For these reasons we consider the CEC Flood Prevention Scheme is not fit for purpose.
Neither the Scottish Executive nor CEC seemed to be interested in the Reporters or our concerns, which may have something to do with the commercial interests of their advisers, so BCC decided to investigate the Reporters points in para 6.10 and 6.11 themselves.

The results of these investigations greatly exceeded BCC's expectations. We show in our Draft Web Page para 2.12, *copy No 3 enclosed*, that if the dam heights are raised by only 1.12 metres to contain the CEC design flood event (one in 200 year return period) there would be no need for any of the CEC's walls and embankments or additional storage between the existing reservoirs and the Murrayfield/Roseburn flow gauge.

THE BCC METHOD WOULD RESULT IN A MASSIVE SAVING OF TAXPAYERS MONEY
We produced a Chart entitled 'Comparison between the BCC and CEC Schemes', ***copy No 4 enclosed***, which shows that flood prevention could be achieved much more quickly with much less inconvenience by raising the dam heights, and according to CEC's figures, at a total cost of just £6m to the taxpayer. However according to Mr. Andrew M. Holmes letter to Councillor Henderson dated 02 November 2007 "fundamental change such as proposed by Dr. Stephen would require the Council to promote and publish another flood prevention scheme with consequent delay and cost." ***copy No 5 enclosed.*** We do not understand why Mr. Holmes thinks that consequent cost would be involved as we show there would be a saving to the taxpayer of £39m (£50.8m estimated total cost less £5.8m already spent less the £6m cost of raising the dam heights). Also as the average increase in dam heights of only 1.12 metres would be required, and progressively for one dam at a time, we do not understand why Mr. Holmes thinks there would be a consequent delay. We should point out that if CEC had bothered to act on the Reporters observation para 6.10 and 6.11 above, flood prevention to the required level would already be in place rather than, as at present, still on the drawing board. The CEC Scheme can cope with a rainfall of just 3.84 inches, but in para 2.11 of our Draft Web Page, ***copy No 3 enclosed***, we show how **the BCC Method could cope with 12.1 inches of rainfall, over three times the CEC flood prevention Scheme level – which would eliminate flooding.**
The Scottish Executive and CEC state large additional storage in the rural areas below the dams would be required and that space for these is not available. These additional storage areas would of course only be required if the dam heights were not raised, and those who know the area, or who have walked along the Water of Leith from above Balerno to Slateford know that there is space for large additional storage. For example the potential for severe rainfall storage at Ravelrig, above the bridge at Bridge Road in Balerno, is roughly equivalent to that of Harlaw, and at Woodhall above Slateford is roughly equivalent to that of Threipmuir, and there are very significant severe rainfall flood storage potential locations in and above Colinton Dell. The existing reservoirs at Harlaw, Threipmuir and Harperrig are quite shallow only having an average a depth of 4.08 metres or 3.29 metres on average when drawn down to 'optimum' levels. As we show in our Draft Web Page, ***copy No 3 enclosed,*** we think normally empty dams with flow restriction weirs should be constructed below the existing dams, both to dramatically increase the level of flood protection from the CEC level **as a precaution against more extreme weather due to Global Warming**, and following the example of Her Majesty the Queen, also to generate renewable hydro electric energy, as a source of income and to help reduce Global Warming.

THE GOVERNMENT IN SCOTLAND APPEARS TO BE HAVING A RETHINK
It appears to us, from reports in the media, that the UK Government approach to flood prevention has so far been an unmitigated disaster. However in Scotland we may be beginning to see the light as on the 13th February 2008 the Scottish Government initiated a Consultation on 'The Future of Flood Risk Management in Scotland" which according to Ian Johnston's report in the Scotsman of the 14th February 2008 "Scotland is set to adopt a radical new approach to the prevention of flooding, with wetlands and woods created instead of concrete walls (as in the CEC Scheme). Mike Russell, the environment minister, yesterday launched a consultation process on the Flooding Bill, which will replace outdated 1960's legislation." Perhaps the minister now realises the CEC Scheme, approved by Ian Johnston's predecessor just before the last election, is outdated. We have not had an opportunity to study the Consultation Document yet but two problems appear to arise.
The first is that according to Andrew Holmes letter of 02 November 2007, ***copy No 5 enclosed***, it would appear that CEC is determined to continue with their Scheme even though, as we have shown, a

dramatically better flood prevention and dramatically lower cost alternative is available, which they have refused to investigate.

The second is that the Scottish Government is still looking at Flood Risk Management in isolation, rather than, as is happening in other countries, looking at responsible Renewable Energy Generation from rivers **with the Complete Elimination of Flooding as an incidental by-product**. We think that this dichotomy may be partly due to the fact that apparently one Government Department is responsible for flood risk management and another is responsible for renewable energy generation, and partly because in this country, unlike some other countries, the Government still thinks of hydro energy in terms of Large Hydro schemes whereas the major potential in Scotland is now for Micro and Small Hydro schemes. In Germany Ritz-Atro is selling hydro generators from 1KW upwards from flows of just 70 litres per second, about the amount of rainwater draining from some of our roofs. This is exemplified by our governments fondness for SUDS schemes, whose aim is to prevent water entering our rivers, whereas from a renewable energy point of view we want as much water to enter our rivers as possible so as to maximise hydro energy generation, but manage its flow in the river responsibly so as to eliminate flooding completely.

The saving of £39m on one scheme is relatively insignificant when compared with the potential saving and income generation across Scotland for combined Flood Prevention Storage and Micro and Small Hydro Schemes. Such schemes would be more in keeping with your powers – "to carry out audits of the economy, efficiency and effectiveness with which certain bodies" e.g. the Scottish Government "use their resources." **Would Audit Scotland approve of the construction of a 95 lane motorway for an event which only occurs for a few hours once in 200 years, when 2.5 lanes would suffice for the other 199 years?** There must be a better way – see para 2.8 of our paper, ***copy No 3 enclosed.***

In Andrew Scanion's report on the Johannesburg World Summit on Sustainable Development (WSSD, 2002) he said the Summit "stipulated in its Implementation Plan that hydro power of all scales should be included in the drive to increase the contribution of renewable energy throughout the world. Done well, hydro can be a cornerstone of sustainable energy systems as it: allows greater utilisation of other renewable energy options; is reliable, flexible and efficient; does not consume finite resources; has a high energy payback ratio; produces only low levels of Greenhouse Gas emissions; has long lasting infrastructure; and often provides multiple use benefits."

We appreciate that for CEC it will be difficult at this stage to change from their walls and embankment scheme to an upstream storage scheme, and even more difficult to change to a combined flood prevention and renewable energy generating scheme, in spite of the fact that if properly managed the flood prevention aspect could still be implemented more rapidly than in their current scheme. **We think that the Scottish Government could facilitate this process by talking to CEC, and agreeing to give them the money they have agreed to expend for their walls and embankment scheme, on condition that they use it to develop an upstream storage and hydro scheme for the Water of Leith, as a prototype for other similar schemes across Scotland.**

The construction, fuel and demolition costs of these upstream storage and hydro schemes are negligible compared with these costs for nuclear power, and hydro schemes do not contaminate the environment. They only depend on rainfall, which we get more of than almost any other country in the European Community, and on gravity – both of which cost nothing. The exploitable hydro capacity we have in the UK is given in para 3.4 of our paper, ***copy No 3 enclosed.***

Our leaders have a responsibility to anticipate the future. Her Majesty the Queen has set us all an example with her scheme on the Thames, generating hydro power for Windsor Castle, and if you agree with the opinions of Prince Charles, Alistair Darling and DEFRA as expressed in the attached extract from the New Scientist and letters, we would be grateful if you would use your influence to persuade the Scottish Government to give serious consideration to the low cost, income generating, versatile and flexible BCC method of Flood Prevention Reservoir Storage and Hydro Power Generation as it appears to be in keeping with your powers.

Yours sincerely,

Dr. Kenneth D. Stephen,
Balerno Community Councillor.

THIRD WORLD TRAVELER

THE IMPACT OF GLOBALIZATION

from the booklet

Blue Gold

The global water crisis and the commodification of the world's water supply

A Special Report issued by the International Forum on Globalization (IFG)

by Maude Barlow
National Chairperson, Council of Canadians
Chair, International Forum on Globalization (IFG) Committee on the Globalization of Water

EVERYTHING FOR SALE

The dominant development model of our time is economic globalization, a system fueled by the belief that a single global economy with universal rules set by corporations and financial markets is inevitable. Economic freedom, not democracy or ecological stewardship, is the defining metaphor of the post-Cold War period for those in power. As a result, the world is going through a revolutionary transformation as great as any in history. The most direct result of economic globalization to date is a massive transfer of economic and political power away from national governments into the hands of the bureaucracies they helped to create. At the heart of this transformation is an all-out assault on virtually every sphere of life.

Everything is for sale, even those areas of life once considered sacred, such as health and education, culture and heritage, genetic codes and seeds, and natural resources such as air and water. Increasingly, these services and resources are controlled by a handful of transnational corporations who shape national and international law to suit their interests. The Washington-based Institute for Policy Studies reports that the top two hundred corporations are now so big that their total sales surpass the combined economies of 182 countries and they have almost twice the economic clout of the poorest four-fifths of humanity. Of the 100 largest economies in the world, 53 are now transnational corporations.

A new global royalty now centrally plans the market, destroying lives and nature in its wake. Says writer and former senior advisor to the U.S. Agency for International Development (USAID) David Korten, "The world is now ruled by a global financial casino staffed by faceless bankers and hedge fund speculators who operate with a herd mentality in the shadowy world of global finance. Each day, they move more than two trillion dollars around the world in search of quick profits and safe havens, sending exchange rates and stock markets into wild gyrations wholly unrelated to any underlying economic reality. With abandon they make and break national economies,

THIRD
WORLD
TRAVELER

THE WATER PRIVATEERS

from the booklet

Blue Gold

The global water crisis and the commodification of the world's water supply

A Special Report issued by the International Forum on Globalization (IFG)

by Maude Barlow
National Chairperson, Council of Canadians
Chair, International Forum on Globalization (IFG) Committee
on the Globalization of Water

WATER FOR SALE

Just at the time governments are backing away from their regulatory responsibilities, giant transnational water, food, energy and shipping corporations are lining up to take advantage of the world's water shortage, acquiring control of water through the ownership of dams and waterways; the development of new technologies such as water desalination and purification; control over the burgeoning bottled water industry; the privatization of municipal and regional water services, including sewage and water delivery; the construction of water infrastructure; and water exportation.

'Water is the last infrastructure frontier for private investors," says Johan Bastin of the European Bank for Reconstruction and Development. Tragically, water is also the last frontier of nature and the commons.

The Globe and Mail of Canada states that privatizing water looms as the national mega-industry of the next decade, with potential investment in the tens of billions of dollars. "Water is fast becoming a globalized corporate industry." In May 2000, Fortune magazine stated that, in a world fleeing the vagaries of technology stocks, water is the best investment sector for the century. The World Bank places the value of the current water market at close to $1 trillion; however, with only 5 percent of the world's population currently getting its water from corporations, the profit potential is unlimited.

The world of privatized water is overwhelmingly dominated by two French transnationals. Suez Lyonnaise des Eaux (which built the Suez Canal and had 1999 profits of $1.5 billion on sales of $32 billion) and Vivendi SA are referred to as the General Motors and Ford Motor Company of the water world. Both are ranked among the 100 largest corporations in the world by the Global Fortune 500. Between them they own, or have controlling interests

THIRD
WORLD
TRAVELER

THE CRISIS

from the booklet

Blue Gold

The global water crisis and the commodification of the world's water supply

A Special Report issued by the International Forum on Globalization (IFG)

by Maude Barlow
National Chairperson, Council of Canadians
Chair, International Forum on Globalization (IFG) Committee
on the Globalization of Water

A Finite Resource

It is commonly assumed that the worlds water supply is huge and infinite. This assumption is false. In fact, of all the water on Earth, only 2.5 percent is freshwater, and available freshwater represents less than half of 1 percent of the world's total water stock. The rest is seawater, or inaccessible in ice caps, ground water and soil. This supply is finite.

As Allerd Stikker of the Amsterdam-based Ecological Management Foundation explains "The issue today, put simply, is that while the only renewable source of freshwater is continental rainfall (which generates a more or less constant global supply of 40,000 to 50,000 cubic km per year), the world population keeps increasing by roughly 85 million per year. Therefore the availability of freshwater per head is decreasing rapidly."

Most disturbingly, we are diverting, polluting and depleting that finite source of freshwater at an astonishing rate. Today, says the United Nations, 31 countries are facing water stress and scarcity and over one billion people lack adequate access to clean drinking water. By the year 2025, as much as two-thirds of the world's population-predicted to have expanded by an additional 2.6 billion people-will be living in conditions of serious water shortage and one-third will be living in conditions of absolute water scarcity.

World Resources, a publication of the United Nations Environment Program, the World Bank and the World Resources Institute, has a dire warning "The world's thirst for water is likely to become one of the most pressing resource issues of the 21st century...In some cases, water withdrawals are so high, relative to supply, that surface water supplies are literally shrinking and groundwater reserves are being depleted faster than they can be replenished by precipitation."

THIRD WORLD TRAVELER

Introduction

from the booklet

BLUE GOLD

The global water crisis and the commodification of the world's water supply

A Special Report issued by the International Forum on Globalization (IFG)

by Maude Barlow
National Chairperson, Council of Canadians
Chair, International Forum on Globalization (IFG) Committee on the Globalization of Water

"The wars of the next century will be about water."

Ismail Serageldin, vice president of the World Bank

We'd like to believe there's an infinite supply of water on the planet. But the assumption is tragically false. Available freshwater amounts to less than one-half of 1 percent of all the water on earth. The rest is sea water, or is frozen in the polar ice. Fresh water is renewable only by rainfall, at the rate of 40,000 to 50,000 cubic kilometers per year. Due to intensive urbanization, deforestation, water diversion and industrial farming, the earth's surface is drying. If present trends persist, the water in all river basins on every continent could steadily be depleted.

Global consumption of water is doubling every 20 years, more than twice the rate of human population growth. According to the United Nations, more than one billion people on earth already lack access to fresh drinking water. If current trends persist, by 2025 the demand for freshwater is expected to rise to 56 percent above the amount that is currently available.

As the water crisis intensifies, governments around the world-under pressure from transnational corporations-are advocating a radical solution the privatization, commodification and mass diversion of water. Proponents say that

THIRD
WORLD
TRAVELER

THE GLOBAL TRADE IN WATER

from the booklet

Blue Gold

The global water crisis and the commodification of the world's water supply

A Special Report issued by the International Forum on Globalization (IFG)

by Maude Barlow
National Chairperson, Council of Canadians
Chair, International Forum on Globalization (IFG) Committee
on the Globalization of Water

PIPE SCHEMES

The water privateers are now also setting their sights on the mass export of bulk water by diversion, by pipelines and by supertanker. Modified tanker deliveries already take place in certain regions that are willing to pay top dollar for water on an emergency basis. Barges carry loads of freshwater to islands in the Bahamas and tankers deliver water to Japan, Taiwan, and Korea. Turkey is preparing to sell its water by shipping it on converted oil tankers and through pipeline from the Manavgat River to Cyprus, Malta, Libya, Israel, Greece and Egypt.

In the summer of 2000, Israel began negotiations to buy over 13 billion gallons of water a year from Turkey; the tankers are already moored to huge yellow floating stations two miles offshore, awaiting delivery orders. Turkey's water company says it has the pumps and pipes to export four to eight times that amount.

To deal with droughts in southern European countries, the European Commission is looking into the possibility of tapping into the sources of water-rich countries such as Austria. If its plans to establish a European Water Network are realized, Alpine water could be flowing into Spain or Greece, rather than Vienna's reservoirs, within a decade. "This means that in theory we could supply everyone in the European Union, all 370 million of them," declares Herbert Schroefelbauer, deputy chairman of Verbund, the country's largest electrical utility. A high-tech pipeline already transports quality spring water from the Austrian Alps to Vienna, and the proposal to extend this system to other countries is creating great unease among Austria's environmentalists, who warn of the damage bulk exports could have on the sensitive alpine ecosystem.

Gerard Mestrallet of Suez Lyonnaise is planning another Suez Canal-this time in Europe. He has announced his intention to build a giant 160-mile aqueduct to transport water from the Rhone River through France to the

THIRD
WORLD
TRAVELER

THE FAILURE OF GOVERNMENTS

from the booklet

Blue Gold

The global water crisis and the commodification of the world's water supply

A Special Report issued by the International Forum on Globalization (IFG)

by Maude Barlow
National Chairperson, Council of Canadians
Chair, International Forum on Globalization (IFG) Committee
on the Globalization of Water

TOO LITTLE TOO LATE

Governments all over the world have been remiss in not recognizing the crisis surrounding the world's water resources and for not taking steps to offset the coming emergency.

In the industrial world, there are some real success stories in the reclamation of rivers, lakes and estuaries choked with sewage and industrial pollution. The Hudson River in the U.S. was once given up for dead; now it abounds with life. Citizens and governments have worked to ban some of the most egregious toxins entering our water, such as DDT, and in December 2000 concluded a historic treaty banning the major persistent organic pollutants (POPs). As well they have forced the partial clean-up of industrial effluent such as waste from pulp and paper mills.

The partial recovery of the Great Lakes through joint action of the bordering provinces and states, for example, is being studied by scientists all over the world. After discovering that phosphorus was causing much of the deterioration, the governments of Canada and the United States signed the Great Lakes Water Quality Agreement in 1972, which strongly curbed the dumping of phosphorus and municipal sewage into the lakes.

As well, conservation efforts in Europe and North America have resulted in some reduction in household and industrial water use, helping to slow the rate of aquifer withdrawal. Water use has actually dropped in some regions and industrial sectors in the U.S. by 10 to 20 percent since 1980, according to the United States Geological Survey. In the last decade, govern

In industrial countries, where the technology and resources are available for improvements, governments have

THIRD
WORLD
TRAVELER

THE THREAT OF INTERNATIONAL TRADE AND INVESTMENT AGREEMENTS

from the booklet

Blue Gold

The global water crisis and the commodification of the world's water supply

A Special Report issued by the International Forum on Globalization (IFG)

by Maude Barlow
National Chairperson, Council of Canadians
Chair, International Forum on Globalization (IFG) Committee
on the Globalization of Water

WATER, NAFTA, AND THE FTAA

Chapter 3 of NAFTA establishes obligations regarding the trade in goods. Using the General Agreement on Tariffs and Trade (GATT) definition of a "good" which clearly lists "waters, including natural or artificial waters and aerated waters," NAFTA adds in an explanatory note that "ordinary natural water of all kinds (other than sea water)" is included. Chapter 12 sets out a comprehensive regime to govern trade and investment in the service sector, including water services. Chapter 11 establishes an extensive array of investor rights, including investors in water goods and water services. Thus, under NAFTA, water is a commercial good, a service and an investment.

There are three key provisions of NAFTA that place water at risk. The first is "National Treatment" whereby no country can "discriminate" in favor of its own private sector in the commercial use of its water resources. For example, if a municipality privatizes its water delivery service, it would be obliged to permit competitive bids from water service corporations of the other NAFTA countries. Similarly, once a permit is granted to a domestic company to export water, the corporations of the other NAFTA partner countries would have the same right of establishment to the commercial use of that country's waters as its domestic companies. If a Canadian company, for instance, gained the right to export Canadian water, American transnationals would have the right to help themselves to as much Canadian water as they wished.

The second key provision is Article 3 15, the "proportionality" clause, under which a government of a NAFTA country cannot reduce or restrict the export of a resource to another NAFTA country once the export flow has been established. Article 309 states that "no party may adopt or maintain any prohibition or restriction on the exportation or sell for export of any good destined for the territory of another party" and this provision includes a

THIRD WORLD TRAVELER

THE NEED FOR COMMON PRINCIPLES

from the booklet

Blue Gold

The global water crisis and the commodification of the world's water supply

A Special Report issued by the International Forum on Globalization (IFG)

by Maude Barlow
National Chairperson, Council of Canadians
Chair, International Forum on Globalization (IFG) Committee
on the Globalization of Water

Watersheds come in families' nested levels of intimacy. On the grandest scale the hydrologic web is like all humanity-Serbs, Russians, Koryukon Indians, Amish, the billion lives in the People's Republic of China-it's broadly troubled, but its hard to know how to help. As you work upstream toward home, you're more closely related. The big river is like your nation, a little out of hand. The lake is your cousin. The creek is your sister. The pond is her child. And, for better or worse, in sickness and in health, you're married to your sink.

-Michael Parfit, National Geographic

Presently, the world is poised to make crucial, perhaps irrevocable decisions about water. Except for those now deliberately seeking to profit from the world's water crisis and those who have continued to pollute water systems even when confronted with evidence of the damage they have wrought, the harm done to water to date has been largely unintentional and reactive-a combination of benign neglect, ignorance, greed, too many demands on a limited resource, careless pollution and reckless diversion. The human race has taken water for granted and massively misjudged the capacity of the earth's water systems to recover from our carelessness. Although we now must answer for the great harm we have caused, it is probably fair to say that no one set out to create a global water shortage or to deliberately destroy the world's water supply.

However, lack of malice is no longer a good enough excuse. We know too much. Forces are already established that would see water become a private commodity to be sold and traded on the open market, controlled by transnational corporations and guaranteed to serve investors and private sectors through global trade and investment agreements. If we do nothing now, this is the future of water.

THE ETHICS OP WATER SHARING

THIRD
WORLD
TRAVELER

CONCLUSION

from the booklet

Blue Gold

The global water crisis and the commodification of the world's water supply

A Special Report issued by the International Forum on Globalization (IFG)

by Maude Barlow
National Chairperson, Council of Canadians
Chair, International Forum on Globalization (IFG) Committee
on the Globalization of Water

Not long ago, the world celebrated the 50th anniversary of the 1948 United Nations Universal Declaration of Human Rights. This Declaration marked a turning point in the long international quest to assert the supremacy of human and citizen rights over political or economic tyranny of any kind. Together with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Declaration stands as a twentieth century Magna Carta. Besides granting full human rights to every person on earth regardless of race, religion, sex, and many other criteria, the Declaration includes the rights of citizenship, services and social protections that every citizen has a right to demand of his or her government.

These rights include social security, health, and the well-being of the family, including the right to work, decent housing and medical care. The covenants bind governments to accept a moral and legal obligation to protect and promote the human and democratic rights outlined in the Declaration and contain the measures of implementation required to do so. The individual rights and responsibilities of citizens as established by the Declaration, together with the collective rights and responsibilities of nation-states as established in the covenants, represent the foundation stones of democracy in the modern world.

Yet a half-century later, the lack of access to clean water means that more than one billion people are being denied a right guaranteed them in the United Nations Declaration. Over those fifty years, the rights of private capital have grown exponentially, while the rights of the world's poor have fallen off the political map. It is no coincidence that the deterioration and depletion of the world's water systems has taken place concurrent with the rise in the power of transnational corporations and a global financial system in which communities, indigenous peoples and farmers have been disenfranchised.

The role of the state has been profoundly altered in recent decades. As writer and activist Tony Clarke explains, "Stateless corporations are effectively transforming nationstates to suit their interests in global transnational

East Dunbartonshire Council
www.eastdunbarton.gov.uk

AGENDA ITEM NO:

DEVELOPMENT & ENVIRONMENT COMMITTEE	**DATE: 1st APRIL 2008**
REPORT NO: D&E-815/08	**BY CORPORATE DIRECTOR -ENVIRONMENT**
CONTACT OFFICER	**DEREK CUNNINGHAM, HEAD OF ROADS, PROPERTY MAINTENANCE AND WASTE MANAGEMENT** / **ALAN SIM, HEAD OF PLANNING, DEVELOPMENT AND PROPERTY ASSETS**
SUBJECT	**CONSULTATION ON 'THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND'**

1.0 PURPOSE

1.1 The purpose of this report is to inform the Committee of the content of the Consultation on 'The Future of Flood Risk Management in Scotland' and to set out a recommended response to the Scottish Government.

2.0 SUMMARY

2.1 The Scottish Government will introduce a Flooding Bill in 2008 to modernise the flood risk management system in Scotland. It is important to note the terminology used, i.e., flood risk management rather than flood prevention. This is in recognition that flooding is a natural phenomena that cannot be prevented and accordingly efforts should be concentrated on managing the risk as effectively as possible in the circumstances.

2.2 The general approach is to simplify current processes, remove constraints and to encourage a joined up approach by the relevant authorities to allow effective flood management at national, area and local levels. The role of Local Authorities is seen as being a key element of flood management, particularly at area and local levels.

3.0 RECOMMENDATION

It is recommended that the committee:

3.1 Submits a copy of this paper as the Council's response to the Scottish Government Consultation 'The Future of Flood Risk Management in Scotland'.

Head of Roads, Property Maintenance and Waste Management

4.0 BACKGROUND

4.1 The proposals set out in this consultation paper are designed to establish a framework within which sustainable flood risk management in Scotland will operate more effectively than at present. The intention is to ensure that there is no duplication of effort, and that the flood risk management process is simplified and better co-ordinated. It is recognised that Local authorities are best able to judge the needs of their areas and will continue to be responsible for implementing flood alleviation measures. It is also recognised that individual local authorities cannot operate in isolation. The proposals seek to establish a way of coordinating catchment flood management planning to ensure a national approach, delivered locally.

4.2 The proposals include options to simplify the present statutory process for approving flood risk management measures, and to remove the risk of two public inquiries being held; one on planning and one on flood risk management measures. It is intended that the proposals will reduce significantly the delays associated with this aspect of flood risk management.

5.0 CONTENT OF THE DOCUMENT

5.1 The First Minister announced on 5 September 2007 that the Scottish Government will introduce a Flooding Bill in 2008 to modernise the flood risk management system in Scotland. The broad objective in promoting new legislation is to provide the framework to ensure that a fully sustainable approach to flood risk management is in place across Scotland.

5.2 Identified problems with the current system.

5.2.1 The consultation document notes that, at the moment, there are a large number of key players dealing with flooding from all its sources; however there is a lack of co-ordination between the different powers and duties under different legislation (including flood prevention, roads, urban drainage, sewerage and land drainage). This lack of co-ordination is because there is no national framework within which local authorities, Scottish Water, SEPA and others can take decisions relating to the management of flood risk. As a result, flood risk management has been largely reactive. The consultation document suggest we have to leave this reactive approach behind, and instead look to reduce the risk of significant impacts of flooding through sustainable flood management.

5.2.2 The Flood Prevention (Scotland) Act 1961 is the main piece of legislation for managing flood risk from rivers and the sea, but it was written for previous local government structures and responsibilities, and does not interact well with new duties such as the duty to promote sustainable flood management under the Water Environment and Water Services Act 2003 (The 2003 Act). In particular:

- its emphasis on large scale engineered solutions to flooding problems makes it difficult to implement a catchment wide approach.
- the measures permitted in the Act are only suitable for river and coastal flooding, and would not address all types of flooding as required by a sustainable approach.
- the statutory process set out in the Act is seen by many as the cause of delays in developing and building flood prevention schemes (as they are currently known) as it is not integrated with other statutory processes such as planning and the Controlled Activities Regulations (under the 2003 Act) and so requires local authorities to pursue three separate statutory processes in order to get a scheme built.

5.2.3 Another recognised problem is the lack of integration of water industry infrastructure with other drainage and flooding infrastructure. At the time of the 1961 Act, local authorities were also responsible for water infrastructure and could use the water and sewerage legislation to carry out work on the sewerage infrastructure. They could only use the 1961 Act where the existing sewers or water mains had to be diverted as a consequence of carrying out a flood prevention operation.

Now that Scottish Water is responsible for water industry infrastructure, there are difficulties when proposed flood alleviation measures would require an upgrading of, or improvements to, the sewerage infrastructure which is not on Scottish Water's 6 year work programme.

This splitting of responsibilities has also meant that surface water drainage has become a grey area, where local authorities are responsible for the water on the road surface but Scottish Water is responsible once the water enters its sewers.

Finally, there is no legal restriction on building on a flood plain, although SPP7 - Planning and Flooding, published in February 2004, strengthened planning guidance on striking a balance between how we use land and avoid inappropriate development on flood plains.

5.3 The Way Forward

The consultation seeks views on the following proposals:

- identify a competent authority with overall responsibility for the implementation of the EC Floods Directive and responsible authorities (including local authorities, Scottish Water, SNH and the Forestry Commission) for the purposes of flood risk management planning.
- enable areas for flood risk management planning to be defined by Ministerial direction following consultation with SEPA and the responsible authorities. These areas will cover a single large catchment or combination of multiple catchments including coastal management units.

The competent authority will be required to:

- undertake preliminary flood risk assessments (PFRA) to create a national picture of flood risk in Scotland, by 22 December 2011.
- undertake Flood Risk and Hazard Mapping for those areas identified through the PFRA as being at significant flood risk by 22 December 2013.
- produce strategic Area Flood Risk Management Plans that will coordinate flood risk management objectives and measures across catchments, or groups of catchments, and set the framework in which measures are delivered or planned for at a local level by responsible authorities i.e. local authorities and others.

In preparing these plans, the competent authority will:

- secure the participation of responsible authorities via area advisory groups, and will consult stakeholders.
- submit the plans to the Scottish Ministers by the required date, and will monitor and review in accordance with the requirements of the Floods Directive.
- require local authorities to develop detailed Local Flood Risk Management Plans, prepared in co-operation with the other responsible authorities, which will set out in more detail the measures required to manage the local flood risk.

Local authorities will retain existing duties to:

- assess the condition of watercourses from time to time to ascertain whether their condition was likely to cause flooding of non-agricultural land in their area.
- maintain watercourses in a due state of efficiency where such maintenance would substantially reduce the risk of such flooding.
- publish a biennial report of instances of flooding and measures taken since their last report, and any further measures they consider they require to take to mitigate flooding of non-agricultural land.

It is proposed that the form and content of the biennial reports will be prescribed by the Scottish Ministers in secondary legislation, and that it will also be subject to Ministerial guidance.

Local authorities will also have the power to carry out such flood risk management measures as may appear to them to be necessary or expedient for the protection of any land or property in their area. This would enable local authorities to implement the measures agreed in a Local Flood Risk Management Plan.

The present statutory process will be simplified by either:

- retaining a statutory process for approval of flood risk management measures, but for Ministerial confirmation to carry deemed planning permission, or
- removing entirely the Ministerial confirmation process.

The Scottish Government is also seeking views on proposals to introduce a transfer of responsibility for enforcement of the Reservoirs Act 1975 in Scotland from local authorities to a single enforcement authority, and is keen to obtain feedback on which organisation may be best placed to undertake enforcement.

6.0 SUGGESTED RESPONSE TO CONSULTATION QUESTIONS

The consultation seeks responses to specific questions as undernoted. The suggested Council responses are detailed after each question.

Q1 Do you believe the definition of Sustainable Flood Management (SFM) is helpful and of practical benefit to flood risk management?
Yes, in taking forward any new proposals or legislation it is essential that there are clear definitions of key aspects. In this respect definition of SFM is helpful and of practical benefit.

Q2 Do you think the definition is clear and simple to understand?
The definition leaves scope for interpretation e.g. on what might be considered as 'fair'. It is however recognised that, in seeking to establish a fairly short and straightforward definition, that there is always likely to be scope for individual interpretation.

Q3 Do you agree with the conclusion as set out in paragraph 3.17?
Yes, there requires to be a single competent authority to ensure a consistent approach at a national level.

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, given current remits, responsibilities and resources, it would seem logical that SEPA be the competent authority.

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?**
The proposals provide a sound basis for the development of Local Flood Risk Management Plans. Critical to this however are the resource implications this would have for Local Authorities in terms of finances and relevant staff expertise. It is essential that appropriate funding is provided for Local Authorities to discharge any responsibilities in this area.

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?**
It should be for partners to determine the lead authority within a local area based on local circumstances and who in any instance is best placed to deliver successful outcomes.

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?**
No further bodies identified.

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

Q10 **Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?**
It is recognised that wider stakeholder and community engagement is essential. The proposals do not however sufficiently define how this might be effectively achieved.

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, the process as proposed would be appropriate for the development of Area Flood Risk Management Plans.

Q12 **Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?**
Yes, it would be appropriate for Ministers to have such powers in respect of Area Flood Risk Management Plans.

Q13 **Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?**
Yes, urban drainage is one of the various aspects which can impact, either favourably or adversely on flooding and flood mitigation within a local area. It is therefore essential that these are included within 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?**

It would be appropriate in a plan led decision making environment to require flood risk areas to be shown on in Local Development Plan proposals maps. Developments which might depart from Development Plan policies could thereby be identified by the competent authority for referral to Ministers.

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 deliver of flood risk management?
Yes, but it is questionable whether this would be any more streamlined than relying on established planning procedures or that the loss of local democratic input could be justified.

Q16 Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?
There would be no obvious justification for such a requirement when the features were an integral part of a scheme which invoked the planning process.

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?
Current procedures for Ministerial referral of Local Authority Interest planning applications provide an acceptable option and adopting this approach would help to increase consistency.

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?
Yes, if Local Authorities are to be made responsible then they should be given appropriate decision making authority.

Q19 What would be the appropriate timescales for notification and response?
Although flood risk management can be technically complex, the overwhelming number of objections are not concerned with such issues but with impact on amenity. There is therefore no reason to depart from normal planning notification timescales.

Q20 Would it be appropriate for such a process to carry deemed planning consent?
Yes. This could be termed in a similar way to the process by which Local Authority interest applications are currently handled.

Q21 How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed, be addressed?
This is recognised as a key area for consideration. There are significant issues around technical expertise and capacity particularly in smaller Local Authorities which may have difficulty sustaining such expertise within existing structures and accordingly rely on specialist consultant support. The option of shared resources must be seriously considered.

Q22 Are there any additional alternatives to the options outlined above which would simplify procedures?
As explained above, there is no clear justification for such development proposals to be treated any differently from other Local Authority developments which require planning consent.

Q23 Do you consider local authorities' powers are sufficient to take necessary action to avert danger to life and property?
Because only a certain class of flood risk measure, i.e. those involving engineering operations are subject to statutory procedure, this might limit Local Authorities flexibility in regards to the act.

Post Committee amendment / addition
The issue if Riparian Owner responsibility requires clarification and strengthening and Local Authorities should be empowered to instruct necessary works to be undertaken by Riparian Owners or to themselves undertake such works as are necessary and recover costs incurred.

Q24 Do you agree that streamlining the CAR and flooding/planning processes can be managed through better guidance?
Streamlining the processes is essential but may require alteration to processes rather than simply seeking to manage through guidance.

Q25 Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulations?
The proposals are reasonably addressing the issues around joined-up regulations.

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 proposals are a reasonable approach to simplifying the process of promoting flood measures.

Q27 Do you agree that the form and content of the biennial reports should be more systematic, ad subject to direction from Ministers?
Yes, in taking forward a new national, area and local approach to flood management, it would be beneficial to introduce some consistency to the content of biennial reports. It must also be recognised that any changes in this respect may have a financial impact on Local Authorities, particularly in terms of the first report produced under any new format and structure.

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 proposals have the potential to provide an improved approach to flood management. It is essential however that Local Authorities, and other responsible authorities, are properly funded to take forward the proposals and to improve on flood management in the future.

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 proposals provide a framework to allow flood risk to be addressed without the need to impose a duty on Local Authorities. There will however be a requirement for appropriate funding to be in place to deliver the needs identified in the development of Area and Local Flood Risk Management Plans.

RESERVOIR SAFETY

Q30 Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?
Yes, it would be entirely appropriate that a consistent approach be introduced and administered by a single national body.

Q31 If so, should it be SEPA or another body as yet unidentified body?
Given the current responsibilities of SEPA and the option to define SEPA as the competent authority with a national remit for implementing the Floods Directive, it would seem logical they be the single national 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?**
The proposals appear adequate and reasonable on this matter.

Q33 **Do you agree that enforcement powers be extended and post incident reporting included as an additional requirement?**
Agree that enforcement powers be extended to ensure an effective response to safety requirements.

Q34 **Views on crown application and any other comments?**
No specific views are offered on this particular issue.

7.0 IMPLICATIONS FOR OTHER DEPARTMENTS

7.1	**Finance**	Not identifiable at this stage
7.2	**Legal**	Not identifiable at this stage
7.3	**Human Resources**	Not identifiable at this stage
7.4	**Public Relations**	Not identifiable at this stage

028

Scottish Government

Consultations

Introduction

Views are sought in relation to : **The Future of Flood Risk Management in Scotland**

We should be very grateful if you would answer these questions on the proposals in this consultation paper and on their potential impacts. Please give reasons for your answers where you think it may be helpful. You should also feel free to suggest alternative approaches or make whatever additional comments or suggestions you think are appropriate. Consultation deadline: 23/04/2008.

Information about you

Please complete the details on the Respondent Information Form below. This will help ensure we handle your response appropriately.

Name: Hamish S Eadie BSc MSc FICE FCIWEM * Required

Organisation: (if applicable) hamish.himself

Postal Address:

Post Code: * Required

E-mail:

Telephone Number:

1. Are you reponding as: (please tick one box) * Required

- (•) An individual (go to Q2a/b and then Q4)
- ( ) **on behalf of** a group or organisation (go to Q3 and then Q4)

2a. INDIVIDUALS

Do you agree to your response being made

- (•) Yes (go to 2b below)
- ( ) No, not at all (We will treat your response as confidential)

available to the public (in Scottish Government library and/or on the Scottish Government website)?

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- ○ Yes, make my response, name and address all available
- ○ Yes, make my response available, but not my name or address
- ◉ Yes, make my response and name available, but not my address

3. ON BEHALF OF GROUPS OR ORGANISATIONS

The name and address of your organisation ***will be*** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

- ○ Yes
- ○ No we will treat your response as confidential

4. SHARING RESPONSES/FUTURE ENGAGEMENT

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

- ◉ Yes
- ○ No

Consultation Questions

Question 1:

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

Yes

Question 2:

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

The word "sustainable" is frequently misused in government (and other circles). What is being discussed is a robust long term strategy which considers our environment. Is the word required? The definition highlights the weakness of its current use- if it is sustainable, then there is no need to amplify with a reference to the future!

Otherwise - yes

Question 3:

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

Yes

Question 4:

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
Yes

Question 5:

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, it is a good basis but will need ammendments following consultation.

Question 6:

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

Neither.
Ministers settle disputes only.

Question 7:

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

What is the legal definition of an "Authority" and who else under that definition would be eligible?
If you are simply trying to pick out government/ quasi government parties and saying that they have to comply, then all with a responsibility in a scheme should be automatically responsible and no specific names are required.
The bodies seem patchy - why the Forestry Commission, but not British Waterways?
The logic is not immediately apparent.

Question 8:

Which other bodies should be identified as responsible authorities?

Runs on with 7. What defines a body? Energy Suppliers, Harbour boards, NFU, Landowners?

This section needs amplified.

Question 9:

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

Yes

Question 10:

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

No. Generally government consultations are perceived as being weak, diminishing the status of government. The stakeholders rights and responsibilities should be made clearer in the process and included in the legislation.

Question 11:

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?

No direct experience but in principal, yes.

Question 12:

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

yes

Question 13:

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

Yes. Also see Q21

Question 14:

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?

~~Not either or.~~
Yes and yes.

~~Question 15:~~

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, but it will need to be clear to all that the planning process is fully intigrated.

~~Question 16:~~

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

No

~~Question 17:~~

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

~~Unambigious simple guidance for submission should be available.~~
Clear timescales should be set.

~~Question 18:~~

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?

Yes

~~Question 19:~~

What would be the appropriate timescales for notification and response?

~~Question 20:~~

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

No

Question 21:

How should the issue of technical expertise and capacity be addressed?

There needs to be some formal guidance on standards under a technically sound body such as the Institution of Civil Engineers. A particular problem is the combination of design standards eg overtopping frequecy,drains and surface flooding.

Question 22:

How could such a process ensure the necessary technical standards are observed?

Third party audit as for bridges, catagory depending on value or consequence of failure.

Question 23

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

Question 24

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

Will help.

Question 25

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

Question 26

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 impression is given that the CAR regulations might be separate. The high level issues MUST be an integral part of the flood order. This may well lead to a need for the Ministerial backstop in case of disputes.

Question 27

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

Yes and available (if not already so)

Question 28

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

Generally a large step in the right direction.

Question 29

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?

No

RESERVOIR SAFETY

Question 30

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

Yes

Question 31

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

The Act has been succesful to date as it is primarily focussed on the public safety. As it stands any new body only requires to carry out the regularity function and therefore any government body could do. The reservation with SEPA could be an interest in ammending/ interpreting the act for environmental enhancement purposes - albeit with good intent, eg operational flood management.

Question 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?

Yes

Question 33

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

Yes

Question 34

Views on crown application and any other comments?

Crown estate must be included.

What about Mines and Quarries issues?

What is behind the comment that reservoir flows are a particular Scottish Water responsibility?

SPP7 needs strengthened to avoid local authorities yielding to developers pressure.

Submit Responses

Page updated: August 15, 2005

The issue of agricultural land does not seem to be fully addressed.

RBS Insurance

RBS Insurance response to The Future of Flood Risk Management in Scotland

RBS Insurance is a division of the Royal Bank of Scotland Group. We underwrite and sell motor, home, commercial and other insurance direct to customers over the telephone and internet as well as through partnerships and a network of 2,500 brokers. Our brands, which include Direct Line, Churchill, Privilege and Green Flag are among the best known in the UK. We are the UK's number one car insurance provider and number two home insurance and travel insurance provider.

1.0 Executive Summary

1.1 RBS Insurance believes that the definition of Sustainable Flood Management is of practical benefit to flood risk management and is simple to understand.

1.2 The Scottish Environment Protection Agency (SEPA) should be designated as the single authority with overall responsibility for implementing the Floods Directive in Scotland.

1.3 Local authorities are best placed to deliver implementation of Local Flood Risk Management Plans. SEPA should be given the power to designate a lead authority within a local area.

1.4 The Local Flood Risk Management Plans should include sustainable urban drainage plans as a compulsory component.

1.5 There should be a duty on responsible authorities (local authorities, Scottish Water, the Forestry Commission and Scottish National Heritage) to work together within Flood Advisory Groups to produce Area Flood Risk Management Plans.

1.6 There should be a requirement on planning authorities to demonstrate how they have regarded Flood Risk Management Plans.

1.7 Local authorities should have a new duty to promote flood alleviation measures.

1.8 Enforcement responsibilities under the Reservoirs Act 1975 should be transferred to SEPA.

1.9 There should be a statutory duty on reservoir undertakers to prepare inundation maps and plans, similar to that in the 2003 Water Act for England and Wales.

2.0 Response to Consultation Questions

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

Yes, we believe the definition of Sustainable Flood Management is of practical benefit to flood risk management because it includes all sources of flooding.

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

Yes, the definition is clear and leaves little room for misinterpretation or misunderstanding.

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

Yes, we agree that there should be a single authority with a national remit for implementing the Floods Directive, with local authorities best placed to deliver implementation on the ground.

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, there should be a single authority with overall responsibility for implementing the Flood Directive nationally. We believe this authority should be SEPA.

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, we agree that local authorities should be responsible for preparing Local Flood Risk Management Plans and that they should be fully integrated with Area Plans. However, we believe the inclusion of a sustainable urban drainage plan should be compulsory, not only provided if it is considered necessary.

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?

We believe that Scottish Environment Protection Agency (SEPA) should have this power to designate a lead authority in its role as the single authority responsible for the national overview.

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

Yes, we agree these agencies are the appropriate authorities to have responsibility for developing Area Flood Risk Management Plans.

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

Yes, there should be a duty on the responsible authorities to produce plans. Without such a duty, co-ordination will not be guaranteed and the plans may not be as effective.

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

Yes, the proposal to establish stakeholder forums is a sensible idea to engage individuals and organisations in the planning process.

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

Yes, we agree that Ministers should have these powers.

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

Yes, we strongly believe that urban drainage plans should form an compulsory part of Local Flood Risk Management Plans.

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

We believe there should be a requirement on planning authorities to demonstrate how Flood Risk Management Plans have informed their decisions.

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, we agree that the granting of deemed planning permission at the end of the statutory process is a more sensible approach to delivering flood risk management.

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

No, we do not believe Ministerial confirmation is necessary in schemes which do not require planning permission.

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?

Yes, we think that a local authority based approach would be the best way to proceed.

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

Yes, deemed planning consent would be required.

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

We believe this issue should be addressed by pooling the expertise of external flooding engineers to undertake technical scrutiny, as suggested in the proposals.

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

Yes, better guidance would be adequate to manage the CAR and flooding/planning processes.

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

Yes, the form of biennial reports should be consistent across local authorities, prescribed by Ministerial direction.

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, we agree that the proposals will greatly improve flood risk management in Scotland if fully implemented.

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?

We believe that local authorities should have a new duty to promote flood alleviation measures.

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

Yes, a single national body would ensure more effective enforcement of the measures in the Reservoirs Act 1975.

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

Yes, we believe the body should be SEPA.

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?

Yes, we believe there should be a statutory duty on reservoir undertakers to prepare inundation maps and plans, similar to that in the 2003 Water Act.

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

Yes, we agree. Post incident reporting should be a requirement of mapping and planning in order to improve reservoir safety.

Q34. Views on crown application and any other comments?

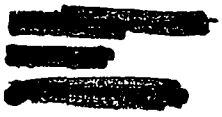
We believe the Crown bodies should be bound by the Act.

Consultation on 'The Future of Flood Risk Management in Scotland

030

John Swanson

1 I am responding as an individual
2a Yes
2b Yes, make my response and name available, but not my address
3 NA
4 Yes



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

A definition is essential to allow all stakeholders to be aware of where the boundaries and requirements are set.

To not have a definition will make control difficult, and very likely end up with situations and results that are undesirable. The definition can be tuned in time to such as new technologies eg in flood defences, building materials and designs, improved understanding of weather and climate change, changes in public perception in what can be safely accepted etc.

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

The definition given in box 2 by the FIAC seems simple to understand, however, it does seem to indicate that some level of flooding may be acceptable. Certainly for housing and other essential developments such as hospitals, power stations, pollution sources etc. this should not be accepted.
The more developments that are built in flood plains, or that cause flooding in other properties, the greater will be the social, economic and ecological cost when flooding occurs, and the greater the inability for the economy to cope, locally or nationally.
Also any development that may cause a flood impact elsewhere cannot be acceptable.

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

There does need to be a national body that ensures that all the separate parts are dealing properly with flood management, and that at local, regional or estuary level there is no conflict of interest between local authorities.

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?

Whilst SEPA is currently the only single body that has the expertise and resources to carry out this function, there are concerns that some of their aims such as protecting wildlife habitat may conflict with the aims of flood management, and for this reason, it would be better that those parts of SEPA that would provide the correct expertise and resources are set up as a separate National Flood Agency, concentrating on Flood Management, minimising impact and hardships which is of immense social and economic importance.

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?

As long as there is a competent authority with sufficient resources overseeing the making of Local Flood Risk Management Plans to ensure compliance and efficiency, and that they are seamlessly integrated with regional and national plans, then this seems reasonable.

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?

One would expect that neighbour authorities would have a common sense approach to flood plans that by their nature cross into adjacent authority areas, however there may be occasions when a authority has to decide on priorities. For this reason, some mechanism would have to be in place to deal with such problems should they arise.

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

In 3.32 the responsibilities listed above also includes "amongst others" which are not listed. I think all the emergency services need to be listed, as they have to respond/clean up if it all goes wrong. There may be other responsible authorities that need to be identified.

Q8. Which other bodies should be identified as responsible authorities?
Along with Q7 above, emergency services including Coastguard, NHS, other national and local voluntary services that assist eg WRI, RNLI etc. as all of these will have issues that should be considered in the Plan to reduce damage, financial burdens, human suffering, casualties, fatalities etc. during and after a flooding incident. Householders and businesses in affected areas should also have some say in the Plan, and therefore should be represented.

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

Yes

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

All those that will be affected or involved in the event of a flooding incident need to be identified and included in the plan preparation, therefore support for wide stakeholder and community involvement is essential.

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. The structure plan approval system is tried and tested, however note previous comments regarding SEPA, whereby flood management and planning needs to be separated from SEPA's other responsibilities.

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

Provided they are fully conversant with and fully understand why they are doing so, and that any modifications benefit the communities involved or likely to be involved in flooding incidents or affected by such as the building of flood defences, but not necessarily at risk of flooding.

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

Yes, especially if it will remove the so-called grey areas. In addition, water will follow route of least resistance, and will not differentiate between urban drainage systems, roads, open areas, rivers, other waterways and therefore all routes need to be included.

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?

Recently, more and more planning applications are referred to SEPA. There has to be some recognition/guideline of how to determine which planning applications are referred to the Flooding Authority (see earlier comments on SEPA) as the appropriate body. The current SEPA maps, especially in this locale, cannot be relied upon as they are too general, and indicate the main street at flooding risk when this is extremely unlikely to happen. So a stronger linkage is essential

Option 1
This seems an appropriate method for large-scale flood risk management schemes that crosses more than one authority area, the exact definition of which should be agreed.

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?

Only provided all the requirements of a planning application have been met. There should really be no reason why both cannot be carried out at the same time and under the same jurisdiction, ensuring that the requirements for both planning applications and flood risk management are met. Any public notifications, public enquiries etc. should clearly indicate that it is both that are being considered.

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

Yes, if it is of large scale and affects much and many and crosses several authority areas.

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?

For those affected by a flooding incident a month is too long. If the scheme is considered essential for prevention of social and financial suffering, then suitable priority must be given, and therefore in such cases there should be a mechanism that allows shorter delays to implementation that do not adversely affect those affected.

Option 2

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?

This would be appropriate where the definition of the option 1 method is not met.

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

They should be aligned to current planning application requirements. That way the whole could incorporate all planning requirements at the same time.

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

If both planning and flood management requirements are aligned and dealt with in the same time scale and incorporate the requirements of both, then YES

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

The national body dealing with Flood Management extracted from SEPA could have a central pool of expertise that would be available to the local authorities dealing with the scheme. Also each local authority should have a requisite level of technical expertise to deal with smaller schemes and advise on larger schemes in their region as appropriate.

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

Once the decision that a flood prevention scheme is required has been taken, then planning and flood management should be one single process that incorporates the requirements of both.

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

At this time it is not possible to answer this, however as there seems to be doubt, it would certainly be worthwhile reviewing with each authority. That way if there are any scenarios other than those that they already have the powers to deal with, then decisions on dealing with those outside their powers to be made.

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

Whether by better guidance or making it a requirement, streamlining the processes so they work in tandem seems to be a constructive approach.

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

Simplify and publicise.

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?

Simplify into one system that deals with all the requirements so that it can all be dealt with as efficiently, quickly an appropriately as possible, and not allow unnecessary red tape to throttle progress.

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

Yes. They should also be simple enough so that the public can understand them.

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

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?

Local Authorities should have an obligation to promote measures to alleviate flooding and be supported by the national body. Whilst owners, including householders are responsible for their flood protection of their own property it seems that few, if any householders, are actually aware of this and in any case it can be very difficult to achieve anything without neighbour and local authority assistance, agreement, enforcement etc.

RESERVOIR SAFETY

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

Yes

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

A single national body yet to be identified so that it deals only with the required responsibilities and does not have the potential conflicts that SEPA currently has.

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?

There should be a statutory duty for all reservoirs. Smaller reservoirs such as the angling ones mentioned in consultation document may be permitted to lesser requirements as deemed appropriate by the single national body.

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

Yes

Q34. Views on crown application and any other comments?

These must be included in requirements, as being a crown body does not necessarily imply equivalent or higher standards are voluntarily imposed.

031

'THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND'

Response from Comhairle nan Eilean Siar to the Scottish Government's Consultation Document

Sustainable Flood Management (SFM)

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

Note: The Flood Issues Advisory Committee (FIAC) defined sustainable flood management as:

"Sustainable flood management provides the maximum possible social and economic resilience (ability to recover quickly and easily) against flooding, by protecting and working with the environment, in a way which is fair and affordable both now and in the future."

The definition of sustainable flood management taken together with the overall objectives and principles of SFM is helpful in that it describes the wider consideration and inclusiveness that will be required to address flood management.

SFM should aim to reduce the risks of flood damage by better integration between an improved flood warning system, the use of planning policy to avoid further unsuitable development, increased investment in flood alleviation and improved guidance on climate change adaptation.

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

The definition itself is clear, but in order to simplify understanding it should be used together with illustrations of SFM principles and an indication of those bodies involved in its implementation.

The Competent Authority

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

The Scottish Government should retain overall responsibility for flood risk management but a competent body could act on its behalf and have a national remit for implementing the Floods Directive. However, the local implementation and engagement role that can be played by statutory local authorities and other 'voluntary' bodies such as in the case of coastal flooding, multi-stakeholder local coastal partnerships, should not be understated. Due account should be taken by the planning process and that the local implementation of the principles of Awareness, Avoidance, Alleviation and Assistance should be adequately funded by the Scottish Government.

Consideration should be given to Catchment Strategy Planning for SFM, but that catchments should be within realistic boundaries, e.g. the Western Isles is included in the RBMP West Highland AAG, but Comhairle nan Eilean Siar has no interest in SFM designed for the Scottish mainland. It does however, have considerable experience and knowledge of mainly coastal SFM issues within the Western Isles.

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 already gained considerable experience of this type of approach through River Basin Management Planning, however, the principles of stakeholder engagement, transparency and the democratic process should be adhered to.

Flood Risk Management Planning

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, a hierarchical approach will be an effective way of delivering flood management planning in Scotland. This approach will ensure standardization and knowledge transfer between designated single large catchments. The Western Isles area has its own distinct boundary and is covered by a single local authority. Also, the local authority leads the multi-stakeholder ICZM partnership; the Outer Hebrides Coastal Marine Partnership.

For the preparation of Local Flood Management Plans, more and better quality data is required than available at present. The SEPA Indicative Flood Maps provide a basis against which any potential risk from flooding can be identified, but takes no account of built structures such as coast protection or culverts; it does not allow for storm surge or tidal run; and we are led to believe that a probability range of +/- 1m is assumed. It would be useful for both planning authorities and developers if more accurate information was available as is possible through LIDAR studies.

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?

If the Western Isles is designated as the single large catchment area, the situation of having two local authorities within the area will not arise. If however, the catchment is based on the RMBP West Highland area, this could be more problematic in terms of equitable funding across local authority boundaries given the transfer of flood risk management funding to the local government settlement.

Responsible Authorities

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

Yes, their involvement as responsible bodies would be seen as essential for the effective delivery of area and local flood risk management plans.

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

Other bodies that should be involved in flood risk management, but it may not be necessary for them to be listed by statute, are, for example, landowners including community and SGRPID, crofting and farming organisations, community councils, flood action groups, port authorities, etc.

Participative Planning Process

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

A Flood Advisory Group has not been established for the Western Isles. However, the Outer Hebrides Coastal Marine Partnership (CoastHebrides) was set up by Comhairle nan Eilean Siar in the summer of 2006. The partnership has a Forum consisting of members representing statutory, business, environmental, and community groups (including flood action groups), and has a coordinator employed by the Comhairle. The Forum meets quarterly and is involved in climate change impacts and adaptation, and coastal erosion and flooding issues among other coastal zone management topics.

As coastal flooding has more impact than fluvial in the Western Isles, CoastHebrides, or a sub group, would be the preferred organisation for responsible bodies to work with to produce plans.

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

Yes, however the experience of the RMBP Area Advisory Groups, similar in many respects to the flood risk management proposals, shows that it is difficult to retain active participation of business and community members and this issue requires to be addressed.

Approving the Plans

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, the general approach of stakeholder participation in planning should be adopted. However, lessons can be drawn from the RMBP process which is in comparatively early stages and still has to produce plans. Ways should be found to retain true stakeholder participation and interest in the process. Although, flooding is a far more emotive issue and has more impact on people's lives than RMBP, and encouraging community involvement will be important.

Novel methods of retaining interest should be trialed and evaluated such as use of visualizations generated by GIS, use of video to show experience of other areas (and/or countries), and 'Planning for Real' methods to name a few.

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

Yes, as Ministers are accountable to the Scottish Government and the democratic process, this will be essential.

Managing Surface Water & Urban Drainage

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

Yes. Although the problems associated with the rapid increase in hard drained surfaces quickly channeling surface water into water courses is not so problematic within the Western Isles there remains the need to co-ordinate all drainage planning to ensure flood risk is managed and so potential reduced.

The Planning System

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?

FRMPs should certainly inform the preparation of development plans. At present the identification of sites for inclusion in development plans is guided by the SEPA Indicative Flood Maps, however these have limitations and the responsibility falls on the developer to provide Flood Risk Assessments to show how any flood risk might be ameliorated. As the information to be provided by FRMPs will be more detailed and set out specific measures to address flood risk it would seem to make sense that panning authorities should have regard to them in preparing development plans.

Simplifying Procedures – Option 1 Ministerial

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, but it is suggested that the application to Ministers for consent would require to be reviewed and follow more closely the process and steps in a S36 application under the Electricity Acts) i.e.

1) enhanced requirements on the detail to be submitted at application stage to include as mandatory, plans, elevations, cross sections, details of materials (It is expected that this level of detail would in any event be required for Environmental Impact Assessment screening.) (Currently an FPS application only requires to include a description of: all permanent elements of the scheme, e.g. embankments, floodwall, storage areas etc ; all land affected by the above operations ; land where entry or temporary works will be required.) ;

2) Scottish Ministers undertake consultation with statutory bodies (SEPA, SNH, Planning Authority; Scottish Ministers (At present SGRIPID only encourages authorities to consult the planning authority, SEPA, SNH and Historic Scotland)

3) Carry out an assessment

4) Local Authority (developer) seeks to resolve objections; Pubic Local Inquiry for outstanding objections and then Deemed Consent.

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

Yes; Process should address totality of a scheme under one application.

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?

Refer to response to Q15 above. Timescales would require to be adjusted to take account of enhancements to the consenting process

Simplifying Procedures – Option 2 Local Authority

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?

In light of the local authority being the Developer (for what are likely to be larger schemes with local pressure groups for and against), and the party best placed to negotiate solutions to address objections, it is considered that there is strong merit in the consenting process being placed within the remit of the Scottish Government. Apart from allaying public concerns re the authority being both developer and consentor, it addresses the fact that a local authority process will, where there is a substantial body of objection or statutory consultee objection, lead in any event to the application being called in by Scottish Ministers;

Furthermore, flood prevention schemes, while falling within the definition of development, serve a different objective to most land use planning applications in that they are schemes generally seeking to protect developed land (as opposed to dealing with land use related to new development).

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

As Q18 above.

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

Yes provided the scope of the application is sufficient to assess the planning issues.

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

Assuming an increased number of projects being undertaken given the increased scope of scheme types and implementation bodies; technical expertise in terms of engineers, hydrologists and experienced planners may be difficult to resource. This may be the case whether reliance is placed on consultants or in employing additional local authority staff. There is already considerable pressure on both consultants' and councils' technical staff.

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

Examples could be made available to demonstrate good practice which would assist in reducing the need for all schemes to be designed from first principles.

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

During an emergency situation there is the need for a clear chain of command. It is usually the Police who decide what action is required to safeguard against danger to life and property and then get others to undertake the work and to carry the costs. However, difficulties can arise in determining who is actually responsible for costs being allocated by the local authority at a later date. Clear rules on costs would help, especially if the decision maker is initially responsible for costs which are to be recovered at a later date.

CAR (Controlled Activities Regulations) Authorisation

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

Yes.

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

Nothing further to add. The proposals are designed to simplify, streamline and co-ordinate sustainable flood risk management in Scotland. If SEPA is to be appointed as the single competent authority with a national remit to implement the Floods Directive and local authorities having primary responsibility for flood alleviation and the planning process, the proposals should better integrate planning and CAR processes.

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?

None.

Duties Under the Flood Prevention (Scotland) Act 1961

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

The 1997 amendment to the Flood Prevention Act places duties on local authorities to publish biennial reports on flooding of non-agricultural land in their area. These reports detail occurrences of flooding over the previous two year period together with detail of the measures taken to prevent or mitigate such flooding. The Act only covers flooding from watercourses and does not cover flooding which is tidal in nature.

The biennial reports be used to inform the Preliminary Flood Risk Assessment and their format should be designed for that purpose. Consideration of the recording of instances of coastal flooding in the reports should be given.

Delivering Sustainable Flood Management

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 sea and coast is the predominant landscape feature of the Western Isles and much of the coasts are very low-lying and infrastructure such as roads and buildings are vulnerable to winter storms, erosion and flooding.

The great storm of January 2005 had a devastating effect on the community living in the islands. Five people from one family died while trying to escape from rising flood water during winds in excess of 120 m/hour. The term 'storm surge' was almost unheard of before, but is now in everyday usage. The storm caused damage to houses, roads, ports and other infrastructure, to a value of over £20m, and much of this damage has or still is being repaired. Further, this has had a detrimental effect on community resilience and confidence, and there is a need among the general public to know about the risk of reoccurrence of such storms especially in view of projected climate change and to develop adaptation strategies to protect their communities against the effects of rising sea levels, flooding and erosion.

We are encouraged by the proposed flexibility for local authorities to develop a range of flood management measures which, in the case of the Western Isles, will be mainly

coastal in nature and not just based on traditional flood prevention schemes. An example of this type of approach is the proposed CoastAdapt project. The Comhairle is lead partner in an application to the Northern Periphery Programme for a 3-year project entitled "The Sea as Our Neighbour: Sustainable Adaptation to Climate Change in Coastal Communities and Habitats on Europe's Northern Periphery" (CoastAdapt). An excerpt from the application states;

"Coastal communities are particularly vulnerable to climate change because, in addition to changes in the climate, they are also exposed to sea level rising and storm surges. With extreme events predicted to occur more frequently, the importance of preparing for climate change is being recognised by coastal municipalities/local authorities across the northern periphery. Most national governments have prepared a climate change programme, but because of the magnitude of the problem and the site-specific consequences, local authorities have an important role to play in climate change adaptation. Some of the concerns mentioned by communities willing to adapt are the lack of resources, not only in terms of trained staff and awareness raising (i.e., to gain political support), but also the need for more detailed local data and information on the likely impacts of climate change as well as tools, techniques (e.g. frameworks), and examples of best practices. For example, practical methods supporting decision-makers in making complex choices are not readily available. CoastAdapt will address these existing gaps by providing decision makers with the best evidence base and tools that are needed for making decisions about climate change adaptation at the local scale."

The Comhairle supports the principles of Sustainable Flood Management which address problems faced by communities, whether physical such as the efficacy of building hard sea defences or long-term viability of protecting low-lying ground from flooding; or social such as people having the capacity to make informed judgement and decisions, or officials in local government having the knowledge to enable effective policies to be enacted.

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 proposals will involve a new approach to flood risk management in Scotland and although the local authorities will have a statutory duty to prepare Local Flood Risk Management Plans that coordinate the delivery of measures to address flood risk, the success of this process will be dependant on the cooperation and collaboration of all responsible authorities. The new legislation proposes a more inclusive and flexible approach to flood risk management planning and will permit the opportunity for the development of local solutions to suit local conditions.

The new system will take time to become established and will be dependant on sufficient resources being made available to local authorities and other responsible authorities. Review and evaluation of the process should be undertaken to ensure successful implementation is realised through better flood preparedness and prevention. In order to assist with this, the development of key success indicators should be undertaken at an early stage in the process.

Reservoir Safety

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

Yes, the reasons for change set out in the consultation document are appropriate to the experience and circumstances prevailing within the Western Isles. A single enforcement body would exercise duties and powers in a more uniform and efficient way than at present.

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

Yes, as SEPA is already an established regulatory body, they would be most appropriate to assume full responsibility for enforcement of the Reservoirs Act.

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?

We agree with the proposal that reservoirs should be assessed as part of a preliminary flood risk assessment under the Floods Directive and where there is risk of significant hazards, SEPA would be required to map that risk. Where appropriate, there should be cross referencing with bodies undertaking local emergency planning measures.

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

Yes, in the event of non-compliance by a reservoir undertaker with recommendations made by the supervising engineer, enforcement powers should be available to the new enforcement authority, but only in so far as is reasonable in the interests of safety based on potential risk.

Post incident review and reporting as an evaluation of incident response is important to identify and correct weaknesses in order to learn from and avoid repetition of mistakes, and should be included as an additional requirement.

Q34. Views on crown application and any other comments?

Where the situation exists that the Crown controls or plans to control reservoirs, the same prescriptions should be in force as for those controlled by others.

Other Issues

Consideration should be given to interim arrangements for the implementation of flood risk management schemes that may be necessary during the establishment of the new legislation and subsequent process.

Consultation on The Future of Flood Risk Management in Scotland

Submission by Argyll and Bute Council – April 2008

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

There are currently no national guidelines on the design and promotion of flood prevention schemes. Only two chapters of the Guidance for Local Authorities have so far been published, namely Economic Appraisal and Approaches to Risk. It is therefore vital that national guidance on the design of sustainable flood management schemes (para 2.7) is issued either with the new Bill or as soon thereafter as possible.

One of the main aims of the changes to the legislation should be to simplify the process and make promotion of major schemes easier. The assessment of schemes against the 5 sustainable flood management objectives brings an additional set of criteria that must be satisfied before a scheme proceeds.

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

The aims of sustainable flood management are clearly stated if somewhat oversimplified and more detailed guidance is vital if the aims are to be satisfied.

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

It is agreed that it would be best for the local authorities to continue to implement flood defence works based on the local knowledge of their areas and their contact with the communities affected by the flooding.

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?*

It is agreed that SEPA should be designated as the competent authority implementing the Floods Directive. However, the main aim of any changes to legislation should be to streamline the process of promoting flood defence schemes. The time currently taken to consult and secure agreement with SEPA on scheme proposals can be extremely lengthy and any future arrangement should avoid increasing and aim at decreasing approval time.

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?*

With the 1997 amendment to the Act, local authorities were given additional statutory duties but very little additional funding to ensure that these duties were carried out. Although certain aspects of a Local Flood Risk Management plan are already being carried out, this represents yet another new responsibility being placed on Councils. The ability of the local authorities to satisfy this new duty greatly depends on the adequacy of the funding transferred under the government settlement. Based on the allocations following the 1997 amendment, the funding is unlikely to be adequate.

The question also needs to be asked whether schemes currently in the pipeline will be delayed until after both the Area and Local FRMPs are in place and approved. Long delays to the progression of schemes currently being finalized would not be acceptable and there needs to be a statement from Ministers on interim arrangements for current schemes.

Para 3.27 states "any other matters specified by Scottish Ministers..." and seems to leave it open for further duties to be placed on local authorities in the future and perhaps without further funding being allocated.

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?*

It is likely that for the larger, cross-boundary catchment studies there are already partnerships of local authorities working together. There should not therefore be a need for powers to designate a lead authority.

With the introduction of Area FRMPs, there will also be a need for cross-boundary co-operation in the preparation of Strategic Development Plans.

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

Agreed. But collaboration between these bodies must be greatly improved in order to streamline the process of promoting flood prevention schemes and general flood prevention and alleviation.

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

In rural authorities, soft engineering flood defence schemes are likely to become more prevalent and utilise agricultural ground for storm attenuation purposes. In some locations, flooding has been exacerbated by excess storm flows from agricultural ground. It is therefore suggested that the National Farmers Union should play a part either as a responsible authority or within advisory groups.

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

It is vital that authorities work together and that arrangements should be based around existing Advisory Groups.

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

Community engagement already forms a vital part of the development of flood prevention schemes both at the feasibility and planning stages. If the local householders / businesses are not involved then problems are being stored up for the future.

The development of an Area FRMP would be better handled by SEPA because of the likely higher strategic content of the plan whereas the consultation on the Local

FRMP would be better handled by the local authority with their experience of dealing with the local communities.

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?*

With the introduction of RBMPs, Area FRMPs and Local FRMPs there is a danger of the design and promotion of flood prevention schemes being delayed by having to satisfy more and more conditions. The current process can take many years and currently involves only planning, SEPA and CAR plus Ministerial approval.

Since local authorities will have to consider Area FRMPs when preparing Local FRMP's and flood prevention schemes, the Bill should set out a tight timescale for SEPA to complete the Area FRMPs to avoid long delays to schemes currently being developed.

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

The powers to approve, reject or modify Area FRMPs should be devolved from Ministers to SEPA when they are appointed as the competent authority.

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

It is vital that urban drainage plans are included in the Local FRMPs. There are a number of locations in Argyll and Bute where flooding problems are caused by a combination of under-capacity foul / combined sewers together with surface water.

However, collaboration with Scottish Water over recent years has been poor with their priorities differing greatly from those of local authorities and the Bill would need to ensure that there is proper interaction between the responsible authorities during the promotion of flood defence schemes.

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 already be taking into account the flood risk plans currently available from SEPA in the preparation of their development plans.

This process should be able to be carried out more accurately given the additional detail that will be available in FRMPs. It should be a requirement on planning authorities that they have regard to FRMPs when considering development applications.

However, there needs to be a major review of SPP7 in parallel with the development of the new Flooding Bill to introduce more clarity to it's recommendations, particularly with regard to development on flood plains.

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?

Any changes to the existing system that cut down the time taken from feasibility study to confirmation is to be encouraged. At the moment, if planning permission is required for a scheme, three consultation processes are needed, one during scheme design, one for planning and one for consultation under the Act.

However, the removal of the local planning process may lead to an increase in the number of objections to any scheme and the number of inquiries that are needed. If objections are addressed locally at the planning stage, there is less chance of objections being received when the scheme is advertised.

Therefore deemed planning permission may not indeed streamline the process.

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

If national guidelines on the design of flood prevention schemes were published by the Scottish Government, then the design of schemes not requiring planning permission could be left in the hands of local authorities without the need for Ministerial confirmation.

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 time taken for the final Ministerial confirmation process is usually fairly short. However, it can take several years to satisfy the Flooding Section that the scheme can be put forward for confirmation. And the timescales of 3 months and 6 weeks for advertising schemes further delays the start of construction on site.

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?

Yes. However, it is vital that extensive national guidelines for flood prevention design, as is currently produced for the design of roads, for example, is published ahead of the introduction of the Flooding Bill.

A change to a local authority based process would undoubtedly shorten the process of promoting schemes especially if a Local FRMP was in place and had been agreed with local communities. It is however accepted that there may continue to be situations where a scheme has to be referred to Ministers, for example unresolved objections.

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

Both of the current advertising periods of 3 months and 6 weeks should be reduced to 28 days.

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

Deemed planning consent may not be acceptable to local communities who may feel that they have not been consulted to a great enough extent. It may be possible for the planners in the local authorities to set up a procedure specifically for flood prevention schemes that includes some of the procedures currently required by the 1961 Act. This would allow the planning and the confirmation of the scheme to be rolled into one procedure whilst ensuring that proper consultation was carried out.

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

The publication of national guidelines on flood prevention schemes would ensure that there was a specification to follow during the design and promotion of schemes.

The majority of work carried out by local authorities is currently covered by guidelines, specifications or model documents published nationally but there is very little covering flood prevention.

Pooling resources across authority boundaries could deal with any lack of expertise but for specialist expertise, it may still be necessary to engage private sector consultants.

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

The powers to enter land following notice are available under the Roads (Scotland) Act in relation to matters concerning roads.

Under the 1961 Act, it is only after the scheme is confirmed that powers of entry are available. It would be useful if temporary entry, subject to notice, could be taken at the feasibility or design stage of a flood prevention scheme.

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

Under the Roads (Scotland) Act there are powers of entry and recovery of costs from owners for certain operations carried out to avoid endangering users of the highway. The revised flooding legislation should include provisions for entry to private land and for recovering the cost of the work involved in maintaining watercourses where there is a danger to life and property.

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

A recent example of the promotion of a major flood prevention scheme involved three separate consultations with SEPA, as follows:

- During the feasibility / design stage
- As part of the planning process
- As part of the application for a complex CAR licence

This process took over 2 years and roughly the same information was sent to SEPA on the three occasions and each consultation was handled by a different person usually at a different office.

The details agreed with SEPA at the design stage should form the basis of all further consultations and the need for resubmission of the same information should be avoided.

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

A detailed review of the current planning, flood prevention and CAR regulations should be carried out to minimise the number of submissions that are required when promoting a flood prevention scheme. For example, a modified procedure for planning applications for flood prevention schemes which covers some of the matters currently carried out under the 1961 Act.

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?*

More integration of the planning, promotion and CAR procedures to streamline the process of advancing a scheme and shortening the process from feasibility to construction.

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

Given that these reports will be the starting point in the preparation of the Local FRMPs, the format should be subject to guidance and the direction of Ministers.

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 changes to the legislation are likely to streamline the process of delivering flood risk management and shorten the time to deliver schemes. However, whether the local authorities can deliver the requirements of the new Bill greatly depends on the level of settlement that was made to them under the block grant system.

Some authorities have dedicated flooding sections who should be able to easily deliver on the proposals whilst others carry out flood prevention on a part time basis and they may have difficulty satisfying their new responsibilities.

The statements "we do not propose that the Bill should set out in detail what a flood management measurement might be" and "issue guidance on sustainable flood management" are disappointing.

The lack of national guidelines for the design of flood prevention schemes has undoubtedly led to delays in the promotion of schemes, as the rules seem to change during the scheme development.

Consideration should therefore be given to publishing the remaining chapters of the "Flood Prevention Schemes – Guidance for Local Authorities" issued in 2005.

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?*

Given the budgetary pressures currently being experienced by local authorities, the promotion of schemes should remain permissive.

RESERVOIR SAFETY

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

The case for a single national body to enforce the provisions of the Reservoirs Act 1975 is attractive, in terms of consistency and capacity, which would see the development of flood risk assessments for each reservoir.

Whilst the Council meets the expectations of the Scottish Government in relation to the administration of the Act and the provision of management information, it is not true to say that that is all that we do. The Council has used available enforcement powers to occasion inspection reports and the making safe of dangerous reservoirs. It has also been frustrated in obtaining the desired reports as quickly as might reasonably be expected, in dealing with those reservoirs owned by small angling clubs and small reservoirs which fall outwith control of the Act.

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

The proposal to pass the duty to the Scottish Environmental Protection Agency (SEPA) is appropriate providing, in addition, for the desired single body approach for:

(i) the benefits of integrated flood risk assessment and planning, and reservoir flood mapping, with enhanced incident reporting
(ii) the Agency would be able to apply its technical resources to achieve a superior regulatory outcome, moreover, if it were able to resource this work using dedicated, engineering staff.

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?*

The creation of a statutory duty would reduce the resource burden on the national agency (through the extension of the role of the inspecting engineer), and would be desirable in that reservoir undertakers would, through a process of risk assessment, be more alert to the consequences of reservoir failure and risk management.

By contrast, it would be desirable for this work to be undertaken by a national body resource, in that it would derive a single, consistent database, a direct appreciation of

any risk, would provide for the ready delivery of the desired information (which would otherwise be difficult to obtain through the protracted process of securing inspecting engineers reports) and would address the anticipated compliance problems for charitable and community groups.

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

Yes

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

No other comment.

ITEM:

PAGE: 1

REPORT TO: ENVIRONMENTAL SERVICES COMMITTEE, 16TH APRIL 2008

SUBJECT: THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND

BY: DIRECTOR OF ENVIRONMENTAL SERVICES

1. REASON FOR REPORT

1.1 To inform Councillors regarding the publication of the consultation document on the future of flood risk management in Scotland.

1.2 This report is submitted to Committee in terms of Section E (23) of the Council's Administrative Scheme.

2. RECOMMENDATION

2.1 That Appendix A and the comments made in paragraphs 4(a)–(c) should form the basis of the Council's response.

3. BACKGROUND

3.1 The First Minister announced on 5th September 2007 that the Scottish Government would be introducing a Flood Bill in 2008 to modernise the flood risk management system in Scotland.

3.2 As part of this process the Consultation Document "The future of flood risk management in Scotland was published on 13th February 2008, and distributed to a range of stakeholders, including all 32 Local Authorities.

3.3 The document has implications for the Councils functions as Flood Alleviation, Planning and Emergency Planning Authority. It will set the framework, which dictates how quickly Local Authorities will be able to react and implement alleviation proposals.

3.4 The proposals set out in the consultation paper are designed to establish a framework within which sustainable flood risk management in Scotland will operate more effectively than at present and with a view to the transposition to domestic legislation of the European Directive on Flooding. They aim to ensure that there is no duplication of effort, and that the flood risk management process is simplified and better co-ordinated. The Scottish Government acknowledges that local authorities, who are accountable to local communities, and best able to judge the needs of their areas, will continue to be responsible for implementing flood alleviation measures. However, the

Government proposals suggest that individual local authorities cannot operate in isolation. The proposals seek to establish a way of co-ordinating catchment flood management planning to ensure a national approach, delivered locally.

3.5 Chapter 1 of the consultation deals with the impacts of flooding, the current landscape of flood risk management in Scotland, general roles and responsibilities, current legislation for the management of flood risk, the EC Floods Directive, the planning system and the statutory process for flood prevention schemes, managing urban drainage and The Pitt Report on the Floods in July/August 2007.

3.6 Chapter 2 looks at issues concerning sustainable development and sustainable flood management.

3.7 Chapter 3 deals with the proposals for the Bill. As well as the general scope and content of Bill, the legislative framework and general duties and responsibilities, this chapter also looks at the following:

- The Competent Authority
- A clear and participative approach to flood risk planning
- Responsible Authorities
- Flood Risk Management Planning – a participative process
- Approving the plans
- Ensuring compliance with the Flood Risk Management Plans
- Managing surface water and urban drainage
- The planning system
- Flood protection measures – Simplifying the Statutory Process
- Simplifying Procedures
- Flood measures beyond the 1961 Act
- Controlled Activities Regulations (CAR) authorisation
- Ensuring a Co-operative Approach
- Other duties under the 1961 Act, and
- Delivering Sustainable Flood Management

3.8 Chapter 4 looks at reservoir safety, in particular the definition of a reservoir, as well as reservoir flood plans and inundation maps, the extension of enforcement powers, and the Government's perceived need for a single reservoir enforcement authority in Scotland.

4 SUMMARY OF IMPLICATIONS

(a) Corporate Development Plan/Community Plan/Service Improvement Plan

There is overwhelming public support for the development and implementation of Flood Alleviation measures in Moray. The Council has promoted 4 Flood Prevention Orders with an estimated value in excess of £150 million yet has received only 31, (0, 4, 2, 25) objections.

(b) Policy and Legal

The development of Flood Alleviation measures remains the Council's first priority. The Council is responsible for developing and implementing the largest programme in Scotland. It has consistently urged the updating of the legislation covering Flood Alleviation which dictates that schemes currently require a Flood Prevention Order, Planning Permission, consent under CAR, and frequently licenses from SNH.

The existing legislation requires that even one objection, however minor, to a Flood Prevention Order will lead to a Public Inquiry.

In the list of current flooding legislation there is no mention of the Coast Protection Act 1949. The opportunity should be taken to update this legislation at this time.

It should also be noted that contrary to the statements made in the consultation paper responses to flooding do not always take place through the framework established under the Civil Contingencies Act. There are incidents where this is the case but the vast majority are minor incidents that pass with only council involvement.

(c) Resources (Financial, Risks, Staffing and Property)

This Council has been allocated £40 million in the next 3 years to progress flood alleviation schemes. On current spending estimates this would mean the Council facing a shortfall of £23 million over this period. In the longer term the total shortfall could exceed £80 million pounds. Ministers have emphasised that while they are sympathetic to the Council's plight, they are unable to commit further at this stage.

In future, funding for flood alleviation schemes is likely to be consolidated into Council budgets and based on their developed and approved Flood Risk Management Plans. However the funding necessary to develop these plans is not identified and so plan could only be taken forward with the financial risk of no subsequent funding for major projects.

Dealing with Flood alleviation requires long term commitment of resources and as more projects reach the design stage the problem that Moray now faces could confront most authorities. Government has to consider how this should be addressed. Equally while the consultation paper suggests a logical approach to studying flood alleviation and selecting alleviation measures it is essential that current work by local authorities which could protect vulnerable communities is not shelved but is funded and allowed to proceed. There also needs to be rationalisation of responsibilities so that budgets of responsible bodies are aligned.

The Moray Council has entered into partnership with Royal Haskonings and Morrisons to ensure that schemes are designed and implemented as quickly as possible. It is already clear that there is a National shortage of skills such as hydrologists and engineers, a skills shortage that can only worsen due to the demands of high profile projects such as the Olympics and the Commonwealth Games. Future consents should involve quality management procedures to avoid multiple checking and duplication. It is also essential that the procedure be simplified to reduce the needs for multiple consents.

The legislation has to require, rather than encourage the various government organisations and quango's to work together in producing flood alleviation proposals. Experience has shown that even when Local Authority schemes are far advanced the degree of commitment and support from other bodies varies as each pursues its' own agenda. For example even with involvement during the preparation of the Elgin Flood scheme SEPA are still submitting comments such as those reproduced below. Were the Moray Council required to adopt an alternative at this stage the likelihood is that FPO procedure would require to be repeated with attendant delays.

"SEPA requests further comparative information on the proposals (including construction, operation & maintenance issues and costs of the diversion versus reasonable alternatives such as a control structure on the Tyock)."

It is suggested that there is a need for agencies to adopt a culture, which encourages rather than controls alleviation proposals. This could involve changes in legislation.

The scope of flood risk management plans should also include sewer capacities. Here Scottish Water has a crucial role in reducing pluvial flooding. Surplus capacity is gradually reducing. Current legislation is unclear as to responsibilities. Those adversely affected by pluvial flooding currently pay the price for this uncertainty.

There is emphasis on the use of SUDS drainage to reduce the run off to watercourses but it should not be forgotten that SUDS can also add to pluvial flooding if ground conditions or maintenance schemes are inappropriate.

The current procedures require that a Flood Prevention Order is approved before a Local Authority can acquire property without risk or offer

compensation. This can mean that those directly affected by the construction of Flood Alleviation Measures can face long periods of uncertainty while proposals are considered at public Inquiry. It would be helpful if the rules regarding such purchases could be re-examined.

It is necessary to clarify whether the new stakeholder forums will supersede the role of FLAGs (Flooding Liaison Advisory Groups). It is also worthwhile considering the establishment of fora on a project by project basis since stakeholders will vary.

(d) Consultations

The Head of Direct Services (and Emergency Planning Officer), Head of Development Services, Consultancy Manager, Planning and Development Manager, Development Control Manager and Chief Legal Officer have been consulted and their comments incorporated into this report. The Director has also had the opportunity to examine draft responses made by two other authorities and the report benefits from their input.

5 CONCLUSION

The opportunity to amend the raft of legislation and administrative arrangements surrounding flood alleviation is to be welcomed. The Council is at an advanced state in the promotion of alleviation measures for Moray but the experienced gained should assist the Government to improve the forthcoming legislation.

Author of Report: R.A. Stewart, Director of Environmental Services
Background Papers:
Ref:

Signature: _____

Designation: _____ Name: _____

"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.*

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

Answer: The definition is helpful and wide-ranging enough to include new techniques as they are developed.

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

Answer: As a high level definition, it is clear and simple; there will need to be further guidance on its application to actual flood risk management projects.

The Scottish Government ... 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.

Q3. Do you agree with the conclusion as set out above?

Answer: Yes.

The Government considers that SEPA is best placed to take the lead role in the implementation of the Floods Directive and should be identified as the competent authority.

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?

Answer: SEPA appears best placed to undertake that role. This does not dilute the critical role that Local Authorities have in planning and delivering flood alleviation schemes.

The Scottish Government also proposes that a hierarchical approach to flood management planning would be the most effective way to deliver flood risk management in Scotland. The Area Flood Management Plans developed under the Floods Directive would set the strategic framework for flood risk management in

Scotland. The competent authority would have a duty to produce these plans. In summary, these plans would:

- *Summarise significant flood risks (preliminary flood risk assessments);*
- *Map flood hazards (likelihood of flooding) and flood risks (impacts of flooding);*
- *Set out objectives to manage flood risk; and*
- *Set out broad-scale measures and polices to address flood risk.*
- *The identification of areas at significant flood risk would be a collaborative process between the competent and responsible authorities. The assessment would use information from a variety of sources, and information held or produced by local authorities through biennial reporting and other studies would be of vital importance.*

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?

Answer: A hierarchical approach to flood management planning is sensible. However the benefits of a high level, strategic approach must be combined with local knowledge. The flood alleviation proposals prepared by Moray Council have benefited considerably from the contributions made by members of the public.

Agreement has to be reached in defining "large river basins". There are resource implications since a Local Authority could be involved in several basins or, alternatively, the solution for one basin could involve many Local Authorities.

Where a Local Flood Risk Management Plan is being produced for a catchment covering two or more local authority boundaries, all responsible authorities within the catchment, including local authorities, would have a duty to collaborate in the production of the plan. It should be for those authorities to determine the best approach to that cooperation – the Scottish Government believe it is unnecessary for an external body – SEPA or Scottish Ministers – to identify a lead authority.

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?

Answer: Scottish Ministers should have the power to designate a lead authority within a local area in exceptional circumstances – for example when partners can not agree.

Improving flood management in Scotland requires clarification of the roles and responsibilities of all the bodies involved in flood risk management, and appointing a competent authority is only one step in this process. The Scottish Government recognises that a number of important elements come together to manage risks from flooding, including flood risk assessments, flood warning, flood protection and flood response. Bodies are already in place in Scotland with responsibilities for these different elements of flood risk management and the role of local authorities is of central importance. A general duty has already been placed on relevant public bodies by the Water Environment and Water Services (Scotland) Act 2003 to contribute to the delivery of sustainable flood management. The Scottish Government therefore propose that the Bill should provide for responsible authorities

to be listed by statutory instrument. Responsible authorities should include Scottish Water, Local Authorities, SNH and Forestry Commission among others – as responsible authorities they will have a duty to co-operate in the development of the Area Flood Risk Management Plans.

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

Answer: Yes

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

Answer: No response

It is important that Flood Risk Management Planning is undertaken in full cooperation between the competent authority and the relevant authorities with responsibilities or interests in the area affected by a plan. It is also important that the preparation and implementation of these plans is undertaken in full and continuing consultation and discussion with the local population directly affected.
To support collaborative working, the Scottish Government propose that responsible authorities within a designated area would have a duty to work together with the competent authority to produce the Area Flood Risk Management Plans. The Scottish Government propose that the best way to do this would be to form ***flood risk management advisory groups*** *comprising all the relevant responsible authorities. To support integration with the Water Framework Directive, these groups would be subgroups of the Advisory Groups established under the Water Environment and Water Services (Scotland) Act 2003.*

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

Answer: Yes, though membership of flood risk management advisory groups should not be restricted solely to responsible authorities.

To ensure wider stakeholder and community engagement, the Scottish Government also propose to establish stakeholder forums. These forums would help harness the ideas and enthusiasm of individuals and groups and help the organisations involved in flood management communicate how and why specific objectives and measures are being considered.

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

Answer: The level (and coverage) at which such forums would be established is not clear. Stakeholders will vary. The establishment could be part of the project management arrangements with membership decided on a project by project basis. For example, in some cases the involvement of landowners and the agricultural sector may be necessary to secure sustainable Land Management outwith urban areas.

The Water Environment and Water Services (Scotland) Act 2003 sets out a detailed procedure for the preparation and approval by Scottish Ministers of River Basin Management Plans. Ministers can require the modification of the plan before approval. The Act also provides for the regular review of the plan. The system adopted for River Basin Management Plans is broadly similar to the existing approval of structure plans for planning purposes. The Scottish Government considers that the Bill should set out a similar procedure for the development of the plan involving consultation. There should also be a similar role for the Scottish Ministers to whom the Plans should be presented ultimately for approval.
We envisage a system whereby the competent authority, having developed the Area Flood Risk Management Plans with the relevant responsible authorities, and in consultation with all relevant parties, would submit the Plans to the Scottish Ministers for approval. As with the River Basin Management Plan, Scottish Ministers would consider the Plan and could approve, reject or instruct modifications. The Scottish Ministers would be accountable to the Scottish Parliament for their decisions.

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?

Answer: Yes.

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

Answer: Yes.

The Scottish Government wishes to ensure that urban drainage plans sit within a Local Flood Risk Management Plan, and wishes to identify the most effective means to facilitate co-ordination of efforts to reduce flooding from surface water run-off and sewers. One particular area of concern is the lack of integration of water industry infrastructure with other drainage and flooding infrastructure. This is one of the current "grey areas" where responsibilities are unclear, and the Scottish Government feel it is important that the Flood Risk Management Plans address the need for integrated urban drainage.
It is important that new development does not add to the risk of flooding in an area, and that integrated drainage and flood resilience are considered from the start, where appropriate. Scottish Water has just published the 2nd Edition of Sewers for Scotland which includes a section on the design of Sustainable Urban Drainage systems, and is currently looking to form standard agreements with all Scottish Local Authorities for the provision of integrated drainage arrangements. We propose that such agreements would form part of a local flood risk management plan.

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

Answer: Yes, integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan. However, neither the consultation proposals nor the

2nd Edition of Sewers for Scotland properly address the '*"grey areas" where responsibilities are unclear*'.

SPP7 sets out the Scottish Government's policy for identifying flood risk and taking it into account in the planning process. It is clear that new development should be free from significant flood risk, and Local Flood Risk Management Plans that can inform local authorities' development plans should help planning authorities to make more informed judgements on flood risk. This information would add to the current provision whereby SEPA give advice to planning authorities.

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 Flood Risk Management Plans?

Answer: There should be a requirement on planning authorities to show that they have regard to the Flood Risk Management Plans.

Under the Flood Prevention (Scotland) Act 1961 local authorities wishing to secure new or improved flood defence within the definitions of the Act, must promote a flood prevention scheme which is widely advertised before being submitted to the Scottish Government for confirmation. As well as advertisement the Act requires notification of certain interests affected by the scheme (this includes those with an interest in land affected by the scheme as well as other local authorities and statutory bodies whose functions may be affected). Only objections from those to whom the scheme was notified and those who are likely to be affected by the carrying out of a scheme or the change in the flow of water must be considered at a public local inquiry. Scottish Ministers may confirm with or without modification, or refuse to confirm a scheme.

However, in addition to the confirmation process described above, there are separate legislative procedures for granting flood prevention schemes planning permission. In most cases the Scottish Ministers are involved in both processes, but in different roles and at different times. It is possible that an inquiry can be required as part of each process. In addition, since 2006 engineering works in watercourses require authorisation from SEPA under the Controlled Activities Regulations. This can add to the procedural burden and timetable.

Local authorities, and many others, have expressed concerns about these overlapping processes. As well as the bureaucratic overload, they consider that the procedures can add unnecessarily to the time taken to undertake a scheme. The Scottish Government recognise this is a significant issue which requires to be addressed.

The Scottish Government believes that the present processes must be radically simplified. The possibility of two public inquiries being held; one on planning and one on flood risk management measures must be removed. Local authorities should have to prepare only one set of drawings and carry out one consultation exercise. The Government considers that there are 2 basic possible approaches to this simplification. The first is that Ministerial confirmation should carry deemed planning permission. The second is for a local authority based process which would similarly lead to deemed planning consent.

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?

Answer: Yes. It will help but will not by itself resolve the problems facing Authorities. Under existing legislation there have been no cases in Moray where two Inquiries have been held.
There needs to be a holistic approach to the process with alleviation schemes being "owned" by all responsible bodies rather than just Local Authorities.

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

Answer: Yes.

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?

Answer: Were procedures to involve all responsible organisations approval would become simpler and shorter time scales could be considered.

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?

Answer: Yes.

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

Answer: See the answer to 17 above. As it stands there are many variables that could affect timescales.

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

Answer: Yes.

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

Answer: This is a serious issue. The shortage of expertise has been mentioned elsewhere in this response. The process should avoid duplication of effort and multiple checking at different consent levels.

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

Answer: These have been expanded elsewhere in this response

The definition of operations for the purposes of the Flood Prevention (Scotland) Act 1961 is not fully consistent with sustainable flood management. This has hitherto been a constraint on local authorities' approaches to flood risk management since schemes that did not fit the definition could not be eligible for central funding. With the transfer of funding to local authorities this is no longer a constraint – local authorities are empowered under other legislation to undertake other activities. The Scottish Government consider that procedures for measures outwith the definition of the Flood Prevention (Scotland) Act 1961 are satisfactory and do not require to be amended.
Nevertheless, rainfall events can have a number of damaging effects on property and cause risk to life. Local authorities have extensive powers to act to protect life and property. However given the increasing incidence of severe rainfall events, it may be advisable to ensure that local authorities are fully empowered, where a clear and present danger exists, to take urgent remedial action, including on private land, to avoid damage to life and property, and to recover costs after it has taken such action.
Q23. Do you consider local authorities' powers are sufficient to take necessary action to avert danger to life and property?

Answer: Not in the case of addressing severe rainfall events where the impacts of overland flows from agricultural land can be significant and current legislation is unclear.

The Scottish Government wishes to consider how best to align the Controlled Activities Regulations process with the proposals to simplify statutory procedures. In order to achieve this it considers that:

- *Local authorities should seek CAR authorisation at the same time. Application and advertisement should cover all relevant factors.*
- *It is unlikely that any statutory provisions are required to achieve this alignment. The Scottish Government will therefore work with SEPA, local authorities and other interested parties to ensure that guidance ensures the necessary alignment.*
- *if it is decided to retain a process of Ministerial confirmation, then such confirmation could carry deemed CAR authorisation.*

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

Answer: Yes. This can be achieved through a single process, guidance and legislation.

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

Answer: legislation, focus and budgets need to be aligned.

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?

Answer: Relevent comments have been made elsewhere in this response.

At present local authorities have a duty to publish a biennial report of instances of flooding and measures taken since their last report, and any further measures they consider they require to take to mitigate flooding of non-agricultural land. The biennial reports should form an important component of the Preliminary Flood Risk Assessment required under the Floods Directive. The Scottish Government propose that duties on local authorities to produce these reports should be retained and that they form part of their duties as responsible authorities. In order to ensure consistency the Government propose that the form and content of the biennial reports should be prescribed by Ministerial direction made under the Bill.

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

Answer: Our experience is that such reports are of little interest to the public. It is suggested that the need for such reports should be abandoned. At the very least their format could be simplified with a requirement to publish them electronically rather than in print form.

The Scottish Government do not propose that the Bill should set out in detail what a flood management measure might be. Rather, the Bill would establish the framework to ensure that all flood risk management measures are implemented as part of a strategic approach to flood risk management in Scotland.
The Scottish Government do not believe that it is necessary to specify a detailed range of flood management measures in the Bill. If the need for Ministerial confirmation of flood risk management measures is retained, then the Scottish Government will expect local authorities to have taken the guidance into consideration in the development of the most appropriate measures in order to achieve confirmation.
The aim of the Flood Risk Management Plans will be to manage the consequences of flooding on people, economic activity and the environment where these are significant. This may include taking steps to slow the flow, or to store flood waters where the consequences will be less, in order to reduce the consequences elsewhere. The Scottish Government do not wish to prescribe the nature of the land where these measures may be taken and the simple distinction between agricultural and non-agricultural land in the Flood Prevention (Scotland) Act 1961 is no longer appropriate.
The proposals outlined provide a new framework of duties and responsibilities on a number of bodies across Scotland with a role to play in flood risk management. The powers remain largely permissive, with duties only being placed on the competent authority and responsible authorities to collaborate in flood risk management planning.
However, this is combined with the existing duty under the Water Environment and Water Services Act 2003 to promote sustainable flood management, and with the fact that all responsible authorities should have signed up to a national flood risk management plan that has been approved by Ministers. The Scottish Government believe that this approach will support delivery of the Floods Directive and ensure that Scotland is equipped to take forward sustainable flood management.