

11. It should be noted that recent IPCC statistics show that global carbon emissions over the last two years have lain outside the most pessimistic scenarios of the IPCC. Furthermore, the rate of increase of emissions has almost doubled since 2000. This suggests that adaptation to potentially severe change must have a much higher profile in government planning. The Scottish Government should develop and publish its adaptation strategy at the earliest opportunity.
12. There is a shortage of professionals based in Scotland with the necessary skills base and experience to deliver appropriate flood risk management. In part this reflects a shortage of students in civil engineering which urgently needs to be rectified. It also reflects a lack of more widely trained flood risk managers (at the Masters degree level) capable of integrating relevant expertise in engineering, geography and selected social sciences.
13. The responsibility for flood risk management must be shared between the authorities and individuals. It is therefore essential that the communication systems to disseminate flood risk and flood warning information succeed in their intentions. In particular, it is important that land and property owners are aware of their responsibilities in protecting their properties and what they might expect from the government.

Potential impact of climate change on the frequency and severity of all types of flooding in Scotland

14. A number of studies⁴ have itemised the potential impacts of climate change on flooding in Scotland. The most important findings from these are:
 - An increase in winter rainfall (especially in the north and west) is likely to increase the risk of flooding by the 2050s. For some river basins the 1 in 50 year flood could become the 1 in 30 year flood. The standards of protection currently provided by flood defences in many urban areas will decline.
 - Localised summer storms are likely to intensify urban flood risk. Urban drainage systems are only designed for a 1 in 30 year event, and such events (similar to that which affected the east end of Glasgow in 2002) are likely to become both more intense and more frequent. In terms of changing flood risk, this is likely to be the most significant impact of future climate change.
 - A general decline in snow cover. In the recent past, major flood events have been associated with substantial snowfall followed by sudden thaws and further rainfall. It also needs to be noted that periods of floods can coincide with accelerated soil erosion on bare fields resulting in enhanced sediment delivery to streams. Such sediment can impair the effectiveness of flood defence structures.
 - Projected sea-level rise (0.31m – 0.57m) will increase coastal flood risk, although to a lesser extent than in other parts of the UK. More important are potential changes in the frequency of storm surges (elevated sea-levels caused

⁴ Werritty A, Black A R, Duck R W, Finlinson W, Thurston N, Shackley S and Crichton D *Climate Change: Flooding Occurrences Review*, (2002) Central Research Unit, Scottish Executive. Werritty A with Chatterton J (2004) *Future Flooding Scotland*, Foresight Flood and Coastal Defence Project, Office of Science and Technology, Department of Trade and Industry.

by major storms – e.g. the January 2005 storm in the Outer Hebrides which resulted in 5 fatalities) which can locally add 1-2 m to predicted tidal levels. In NE England the 1 in 50 year extreme water level (sea level rise plus increased storm surge activity) is projected to become a 1 in 3 year event by the end of the century. Comparable figures are not yet available for Scotland but there is likely to be a similar increase in the frequency of extreme water levels, especially on the west coast, caused by heightened storm activity in the Atlantic.

15. As a consequence it is expected that flooding will increase in Scotland. The most evident consequence of this is that the level of protection afforded by existing flood defences will be reduced.
16. An example is presented in Table 1 which examines the flood risk at Pacific Quay on the River Clyde⁵. A flood frequency analysis for the year 2000 is presented and the effects of how this may change for conditions in the 2050s examined by simply assuming a 10% increase in design event rainfall. The revised flood frequency analysis shows that 1 in 100 and 1 in 200 flood chances are halved to 1 in 50 and 1 in 100 flood chances, respectively, by the 2050s. This simple example clearly shows the importance of recognising the effects of possible future changes when designing flood defences.

Table 1 – A study of Pacific Quay on the Clyde shows that floods could be twice as likely in 50 years.

Flood chance in any year (return period)	5	10	20	30	50	70	100	200	500
Year 2000 runoff (m ³ /s)	678	798	931	1005	1114	1191	<u>1254</u>	<u>1411</u>	1680
Predicted 2050s runoff (m ³ /s) Design event rainfall +10%	750	884	1033	1116	<u>1239</u>	1324	<u>1396</u>	1572	1875
Increase in runoff (%)	9.6	9.7	9.9	9.9	10.0	10.1	10.1	10.2	10.4

17. The three main categories of flooding in Scotland are:
 - *Coastal flooding*, caused by extreme tidal conditions which can occur due to three main mechanisms, and most commonly, as a combination of two or more of these: high tide level, surge and wave action. Coastal flooding is generally caused by a storm surge driven by depressions tracking from the Atlantic, combining with high tide conditions;
 - *Fluvial flooding*, (from rivers, streams and other inland natural watercourses) which is usually caused by prolonged or intense rainfall,

⁵ Fleming G, Frost L, Huntingdon S, Knight D, Law F, Rickard C, *Flood Risk Management*, (2002) Thomas Telford Ltd.

generating high rates of runoff which overwhelm the capacity of the river or channel to transmit the water downstream;⁶ and

- *Pluvial flooding*, defined as flooding that results from surface water flow before it reaches a water course. It is often combined with flows from sewers whose capacity has been exceeded. Pluvial flooding ensues as a result of failure of the drainage system to carry away surface water.
18. Coastal flooding is not a significant risk for much of the Scottish coastline which is typically cut into high cliffs in very resistant rocks or alternatively protected by reasonably adaptive natural barriers. In other, lower-lying and unprotected locations, coastal flooding will be influenced by sea level rise, which will vary around Scotland's coastline reflecting differential isostatic rebound following the melting of the last Scottish icesheet. Coastal flooding in lower-lying areas is also closely linked to coastal erosion, especially along 'soft', readily eroded shorelines where significant volumes of sediment can be redistributed by wave and current action.
 19. Global mean sea level is rising, but the expected relative sea level changes around our coasts vary with location. Higher relative sea levels would clearly result in more frequent coastal flooding in some areas, and increased near-shore wave energy. If there is an increase in the frequency of weather events that result in extreme storm surges, then it is to be expected that there will be an increase in coastal flood frequency, and if depressions are deeper, storm surge magnitude may increase at a particular frequency. Research is urgently required on the combined probabilities of high upstream floods, high tides and high storm surges simultaneously. These effects could have a very significant bearing on coastal and estuarine flood risk.
 20. The predicted changes in winter rainfall will increase the risk of fluvial flooding and more intense summer rainfall will increase the risk of pluvial flooding in urban areas. The increased level of rainfall and the change in prior wetness of a catchment at any particular storm season will reduce the effectiveness and lifespan of current defences against overtopping of river banks.
 21. Increased rainfall is becoming the most likely source of extensive urban flooding. As areas of non-permeable surface increase through building development and the associated increasing demands on the drainage/sewerage system rise, the capacity of the drainage system to carry away surface water diminishes. Information on the level of surface water protection of urban drainage systems is less readily available than for built fluvial defences and is generally considered to give a much lower level of protection, 1 in 30 years or less. Therefore, it is essential that accurate information is collected if flooding is to be properly managed. This low level of protection will become severely deficient with increased rainfall – a serious prospect for central Scotland with its highly urbanised population.

⁶ Dumfries and Galloway Council's Flood Risk Management Policy

<http://www.dumgal.gov.uk/dumgal/MiniWeb.aspx?id=187&menuid=2983&openid=%092983>

Changes needed to the existing legislation

22. Existing legislation relating to flood management mainly derives from the Flood Prevention (Scotland) Act 1961 which gave local authorities discretionary powers to undertake flood prevention on non-agricultural land, approved schemes at present being eligible for up to 80% central government grant. This Act was amended by the Flood Prevention and Land Drainage (Scotland) Act 1997, which placed additional duties on local authorities, the most important being to maintain urban water courses free of obstructions and to assess the flood hazard. The Land Drainage (Scotland) Act 1958 makes provision for the approval of works to improve the drainage of agricultural land or carry out works to prevent erosion or flooding. More recently, the Water Environment and Water Services (Scotland) Act 2003 placed a duty on the competent authorities to promote "sustainable flood management". Other recent legislation which directly impinges on flood management includes the new Planning etc (Scotland) Act 2006 and the Environmental Assessment (Scotland) Act 2005.
23. At present, responsibilities for flood management are widely dispersed:
- the Scottish Government's Environment Directorate is responsible for developing national policy on flood prevention and flood warning and provides grant aid to local authorities for approved schemes;
 - local authorities lead in developing flood prevention schemes, are responsible for planning control and the maintenance of water courses on non-agricultural land, and (with the emergency services) co-ordinate emergency action during and immediately after floods;
 - the Scottish Environment Protection Agency (SEPA) is a statutory consultee on planning applications in flood-prone areas, provides general flood alerts for the whole of Scotland via its *Flood Watch/Flood Line* service and operates local flood warning schemes in partnership with local councils and the emergency services.
24. Recent legislation under the Water Environment and Water Services (Scotland) Act 2003 has placed greater responsibility on SEPA for CAR licensing (Controlled Activity Regulations), and planning guidance (Planning and Flooding, 2004)⁷ has provided local authorities with stronger controls on inappropriate development on floodplains. However, there is a need for improved integration of CAR and SPP7 within the overall planning process.
25. At present, drainage schemes for agricultural land may be authorised by Scottish Ministers under the Land Drainage (Scotland) Act 1958. The main purpose of the Act is to allow Ministerial control over funding and planning of large scale drainage, and the section pertaining to this should be repealed or substantially amended. The Scottish Ministers should not only satisfy themselves that the applicant's proposals are in the interests of agricultural production; other interests (e.g. increased urban flood risk downstream) should

⁷ Scottish Planning Policy SPP7 – Planning and Flooding, (2004)

be made explicit grounds under a replaced or amended section for refusing to grant an order for a proposal. It is acknowledged that the Environmental Assessment (Scotland) Act (Schedule 1, Pt 2, Para 23) does require an Environmental Impact Assessment for such schemes, but the 1958 Act sends the wrong message to landowners. Indeed, section 8 of the Act, whereby the Ministers can serve notice on landowners *requiring* works, should be expanded to include the requiring of works that will mitigate flood risk downstream, not just on adjoining land.

26. The current legislation would benefit from clarity in responsibilities for pluvial flooding and specifically the role of Scottish Water in providing urban flood mitigation which is not necessarily integrated with current responses to fluvial flooding which is a Local Authority duty. The recent introduction of Sustainable Urban Drainage Systems (SUDS) within the planning process has led to a division in responsibilities particularly in adoption of such schemes by Scottish Water. Therefore, it is essential that the responsibilities and duties of the actors, including Scottish Water, Local Authorities and land/property owners, are clarified.
27. Existing legislation is inadequate for delivering Flood Risk Management Plans as required in Article 7 of the 2007 EC Directive on the Assessment and Management of Floods. New flood management legislation should not only transpose the new EC Directive into Scots law, but also provide for the strategic management of flood risk at the whole river basin scale. It should be permissive in the means used to mitigate flood impacts which should include both structural and non-structural measures.
28. It is strongly recommended that current sewerage legislation is reviewed with sewer flood control in mind. The review should include an assessment of the current low levels of investment in sewer improvement to reduce flood risk and the need for a more joined-up approach to the whole issue of urban drainage, and its integration with fluvial flooding and land drainage. There has been a reluctance to accept responsibility for maintenance of SUDS which has constrained progress of these systems. This reluctance should be addressed by the Government and legislation introduced.

Responsibility for flood management and funding

29. Given the diffuse nature of those actors with responsibility for an aspect of flood management in Scotland, there is a need for a national body to provide a strategic overview, direct implementation and review effectiveness of policy. There are a number of models upon which such a body could be founded, which would have to be considered.
30. One option would be to reinforce SEPA's role so that it takes the strategic overview on flood management and considers national priorities in addition to its role as a responsible authority. However, given SEPA's current remit and associated resource constraints, such a shift may be unrealistic.

31. Alternatively, a new Flooding Authority could be created and charged with strategic responsibility, with enhanced supervisory powers over the various operating authorities. The authority should have responsibility for spending prioritisation and policy development. However, what is most important is that the funding authority has a serious commitment to ensuring that appropriate flood alleviation schemes are identified and implemented. Such an authority would also have a major role to play in addressing the skills shortage issue and ensuring that appropriately trained personnel are available.
32. It is envisaged that primary responsibility for implementation of specific flood management measures and schemes would remain with local authorities who have the important parallel and linked responsibilities for land use planning and for flood emergency response.
33. The use of Flood Liaison and Advisory Groups in Scotland is much to be commended as a means to benefit from the knowledge and experience of a range of concerted interests.

Role of sustainable flood management in mitigating the effects of flooding

34. The term 'sustainable flood management', embedded in the Water Services and Water Environment (Scotland) Act 2003 has been defined by the Scottish Executive's National Technical Advisory Group on Flooding (2004) in the following terms⁸:

"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."

The overall objective is to deliver a resilient response to flooding in which:

- *social needs* (enhance community benefit, with fair outcomes for everyone),
- *environmental needs* (protecting and working with the environment, with respect for all species, habitats, landscapes and built heritage) *and*
- *economic needs* (deliver resilience at affordable cost with fair economic outcomes and the protection of local jobs and wealth) are balanced.

35. The definition has attracted interest from across Europe and the innovative thinking adopted should be commended and built upon.
36. As set out above, it is important to promote the human dimension in any sustainable flood management policy. The human distress and health damage caused by flooding has been overlooked in the strictly economic approach adopted to assess the benefits of flood mitigation interventions. This human cost should be built in to future benefit-cost assessments, so that the true worth

⁸ National Technical Advisory Group on Flooding, *Final Report*, Scottish Executive
www.scotland.gov.uk/Topics/Environment/Water/Flooding/advisory-groups/ntag/ntgfinalreport

of interventions is established. Preliminary research⁹ shows that the intangible costs of flooding often exceed the tangible costs. This should be developed further by the collection of robust information on the social and health-related consequences of flooding and an assessment of the location and needs of those most vulnerable to flooding.

37. However, part of the social inclusion aspiration of the public is to live in affordable and pleasant housing with a low risk of the distress caused by flooding. Flood management plans should address the balance between development and wealth creation and the delivery of sustainable housing as part of a sustainable flood management policy. The environmental impact of flood management plans could be balanced by ensuring that water courses in the upper parts of catchments are restored to provide maximum flood attenuation. Non-structural methods of flood management are much more equitable for smaller communities and may be more amenable for funding.
38. Sustainable flood management schemes are essential to prevent increased flood risk from new developments. The provisions of the Water Environment and Water Services (Scotland) Act 2003 have led to Scotland leading the way in the design and construction of SUDS. However, this legislation needs to be strengthened to clarify maintenance responsibilities.
39. There is a need for improved joint working between Local Authorities and Scottish Water to address the risk from flooding in the urban environment. Inundation in the urban area often arises from combined flooding from fluvial and storm water drainage systems. Solutions to prevent the recurrence of such events require combined and innovative storm water management that can be best achieved through collaboration between Local Authorities and Scottish Water.

Role that land-use management, the planning system and building regulations play in mitigating the effects of flooding?

40. Land-use management should allow rivers and water space that they will either take or be given. Large floodable areas or land that can be flooded at different levels of flooding must be in place. Living with rivers and giving water space is not only cost effective but more sustainable. Also, protecting wetland, peatland and upland ecosystems will hold rainfall back and mean that river valleys are less prone to severe floods.
41. Changing agricultural and forestry practices such that water is retained for longer in the soil should be a key objective in managing water in the uplands. Suitable measures include blocking ditches and drainage channels (often introduced prior to planting trees or improving grouse moors). These measures will reduce flood risk downstream, but are likely to be more effective for frequent modest floods rather than more extreme floods. They form an invaluable component of increasingly favoured non structural measures but,

⁹ Werritty A *et al.* (2007) Exploring the Social Impacts of Flood Risk and Flooding in Scotland, Scottish Government. /www.scotland.gov.uk/Publications/2007/04/02121350/0

on their own, cannot provide the standard of protection expected by many exposed to flood risk in urban areas.

42. A potential response to the threat of increased coastal and estuarine flooding is managed re-alignment of the shoreline. Typically this involves breaching existing coastal defences and allowing the inundated area to revert to salt marsh.
43. As well as land-use management, there is a clear role for the planning system. Any development on floodplains must take the function of the land into account and be developed accordingly. Planners should not allow development which results in loss of flood storage or that has a negative effect on the flows/direction of flood waters. The loss of floodplain storage is compounded by increased runoff response. Where redevelopment of property on floodplains is necessary because of the concentration of other services, or other good reason, the Building Regulations must play a more prominent role than they have in the past, and they must be enforced more strongly than at present if they are to be effective. Much can be learnt from countries such as Germany and the Netherlands which promote flood-resilient buildings and structures that can float during floods. The insurance industry could also take a prominent stance in this regard by requiring those who re-instate property in an area at risk from further flooding to adopt resilience measures to reduce future flood risk.
44. Innovative building and site designs that do not depend on flood barriers for protection should be encouraged, especially where this results in an increase in flood storage capacity, greater public access to the water edge or other public benefit.
45. Overall, the integration of land-use management, planning and building regulations can significantly mitigate the effects of severe flooding. Currently, the planning system and building regulations are being updated in a somewhat piece-meal fashion. However, in the case of building regulations the inclusion of generic rules on SUDS are often impractical where soak-aways are designed in low permeability areas, e.g. clay. It is important to classify land characteristics in order that more effective land-use management policies can be established which will help to mitigate the effects of flooding. The current planning guidance is more orientated towards restricting building on floodplains without necessarily taking account of the potential mitigation provided by upstream land-use management measures.

Improvements to existing flood warning systems

46. As detailed above, SEPA is the flood-warning authority and it has adopted the Flood Warning Code system, namely: Flood Watch; Flood Warning; Severe Flood Warning; and All Clear. Flood warnings based on this system are issued by SEPA and then disseminated by local authorities, the police and the media when required. The optimal means of dissemination are under review with innovations such as Advanced Voice Messaging (based on the telephone system) working especially well in rural areas. Information on the means for

individuals to protect themselves and their property is also constantly under review. Increasingly, flood risk management is seen as a responsibility shared by the authorities and by the individual. In this context, local communities could play an important role in communicating the flood warning to vulnerable members of the community. It is suggested that schemes equivalent to Neighbourhood Watch should be introduced, entitled "Neighbourhood Flood Watch" for those vulnerable smaller communities. A secure link between knowing a flood is coming (based on the SEPA flood warning system) and the action the community should take itself can significantly reduce a flood's impact.

47. While it could be anticipated that Severe Flood Warning and All Clear are self-evident it is less apparent with the Flood Watch and Flood Warning codes what action is required by individuals. A review of this system of codes would be beneficial in order to elicit the appropriate response. Property owners tend not to respond as they might and methods to improve awareness and action would be welcomed by all.

Effectiveness of the responses to flooding events

48. Following severe flooding in Perth (1993) and Strathclyde (1994), central government spend on flood defence has significantly increased over the past decade such that, at present, all recently approved schemes have been jointly funded by central and local government. However, given that only a small fraction of Scotland's population at risk of being flooded is currently protected by such schemes, plus the significant projected increase of flood risk in urban areas, the relative proportion of public expenditure on flood risk management should continue to increase
49. To judge whether existing processes are optimal we would have to know whether it is possible to redeploy flood defences/ management resources in a way that would impact positively on urban regeneration, employment, profitability, housing wealth inequality, social cohesion etc. Physical measures of the extent of flooding are only part of the story. The same degree of flooding in different areas (e.g. one economically robust, the other economically vulnerable) might have very different impacts on social welfare. Further research is needed to identify the location and needs of those most vulnerable to the risk of flooding, ways of enhancing their resilience and appropriate responses by Local Authorities.

Additional Information and References

Copies of this response are available from the RSE's Consultations Officer, Mr. William Hardie (email: evidenceadvice@royalsoced.org.uk) and from the RSE web site (www.royalsoced.org.uk).

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April 2008



**West Lothian
Council**

Development & Environmental Services

APPENDIX 1

West Lothian Council's Response to Consultation on 'The Future of Flood Risk Management in Scotland', published by the Scottish Government, February 2008

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

No. The definition of sustainable flood management is too vague. Everything everyone does needs to be increasingly sustainable. Our approach to the management of flood risk is no different. It doesn't need the use of the term 'sustainable' in legislation to achieve this.

There appears to be a perception that Flood Prevention Schemes in the past have been focused on defense rather than a selection of softer options. Whilst there may be evidence elsewhere to support this, it is not the experience in West Lothian where the Council has two schemes in place and another in development. Even the oldest non-statutory scheme in Bathgate was created within an area of post-industrial derelict land. It was developed into three large open freshwater pools surrounded by wetland basins, which provide a haven for wildlife. The wet areas are a mosaic of reed, sedge, horsetail and meadowsweet beds. There is also some semi-natural broadleaved woodland of willow, birch and alder, as well as semi-improved grassland. The Scottish Wildlife Trust manages the area as a local reserve.

The need to protect and enhance sensitive environments and improve spoiled areas where this is possible is fully acknowledged. The existing cost-benefit tests required to secure existing grant-assisted schemes constrain local authorities. With improved flexibility, a more innovative approach that also meets other corporate objectives such as enhancing biodiversity should be possible.

The Scottish Government is urged to take a cautious approach to over-precise definition. If a definition is necessary, it needs to reflect the fact that flooding in many of our urban communities is a result of unsustainable practices in the past. The maximum possible social and economic resilience often cannot necessarily be achieved in urban areas by protecting and working with the environment. Manmade flood defence structures such as floodwalls and embankments may always be required in the absence of an appropriately located area capable of delivering high-volume attenuation.

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

Yes, it is clear but it is unhelpful.

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

No. Knowledge and competence in this subject area is currently shared between SEPA, Scottish Water and local authorities. It is suggested that a 'lead' or 'coordinating' authority be appointed to coordinate activity and report to Ministers. The suggestion that SEPA take on this role is not considered inappropriate and should help to ensure a consistency of approach across the country.

Whilst co-ordination at a high level is important, not least for political accountability at a national level, it is effective project level coordination that is most important and where engagement is more focused and meaningful. SEPA, being a national organisation lacks the experience of working with the community at large, a role best undertaken by local authorities.

West Lothian Council has been working in an integrated way with other partners for some time under the award-winning River Almond Catchment Management Plan. It has proved an effective vehicle for coordination and communication and has helped to justify investment. The reporting framework is not, however, an end in itself. In the context of the redrafted legislation, success will be largely dependent on what happens as a result of gathering the information. The legislation needs to include permissive powers or a duty to implement plans. In turn, Ministers must be prepared to provide new core funding for local authorities and Scottish Water to deliver projects that will reduce flood risk. Without the powers or resources to actually reduce the risk of flooding, there is little advantage in undertaking the risk management exercise.

The council considers that three types of plan, national, area and local are unnecessary. It is the local problems that really matter to people and these are often smaller than sub-catchment level. There is no reason why local plans cannot inform a national picture. The River Basin Planning Framework is not considered a good model to emulate and has not been around long enough to be robustly tested.

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, providing technical support, collating data from all sources, bringing it together and reporting to Ministers is a role suited to SEPA. The Council is unenthusiastic, however, about term 'competent' authority as it infers that others may be less than 'competent'.

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

No, the council does not believe that a hierarchical approach to flood risk planning will necessarily result in the most effective way to deliver flood risk management in Scotland.

Collating information, much of it known to local authorities, Scottish Water and SEPA, and mapping that knowledge, risks drawing resources away from active flood risk management. The proposals appear to place no permissive powers place or duties on these organisations to do anything about the problems that are identified. Without a duty and appropriate resources, all strategic planning and reporting may be in vain.

The Council is concerned that the limited resources currently available to reduce flood risk may be redirected to urban centres with larger populations at a cost to those at risk in other locations. The Council wants to reserve the right to allocate reasonable resources to afford better protection to those at risk of flooding living in its area.

The preparation of flood risk management plans and the work to develop a better understanding of pluvial flooding, in particular, will require to be appropriately funded by the Scottish Government.

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?

Local authorities should be the lead authority for flood risk in their areas, where is not significantly influenced from outwith the local authority area. However, where inter-authority working is appropriate, and responsible authorities cannot agree, Scottish Ministers should be empowered to designate a lead authority. Ideally, therefore, this matter should be left to the partners to decide, however they should be given a specific timescale in which to make this decision, otherwise Scottish Ministers could then determine the situation.

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

With no assets, little knowledge of hydrology and engineering and only a regulatory interest in the natural environment, SNH are not considered to have a sufficiently significant role to justify having a duty placed upon them.

Although the Forestry Commission may have land-based assets, with the correct powers, there is nothing to prevent such land being used by local authorities for flood management. There is arguably no need for the Forestry Commission to be designated as a responsible authority though a duty to work with local authorities where their land asset may have a role in reducing flood risk might be helpful in some parts of Scotland.

Consideration should be given to the inclusion of British Waterways (Scotland) as a responsible authority and one responsible for the management of an ageing asset with a significant potential to cause flooding.

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

The level of risk presented by a changing climate on ageing assets suggests that British Waterways alone be considered for inclusion as a responsible authority.

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 all designated authorities to work together where this is justified on technical grounds or where Scottish Ministers determine that it is otherwise appropriate. The make-up of groups should be a matter for the responsible authorities to agree.

Flood Liaison & Appraisal Groups as referred to in SPP7 'Planning & Flooding' have not been an overwhelming success. In contrast, however, short-life, project-based groups set up to deal with local flooding issues have proved particularly helpful. There needs to be much greater synergy between local authorities and Scottish Water to deal with specific problems.

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

No. It is considered that there are already sufficiently robust channels at local authority level to engage effectively with local people. Local authorities are locally accountable and have a greater expertise in public consultation and stakeholder engagement than any other public body.

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?

No. The Council is already concerned at the benefit to cost ratio of SEPA's heavily bureaucratic River Basin Management strategy. The process has become the goal. It appears highly unlikely that the targets set for water quality improvement can possibly be achieved through this weighty structure. There is no evidence that the structure will result in the necessary effect. The data collected by SEPA from local authorities could certainly be collated on a river basin district basis however and reported to Ministers if that is deemed to be the most appropriate basis.

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

No, modern government must empower not control. There seems to be no reason for Ministers to be involved except where there is dispute between so-called 'competent and 'responsible' authorities or where these organisations fail to produce appropriate Flood Risk Management Plans. Provision should be made in the legislation for Ministers to intervene in these circumstances.

Also, why should Ministers wield the power to approve, reject or modify plans that those responsible for them have no duty whatsoever to implement and no additional funding to do so?

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

Yes. The constrained urban drainage network and the associated increase in the volume of surface water during extreme rainfall events have led to the most significant floods within the area administered by West Lothian Council.

The integration of the work that has been done to date by local authorities and Scottish Water's will take time, however. Additional resources will be required to ensure that this happens. Ministers will have to ensure that 'competent' and 'responsible' authorities are appropriately resourced to take such an additional responsibility.

The Council is concerned as to which body will be responsible for run-off in urban areas exceeding the 1:30-year event, which is the design standard for road drains and sewers. Such events are increasingly common.

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

Yes, planning authorities have a fundamental role as part of any holistic strategy to reduce flood risk and must be required to demonstrate through the development planning process (both the new Strategic Development Plans and Local Development Plans) that they have taken account of both FRMPs and advice provided by SEPA on flood risk. This should be a statutory requirement set out in the emerging Flooding Bill in 2008.

The proposals detailed in the consultation document, will help to ensure that information associated with fluvial and pluvial flooding is collated, placed in a spatial planning format and used to inform the development-planning format. Studies into fluvial flooding are placed into a GIS format in some local authority areas, including West Lothian, at present but there are insufficient funds to be proactive in commissioning studies, particularly where there has been no significant flooding in the past.

In addition to mitigating the risk of new developments flooding and of flooding as a result of new development, the role of the planning authority should extend to securing incidental improvements through planning gain and working in partnership with developers and others to achieve wider objectives that will help reduce flood risk.

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?

Local authorities are creatures of statute and need the powers to promote measures that will reduce flood risk. However, experience suggests that people are more familiar with the planning process than that of the legal process associated with flood prevention. More enquiries and objections were generated through the development planning process for a recent Flood Prevention Scheme in West Lothian than through the process of promoting the scheme under the Act. This suggests that it is the planning process that is the more engaging.

The Town & Country Planning legislation, whilst not perfect, has proved to be a robust vehicle to cope with most types of development. It is suggested that it has a strong role in as an integral part of the emerging flooding legislation replacing the relevant part of the current Flood Prevention (Scotland) Act 1961, as amended.

If it is intended that there should be a return to the situation where the Scottish Government provides grant funding, then the process of promoting a Flood Prevention Scheme will, of course, need to involve Ministers and civil servants. If, however, funding is to be found from a block allocation, as is currently the case, local authorities ought to be empowered to promote schemes relying on the powers conferred under the new flooding legislation and on the relevant parts of the Town & Country Planning Act.

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

No. Endorsement by the Scottish Government is only considered necessary when government is providing direct funding towards a scheme in the form of direct grant aid.

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

No, the present procedure for Ministerial confirmation is burdensome and unnecessary except where direct grant funding is being provided by Ministers. It is also inconsistent with the need to empower local people and keep decision-making local. The process leading to the promotion of a scheme currently relies on processes involving civil servants. It is suggested that there should be no need for this to be continued unless the grant system were to be reintroduced.

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, but call-in powers should remain for the reasons outlined in terms of objections from responsible authorities such as SEPA, where developments would be contrary to a development plan and/or where the council has a financial or landowner interest and where there will be a significant impact on land owned by a third party where compulsory purchase powers are being proposed as part of any development.

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

Notification should occur after a statutory period of advertisement of 21-days and the council should receive a response within 28-days from Scottish Ministers, either calling in an application or granting deemed consent with no conditions or granting consent with conditions.

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

No, new measures to reduce flood risk, where they need planning permission, should be subject to the normal development control process subject to points 18 & 19 (above) and provided that there has not been a 'significant body of objection' to a proposal, i.e. from 5 or more objectors or from a statutory consultee or from a representative organisation such as a Community Council.

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

Local authorities do not currently depend upon civil servants to promote measures to help reduce the risk of flooding but the process does currently involve engineers, economists and administrative personnel within the civil service to ensure that technical and economic standards have been complied with.

Specialist consultants in tandem with experienced local authority officials generally design and promote schemes. Proposals are then subject to feasibility work to ensure that environmental, social and economic criteria are met. SEPA's hydrologists, water quality specialists, ecologists and geomorphologists each then have the opportunity to vet the proposals. A further opportunity is afforded to SEPA to comment through the development planning process and again when application is made to them under the WEWS Controlled Activities Regulations. SNH and BAA are consulted through the planning process as statutory consultees.

It is suggested it would be good practice for measures to be subject to cost-benefit appraisal but that government economists should not have a future role. Guidance on cost-benefit needs to be adjusted to ensure that more sustainable proposals are not compromised.

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

Avoid the need to seek confirmation of measures to reduce flood risk except where Ministers were to provide direct funding in terms of grant aid.

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

The Flood Prevention (Scotland) Act 1961, as amended does not provide sufficiently robust powers. In such circumstances, Civil Contingencies powers may currently be required along with the assistance of the Police.

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

No. SEPA currently indicate to planning authorities that the likelihood of an applicant being able to secure a license under the WEWS Controlled Activities Regulations is a material consideration in the determination of a planning application. However, the planning authority is rarely able to determine that likelihood unless a comprehensive application has been submitted to SEPA detailing the proposals. This process alone can take up to four months so there is an immediate incompatibility. It seems unlikely that guidance alone would therefore be sufficient to streamline the process. Where authorities elect to implement measures to reduce risk identified in a Flood Risk Management Plan, there should be duty to engage with SEPA and a legal burden on SEPA to work closely with responsible bodies to ensure that proposals are compliant with the Controlled Activities Regulations. This should be determined before an application for planning permission is made. SEPA should be given a legal duty to work closely with those promoting measures to reduce the risk of flooding.

To ensure best value, there should then be no need to apply separately for a license and SEPA should not be permitted to levy fees for the work necessary for local authorities to secure measures that represent a 'best fit' with political, environmental, social and technological objectives.

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

Yes:

- Ministers need to ensure that the Scottish Government gives effective strategic direction but avoids the need to micro-manage.
- Care needs to be taken to empower but not over-regulate.
- The 'silo effect' currently endemic within many organisations is the barrier to effective external partnership. It is this cultural problem that needs to be overcome before organisations can be truly 'joined-up' in the way that they work. Ministers have a responsibility to address this in respect of public sector organizations.
- Local authorities need the powers to ensure that owners of land become engaged through legal process where this proves necessary. In particular landowners must manage their watercourses effectively. Where they fail to do so local authorities require the powers to undertake the work that is necessary and recover their costs from the landowners in question.

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?

Yes. There needs to be a renewed emphasis on local decision-making. Local authorities need to be empowered to respond to the needs of local people. The powers are needed to carry out work to reduce the risk of flooding subject only to compliance with the Controlled Activities Regulations and planning permission etc. where it is necessary. Local authorities must be empowered to carry out work on private land with the consent of the landowner resorting to specific powers delegated to them where consent is not forthcoming. Optimum use needs to be made of existing democratic frameworks and processes, in particular Community Planning, to ensure the engagement of local people where it is necessary and desirable. This too should be locally determined.

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

No. The biennial report required under the existing legislation is burdensome and adds little value to stakeholders. In order to ensure effective strategic direction by Ministers, SEPA should separately collate summary data from responsible authorities and report back. Ministers must determine exactly what minimal information they need to fulfill this purpose.

How local authorities communicate with their customers and respond to local needs should be a matter that is determined locally.

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

No. The best local authorities have been assessing risk and bringing forward a range of strategies to reduce that risk for seven or eight years now. They already work effectively with SEPA where this is necessary and work hard to engage with Scottish Water (often with rather less success).

The new proposals will be difficult to resource and stand to draw staff time away from front-line activities. The new legislation should serve to make Ministers more accountable for the risks that are identified but place no duty on so-called 'Responsible Bodies' to manage that risk. The proposal may therefore be flawed.

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?

No, more could be done. Local authorities need permissive powers and new funding to undertake a range of new and traditional activities to manage flood risk, large and small scale with the minimum of bureaucracy and in a culture of collaboration. Without the powers and the new funding to implement the plan or there is little advantage in the planning process.

RESERVOIR SAFETY

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

Yes. Climate change, the location of many reservoirs close to population centres, and the ageing infrastructure, together, make the issue of reservoir safety and compliance with the requirements of the Act increasingly important, demanding a proactive response from the enforcement authority and from undertakers. Division of this task between up to thirty-two local authorities is unhelpful and, no doubt, results in an inconsistent approach across the country. A single enforcement authority should be in a stronger position to keep reservoir safety in Scotland under review, promoting revisions to legislation, good practice, and a culture of excellence rather than minimal compliance.

Although there is only a small element of officer's time allocated to the administration of the Reservoirs Act by this authority on a day-to-day basis, there is no specific budget provision. In acknowledging that from time to time, funding might need to be found to fully discharge the duties of the Council, as enforcement authority, adjustment of Council funding to take account of the setting-up of a single, national Enforcement authority is not considered appropriate. Indeed, cost savings are not envisaged as a result of the transfer of responsibility. The new national regulator will also incur additional capital set-up and revenue costs and funds will need to be in place enabling it to act in the event of non-compliance by undertakers which is forecast to increase.

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

If Scottish Ministers elect to take forward the proposal for a single, national enforcement authority, it is considered that an existing public regulator should embrace the role. This should further minimise costs and duplication of effort. SEPA are considered reasonably well placed to take on the role, have a record of accomplishment in both regulation and hydrology, have a local presence throughout Scotland as well as being the national flood warning authority. SEPA also have established relationships with the Scottish Government, Scottish Water the Water Industry Commissioner for Scotland and local authorities.

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?

No, reservoir failure has the potential to result in a very significant loss of life and widespread damage to property. The likelihood of an event and its effect is not to be underestimated given the ageing infrastructure, lack of maintenance and a changing climate. Although it is understood that Scottish Water, in particular, has carried out some studies into flood routing and inundation from specific reservoirs, there is a need for this to become accepted practice for all large raised reservoirs. There is a need for increasing openness and honesty in the governance of our society. The information should, therefore, be public rather than the subject of subterfuge.

The task should properly be undertaken by those responsible for the asset and the data verified and collated by SEPA. The serious financial implications to small and medium enterprises are acknowledged however. These should be seen in the context of these organisations also being responsible for the maintenance of assets that are hugely expensive to maintain and repair properly. If a public body such as SEPA or local authorities were to be tasked to prepare these maps, it would be burdensome for the public

purse and would need new funding from the Scottish Government.

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

Yes, the Council is supportive of the powers being extended and a duty being placed on reservoir undertakers to report incidents.

Q34. Views on Crown application and any other comments?

The Council sees no good reason why Crown bodies should be exempt.

END

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From: [Redacted]
Sent: 22 April 2008 18:44
To: Flooding, Erosion and Reservoir Safety
Subject: Consultation Response

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The Future of Flood Risk Management in Scotland

RESPONDENT INFORMATION DETAILS

Name: [Redacted]
Organisation:
Address:
Postcode:
Email:
Telephone
Number:
Responding as: An individual
Individual
Permission: Yes
Confidentiality: Yes, make my response and name
available, but not my address
Group or
Organisation: Not Supplied
Share Response
Permission: Yes

Consultation Questions

The Future of Flood Risk Management in Scotland

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?	No. See comments below.....
Question 3: Do you agree with the conclusion as set out in paragraph 3.17?	Needs to be worked on.....

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?	No. It should not be SEPA. See comments below.....
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?	See comments below....
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?	Ministers should designate - NOT SEPA.
Question 7: Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?	Yes, all of them....provided that it doesn't become a talking shop, or a good week-end away! Meetings should be mandatory, short, sharp, to the point, no flannel - and accountable!
Question 8: Which other bodies should be identified as responsible authorities?	MOD. Coast Guard. Emergency services. MSP"s should have a say....
Question 9: Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?	Yes. But see comments below.....
Question 10: Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?	I have no idea.
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?	A full risk assessment should be undertaken to assess the capabilities of SEPA and other linked organisations in a full and frank "fit for purpose" exercise. This should include the MOD.
Question 12: Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?	Yes. Provided that they are sufficiently trained, qualified and capable of making those decisions.
Question 13: Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?	Yes. Undoubtedly.
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?	There should be mandatory links that would and should keep the public informed of what improvements have, and are about to take place in their area making them more responsive to decisions and give greater understanding and choice as to the way ahead.

<p>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?</p>	<p>Yes.</p>
<p>Question 16: Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?</p>	<p>Yes. After all, Ministers are responsible and should therefore confirm their understanding of processes and should mandatory take part in any training suited to their level that takes place.</p>
<p>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?</p>	<p>No. Ministers need to get to grips with scenarios that will enhance their understanding of procedures. As mentioned, they should take part in training that will give that greater understanding.</p>
<p>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?</p>	<p>No. I don't trust Local Authorities to develop local policies using untrained, inadequate and unqualified staff in "old school tie" or nepotism rife jobs-for-life scenarios where life and death situations and decisions arise.</p>
<p>Question 19: What would be the appropriate timescales for notification and response?</p>	<p>Time scales should be in "bounds" where stock is taken, checked and re-checked and exercised if necessary. So some flexibility should be worked into the check to ensure compliance and accuracy before going onto the next "bound".</p>
<p>Question 20: Would it be appropriate for such a process to carry deemed planning consent?</p>	<p>Not initially. Get the training out of the way before proceeding with and introducing complicated detail.</p>
<p>Question 21: How should the issue of technical expertise and capacity be addressed?</p>	<p>Matrix the capacity and don't let individuals get compartmentalised in their thinking.</p>
<p>Question 22: How could such a process ensure the necessary technical standards are observed?</p>	<p>Practise! Carry-out meaningful exercises with external observers/auditors scoring and giving a conclusion briefing to all taking part.</p>
<p>Question 23: Are there any additional alternatives to the options outlined above which would simplify procedures?</p>	<p>No. Because we should learn from history and just like I did at school, to learn my tables, it was a repetitive exercise that has stood the test of time.</p>
<p>Question 24: Do you agree that streamlining the CAR and flooding/planning processes, can be managed through better guidance?</p>	<p>Yes.</p>
<p>Question 25: Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?</p>	<p>Yes. Ensure that "new blood" is introduced on a regular basis to ensure forward planning has enough foresight to amend regulation well in advance of potential disasters.</p>

<p>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?</p>	<p>Yes! Publish understandable detail on the internet and make available in local Libraries. The more you inform the people, the less it is likely to confuse.</p>
<p>Question 27: Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?</p>	<p>Yes, Ministers after all are the ones accountable but the content should be free from "technospeak" and made easy to read and digest to enable accurate decisions to come from those in control.</p>
<p>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?</p>	<p>They may improve things but operationally, it's "tinkering at the edges". Get people on-board who will be independent enough to "get the job done!".</p>
<p>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?</p>	<p>Local Authorities should have the responsibility and control up to an agreed level where a national body would take over in cases where greater support is required (see below).</p>
<p>Question 30: Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?</p>	<p>Yes.</p>
<p>Question 31: If so, should it be SEPA or another as yet unidentified body?</p>	<p>There should be a national body separate but complimentary to SEPA - somewhat like the old MOD "Aid to Civil Power" backup for Local Authorities but re-titled and on a more permanent footing where MOD "numbers" are available and can liaise instantly, response time reduced considerably and emergency stocks retained more or less locally. Again, somewhat like the American FEMA - I think that's the title?</p>
<p>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?</p>	<p>There should be a statutory duty on reservoir undertakers to prepare reservoir inundation maps and plans and these should be made public to enable choice.</p>
<p>Question 33: Do agree that enforcement powers be extended and post incident reporting included as an additional requirement?</p>	<p>Yes</p>
	<p>All my life I have worked on the principle of not buying property less than sixteen mean metres above sea level. This has served me very well, having been housed close to the sea</p>

Question 34: Views on crown application and any other comments?

most of my RN/RM career - and never ever had a problem as gravity was the key - the Romans got it right! All new properties should be vetted to ensure that where practicable, all unnecessary builds are not authorised and built less than sixteen mean metres above sea level unless authorised. That way Scottish coastal towns, cities and businesses will not suffer the same fate that is going to befall London and Scottish areas built on natural flood plains. Lines of communication will be kept open and the economy will benefit. Inland built properties should work to the same criteria above flood levels.

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The Royal Town Planning Institute in Scotland
57 Melville Street
Edinburgh
EH3 7HL

Tel: [REDACTED]

Fax: 0131 226 1909

www.scotland.rtpi.org.uk

Registered Charity No: 262865

Scottish Charity Registration Number SC 037841

Frances Conlan
Water, Air, Soils and Flooding Division
The Scottish Government
1H
Victoria Quay
Edinburgh
EH6 6QQ

Email: Engineering@scotland.gsi.gov.uk

22nd April 2008

Dear Frances

The Future of Flood Risk Management in Scotland

The Royal Town Planning Institute in Scotland (RTPI) is grateful for the opportunity to respond to this consultation which sets out proposals for the Flooding Bill as we consider that the planning system has a key role to play at national, city-region and local levels in addressing Scotland's current and future vulnerability to flooding.

The RTPI is the UK body chartered to represent the planning profession and offers these comments from the point of view of a diverse and policy-neutral professional body committed to supporting devolved government in Scotland. The Institute has approximately 1900 members in Scotland, working across all sectors of central government, local government, government agencies, the voluntary sector, private consultancy, the development industry and academia.

Since devolution, the Institute has empowered its RTPI in Scotland Office, together with its Scottish Executive Committee, with the responsibility for working with government and public bodies generally for the improvement of the planning system in Scotland. This is in accordance with its charter obligation to work for the public interest.

The Institute's response to the questions raised in the consultation, is set out in the Annex 1 to this paper. Our response to the Scottish Parliament's Rural Affairs and Environment Committee's Inquiry into flooding is given at Annex 2. The Institute trusts that these comments are of assistance and has no objection to its comments being made available to the public in the usual way. Should you wish any clarification please do not hesitate to contact me at the RTPi Scotland, Edinburgh office: 57 Melville Street Edinburgh, EH3 7HL phone: 0131 226 1959, email: veronica.burbridge@rtpi.org.uk

Yours sincerely



Veronica Burbridge

National Director
The Royal Town Planning Institute in Scotland

ANNEX 1

DETAILED RESPONSE BY THE ROYAL TOWN PLANNING INSTITUTE IN SCOTLAND TO THE SCOTTISH GOVERNMENT CONSULTATION ON THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND

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

The definition is a helpful starting point however it requires further refinement, clearer recognition of the need to avoid and reduce flooding, and the need to recognise the dynamic and inter-connected nature of river systems

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

No, the definition could be reworded to incorporate the aspects identified above and to incorporate the points currently made in the footnotes.

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

Yes. This is consistent with the Institute's response (copy attached) to the Parliament's Flooding and Flood Management Inquiry. A single competent body with a national remit for implementing the Flood Directive is required, supported by local co-ordination.

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

Yes.

Q5. 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. All elements in paragraph 3.27 should be included and arrangements secured for input by all the responsible bodies and associated funding streams.

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

The local authority should be the lead authority within a local area. There should be provision for Scottish Ministers to designate a lead body if disagreement arises.

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?

The Institute suggests the addition of bodies such as hydro generating companies, canal and waterway authorities, railway operators, and Historic Scotland as locally appropriate.

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?

Yes. Presumably SEA would require public participation in any event.

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

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

Yes

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

Yes, otherwise the risk from all sources cannot be addressed.

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

Yes there should be strong links with the Development Plan which should address flooding issues raised by the Flood Risk Management Plan process.

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

Yes, this should avoid unnecessary duplication.

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

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?

It is considered that the present procedure is satisfactory.

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.

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

They should be equivalent to planning procedures.

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

Yes.

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

Proposals will need to comply with the Flood Risk Management Plan. Technical standards could be set out in government guidance.

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

Minor schemes and unanimously supported schemes might be fast tracked

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

We agree that the local authorities should be fully empowered (para 3.77) to take action and recover costs later.

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

There may be parallels here with Listed Building Consent and Historic Scotland. Better guidance will help, but will not be a universal panacea.

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

Perhaps all of the CAR applications should be made to the local planning authority in the first instance, just like Listed Building Consent applications.

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?

See above.

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

Perhaps quinquennial reports would be better (inspections would still be twice-yearly or more frequent, it is assumed), and would allow flooding issues to be reviewed and dealt with in Local Development Plans. Standard templates could be developed.

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, if taken with other measures to address the proper planning of areas and responses to climate change.

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?

Where flooding has taken place or is anticipated, measures to minimise and alleviate should be promoted – the Institute considers these should be key parts of (Local) Development Plans.

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?

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?

The possibility of inundation should be an element of a Flood Risk Management Plan, and thus the IMP should be prepared by SEPA/the LA, and not under Civil Contingencies legislation. Notwithstanding the current biennial reporting, it is suggested that inspection by an Inspecting Engineer should be no less than twice yearly.

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

Yes. Each reservoir should have a logbook where this material, along with inspection reports and so on, is retained: this should be produced and kept open to the public under FoI as a duty on reservoir owners.

Q34. Views on Crown application and any other comments?

There should be no Crown Exemption from the provisions of the Act.

Annex 2: RTPI response to Scottish Parliament Rural Affairs and Environment Committee consultation.



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The Royal Town Planning Institute in Scotland
57 Melville Street
Edinburgh
EH3 7HL

Tel: [REDACTED]
Fax: 0131 226 1909
www.scotland.rtpi.org.uk
Registered Charity No: 262865
Scottish Charity Registration Number SC 037841

12th December 2007

Email to: [REDACTED]@scottish.parliament.uk

Dear Vikki

Scottish Parliament Rural Affairs and Environment Committee Flooding and Flood management Inquiry

The Royal Town Planning Institute (RTPI) welcomes the opportunity to respond to this consultation as we consider that the planning system has a key role to play at national, city-region and local levels in addressing Scotland's current and future vulnerability to flooding.

The RTPI is the UK body chartered to represent the planning profession and offers these comments from the point of view of a diverse and policy neutral professional body committed to supporting devolved government in Scotland. The Institute has approximately 2000 members in Scotland working across all sectors of central government, local government, government agencies, the voluntary sector, private consultancy, the development industry and academia. Since devolution, the Institute has empowered its RTPI in Scotland Office, together with its Scottish Executive Committee, with the responsibility for working with government and public bodies generally for the improvement of the planning system in Scotland. This is in accordance with its charter obligation to work for the public interest.

Our comments are set out below under the headings of the questions posed in the consultation paper. The Institute does not wish to respond to questions regarding flood warning systems or responses to flooding events.

What is the potential impact of climate change on the frequency and severity of all types of flooding in Scotland?

A number of recent reports such as the Stern Review, work by the UK Climate Impacts Programme, and more specific reports on Scotland such as 'Foresight Future Flooding' have reviewed the scientific evidence for climate change and have identified risks and economic impacts and the need for action. The best regional estimates for the next 70 – 100 years suggest higher rainfall totals, increased storminess, and more intense rain concentrated on

fewer days, higher consequent peak river flows, and sea level rise of 30 – 60 cms. These aspects of climate change have implications for all types of flooding across Scotland. There are particular concerns for increased storminess leading to pluvial flooding resulting from rainfall generated overland flows. It will be important to identify vulnerable areas and to improve understanding of the capacity of existing drainage infrastructure in urban areas. Regular, updated national guidance will be needed on the impacts of climate change and on the implications for policy and practice.

What changes are needed to the existing legislation?

The primary flood legislation is now 46 years old and would benefit from streamlining amendment or replacement particularly in view of the specific requirements of the EU Directive on Flooding. Other factors which support a review of legislation include changing experience in practice, increased emphasis on adaptation and mitigation, changes in related legislation regarding planning and environmental issues, the need to speed up decision making processes and to integrate statutory flood management procedures with planning procedures and Controlled Activity Regulations wherever possible, and the need to clarify responsibilities and to address funding issues including combined funding mechanisms.

The Flooding Directive will require national legislation for flood risk management plans to be drawn up by 2015. These will run alongside the second round of River Basin Management Plans, following on from the initial 2009 -2015 round. Further changes to regulations must address risk reduction and the operational implementation of WEWS should be linked with the Flooding Directive to produce a programme for flood risk reduction. Given the requirement under the Floods Directive, it is hoped that the opportunity will be taken to permit responsible authorities to integrate flood management with other land and water management objectives.

Some improvements could be addressed under existing legislation; these include improvements to information availability and monitoring systems; raising awareness of flood hazards; guidance and co-ordination of activities including stakeholder engagement in flood management. There is a need to encourage partnership working and to dovetail actions by responsible authorities in both the built and landward areas. SEPA and SNIFFER have important roles to play in co-ordinating information and in disseminating best practice.

Who should be responsible for flood management and how should it be funded?

Flood management requires a co-ordinated approach across sectors at all levels. However, a single national body is needed to act as the strategic authority and to act as the 'competent authority' under the Directive. It would appear appropriate for SEPA to undertake this role. However, given the wide range of bodies involved in work to address flooding issues, it would be useful to have national advisory group similar to the former Flood Issues Advisory Committee. The Scottish Government should support strategic partnerships in flooding issues working with local authorities and other bodies. This work should be closely related to that of Strategic Development Planning Authorities and the Area Advisory Groups formed under the Water Environment and Water Services (Scotland) Act. Primary responsibility for implementation of specific flood management measures and schemes should rest with local authorities and be closely associated with land use planning responsibilities.

What role should sustainable flood management play in mitigating the effects of flooding?

Sustainable flood management focusing more on avoidance and adaptation to the flood threat and incorporating policies of managed retreat should play a key role in mitigating the effects of flooding wherever possible. Guidance should build on the earlier work of the Flood Issues Advisory Group.

What role can land-use management, the planning system and building regulations play in mitigating the effects of flooding?

The Institute supports the view that land use management, the planning system and building regulations all have important roles to play in mitigating the effects of flooding. Greater recognition of the interaction between these roles is important. There is a strong case for flood risk mitigation through sustainable land use practices in upper and middle catchment areas for the benefit of those areas downstream. This requires spatial co-operation and co-ordination across a number of stakeholder groups and the co-ordination of funding streams to allow catchment wide land management measures.

The spatial planning system is fundamental to sustainable flood management, in exercising control over development in flood plain areas and in ensuring that planning decisions do not exacerbate problems elsewhere. At the national level, SPP7 contains strong guidance aimed at preventing further development on land which is at significant risk of flooding from all sources, or which would materially increase the probability of flooding elsewhere. The Institute supports this policy position, which seeks to work with natural systems wherever possible. The risk of flooding should also be addressed through the National Planning Framework with close links established to Catchment Management and River Basin Management Strategies.

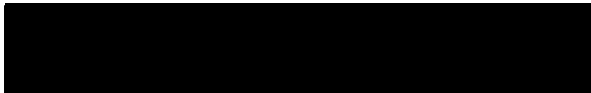
At the strategic level consideration of the possibilities afforded by more compact cities and the multi functional role of '*green infrastructure*' in safeguarding communities and infrastructure as well as providing for other objectives such as health and natural heritage should be recognised. The incorporation of flooding issues into strategic environmental assessment of policies plans and programmes at strategic and local levels should be based on robust and easily available data and monitoring and linked to work on the ameliorisation of social impacts of flooding.

With regard to building regulations, the Institute would support the introduction of measures to encourage increased resilience and resistance of buildings to flooding. Attention might also be given to protection of the historic environment and it is noted that Historic Scotland has developed advice about how to deal with particular aspects of building maintenance and the conservation of fabric and that specific guidance on the protection of historic heritage and archaeological fabric might be appropriate.

I hope that these points are helpful to you. Please do get in touch if you would like to discuss further.

Best wishes

Yours sincerely



Veronica Burbridge
National Director

**Scottish Government: Environmental Quality Directorate
Water, Air, Soils and Flooding Division**

**Consultation on 'The Future of Flood Risk
Management in Scotland'**

Response on behalf of the Scottish Hydrological Group

Introduction

This response to the consultation on 'The Future of Flood Risk Management in Scotland' is presented on behalf of the Scottish Hydrological Group. The SHG is a professional and technical association whose object is to encourage and advance the study of hydrology, in particular in a Scottish context, by holding meetings and seminars for the discussion of papers, by arranging technical visits and through other appropriate activities. It is a specialist Group of the Institution of Civil Engineers in Scotland, and is affiliated to the British Hydrological Society. Our interests extend to all aspects of hydrology and its relevance to human interests and activities, as well as to the environment generally, including:

- Hydrometry; the measurement and recording of hydrological parameters.
- The conservation and management of water resources.
- The interaction between hydrology and ecology.
- Predicting flood frequency and risk.
- Real time forecasting of surface water, fluvial and coastal flooding.

Preamble

Sustainable Flood Management?

In the consultation document the word 'sustainable' occurs over 100 times, usually coupled with 'flood management'. Yet nowhere is it acknowledged that flood management is inherently unsustainable in that it involves interference with natural phenomena and processes. 'Do nothing' is the only truly sustainable flood management policy. Given that this would be socially and politically unacceptable, we would have preferred to see as an objective:

'the promotion, as far as economically justifiable and socially and politically acceptable, of sustainability in flood management'.

Sustainability would mean in this context minimising whole life costs (construction, maintenance, operation and renewal) while having a parallel regard for minimising the consumption of fossil fuels (and hence greenhouse gas emissions) and other non-renewable resources. Both of these are currently under-valued in financial terms and hence are not given sufficient weight in conventional cost-based appraisals. A similar parallel regard must be had, in planning and executing flood management measures, to the protection and conservation of the natural and man-made environment. However, the protection of the water environment cannot be a primary objective of flood management, which is essentially about protecting human capital *from* the water environment.

It is implicit in this approach that the objective of greater sustainability is more likely to be furthered by working with and adapting natural forces and processes rather than by confronting them. It must not be thought however that this will always be the case or that every proposal will be able to further all these desirables. Concessions, trade-offs and compromises will often be necessary.

Indicators of Sustainable Flood Management?

It follows from the above that we are not impressed by the proposed indicators of sustainable flood management (Annex B), feeling that they are excessively complex and likely to fall down when presented with the diverse nature of real flood management proposals. We should prefer to continue to use the present financial appraisal methods (Benefit/Cost, discounted cost and revenue streams) for those aspects which can be valued in money terms. These would be supplemented by agreed additional weighting for non-renewable resource inputs, such as fossil fuels or tropical hardwoods, which are insufficiently valued in financial terms at present. They would also have to be supplemented by parallel non-financial measures for e.g. relief of anxiety and distress, environmental benefit or detriment.

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

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

"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."

See also general comments in the preamble above.

It is stated that 'resilience' means: 'ability to recover quickly and easily'. We would suggest that what the public want from flood management is protection from flooding, not the 'ability to recover quickly and easily'. It is the function of hydrologists to point out to those in vulnerable locations that total protection cannot be given, but we would suggest that a defined level of protection is a great deal better than 'resilience'. 'Resilience' might perhaps be a fall-back position to be offered to those to whom an acceptable level of protection cannot be given.

As stated in the preamble above, we cannot agree that protecting the environment is a means of managing flooding; it is rather an important constraint within which flood management must work.

We suggest that 'fair' and 'affordable' are highly subjective unless defined, even more so when 'in the future'.

We welcome the inclusion of all types of flooding; surface water run-off (pluvial), sewer, river, groundwater, estuarine and coastal, in the definition. We would however caution against attempting to fit all of them into a common system of evaluation. The causes and potential means of alleviation of flooding are too diverse.

Bill Proposals

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

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

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?

We would support the proposal that there should be a single 'competent authority' for Scotland and that SEPA should take on this role. SEPA's technical capability, following from its general hydrological function and its more recent experience of flood mapping, forecasting and warning, is unrivalled. We would also support in principle that local authorities (LAs) should retain responsibility for flood management at the local level. There are however a number of dangers in this split responsibility which need to be guarded against.

1. SEPA should not assume an operational role, or become the promoter of flood defence capital investment. The similarities to the Environment Agency in England and Wales are many, but that organisation has a different history, rooted in land drainage. This means that, while it is primarily an environmental gamekeeper, in its flood defence function it must sometimes be a poacher. SEPA should remain firmly a gamekeeper, with only a planning and co-ordinating role in flood defence.
2. The confirmation of LAs as taking the lead in operations and capital investment should leave SEPA free to plan and co-ordinate. However, while Scottish LAs today cover large areas, their boundaries do not normally reflect river catchments or coastal cells. Co-operation between LAs within a catchment is the desirable objective, but it is possible to foresee a situation where the balance of benefit and adverse impact may be such that compulsion may be necessary.
3. Following from the above, the roles of SEPA and the LAs require to be clearly defined. In particular, LAs should not be seen as SEPA's agents. A more appropriate model would be the relationship in development planning between counties and districts in the former two-tier system.

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?

It follows from the above that we would support this basis.

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?

Co-operation including the designation of a lead authority should normally be left to the participants, with perhaps a residual power of compulsion on application by one or more of the parties to the Scottish Government. SEPA's role would be compromised if it had this power of compulsion, although no doubt it would be consulted.

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

The roles in flood management of LAs and, for urban drainage, Scottish Water are clear. Those of the Forestry Commission and SNH are much less so. The Forestry Commission may propose large-scale changes in land use which may impact on flood risk; so may other parties, and all should be obliged to consult SEPA on their proposals. In reverse, a LA as the responsible authority for local flood risk management planning may wish to see tree planting and may engage the Forestry Commission in the execution of this. In a similar fashion, SNH may wish to create or restore wetlands, or may be engaged by a LA to do so in the furtherance of flood management. We do not consider any of these possible roles as justifying the designation of these organisations as 'responsible authorities', although they will always be important consultees.

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

We do not consider that there is any need to give special recognition to any body other than Government, SEPA, LAs and Scottish Water.

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

We would support this proposal.

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

The proposals are sufficient, but it should be recognised that interest will be largely confined to those who have recently suffered flooding and those who may have a direct interest in flood management proposals.

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?

The focus of the Water Framework Directive (WFD) is the protection, conservation and enhancement of the ecology of water bodies, and although flooding is mentioned in it, the protection of people and property from flooding is essentially different from, and in some instances in conflict with, this primary focus. If the objectives of flood management can be achieved while conserving or enhancing ecology, this will be the best outcome, but it will not always be possible. On the clear understanding therefore that area flood risk management planning is separate and different from river basin management planning under the WFD, we would support the use of a similar geographical framework and process.

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

Clearly there must be the possibility of appeal to a higher authority for people who may be dissatisfied or aggrieved by what SEPA propose. It might be sufficient for the Government to retain the power to call in a plan after a period for objections if these are not withdrawn, or if the proposals conflict with wider Government policy. If neither situation applied, deemed approval would follow. In the event of rejection or modification, it would be important for SEPA that reasons were clearly and explicitly stated.

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

We would wholeheartedly support this proposal.

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

The present requirement under SPP7 for local planning authorities to consult SEPA is effective so long as:

- a) LAs are fully aware of the areas of flood risk within their boundaries and hence when they must consult SEPA, and
- b) they heed the advice they are given.

We feel that the proposed structure whereby LAs prepare Local Flood Risk Management Plans in consultation with SEPA and conforming to the Area Flood Risk Management Plans should ensure a higher degree of ownership and willingness to conform to their requirements. It should not be necessary for the LA pedantically to spell out that they have had regard to the LFRMP. In the event of developer pressure leading to a breakdown in this benign scenario, it should be open to anyone, irrespective of their locus, to object and if necessary for the Government to call in the application.

Q15 to Q20

We are convinced by the arguments put forward in paras 3.64 to 3.69 that a LA based approval system leading to deemed consent would, with the safeguards described, be satisfactory and would support the principle of subsidiarity. We feel the strongest argument against an automatic need for Government approval is the absence of any need for central finance for individual schemes. We would however argue for the right of anyone, irrespective of their locus, to object and if necessary to be heard at a public inquiry. This is because the environment is the legitimate concern of all.

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

Since the most recent reorganisation, Scottish LAs are without exception large organisations which either cover large areas or are responsible for major conurbations. It should not be difficult for such organisations to retain sufficient technical expertise and capacity to be an intelligent client for the consultancy firms who would prepare the LFMPs and the schemes.

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

We are not aware of any.

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

We are unable to comment on this question.

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

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

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?

A major flood defence scheme involving engineering work is likely to include a number of operations for which CAR licences are required. The promoting LA of such a scheme is likely to have informal consultation on draft proposals with SEPA (as well as other interested parties) in advance of formal consultation. If the potential CAR licence requirements are identified at this stage, SEPA can comment on their acceptability, possible conditions, other interested parties etc. as well as identifying additional CAR licence requirements which may have been overlooked. Guidance on good practice on these lines should ensure that the formal documents can be issued with minimal delay. It would be advantageous in our view if the final CAR licences for engineering work were suitably bundled, either by type or geographically, so as to reduce the total number.

Apart from the issuing of such guidance, we are not aware of anything further the Government, SEPA or others should be doing to promote joined-up regulation, nor can we envisage any other approach.

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

Our view would be that there should be prescription to ensure minimum standards, but not too much, in recognition that the problems of e.g. Glasgow are somewhat different from those of the Highland Region. Prescription should be in the nature of a check list rather than a form to be filled in.

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

We would (see Preamble above) prefer the words 'further sustainability in' to 'implement sustainable', but in all other regards, and subject to our comments, we do agree.

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 imposition of a duty on LAs, rather than permissive powers, would leave them exposed to pressures to which, for many different reasons, they might be unwilling or unable to respond. We feel that the proposed requirements to identify hazards and prepare plans are sufficient.

Reservoir Safety

The design of dams as water-retaining structures is the function of civil engineers who have specialised in this field. Hydrologists are normally involved only as consultants on the natural phenomena; rainfall, stream flow etc., with which the structure will have to cope. For this reason our comments on this part of the consultation are not as full as for the earlier part. However, hydrologists do have one very important function; that of determining the parameters of the extreme events which could overwhelm an existing dam, and analysing the effects of its failure.

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

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

We accept the arguments for an all-Scotland body to take responsibility for the administrative, legal and enforcement duties of the 1975 Reservoirs Act. We are less convinced by the arguments for these duties to be taken on by SEPA, feeling that it would move SEPA further away from its primary environmental regulator role towards an engineering responsibility. Is not the Scottish Government itself at least as well-qualified to assume this role?

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 are no proposals for dealing with reservoir flood maps in the EU Floods Directive, and we presume the proposed Flooding Bill was meant. If so, we believe that these are adequate provided that the risks from reservoirs and reservoir failure are explicitly included.

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

We would support these proposals in principle, but account needs to be taken of the reasons given in para. 4.14 for not requiring undertakers to produce inundation maps, i.e. that many do not have the resources or the ability to do this.

Q34. Views on Crown application and any other comments?

There seems to us no valid reason for exempting Crown (usually Ministry of Defence) installations from the provisions in normal circumstances, when special exemption can always be brought into effect for a national emergency.

Conclusion

We commend the proposal by the Scottish Government to present new legislation to effect a comprehensive improvement in the management of flood risk, and finally to remove from the legislation the idea that 'prevention' is possible. We feel that the better management of flood risk is a good and sufficient primary objective for the legislation, and that 'sustainable flood management' is something of a distraction. We should prefer to see 'sustainability' promoted as just one of a number of desirables to be pursued, including greater security from flooding, greater resilience in the event of flooding, and economic and administrative efficiency.

RESPONSE TO CONSULTATION ON THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND

FLOOD RISK MANAGEMENT

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

The definition appears to be designed for practitioners and not the general public. There is a risk that the aims and aspirations of Sustainable Flood Management (SFM) will be ignored if the definition is not easily understood by all stakeholders. There is a need to ensure stakeholder involvement to provide a holistic approach to achieving SFM.

It is essential that good guidance is produced on how SFM can be achieved - this should include practical examples such as Renfrewshire Council's Interreg III B Project. Additionally there is a requirement to provide strong indicators to measure sustainability.

All aspects of sustainability must be considered including social and economic drivers - not just environmental aspects. Different weightings could be applied to each factor to define SFM.

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

See above response.

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

The desirability of a single competent authority is accepted in order to allow the European Directive to be delivered appropriately. However, it is clear that this Bill extends beyond the bare implementation of the EU Floods Directive to a review of existing flooding legislation. It may therefore require the identification of the Local Authorities as a competent authority within this role. A dual competent authority may be unavoidable to achieve the aspirations of the Flooding Bill.

There is a need to consider both catchment and local levels of flood risk mitigation measures. These do not stand alone and require both the Local Authority and SEPA (and other stakeholders) to collaborate closely together at both levels. The aim of the Directive is to look at a much more holistic approach and that is what is required in Scotland.

Clearly a partnership approach is essential to ensure successful implementation of all aspects of the Flooding Bill and not just the European Floods Directive.

It is important to note that the promotion and construction of flood prevention schemes remains a permissive power and not a duty.

The proposal that the Scottish Government will prepare flood risk and hazard maps that show only the extent of a flood, and not the water depth or flow velocity (paragraph 3.10) raises some concerns. Not to include the depths of inundation appears to be an opportunity lost. If the depths of inundation were given, they could be used as a valuable tool in, for example, development management. The Scottish Government should reconsider the extent of this proposal.

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?

See response to Question 3.

However, SEPA is currently a regulatory body, and the organisation will have to adopt a different approach and attitude for the collaborative approach proposed in the consultation. SEPA will have to consider the cultural challenge they face when they become a driver as well as a regulator. SEPA does have extensive experience of flood risk and associated environmental issues but will have to embrace the wider concepts of social and economic drivers when considering development. The current focus/emphasis solely on environmental issues would certainly have to change.

The Scottish Government needs to consider how SEPA can be made more directly accountable to members of the public.

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?

See response to Question 3.

The way in which the consultation document describes Area Flood Risk Management Plans and Local Flood Risk Management Plans is confusing and appears unduly bureaucratic. The hierarchical approach is sensible, but it cannot be a purely 'top-down' approach imposed on Local Authorities. The approach will need to be an iterative one with each level informing and being informed by the other.

Should the proposals mean that Area Flood Risk Management Plans must be completed before Local Flood Risk Management Plans this could result in delays to schemes already being considered or underway. There is a real concern that the Competent Authority may, through the Area Flood Risk Management Plans, attempt to impose sets of specific measures to address flood risk on responsible authorities – without consideration of local priorities or the availability of technical and financial resources.

There must be a pragmatic consideration of the boundaries of the various Plans to discourage too many talking shops leading to inaction on the ground.

There is clearly a need to quantify what constitutes significant flood risk within a framework.

In order to promote SFM it is essential that sewerage infrastructure is not neglected and current duties for Scottish Water along with the efficacy and funding must be considered.

The Society of Chief Officers of Transportation in Scotland is concerned that there is a proposal to have a new duty for them to prepare (where a *significant* flood risk has been identified) a Local Flood Risk Management Plan which is to include a "funding plan". This will present a significant additional burden on already hard-pressed Local Authorities.

The Society of Chief Officers of Transportation in Scotland has real concerns on how future funding for flood risk management will be indicated. Paragraph 3.30 suggests future funding will be based on the level of significant flood risk in each Local Authority. This approach fails to consider the cost of flood risk management measures. Consider an example of two authorities with broadly similar levels of significant flood risk where one can construct embankments as a protection to flood

risk, but the other, because of the nature of the terrain, must construct walls. (The cost of constructing walls can be more than three times the cost of constructing embankments.)

Again the consultation appears to suggest that since funding for flood risk management has now been transferred to the local government settlement, local authorities will automatically have funding to allocate to a plan for dealing with that risk. This is a far too simplistic view of managing flood risk, and totally unreasonable.

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?

Partners should be left to decide this although there would be a role for Ministers to adjudicate should a dispute occur.

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

As stated in question 3, it is suggested Local Authorities should be designated a competent authority alongside SEPA but we agree the above bodies should be identified as responsible authorities.

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

We suggest the following bodies should be involved but are uncertain as to whether they should be designated responsible authorities:

- Scottish and Southern Energy;
- Scottish Power;
- British Waterways;
- Network Rail;
- Transport Scotland.

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

Yes, this could be similar to the Planning etc (Scotland) Act 2006.

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

Wider stakeholder and community engagement would be facilitated by giving the lead role to local authorities, who are democratically accountable to local communities and have established local consultation and communication structures already in place. SEPA are not set up to deal with the public at a local level, and are not directly accountable to the public at a local level.

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?

If area flood risk management plans are at a strategic level, the River Basin Management Planning process could be followed. However, it is not clear how frequently this would apply as flood risk management plans are required for areas of significant risk already highlighted in the initial Preliminary Flood Risk Assessments.

The Bill must provide for catchments which cross the national boundary as is the case with the Solway Tweed River Basin.

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

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

Given the importance of the Area Flood Risk Management Plans in delivering sustainable flood management, it is essential that adequate funding be put in place to implement measures when approving the plan(s).

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

It is essential that integrated urban drainage plans are included within the Local Flood Risk Management Plan to provide a holistic approach; however there are associated funding and programming issues which will need to be addressed.

The approach requires a clear planning direction to ensure integrated investment by responsible bodies in their asset management of sewers and roads and in their watercourse management functions. It also relies on concurrent and supporting investment, levered in from new development and redevelopment via the planning process. As the consultation points out there are significant planning issues for urban areas of the future. There may also be the need to address the Housing Act in respect of integrated asset management regimes where significant areas of social housing drainage could be better managed.

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

The Society of Chief Officers of Transportation in Scotland feels that an opportunity was lost when Scottish Water published the 2nd Edition of Sewers for Scotland. This document did not embrace sufficiently or appropriately the philosophy of SUDS. It comes as no surprise that Scottish Water is now currently looking to form standard agreements with Local Authorities for the provision of integrated drainage arrangements; ie those parts of SUDS that Scottish Water will not adopt and are not detailed in their Sewers for Scotland manual.

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?

Flood Risk Management Plans should inform the way that development plans are prepared.

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?

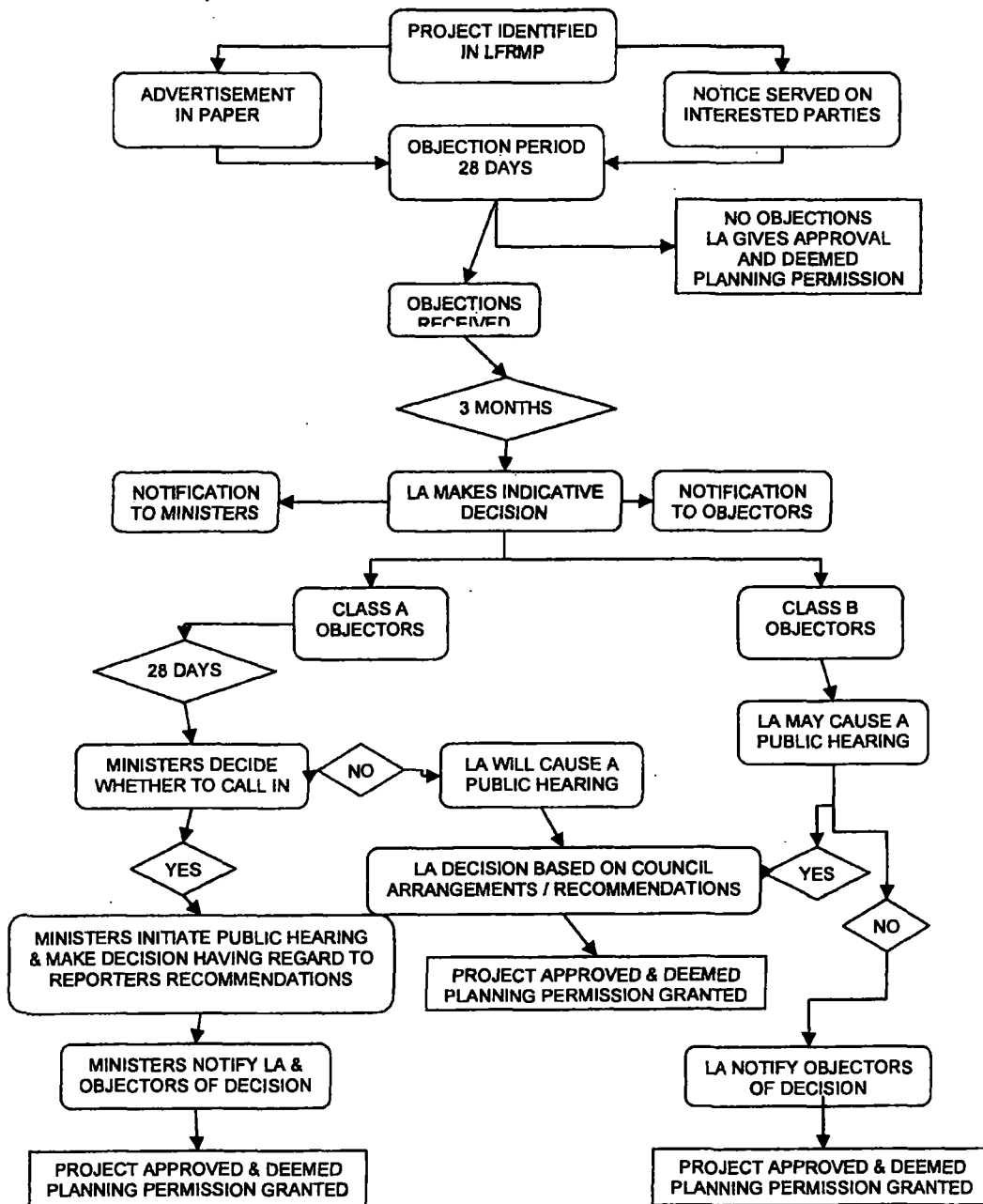
The aspiration of granting deemed planning permission and a streamlined approach is welcomed. However, there is doubt as to how this can be achieved in relation to other permissions that may be required such as Listed Buildings, Conservation Area Consent, Traffic Orders, Controlled Activities Regulations etc.

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

If the scheme is so small that planning permission is not required, then it should not require Ministerial confirmation. Ministerial Approval should not be required where an agreement has been reached with local landowners/interested parties.

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

A Local Authority based approach is welcomed and the flow chart issued at recent Scottish Government workshops appears reasonable with some amendment (see flow chart below).



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?

A Local Authority based process does have merit and would help to expedite the process for a significant number of proposals. There is concern however that Scottish Ministers would end up calling in many applications because of objections. Funding issues remain a concern.

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

If timescales were brought into line with planning this would assist greatly and should be considered; it would also be hoped that the CAR procedure could also be aligned with planning with a 21 – 28 day period being preferred.

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

Yes but may be more appropriate for planners to decide.

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

The publication of guidance similar to the Design Manual for Roads and Bridges for flooding would be helpful.

At present skilled staff are in short supply and this needs to be addressed urgently both through the education process and funding.

The consultation document suggests that it would be inappropriate to make the full technical detail of a flooding scheme the responsibility of the Planning Authority. It also suggests that Local Authorities in each Flood Risk Management Planning Area might contribute to an area pool of experienced flooding engineers which could be utilised by each authority for technical scrutiny of proposals. Again this raises questions on the practicality of this suggestion:

- The wages of the engineers giving advice on proposals not in their authority would have to be met from the Local Authority benefiting;
- Their present employer will have to ensure that insurance is in place whilst doing work which is in effect private work for another Authority;
- Indemnity insurance for the engineers requires to be in place if the design fails;
- Agreement between Local Authorities is required for the release their engineers for such a task giving the work load currently being undertaken;
- Consultants would still be required if there are no experienced engineers available.

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

Minor and universally accepted schemes where landowner agreement is in place; these should be able to be fast tracked.

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

There are a number of issues relating to the powers within the Flood Prevention (Scotland) Act 1961 which do not assist the Local Authorities' ability to take the necessary action to avert danger to life and property.

- There is a 14 day notification period for land entry this may delay the clearance or removal of obstructions. This notification period should be removed.
- At present Local Authorities cannot carry out any improvement works that may assist without raising a flood prevention order. Minor improvements should be allowed including pipe size increase; re-alignment of systems; small bund construction; removal and replacement of culverts; re-building of walls; new headwalls, etc.
- The Local Authorities should have the power to serve notice on landowners/property owners to carry out works to remove blockages or obstructions. If these works were not carried out within a set timescale then the Local Authorities should have powers to carry out the works and re-charge. It is important that this flexibility is provided and it should be noted that an element of control, where applicable, will be exercised by SEPA through the Controlled Activity Regulations.
- The bye-law facility should be removed and replaced by criminal offences.
- Definitions within the legislation also need to be clarified or expanded; for example "watercourse"; "maintain watercourses in a due state of efficiency"; "assess condition"; "from time to time"; "repair"; "cleansing" etc
- Having partial control of some surface water sewers would enable inspection and maintenance to be carried out.

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

This is dependant on the guidance. A CAR licence obtained too early in the process may cause complications later on. Environmental effects must not be allowed to outweigh the need to protect lives etc.

If statutory it would encourage people to sign up to meet timescales. Or if it is to be guidance then it has to be under regulation which would come within secondary legislation.

What has become apparent is that the application of CAR requires consideration alongside the planning process and planning process timescales. This should include any proposed flood prevention schemes.

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

SEPA's approach/advice is inconsistent not only on a geographic basis across Scotland but also during the development of a specific project.

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 Society of Chief Officers of Transportation in Scotland would like to take the opportunity to highlight to the Government the necessity for maintaining the access rights presently existing for promoting flood measures.

The timescales for the promotion, advertising, etc should be streamlined and shortened.

The proposed legislation should contain provision for the dismissal of trivial or frivolous objections with out the need for a Local Public Inquiry.

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

The form and content of the biennial reports would benefit from being more systematic and they should be used as a mechanism for monitoring and reporting on the local flood risk management plans. It is essential the reports are written for ease of understanding by both the practitioner and the public. Direction from Scottish Ministers should not result in a complex and burdensome process.

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, the proposals outlined will improve flood risk management if a partnership approach is considered - this will depend on the agencies/stakeholders working together to achieve this.

It is essential that Scottish Water sewerage networks be included from the outset and duties need to be placed on Scottish Water to ensure they engage in the SFM process. There is also a need to consider their present work and financial funding arrangements to assist with this.

As agricultural land is proposed to be included within the remit of Local Authorities it should be ensured that no burden is placed on them to repair or maintain agricultural embankments, these should remain the responsibility of the landowner. It would be useful to establish a database of where these embankments are, what their purpose is, what the protection standard is and what it has been constructed from, but the exercise and cost of achieving this would be very significant and would probably be in excess of many, if not all, Local Authorities' budgets. There will also be a need for clear guidance on how these embankments are to be dealt with, with respect to maintenance, responsibility of maintenance, etc.

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

The primary duty for flood mitigation measures should remain with the riparian owner and more education is required to ensure they understand their role and responsibilities.

An absolute duty to promote measures to alleviate flooding would place an intolerable and potentially limitless burden on Local Authorities.

RESERVOIR SAFETY

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

Enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body, if and only if that body is given the appropriate financial and technical resources. If those resources can not be guaranteed, the current process and system should remain in place.

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

See Q30 above. If SEPA is established as the competent authority for flooding, it would be appropriate to designate SEPA as the competent authority for enforcement responsibilities under the Reservoirs Act 1975.

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?

Ideally, there should be a statutory duty on the owners to produce the maps, although it is acknowledged that guidance may be required. Some private owners may not be in a financial position to produce maps and there needs to be a mechanism to cater for that. The duty to produce such maps should be on the basis of risk and not absolute.

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

Yes but further thought is needed as to how to achieve.

Q34 - Views on Crown application and any other comments?

The Crown should not be exempt and should be encouraged to comply.

ADDITIONAL COMMENTS

- Funding remains a key issue in all areas.
- There is a lack of technical expertise (engineers, planners, hydrologist, fluvial hydro-geomorphologists and modellers) which needs to be addressed.
- The present Indicative River & Coastal Flood Map (Scotland) has a number of inadequacies and suitable funding is required to ensure high accuracy maps are available across Scotland (for example maps based on Lidar DTM).
- Compensation for landowners/farmers for land needed for natural flood management needs early consideration. There is also concern on how much land may be available should pressures increase on crop production.
- The rights of owners should be maintained but if they prove to be "unreasonable" to the promotion of a flood management scheme for the benefit of the wider community, Compulsory Purchase should be available and the process for implementing should be streamlined.

THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND

DUNDEE CITY COUNCIL: CONSULTATION RESPONSE

APRIL 2008

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

The SFM approach is quick and assists easy recovery, however, recovery periods associated with existing settlements are lengthy and stressful for those affected. Therefore, although the definition sits comfortably with future sustainability, existing settlements remain a potential problem. The definition will be less attainable in respect of some existing settlements and without financial support to retro address such sites it will be difficult to meet the definition. A revised definition should aim to include such scenarios.

In respect of future developments and SFM, there are opportunities through the planning and development process to incorporate sustainable measures. However, measures to deliver SFM through building systems and materials are potentially restricted due to insufficient advancements in technology. Such an approach to SFM could assist, through the development process, in integrating SFM with third parties such as developers.

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

The comments above must be considered in a revised definition in order to ensure a balanced representation is offered reflecting both existing and future SFM issues.

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

The idea of a Single Flood Authority is fully supported with the clear benefits of resolving cross boundary issues and dealing with Flood & Surface Water Management on a catchment wide basis.

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?

This authority believes that the role of a single competent flood authority should be allocated to an existing authority with experience in this field. SEPA currently has a national responsibility for Flood Warnings and has the necessary skill base to undertake this role. Provided that adequate resources are made available then SEPA is the appropriate body for this new role.

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?

This Council agrees that this is a sound basis for developing the plans, but has concerns regarding their implementation.

As funding for flood risk management has now been incorporated within the local government settlement, the implementation of projects will be for the Local Authority to decide. The move away from 'ring fencing' will mean, there is a risk that Local Authorities must decide on the prioritisation of funding

Whilst the basis for the development of Flood Risk Management Plans appears logical there is some concern as to how this will play out in practice. Who decides the form of protection for an area, is the Local Authority's decision final with appropriate funding being made available or will the funding be based on the competent authorities interpretation of an appropriate scheme which might be at odds with the Local Authority's preference? This would lead to a funding gap and possible dispute and guidance regarding prioritisation process are essential.

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?

In the first instance it should be left to the partners, however, where there is no consensus, then SEPA should have the power to designate a lead authority. In the event that the parties do not agree with SEPA's determination, then it is appropriate that there is a referral mechanism to the Ministers.

A model could be established for the management and administration process, similar organisational governance has been established for the operation of RTP's.

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?

Port Authorities, DEFRA.

Farmers Union or equivalent countryside landowning organisation should be high on the list of consultees.

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

This authority supports the principles of closer working and that responsible authorities should have a duty to work together. Guidance will be needed on the levels of representation on Flood Groups so as to not unfairly burden one authority over another. The principles of Planning decisions on a Regional perspective are being discussed and these proposals would sit comfortably in that framework.

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

The whole consultation framework for stakeholder and community engagement needs to be set out as well as indications of how wide the consultation is expected to be.

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?

The principles are already established and to follow the same format aids understanding

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

Yes and clearly states that this approval carries statutory weight.

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

It is imperative, if the impacts of flooding are to be mitigated, that urban drainage plans are included in the hierarchy.

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?

FRMP's should inform Development Plans and planning authorities should have regard to them. The proper place to address this is through a review of SPP7 not the current consultation. Such an approach would embrace the intent of the revised legislation to integrate and modernise flood risk management.

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 it would deliver a more streamlined process but a less democratic process. For that reason this Council prefers Option 2.

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

Not necessarily, considering that a system of appeal would be in place for those scheme's subject to these arrangements.

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?

Present procedures satisfactory.

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.

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

28 days

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

This Council does not agree that this would be appropriate. The suggestion is based on development activity which is presently allowable by local authorities without the need for consent. Even these arrangements however are subject to constraints. Similar constraints should be attached to the scheme of deemed planning consents.

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

The skills required, namely hydrologists, drainage engineers, geographers and mapping specialists and associated knowledge of development planning, are not necessarily commonly found in all local authorities' technical departments. It will be necessary to seek this technical expertise from other departments and duties and/or retrain in order to develop a level of in house expertise. Alternatively some authorities

may seek to externalise this work to term consultants. If existing resources are not to be overburdened, then additional resources will be required to meet this demanding challenge and this should be funded through any financial settlement. Alternatively some measure of self financing may be an option if a scheme of charging can be considered such as for the CAR Regs or as in higher charges for Planning Applications.

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

No

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

This Council is of the opinion that sufficient powers are available. The Local Government in Scotland Act 2003, Part 3 Section 20 enables Local Authorities to do anything they consider is likely to promote or improve the well being of their areas and/ or the persons in that area.

The Civil Contingencies Act 2004, The Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 and statutory guidance 'Preparing Scotland' establish a clear set of roles and responsibilities for Local Authorities and partner agencies in emergency preparation and response.

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?

There is currently an apparent gap in the regulations which leaves out 'LAND DRAINAGE' control and management. For agricultural land this appears to be adequately dealt with under Riparian precedent. However when new development is considered land drainage is not covered by any of the competent bodies. This leads to an inability to ensure that developers have undertaken a necessary duty of care and the reality is that the local authority is often pressured to resolve problems that should have been addressed by the developer.

It is considered that a responsibility for regulating LAND DRAINAGE would sit comfortably within an 'Urban Drainage Plan' but would not remove 'Riparian' responsibility, but would include a cost recovery mechanism if a developer failed to 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?

If 'Flood Measures' are anything which is not a formal 'Flood Prevention Scheme' then it would seem that there are sufficient measures under existing planning acts and the Local Government in Scotland Act 2003 to facilitate measures which would be in the interests of an area.

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

Currently there are 32 Local Authorities and 32 types of biennial reports which vary considerably in quality. To aid stakeholder participation and to be transparent it is important that a common format is adopted for these reports.

Opportunities to complete biennial reports online and hosted by the Scottish Government should be explored.

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

This authority agrees that the proposals will assist in improving the integration of flood risk management; however, funding remains an issue for local authorities and the proposals will not ensure Scotland is equipped to implement SFRM without sufficient financial investment.

Any new duties imposed on public sector bodies in respect of flood risk measures should be fully resourced by the Scottish Government to enable those duties to be carried out.

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?

No additional duties are considered necessary; however, any new duties imposed on public sector bodies in respect of flood risk measures should be fully resourced by the Scottish Government to enable those duties to be carried out.

Clear guidance is required regarding the management of existing legislation including any periods of transition.

Scottish Water currently are responsible for dealing with up to 1 in 30 year flood events where as, there is no comprehensive responsibility for dealing with flood events above this level. This issue clearly needs to be addressed.

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?

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. This authority is content with the proposals.

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?

There is no perceived justification to make Crown bodies exempt from complying with this legislation

Kaya Consulting Limited responses to questions posed in Scottish Government consultation document, 'The Future of Flood Risk Management in Scotland'

Responses to questions posed in the consultation document are provided below. Please note that comments are provided for selected questions only.

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

When taken along with the definitions of 'sustainability' and 'sustainable development' provided at the back of the consultation document we believe that the definition of Sustainable Flood Management is reasonable and includes the most important aspects of what we believe is Sustainable Flood Management.

However, we would suggest one change to the definition. As practitioners we would like any definition of Sustainable Flood Management to imply that it is a practical approach to flood management that contains a number of methods which can be applied with the 'aim of providing the maximum possible social and economic resilience'. By stating that SFM 'provides the maximum possible social and economic resilience to flooding', the definition implies that SFM is either a defined and proven methodology (not true) or that it is an aspirational concept that can only be attained once a point of 'maximum possible' resilience has been reached.

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

It is unlikely that any definition that includes the concept of sustainability and tries to combine it with flood management will be clear and simple to understand for all. Perhaps it is more important to have a definition that is accurate and forms the basis for a change in approach to flood management, rather than one that sacrifices these aspects for simplicity. In its current state we believe that the definition of SFM is acceptable as long as read along with additional definitions of 'sustainability' and 'sustainable development'. However, the fact that the definition requires two footnotes suggests that it may not be clear and simple to understand.

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

Yes we do.

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?

We agree that there should be a single, national authority tasked to deliver the Floods Directive. However, our preferred approach would be the development of an agency that is separate from SEPA.

We believe that if SEPA were to become the competent authority this could jeopardise their regulatory independence. This role held by SEPA is essential in developing and implementing a national flood risk management strategy, which addresses other environmental legislative requirements.

We also have concerns about resourcing aspects of such a task if it is added to SEPA's existing commitments. As a result, we would like to see the development of a focussed committee or agency tasked with implementing the Floods Directive and which reports directly to Ministers. This agency should aim to attract experienced flood managers from government, industry and academia, without the constraints associated with being part of a larger regulatory organisation such as SEPA. Such a committee or agency would aim to provide effective management, ensure co-ordination between agencies and maintain high technical standards.

SEPA will retain an important role in the delivery of the Floods Directive as one of the key responsible authorities.

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

We believe that this is a sound basis for development of local plans. We agree that Area and Local Flood Risk Management Plans should be integrated. However, Area Flood Risk Management Plans should have sufficient flexibility to allow feedback from Local Flood Risk Management Plans, if, following more detailed studies at the local level, the best local option differs from that proposed within the Area plan. Without such flexibility to adapt to local conditions, Local Flood Risk Management Plans will only be seen as the implementation of measures identified in the Area Flood Risk Management Plans.

There is an issue with local authorities having the required technical expertise and capacity. This is covered under Q21.

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 selecting a lead authority within a local area should be left to the partners. However, Ministers should be called in to mediate or select the lead authority if a local decision cannot be made.

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

Yes we do. We believe that some guidance should be provided in case of disagreement between the partners (for example, in prioritising flood risk and/or developing measures to address flood risk).

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

Yes.

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

We think that integrated urban drainage plans should be included as part of Local Flood Risk Management Plans in areas where it is considered to be significant. It may not be cost-effective, or necessary, to have fully integrated urban drainage plans in all areas.

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 FRMP's?

We believe that this should be a two-way process. Local authorities should show regard to Flood Risk Management Plans, but Flood Risk Management Plans should also be cognisant of Local/Development Plans.

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

Yes we do.

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

We believe that a local authority based procedure (Option 2) is a better way of simplifying the present processes. This would speed up the process for dealing with small schemes. However, there may be a need for Ministerial confirmation if the scheme extends over more than one local authority boundary and they cannot agree between themselves.

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

Yes we do.

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

It would be appropriate, but only if the Planners are also statutory consultees to the process.

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

Some local authorities do not have the technical expertise and capacity to deal with a complex flood risk management scheme. Recruitment is one option but there is a shortage of such skilled professionals in the UK. One possible solution could be the development of a group of experienced flood managers, perhaps similar to Panel Engineers involved in reservoir inspection. Local authorities can appoint such professionals to provide the necessary technical expertise during the course of the project. For large flood risk management schemes, or complex schemes extending over more than one local authority boundary, it may be considered more appropriate for the Minister to appoint such professionals to ensure the necessary technical standards are observed.

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?

In addition to streamlining the process, we believe that there are two other areas where the present system could be improved. There should be a shorter and simplified procedure for small schemes. This could perhaps be achieved by a local authority based procedure. There should be an independent panel of experts appointed by the Minister to assess the merits of a Public Inquiry. At present, an objector can walk away before the Inquiry takes place after forcing the local authority to spend a considerable amount of time and resources to prepare for the Inquiry.

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 will no doubt improve flood risk management in Scotland.

We presume that reviewing and updating of the plans will follow the same timetable as stated in the Floods Directive. Each review/update may result in changed risk, and this may have an impact on the level of protection provided. The proposals should perhaps include a procedure for review and updating of the plans.

We have noticed that responsibilities of SEPA as listed in Paragraph 1.7 of the Consultation Document do not include hydrometric data collection and provision. As any flood risk management plan is largely dependent on the quality and quantity of such data, the proposals could be improved by giving SEPA

Kaya Consulting Ltd

the responsibility to identify any gaps in hydrometric data, and to collate, maintain and provide such data to other parties for the preparation of the flood risk management plans.

084

From: [REDACTED]
 Sent: 22 April 2008 22:45
 To: Flooding, Erosion and Reservoir Safety
 Subject: Consultation Response

.....
 This email has been received from an external party and
 has been swept for the presence of computer viruses.

The Future of Flood Risk Management in Scotland

RESPONDENT INFORMATION DETAILS

Name: [REDACTED]
 Organisation: Scottish Organic Services
 Address: 7 Rintoul Avenue CRIEFF
 Postcode: PH7 3SJ
 Email: [REDACTED]
 Telephone Number: [REDACTED]
 Responding as: An individual
 Individual Permission: Yes
 Confidentiality: Yes, make my response, name and address all available
 Group or Organisation: Not Supplied
 Share Response Permission: Yes

Consultation Questions

The Future of Flood Risk Management in Scotland

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?

Question 3: Do you agree with the conclusion as set out in paragraph 3.17?

<p>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?</p>	
<p>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?</p>	
<p>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?</p>	
<p>Question 7: Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?</p>	
<p>Question 8: Which other bodies should be identified as responsible authorities?</p>	SEERAD, or their successors
<p>Question 9: Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?</p>	
<p>Question 10: Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?</p>	
<p>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?</p>	
<p>Question 12: Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?</p>	
<p>Question 13: Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?</p>	Definitely
<p>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?</p>	
<p>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?</p>	
<p>Question 16: Should Ministerial confirmation be</p>	

<i>made necessary even where features of a scheme do not require planning permission?</i>	
<i>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?</i>	
<i>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?</i>	
<i>Question 19: What would be the appropriate timescales for notification and response?</i>	
<i>Question 20: Would it be appropriate for such a process to carry deemed planning consent?</i>	
<i>Question 21: How should the issue of technical expertise and capacity be addressed?</i>	
<i>Question 22: How could such a process ensure the necessary technical standards are observed?</i>	
<i>Question 23: Are there any additional alternatives to the options outlined above which would simplify procedures?</i>	
<i>Question 24: Do you agree that streamlining the CAR and flooding/planning processes, can be managed through better guidance?</i>	
<i>Question 25: Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?</i>	Ensure that this strategy is linked to those for Soils. Much attenuation could be achieved through the encouragement of addition of more organic matter to agricultural soils. This also links with the Climate Change and Water Quality initiatives, Nitrate Directive, Food and Health Strategies etc.
<i>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?</i>	
<i>Question 27: Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?</i>	
<i>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?</i>	Certainly will improve FRM but not necessarily enough to prevent further events
<i>Question 29: Do consultees feel that this is</i>	

<i>enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?</i>	LA should have this duty
<i>Question 30: Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?</i>	
<i>Question 31: If so, should it be SEPA or another as yet unidentified body?</i>	
<i>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?</i>	
<i>Question 33: Do agree that enforcement powers be extended and post incident reporting included as an additional requirement?</i>	
<i>Question 34: Views on crown application and any other comments?</i>	

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[REDACTED]

From: Galbraith LM (Linda)
Sent: 23 April 2008 16:03
To: [REDACTED]
Subject: RE: Consultation Response
Attachments: Acknowledgement Letter.doc

[REDACTED]

Please find acknowledgement letter attached.
Thanks
Linda Galbraith

From: [REDACTED]
Sent: 22 April 2008 22:45
To: Flooding, Erosion and Reservoir Safety
Subject: Consultation Response

.....
This email has been received from an external party and
has been swept for the presence of computer viruses.
.....

The Future of Flood Risk Management in Scotland

RESPONDENT INFORMATION DETAILS

Name: [REDACTED]
Organisation: Scottish Organic Services
Address: 7 Rintoul Avenue CRIEFF
Postcode: PH7 3SJ
Email: [REDACTED]m
Telephone Number: [REDACTED]
Responding as: An individual
Individual Permission: Yes
Confidentiality: Yes, make my response, name and address all available
Group or Organisation: Not Supplied
Share Response Permission: Yes

Consultation Questions The Future of Flood Risk Management in Scotland	
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?	
Question 3: Do you agree with the conclusion as set out in paragraph 3.17?	
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?	
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?	
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?	
Question 7: Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?	
Question 8: Which other bodies should be identified as responsible authorities?	SEERAD, or their successors
Question 9: Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?	
Question 10: Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?	
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?	
Question 12: Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?	
Question 13: Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?	Definitely
Question 14: Should Flood Risk Management	

<p><i>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?</i></p>	
<p><i>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?</i></p>	
<p><i>Question 16: Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?</i></p>	
<p><i>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?</i></p>	
<p><i>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?</i></p>	
<p><i>Question 19: What would be the appropriate timescales for notification and response?</i></p>	
<p><i>Question 20: Would it be appropriate for such a process to carry deemed planning consent?</i></p>	
<p><i>Question 21: How should the issue of technical expertise and capacity be addressed?</i></p>	
<p><i>Question 22: How could such a process ensure the necessary technical standards are observed?</i></p>	
<p><i>Question 23: Are there any additional alternatives to the options outlined above which would simplify procedures?</i></p>	
<p><i>Question 24: Do you agree that streamlining the CAR and flooding/planning processes, can be managed through better guidance?</i></p>	
<p><i>Question 25: Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?</i></p>	<p>Ensure that this strategy is linked to those for Soils. Much attenuation could be achieved through the encouragement of addition of more organic matter to agricultural soils. This also links with the Climate Change and Water Quality initiatives, Nitrate Directive, Food and Health Strategies etc.</p>
<p><i>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?</i></p>	

Question 27: Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?	
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?	Certainly will improve FRM but not necessarily enough to prevent further events
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?	LA should have this duty
Question 30: Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?	
Question 31: If so, should it be SEPA or another as yet unidentified body?	
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?	
Question 33: Do agree that enforcement powers be extended and post incident reporting included as an additional requirement?	
Question 34: Views on crown application and any other comments?	

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From: [Redacted]
Sent: 22 April 2008 22:56
To: Flooding, Erosion and Reservoir Safety
Subject: Consultation Response

.....
This email has been received from an external party and
has been swept for the presence of computer viruses.
.....

The Future of Flood Risk Management in Scotland

RESPONDENT INFORMATION DETAILS

Name:

Organisation:

Address: s

Postcode:

Email:

Telephone Number:

Responding as: An individual

Individual Permission: Yes

Confidentiality: Yes, make my response available, but not my name or address

Group or Organisation: Not Supplied

Share Response Permission: Yes

Consultation Questions The Future of Flood Risk Management in Scotland

	<p>Q1. + Q2. The definition is sound as far as it goes and the objectives are consistent. However, overall it is problematic because it is narrow in the range of responses that it appears to support. It would seem to focus on protecting and working with the environment to achieve the 'avoidance' aspect of resilience, and to constrain the other 3 to actions which involve protecting and working with the environment. So, for example, education</p>
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Question 1: Do you believe the definition of SFM is helpful and of practical benefit to flood risk management?

for awareness or in emergency money for assistance would appear not to be included. This apparent constraint on the possible breadth of the approach is a serious weakness which requires to be remedied. Also, avoidance itself has 2 aspects; actions to produce avoidance at any particular location and actions to produce avoidance overall. In that the SFM definition is based on protecting and working with the environment, it appears to address itself to the former and not to the latter. This is a significant omission which needs to be rectified. The difficulty raised by this comment (above) is that the definition has been used throughout the consultation document. If consideration is to be given to the possibility that there is some substance in the comment, it would follow that overall the approach set out in the document also needs to be expanded. Within the terms of the narrow approach Box 7 is good, but would need to be expanded in the light of the comments on the definition. Within the terms of the narrow approach Box 8 is good, but would need to be expanded in the light of the comments on the definition. For example, local authorities will continue to have primary responsibility for flood alleviation including flood defences and natural flood management. However, they are not asked to consider whether there may be alternatives which address the sensitivity of developments in flood risk areas, rather than the level of risk in those areas. Additional Comment 1: The glossary to the flood risk consultation includes "1 in 100 year event" as "An event that has a probability of occurring once every 100 years. Also expressed as an event, which has a 1% probability in any one year." There should be a review of the use of "measures of current annual risk" which may be and are) taken by the public, and possibly some others, as a basis for a level of confidence over a period of time. In the case of rivers there is uncertainty about how annual risk will change over time, although it is thought that it in some places it may increase to some degree. In the case of sea flooding, it is more certain that flood risk will increase over time, simply because sea level is not expected not to go on rising over many years. The relevance of this is that commercial development investment decisions should be made on the basis of the time period which is the anticipated life of the building. In practice such decisions may be made on the basis of a financial payback of development in 25 years or less. Insurance for commercial development is also provided on the basis of the risk for the

	<p>current year. It does not take account of the possibility that the building may become more expensive to insure in future years. This approach might have been acceptable in times past when the flood risk at the end of a short financial payback period was the same as at the start. Some mechanism does need to be put into place to inhibit development which would add to the overall risk of flooding in the long. Additional Comment 2: The Bill needs to clarify its relationship to the UK and Scottish Climate Change bills - so as to reduce the area of uncertainty about the extent of its intentions.</p>
<p>Question 2: Do you think the definition is clear and simple to understand?</p>	<p>See response to Q 1.</p>
<p>Question 3: Do you agree with the conclusion as set out in paragraph 3.17?</p>	<p>See response to Q 1.</p>
<p>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?</p>	<p>See response to Q 1.</p>
<p>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?</p>	<p>With the establishment of a national standard for significant risk there must be a concern that either the scale of the discovered problem cannot be tackled within a reasonable time period, or that the level of significance has been set so that it fails to identify many locations where there is a lower but still serious level of risk. This could apply in particular to coastal communities whose rivers are relatively short with relatively small catchment areas. Also, the significant qualification outlined in response to Q1 should be noted. Subject to these comments this is a sound basis for the development of Local Flood Risk Management Plans.</p>
<p>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?</p>	<p>See response to Q 1.</p>
<p>Question 7: Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?</p>	<p>See response to Q 1.</p>
<p>Question 8: Which other bodies should be identified as responsible authorities?</p>	<p>See response to Q 1.</p>
<p>Question 9: Do you agree that responsible authorities should have a duty to work together</p>	<p>It is obvious that authorities should work together. Therefore, the duty to do so is only of token value unless there is some simple guidance about what it means in practice and some teeth</p>