

REPORT TO: ENVIRONMENTAL SERVICES COMMITTEE ON 16 APRIL 2008

SUBJECT: THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND

BY: DIRECTOR OF ENVIRONMENTAL SERVICES

1. REASON FOR REPORT

- 1.1 To inform the Committee regarding the publication of the consultation document on the future of flood risk management in Scotland.
- 1.2 This report is submitted to Committee in terms of Section E (23) of the Council's Administrative Scheme relating to exercising the functions of the Council in regard to Flood Prevention.

2. RECOMMENDATION

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

3. BACKGROUND

- 3.1 The First Minister announced on 5th September 2007 that the Scottish Government would be introducing a Flood Bill in 2008 to modernise the flood risk management system in Scotland.
- 3.2 As part of this process the Consultation Document "The future of flood risk management in Scotland" was published on 13th February 2008, and distributed to a range of stakeholders, including all 32 Local Authorities.
- 3.3 The document has implications for the Council's functions as Flood Alleviation, Planning and Emergency Planning Authority. It will set the framework, which dictates how quickly Local Authorities will be able to react and implement alleviation proposals.
- 3.4 The proposals set out in the consultation paper are designed to establish a framework within which sustainable flood risk management in Scotland will operate more effectively than at present and with a view to the transposition to domestic legislation of the European Directive on Flooding. They aim to ensure that there is no duplication of effort, and that the flood risk management process is simplified and better co-ordinated. The Scottish Government acknowledges that local authorities, who are accountable to local communities, and best able to judge the needs of their areas, will continue to be responsible for implementing flood alleviation measures. However, the Government proposals suggest that individual local authorities cannot operate in isolation. The proposals seek to establish a way of co-ordinating catchment flood management planning to ensure a national approach, delivered locally.

- 3.5 Chapter 1 of the consultation deals with the impacts of flooding, the current landscape of flood risk management in Scotland, general roles and responsibilities, current legislation for the management of flood risk, the EC Floods Directive, the planning system and the statutory process for flood prevention schemes, managing urban drainage and The Pitt Report on the Floods in July/August 2007.
- 3.6 Chapter 2 looks at issues concerning sustainable development and sustainable flood management.
- 3.7 Chapter 3 deals with the proposals for the Bill. As well as the general scope and content of Bill, the legislative framework and general duties and responsibilities, this chapter also looks at the following:
- The Competent Authority
 - A clear and participative approach to flood risk planning
 - Responsible Authorities
 - Flood Risk Management Planning – a participative process
 - Approving the plans
 - Ensuring compliance with the Flood Risk Management Plans
 - Managing surface water and urban drainage
 - The planning system
 - Flood protection measures – Simplifying the Statutory Process
 - Simplifying Procedures
 - Flood measures beyond the 1961 Act
 - Controlled Activities Regulations (CAR) authorisation
 - Ensuring a Co-operative Approach
 - Other duties under the 1961 Act, and
 - Delivering Sustainable Flood Management
- 3.8 Chapter 4 looks at reservoir safety, in particular the definition of a reservoir, as well as reservoir flood plans and inundation maps, the extension of enforcement powers, and the Government's perceived need for a single reservoir enforcement authority in Scotland.

4 SUMMARY OF IMPLICATIONS

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

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

(b) Policy and Legal

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

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

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

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

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

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

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

Dealing with Flood alleviation requires long term commitment of resources and as more projects reach the design stage the problem that Moray now faces could confront most authorities. Government has to consider how this should be addressed. Equally while the consultation paper suggests a logical

approach to studying flood alleviation and selecting alleviation measures it is essential that current work by local authorities which could protect vulnerable communities is not shelved but is funded and allowed to proceed. There also needs to be rationalisation of responsibilities so that budgets of responsible bodies are aligned.

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

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

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

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

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

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

The current procedures require that a Flood Prevention Order is approved before a Local Authority can acquire property without risk or offer compensation. This can mean that those directly affected by the construction of Flood Alleviation Measures can face long periods of uncertainty while proposals are considered at public Inquiry. It would be helpful if the rules regarding such purchases could be re-examined.

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

(d) Consultations

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

5 CONCLUSION

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

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Background Papers:

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