in the east, to ease enabling procedures for the creation, development and management of wetlands and water bodies, e.g. established through the Farming and Wildlife Advisory Groups, forestry groups etc., where these would contribute materially to the retention and slower release of flash run-off and hence the propensity for downstream flooding.

Q 26. ???

Q27. Yes, and only produced in conjunction with SEPA/AAG.

Q28. Yes, with above *proviso.*

Q29. .Local Authorities – together with relevant others - in the preparation of a longer term vision and strategy for flood control management and incorporation of drainage infrastructures etc. (see *inter alia* Q 13 etc. above), should have a duty to assess and promote measures to alleviate flooding

C.O. Badenoch
[redacted]

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Loch Lomond and The Trossachs National Park Authority Consultation Response to "The Future of Flood Risk Management in Scotland – A Consultation Document". Scottish Government, February 2008

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

Yes. The definition reflects the wider implications of flood management for the environment and communities, and emphasises the need for long-term, sustainable approaches. The definition and objectives could also reflect the need to consider approaches which involve moving or adapting flood vulnerable infrastructure to reduce the risk and associated damage from flooding. These approaches may be more cost effective than building flood defences.

Sustainable flood management is consistent with the National Park Authority's policy in the National Park Plan 2005 to promote a holistic, catchment-based approach to flood management that favours sustainable solutions and includes planning for the effects of climate change.

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

Yes. The definition and objectives aim to achieve a balance between providing sustainable solutions with less impact on the natural environment, while protecting communities from the economic and social impacts of flooding.

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

Yes. The approach represents the current catchment based approach to water management by SEPA, and takes into account the existing knowledge, experience and role of local authorities in consulting on, developing and maintaining flood defence schemes. The creation of an additional organisation with a specific flooding remit could create duplication and would not promote integrated water and environmental management.

There is a need to clarify the role of National Parks within the proposed framework. It is proposed that National Parks are responsible for developing and implementing Local Flood Risk Management Plans where there is a significant flood risk. It is unclear how measures within Local Flood Risk Management Plans will be delivered if they require the development of defences and other forms of alleviation, for which local authorities are responsible. Clarity is also needed on how National Parks are able to access funding for developing and implementing Local Flood Risk Management Plans.

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?

Yes. SEPA has the technical knowledge and information base to fulfil the competent authority role. This would also help to ensure integrated water management by aligning flood management with SEPA's role in managing and regulating the water environment. From the National Park's perspective it would be beneficial to have one competent authority to liaise with over the development of Area Flood Risk Management Plans and to inform the development of the Local Plan for the National Park area.

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?

Yes. Under the proposed framework the National Park Authority will have a duty to prepare a Local Flood Risk Management Plan where a significant flood risk has been identified. The development of Local Flood Risk Management Plans should be undertaken by local authorities and National Park Authorities with planning functions for the following reasons:

- There is potential for integration between Local Flood Risk Management Plans and Local Development Plans – Local Development Plans must identify any significant flood risk areas for sites identified for new development (the National Park Authority has both plan development and development management functions for the Park area).
- Local authorities have the local knowledge, and in some cases expertise and information required to develop and implement Local Flood Risk Management Plans.
- Local authorities now receive funding for flooding measures – Local Authorities will be able to plan and implement flood management through Local Flood Risk Management Plans. It is anticipated that the National Park Authority will also have access to these funds.
- There is more opportunity to provide for urban drainage plans as part of Local Flood Risk Management Plans, and require the incorporation of Sustainable Urban Drainage Systems (SUDs) for new developments (SUDs have benefits for flooding, water quality and biodiversity).

It will also be essential for the National Park Authority to be involved in the development of additional Local Flood Risk Management Plans which cover the Park area to ensure that there is strong integration between the plans, the National Park Plan and the National Park Local Plan. The Park area covers four local authority boundaries and there are significant river systems within the National Park. There are also frequent occurrences of river and loch flooding in the Park.

The type of approach adopted by local authorities through Local Flood Risk Management Plans could have significant effects on the natural and built environment of the Park. The National Park Authority promotes sustainable flood management approaches and the adoption of natural flood management methods where appropriate. The minimisation of any adverse effects from traditional engineering solutions such as structures and embankments will be important for the Park. The Park has a number of historic conservation areas in the built environment, as well as designated sites for conservation and scenic value that are important for a range of values including tourism and recreation. It will be essential for the Park Authority to lead and where appropriate participate in the development of Local Flood Risk Management Plans to ensure that these interests are incorporated, and that sites for new development identified in the Park's Local Plan are aligned with Local Flood Risk Management Plans.

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?

Partnering local authorities should designate a lead authority for particular catchments due to their local knowledge and some local authority boundaries covering more than one catchment.

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

Yes.

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

It is appropriate that Loch Lomond and The Trossachs National Park Authority has been identified as a responsible authority given its national role in managing and conserving the National Park. The National Park Authority is a public organisation established under the National Parks (Scotland) Act 2000. The National Park Authority should have a key role in determining the flooding approaches implemented in the National Park. Some approaches will have significant negative and positive effects on the natural and built environment and the Park Authority should have input into these decisions.

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

Yes. The National Park Authority welcomes the opportunity to participate in Flood Advisory Groups relevant to the National Park area.

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

Yes. The stakeholder and public meetings will be essential to gather local views on the approaches SEPA and planning authorities propose for sustainable flood management. However, it is not clear in the consultation document whether draft plans will be released for a period of public consultation before they are submitted to Ministers for approval. Clarification of this aspect would be helpful.

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. Flood Risk Management Plans and River Basin Management Plans will be developed for the same catchments. Similar plan development processes could help to ensure alignment between the two types of plans and better integrated water management. The role and boundaries of the National Park however, are unclear. Currently the Park covers four catchment areas including the Forth, the Tay, the Clyde and Argyll. There is potential for this process to be particularly resource intensive if the Park is required to participate in four catchment area groups, as well as develop a separate Local Flood Risk Management Plan for the Park area.

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

Yes. This is consistent with the River Basin Management Planning process and the development of other strategic plans, including Structure Plans. The implications of local flood management solutions for the National Park are also matters of national interest. For example, it is in the national interest to ensure that the natural and historic environment is maintained and enhanced and local flood management proposals must reflect these interests.

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

Yes. The National Park Authority would need to be involved in the development of urban drainage plans for settlements within the Park. It would be more efficient if urban drainage was integrated with Local Flood Risk Management Plans. As a planning authority the National Park Authority will undertake a risk assessment of all sites allocated for future development in the Local Plan. The risk assessment will need to align with the development of urban drainage plans and Local Flood Risk Management Plans.

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?

Planning authorities should be required to take into account Flood Risk Management Plans when developing local development plans. Some objectives and measures in the Flood Risk Management Plans could be given effect through the planning process such as preventing new development in high flood risk areas, and developing criteria for new developments in medium flood risk areas. Local development plans will also need to have regard to urban drainage plans, especially for new development. The Local Plan for the National Park is likely to have specific policies for implementing Sustainable Urban Drainage principles which are also likely to be a component of urban drainage plans for settlements.

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?

Yes. From the National Park Authority's perspective streamlining the process by deeming planning permission as part of the permission granted under the Flood Prevention (Scotland) Act 1961 would improve the timescales for approving schemes, as only one process of inquiry would be needed.

The Park Authority would need to be given a guaranteed opportunity as a statutory consultee to raise views on proposed schemes which cover the Park area, as well as the opportunity to access funding for flooding measures outlined in Local Flood Risk Management Plans. The Park Authority would also expect to be consulted at the flood scheme proposal stage by local authorities before an application is submitted to Government for approval and planning permission.

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

No. This could create unnecessary duplication as any environmental considerations for water bodies would be considered through the licensing process under the Water Environment and Water Services (Scotland) Act 2003, and the Controlled Activity Regulations. This could include applications to alter the natural course of rivers.

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?

No comment.

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?

No. There is a national interest in ensuring that the integrity of the National Park is maintained and that the conservation values of the National Park are incorporated into decision-making. Local flood risk schemes could have significant negative environmental effects on the natural and historic values of the National Park which may not always be taken into account in local decision making. Maintaining a national level of approval is necessary to ensure that the national interests of the Park are incorporated.

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

No comment.

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

No. An open public consultation process should be maintained.

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

No comment.

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

No.

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

No comment.

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

Yes. Guidance can provide clarity on the order of approvals required, for example, whether licences under the Controlled Activities Regulations should be sought before submitting proposals to Ministers for planning permission.

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

No comment.

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?

No.

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

Yes.

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

Yes. Further guidance on implementing sustainable solutions and natural flood management solutions would be useful.

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?

Yes.

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Q1: As the definition is intended to embrace future flooding concerns, economics should not feature specifically, as phased affordable investment would occur, resulting from application of a modern risk based approach appraisal.

Q2 Taking the above into consideration, a simplified alternative could be:

"SFM seeks to safeguard society & the environment through proactive measures, utilizing a risk based approach, ensuring sustainable catchment and infrastructure resilience complies sufficiently against future climatic change effects."

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

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? Yes

Q5 Would Scottish Water, as a responsible authority be required to seek funding from the designated competent authority to effect flood prevention measures against their known assets identified as being at significant risk . This question is aimed to address flooding affecting a Scottish Water asset only & not as part of an overall Local Flood Risk Management Plan?

Q6.In terms of a consistent approach, SEPA should have designation powers

Q7 Yes

Q8 Bodies having direct responsibility for infrastructure assets e.g. Electrical Power & Gas companies

Q9 Yes

Q10 Yes

Q11 Yes

Q12 Yes

Q13 Yes

Q14 Planning Authorities should have mandatory responsibility to ensure that FRMPs are adhered to when considering revisions to development plans.

Q15 Yes

Q16 Unsure

Q17 Unsure

Q18 Yes

Q19. Based on the Glasgow example, reduction by 50% to 12 months should be encouraged.

Q20 Yes

Q21 Staged assessments from independent flooding engineers residing within the area pool *should be considered as a possible solution.*

Q22 & Q23 Unsure

Q24 Yes

Q25 & Q26 Unsure

Q27 & Q28 Yes

Q29. Further consideration should be given towards the power utility companies directly responsible for infrastructure assets. Furthermore funding streams need to be established / clarified to ensure utilities promote flood prevention schemes accordingly using a modern risk based approach. E.G. Scottish Water currently targets Capital Maintenance against known flooding assets. However, promotion of flood alleviation schemes for assets considered to be of significant risk are not currently funded. Promotion of such schemes are currently being pursued through an Exceptional Item bid, that requires approval by the Water Industry Commissioner.

Response to the Scottish Government's Consultation on The Future of Flood Risk Management in Scotland

from the

Sustainable Urban Drainage Scottish Working Party (SUDSWP)

1.0 - Opening Remarks

1.1 The Sustainable Urban Drainage Scottish Working Party (SUDSWP) offer the following as a response to the Flooding Bill consultation. We have deliberately focussed our consideration on matters that relate to sustainable urban drainage systems (SUDS).

1.2 It is offered as a consensus of opinion of the Party and not necessarily as the opinion of the individual stakeholder members, some of whom have offered a response independently.

1.3 With the various stakeholders' interests in mind, it has been seen as necessary to resist any detail of issues and keep a clear view on matters that the Working Party has discussed or had views on in the past. The format of response, therefore, does not follow the questions laid out in the consultation, but simply gives a concise statement of what SUDSWP considers to be relevant to the consultation.

2.0 – SUDS and Flood Mitigation

2.1 SUDSWP recognise the Flooding Bill as an opportunity to strengthen protection against flooding, including adaptation to climate change, through better definition of a framework of measures and roles.

2.2 SUDSWP consider that SUDS can offer a significant contribution towards reducing the risks of flooding under certain circumstances, and that in other situations, for example wide scale fluvial flooding, the inclusion of SUDS within a catchment may have a more limited effect in mitigating the flooding impact.

2.3 It is therefore important to understand what the role of SUDS is in terms of flood mitigation and peak flow attenuation. The SUDS philosophy is to mimic natural drainage, largely through reducing the velocity of runoff and managing flow rate prior to discharging to the water environment. SUDS should be part of a flood risk management plan along with other measures.

2.4 Typically a SUDS system will have a relatively small catchment when compared to most river systems and may hence be more adversely influenced

by short intense rainfall events. This is generally true even for large developments where SUDS have been constructed.

3.0 Flood Storage Areas for New Developments

3.1 It is essential that there is a clear understanding of how storm runoff from developments is to be managed and how flood routing is set and thereafter that this is consistent across Scotland.

3.2 SUDSWP members support the Scottish Government's approach to integrating urban drainage and the proposal that standard agreements between Scottish Water and other statutory authorities, typically local authorities, be included as part of the local Flood Risk Management Plan. Such standard agreements may, however, be influenced by local circumstances. It must also be recognised that integrated urban drainage will consider matters beyond flood mitigation, e.g. water quality, social and amenity aspects.

3.3 SUDSWP members believe that the FRMPs should be a statutory requirement which should inform decisions on potential land use within the development plans and that flood routing and the dual use of amenity area and flood storage must be clearly identified. Additional sustainability benefits will also result from such an arrangement.

3.4 The use of green corridors within a development will also contribute towards flood routing and can make a significant contribution towards flood storage.

4.0 – Further Comments

4.1 SUDSWP consider that the use of retrofitted SUDS can be an economic means of addressing certain existing flooding problems. We also consider that governmental support for resourcing the retrofitting of SUDS is a prudent step in sustainable flood management.