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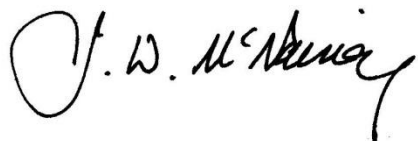
Our ref: A16151533
21 December 2016

Dear Ms Grahame,

BUILDING ON FLOOD PLAINS

Please find attached a report on building on flood plains, following the First Minister's appearance before the Conveners Group 16 November 2016. Please let me know if the Conveners require any further information on this matter.

Best wishes



John McNairney
Chief Planner

Building on Flood Plains – Report to Conveners Group

Background to request

At the Conveners Group meeting on the 16 November 2016, concerns were raised about building in the flood plain and the First Minister committed to:

1. Providing more information on the perceived information gap on the consequences of granting permission for development where unresolved objections on flooding from SEPA remain; and
2. Confirming the number of planning applications that were referred to Ministers as a result of unresolved SEPA objections at the point of determination.

On 9 December the Convener of the Environment, Climate Change and Land Reform Committee wrote to the Cabinet Secretary for Environment, Climate Change and Land Reform on Scotland's climate Change Adaptation Programme highlighting the same concern as point 1, about the application and monitoring of SEPA advice in planning decisions on flood plains.

1 – Unresolved Objections

The Centre for Expertise in Waters (CREW) published 'Assessing the Effectiveness of SEPA's Flood Risk Advice in Planning Decisions' in 2014. For planning applications, it was found that SEPA advice was upheld in 95% of cases (based on a sample of 446 cases determined during 2012). For development plans, only one plan was reviewed given the complexity of that undertaking. However, where SEPA recommended that a site was removed from the plan due to flood risk, the site was removed. At that proposed plan stage, 95% of sites where SEPA had requested a developer requirement for flood risk assessment to be undertaken, the plan reflected that requirement.

The overarching approach of Scottish Planning Policy is to prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere, this aligns with the Flood Risk Management (Scotland) Act 2009 and we consider it to be robust.

The Flood Risk Framework of Scottish Planning Policy provides three categories of flood risk to guide development and the appropriate planning response (the points below are summarised from paragraph 263 of the policy):

1. In little or no risk areas (annual probability of flooding is less than 0.1%) there are no constraints.
2. In low to medium risk areas (0.1 to 0.5% annual probability of flooding), most types of development are suitable. A flood risk assessment may be needed and will be needed for essential infrastructure and most vulnerable uses. Generally not suitable for civil infrastructure, if it must be located in this area it should be designed to remain operational and accessible in extreme flood events.
3. In medium to high risk areas (greater than 0.5% annual probability of flooding), residential and other uses may be suitable in built up areas, provided that flood protection measures to the appropriate standard already exist, or are planned in a current flood risk management plan. Essential infrastructure may also be suitable in built up areas where designed to remain operational during floods and not impede water flow. Generally not suitable for civil infrastructure and the most vulnerable uses, or additional development in undeveloped and sparsely developed areas. Mitigation measures should be provided for development which is permitted. This area can be regarded as the functional flood plain.

Flood risk is therefore subject to varying degrees of safeguarding, with the functional flood plain (which has the highest probability of flooding in any given year) given the greatest safeguarding.

Scottish Planning Policy is also clear that it is not possible to plan for development solely according to the calculated probability of flooding; such calculations should be regarded as a best estimate and authorities should avoid giving any indication that a grant of planning permission implies the absence of flood risk.

Scottish Planning Policy emphasises that in applying the Flood Risk Framework to proposed development a range of other matters need to be taken into account. This includes matters such as the characteristics of the site, the design and use of the development, the size of the area likely to flood and the effects of flooding on access.

SEPA recognise that in addition to their advice on flood risk:

- there are other factors to be taken into account when granting planning permission;
- number of buildings allowed contrary to their advice is low; and
- there are no examples of essential infrastructure or large scale residential development being allowed contrary to their advice.

From a planning system perspective, new buildings are not routinely monitored by the planning authority once construction is complete. However, the planning authority has powers to take enforcement action should construction not occur in accordance with the planning permission.

Currently, development plans are reviewed every five years, at which point new information and data on flooding, including any monitoring undertaken since the previous development plan was produced can be taken into account. SEPA engages with the planning authority in the preparation of the development plan.

SEPA published the first suite of Flood Risk Management Strategies in December 2015, these cover 14 districts and taken together provide the national plan for flood risk management in Scotland. The Strategies were supplemented by Local Flood Risk Management Plans, published in June 2016 and include detailed actions proposed by each local authority in Scotland. The Strategies and Plans build on the National Flood Risk Assessment.

The National Flood Risk Assessment identifies the potential sources of flooding and creates flood risk maps. The National Flood Risk Assessment is reviewed every 6 years as a requirement of the Flood Risk Management (Scotland) Act 2009.

SEPA is commencing the review of the National Flood Risk Assessment. The recommendations from the Climate Change Adaptation Sub Committee Report, new information and changes in the built environment will be considered as part of that process.

Furthermore, the Scottish Government commissioned ClimateXChange to consider flooding policies as part of the evidence needed to inform climate change reporting. The research report includes recommendations relevant to the operation for the planning system and we will consider these through our ongoing Flood Risk and Land Use Planning Working Group.

2 - Planning applications referred to Ministers

Ministers are notified of planning applications where the authority is minded to grant an application with an unresolved SEPA objection. In the last four years **38** such notifications have been received. By way of context, between 2013 and 2016 SEPA were consulted on 9,213 applications where flood risk is an issue. This indicates that the number developments that proceed where there are unresolved SEPA objections is low.

Ministers consider whether the proposal raises an issue of national interest and accordingly whether the decision should be taken by them or by the planning authority. Of the 38 notifications, only **two** were determined by Ministers, the remainder were returned to the relevant planning authority for approval.

It is not always new sites that are being considered. Of the 38 notifications, **12** (32%) were for changes of use of existing development and sites.

The majority of cases notified as a result of unresolved objections from SEPA were for small scale development for houses and flats located predominantly in built up/developed areas. (See Annex A).

Conclusion

The Conveners asked for views on monitoring consequences of developments proceeding in the flood plain despite unresolved objections from SEPA. The information provided above suggests that there is a low incidence of permission being granted contrary to SEPA's advice and that the review of development plans offers an opportunity for monitoring changes in the built environment. However, we are not complacent about the issue of flooding and can look to the next review of Scottish Planning Policy as an opportunity to explore whether there is any further need to revise policy, including on monitoring. Review of SPP would follow the passage of the Planning Bill, currently envisaged in year 2.

John McNairney

Chief Planner
Scottish Government
21 December 2016

Annex A: Notified cases

1/1/16 – to date (30/11/16) – 17 Agency Objections - Details

Application Details	Agency Objecting	Status
Convert retail building to one house and 2 flats, Kirkwall, Orkney	SEPA	Cleared
Build 2 flats in Victoria St, Kirkwall	SEPA	Cleared
Works at Tormiston Mill, Orkney	SEPA	Cleared
Vary planning condition to provide guest accommodation, Station Road, East Linton	SEPA	Cleared
Two houses at Soonhope Farm, Peebles	SEPA	Cleared
Change from public house to dwellinghouse at No1 Shore Street, Dunbar	SEPA	Cleared
Retrospective change of agricultural land to 10 stance caravan park for travellers at St Cyrus	SEPA	Call-in
Foodstore at Wilton Mills, Commercial Road, Hawick	SEPA	Cleared
Flood defence works at Deeside Holiday Park, Maryculter	SEPA	Cleared
Change of use from shop storage to flat, Nith Place, Dumfries	SEPA	Cleared
Change of use from hall and alterations to form 2 flats, Orrock Place, Hawick	SEPA	Cleared
Erection of house, Corpach, Fort William	SEPA	Cleared
Erection of agricultural building and formation of soil bund, Todshawhaugh farm, Hawick	SEPA	Under consideration
Erection of 2 class 3 units, Queens Drive Retail Park, Kilmarnock	SEPA	Under consideration

01/01/15 – 31/12/15 – 13 Agency Objections

Application Details	Agency Objecting	Status
Three houses, Conon Bridge	SEPA	Called-in and refused
Demolish store and erect building (for retail unit and 4 flats), Kirkwall	SEPA	Cleared
Two flats, Kirkwall	SEPA	Cleared
Change of use to house, Innerleithen	SEPA	Cleared
Change of use to house, Hawick	SEPA	Cleared
Camping pod, Ballachullish	SEPA	Cleared
Change of use from offices to 2 flats, Dumfries	SEPA	Cleared

1/1/14 – 31/12/14 – 21 Agency Objections

Application Details	Agency Objecting	Status
Four flats, Kirkwall	SEPA	Cleared
Change of use to dwellinghouse, Hawick	SEPA	Cleared
Four Flats, Callander	SEPA	Cleared
Dwellinghouse, Killin	SEPA	Cleared
Hotel extension	SEPA	Cleared
Change of use to touring caravan site, Lochearnhead	SEPA	Cleared
Smokery, Luss	SEPA	Cleared
Two houses at Teviothead, Hawick	SEPA	Cleared
Change of use to house, Teviothead, Hawick	SEPA	Cleared

1/1/13 – 31/12/13 – 17 Agency Objections

Application Details	Agency Objecting	Status
Portable office, Newcastleton	SEPA	Cleared
Approval of matters application, Clovenfords	SEPA	Cleared
Wildlife pond, Annan	SEPA	Cleared
Alterations to 2 houses	SEPA	Cleared
Change of use from office to flat, Dumfries	SEPA	Cleared
Dwellinghouse, Selkirk	SEPA	Cleared
Swimming pool (domestic), Dumfries	SEPA	Cleared
Change of use from shop to 2 flats, Dumfries	SEPA	Cleared