FLOOD RISK MANAGEMENT ACT 2009 – LEAD AUTHORITIES FOR LOCAL FLOOD RISK MANAGEMENT PLAN DISTRICTS

REPORT BY DIRECTOR OF INFRASTRUCTURE SERVICES

ABSTRACT

This report updates the committee on issues regarding the Flood Risk Management (Scotland) Act 2009 and seeks approval to respond to the Scottish Government with recommendations on which local authority in each of the Local Plan Districts affecting Angus should be lead authority as defined in the Act.

1 RECOMMENDATION(S)

1.1 It is recommended that the committee:

(i) notes the duties of lead local authorities for developing Local Flood Risk Management Plans under the Flood Risk Management (Scotland) Act 2009; and

(ii) agrees to respond to the Scottish Government proposing Angus Council as the lead authority for the Tay Estuary and Montrose Basin district and Perth & Kinross Council for the Tay district.

2 BACKGROUND

2.1 The Flood Risk Management (Scotland) Act 2009 (‘The Act’) places duties on SEPA and responsible authorities to manage flooding in a sustainable manner. The responsible authorities are local authorities and Scottish Water, and any other public bodies and office-holders designated as such by the Scottish Ministers.

2.2 Angus Council, as a local authority (a responsible authority) has functions under Part 3 (flood risk assessment, maps and plans) and Part 4 (flood risk management: local authority functions) of the Act (reference reports 485/11, 180/11, 741/10, 740/09 and 1153/08).

2.3 Under the Act, lead authorities will assume greater responsibilities for the preparation of Local Flood Risk Management Plans as defined in Part 3 of the Act and detailed in this report.

3 CURRENT POSITION

3.1 Duties of Lead Local Authorities

3.1.1 A lead local authority will be responsible for the preparation of a Local Flood Risk Management Plan for each local plan district. Angus lies within two local plan districts: Tay and Tay Estuary & Montrose Basin – see Appendix 1.

3.1.2 Where a local plan district covers more than one local authority’s area, the lead authority and the other authorities must, so far as practicable, co-operate with each other with a view to assisting in the preparation of the local flood risk management plan for the district, review of that plan, and preparation of the interim and final reports, as detailed below.

3.1.3 The nature of the outputs from each individual local authority is essentially the same. Each local authority will be responsible for data collection, providing information and assessment of flood risk from within their administrative boundaries as detailed in the Act, which will be collated by the lead local authority. The format of this information would be agreed in
advance, and would be consistent nationally. The resource implications for each local authority are therefore based on the scale of flood risk within each local authority boundary.

3.1.4 As detailed below, the lead local authority must publish and publicise the plan, and manage the consultation process. The lead local authority must review the plan and report on progress made towards implementing the measures identified.

3.1.5 In addition, the lead local authority and other responsible authorities relevant for that district will work closely with SEPA to promote stakeholder engagement and coordination with local plans.

3.1.6 The lead local authority will not be responsible for the duties of other local authorities within the local plan district required under the Act in their areas. The lead local authority will not be taking on any responsibility for the data collection and assessment required to prepare the plan outwith its own administrative boundary other than some joint monitoring of progress across the entire local plan district. In addition, it is envisaged that many of the activities required for the lead local authority to discharge their duties under the Act will be shared or duplicated within each local authority, through the requirement under the Act for joint-working. For example, it is envisaged that the publication of plans and reports on the plans will require committee approval from each council, ideally based on a common reporting format.

3.2 Local Flood Risk Management Plans

3.2.1 The local flood risk management plans will be published by lead local authorities. In addition to providing a local expression of the strategic plans prepared by SEPA, these "tactical" plans will include a summary of how actions will be implemented in each local plan district. Local flood risk management plans will support engagement with local communities and should also contain both surface water management plans and any additional actions and information that they believe is necessary to support local needs. The milestones for the preparation of the Local Flood Risk Management Plans are identified in Appendix 2.

3.2.2 The Local Flood Risk Management Plan is to include a supplementary part and an implementation part.

3.2.3 The supplementary part must include a summary of the objectives, measures and other information that the lead local authority considers is relevant to the local plan district. Information is to be provided such as maps; how measures will alter, enhance or restore natural features and characteristics; and details of publicity, consultation and changes made in light of views and representations received.

3.2.4 The lead local authority must publish a draft of the supplementary part of the local flood risk management plan ("the draft supplementary part"), in such a manner as they see fit, not less than one year before the beginning of the period to which the relevant flood risk management plan is to relate. The lead local authority must publicise that the draft has been published and the opportunity to make representations about the draft supplementary part, and make copies of the draft supplementary part available for public inspection and accept representation on it.

3.2.5 On publishing the draft supplementary part, the lead authority must also consult persons specified in the Act including responsible authorities on the draft supplementary part and a draft of the implementation part of the plan.

3.2.6 The implementation part must include a detailed timetable for completion of measures, a description of who will be responsible for implementing the measures, arrangements for funding the measures and any such other information as the lead authority considers relevant to the implementation of the measures. The Scottish Ministers, SEPA and the responsible authorities are then responsible for implementing the agreed actions and reducing flood risk.

3.2.7 Measures may include both structural and non-structural measures. A measure is structural if it involves flood protection work, and non-structural measures include: flood warning, awareness raising, the preparation and review of development plans, and the carrying out of
research, monitoring and other methods of gathering information relevant to managing flood risk.

3.2.8 A local flood risk management plan for a local plan district is finalised when the lead authority and all other affected responsible authorities agree to its content, and Scottish Ministers determine its content.

3.2.9 When a local flood risk management plan is finalised, the lead local authority must:
(a) publish the final plan in such manner as it considers appropriate;
(b) make copies of it available for public inspection;
(c) provide a copy of it to SEPA and the Scottish Ministers;
(d) make copies of it available to the public; and
(e) publicise the publication of the final plan.

3.2.10 Local flood risk management plans: interim report

Not earlier than 2 years and not later than 3 years after a local flood risk management plan is finalised, the lead local authority must review the plan and publish a report on the progress that has been made towards implementing the measures identified in the implementation part of the plan.

3.2.11 Local flood risk management plans: final report

Not earlier than 5 years, and not later than 6 years, after a local flood risk management plan is finalised, the lead local authority must publish a report on the plan containing:
(a) an assessment of the progress made towards implementing the current measures,
(b) a summary of the current measures which were not implemented, with reasons for their non-implementation, and
(c) a description of any other measures implemented since the plan was finalised which the lead authority considers have contributed to the achievement of the objectives summarised in the supplementary part of the plan.

3.2.12 Once all councils have approved the plan, the publication and finalising will be undertaken. If this were not possible, eg if there is no consensus agreement between the constituent authorities then it would be for the Scottish Ministers to then determine the content of the local flood risk management plan.

4 PROPOSALS

4.1 The Act identifies the role of lead (local) authorities who are identified for each local plan district. As detailed in paragraph 3.1.1 of this report, Angus lies within two local plan districts: Tay and Tay Estuary and Montrose Basin.

4.2 The Scottish Government have considered the information available and has suggested that the most appropriate candidate for the role of lead local authority for the Tay district, which covers part of Perth & Kinross Council, Angus Council and Stirling Council areas, is Perth & Kinross Council (see Appendix 3 for letter dated 21 July 2011 from the Deputy Director, Environmental Quality, Scottish Government).

4.3 For the Tay Estuary & Montrose Basin, which covers parts of Angus Council, Aberdeenshire Council, Fife Council and Perth & Kinross Council areas and all of Dundee City Council area, the Scottish Government have considered the information available and has suggested that the most appropriate candidate for the role of lead local authority is either Angus Council or Dundee City Council. The Scottish Government recommend that the local authorities within the local plan district should discuss who is best placed to undertake this role. The Scottish Government have requested that the council inform it on who the agreed lead local authority is by 30 November 2011.
4.4 It is proposed that the council confirms the Scottish Government’s suggestion that the most appropriate candidate for the role of lead local authority for the Tay district is Perth & Kinross Council. Given the relatively large geographical area of Angus within this district, it is considered that Angus Council will have a major input in supporting Perth & Kinross Council as lead authority.

4.5 In terms of the most appropriate candidate for the role in the Tay Estuary & Montrose Basin local plan district, the council has established a significant team of specialist staff within the Roads Division to undertake the duties required under the Act. It is considered that the establishment of this team demonstrates the commitment already shown by the council to managing flood risk within Angus. It is also considered that the additional opportunities as a lead local authority for close liaison with Scottish Government, SEPA, Scottish Water and other responsible authorities will provide for better communication and management of flood risk matters more generally. In addition, through informal discussions with technical officers in the other neighbouring councils, it is believed that they will agree to Angus Council taking on the lead local authority role. Additionally, this matter was raised at the recent meeting of Tayplan members including elected representatives from the other relevant authorities except for Aberdeenshire Council who are not part of the Tayplan grouping, where it is understood that those present were in broad agreement with Angus Council being proposed as lead authority for the Tay Estuary & Montrose Basin local plan district. It is therefore considered that Angus Council is the most appropriate candidate and should be proposed for the role in the Tay Estuary & Montrose Basin local plan district.

4.6 Should the local authorities fail to agree on who the lead local authority shall be for any district, then under the Act, the Scottish Ministers will determine who this should be.

5 RISKS

5.1 The risks associated with the recommendations are outlined within section 3 of this report.

6 FINANCIAL IMPLICATIONS

6.1 There are no financial implications arising directly as a result of the recommendations contained in this report.

6.2 It should however be noted that the financial implications of the Flood Risk Management (Scotland) Act 2009 have essentially two dimensions. Firstly, the on-going revenue implications as previously described in Report 180/11, and secondly, the capital financing implications of any interventions (including flood alleviation works) as may be promoted into the future (see Report 685/11).

6.3 As detailed previously in Report 180/11, there are additional duties over those required under previous legislation which have been imposed on local authorities arising out of the FRMA 2009 legislation. This initially involves the production of Flood Risk Management Plans (FRMP) in conjunction with SEPA, Scottish Water and other neighbouring local authorities. As detailed in Section 3.1 of this report, there are a series of further duties that lead local authorities would be required to undertake, as it is proposed Angus Council agree to undertake for the Tay Estuary & Montrose Basin local plan district.

6.4 The Financial Memorandum associated with the original Flood Risk Management (Scotland) Bill detailed the cost as £1.92m nationally in 2010/11 rising to between £7.68m - £9.2m per annum up to 2015. The Scottish Government approved additional funding in 2010/11 to help local authorities meet the additional costs arising as a result of the enactment of the Act. £1.92m was set aside to be split equally between the local authorities, equating to £60k per authority. This funding was not included in the 2010/11 Finance Order, rather the method of distribution was under consideration and the grant was paid as redetermination of local authority revenue grant at the end of 2010/11. The Scottish Government finance settlement for 2011/12 provides for a £7.8m national budget for this issue and Angus Council's allocation is £188,000.
Whilst the above financial settlement does not include a separate additional allowance for undertaking the role of lead local authority, it is considered that the costs can be contained within the staff resources and budget allocations in the Roads Division.

7 HUMAN RIGHTS IMPLICATIONS

7.1 There are no Human Right implications arising from this Report.

8 EQUALITIES IMPLICATIONS

8.1 The issues contained in the report fall within an approved category that has been confirmed as exempt from an equalities perspective.

9 ANGUS COMMUNITY PLAN AND SINGLE OUTCOME AGREEMENT

9.1 This report contributes to the following local outcome(s) contained within the Angus Community Plan and Single Outcome Agreement 2011-2014:

- Communities That Are Prosperous And Fair
  - We have a sustainable economy with good employment opportunities
  - Angus is a good place to live in, work in and visit

- Communities That Are Sustainable
  - Our communities are developed in a sustainable manner
  - Our natural and built environment is protected and enjoyed

10 CONSULTATION

10.1 The Chief Executive, Director of Corporate Services, Head of Finance and Head of Law and Administration have been consulted in the preparation of this report.

11 CONCLUSION

11.1 This report provides an update on issues regarding the Flood Risk Management (Scotland) Act 2009. It identifies recommendations on which local authority in each Local Plan District affecting Angus should be lead authority as defined in the Act and seeks approval of the draft response to the Scottish Government.

ERIC LOWSON
DIRECTOR OF INFRASTRUCTURE SERVICES
NOTE:

The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- Report 485/11 - Flood Risk Management (Scotland) 2009 Flooding In Scotland: A Consultation on Potentially Vulnerable Areas and Local Plan Districts – Infrastructure Services Committee 26 July 2011
- Report 180/11 - Flood Risk Management (Scotland) 2009 Delivering Sustainable Flood Risk Management – A Consultation – Infrastructure Services Committee 1 March 2011
- Report 741/10 - Flood Risk Management (Scotland) 2009 consultation - ‘‘Planning for floods – planning for the future’’ - Delivering partnership approaches to implementing the Flood Risk Management Act – Infrastructure Services Committee 12 October 2010
- Report 740/09 – Flood Risk Management (Scotland) Act – Ramifications for the Council – Infrastructure Services Committee 13 October 2009
- Report 1153/08 - Flood Risk Management (Scotland) Bill - Financial Memorandum – A Consultation by the Scottish Government Finance Committee – Infrastructure Services Committee 25 November 2008

Roads/JG/WS
Local Plan District 7: Tay Estuary and Montrose Basin
Local Plan District 8: Tay
Flood risk management milestones

<table>
<thead>
<tr>
<th>Deadline</th>
<th>Lead authority</th>
<th>FRM Act requirement</th>
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<tbody>
<tr>
<td>May/June 2011</td>
<td>Scottish Government</td>
<td>Publish guidance on sustainable flood management.</td>
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<td>January 2011</td>
<td>SEPA</td>
<td>Establish advisory groups.</td>
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<tr>
<td>December 2011</td>
<td>SEPA</td>
<td>Produce an assessment of flood risks across Scotland leading to identification of areas most vulnerable to flooding.</td>
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<td></td>
<td>SEPA</td>
<td>Identify local plan areas.</td>
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<tr>
<td>March 2012</td>
<td>SEPA</td>
<td>Establish local plan advisory groups.</td>
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<td></td>
<td>Local authorities</td>
<td>Prepare a schedule of clearance and repair works.</td>
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<tr>
<td>Timescales to be set by Scottish Ministers</td>
<td>Local authorities</td>
<td>Prepare maps of water bodies and Sustainable Urban Drainage Systems ( SUDS).</td>
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<tr>
<td>Timescales to be set by Scottish Ministers</td>
<td>SEPA</td>
<td>Prepare maps of artificial structures and natural features.</td>
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<tr>
<td>Timescales to be set by Scottish Ministers</td>
<td>Scottish Water</td>
<td>Publish an assessment of flood risk from sewerage systems.</td>
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<td>December 2013</td>
<td>SEPA</td>
<td>Publish an assessment of opportunities for restoration of natural features and characteristics to reduce flood risk.</td>
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<td>SEPA</td>
<td>Publish flood hazard maps and flood risk maps.</td>
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<td>SEPA</td>
<td>Publish a statement of consultation actions.</td>
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<td>December 2014</td>
<td>SEPA and lead local authorities</td>
<td>Publish draft national and local flood risk management plans for consultation.</td>
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<td>December 2015</td>
<td>SEPA and lead local authorities</td>
<td>Publish flood risk management plans.</td>
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<td>June 2016</td>
<td>Lead local authorities</td>
<td>Publish implementation parts of local flood risk management plans.</td>
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<tr>
<td>2016 onwards</td>
<td>SEPA and responsible authorities</td>
<td>Begin implementing the measures in local flood risk management plans</td>
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Cycle repeated every 6 years thereafter
21 July 2011

Dear Colleagues,

Flood Risk Management (Scotland) Act 2009 – Lead local authorities - Angus

As you know, the Flood Risk Management (Scotland) Act 2009 (the Act) has important implications for local authorities, and it is essential that local authorities are fully informed about and prepared for these new responsibilities.

To assist further in your preparations to implement the Act, I am writing to remind you that under section 34 of the Act, a lead local authority has to be agreed for each local flood risk management district or, if agreement can’t be reached, determined by the Scottish Ministers.

The Scottish Government has recently published guidance on delivering sustainable flood risk management which sets out the principles which should be followed by bodies involved in managing flood risk, including how to deliver these responsibilities by working together.

SEPA have recently identified 14 proposed local plan districts and we are now in a position to inform you of the proposed districts that cover your local authority area.

Flood risk management (FRM) districts which cover your local authority area

- Tay
- Tay Estuary & Montrose Basin

The Tay district also covers part of Stirling and Perth & Kinross Council areas. After considering the information available, the Scottish Government would suggest that Perth and Kinross council may be the most appropriate candidate for the role of lead local authority for the FRM district – Tay.

The Tay Estuary & Montrose Basin district also covers part of Aberdeenshire, Dundee City, Fife Council and Perth & Kinross Council areas. After considering the information available, the Scottish Government would suggest that either Angus or Dundee City may be the most
appropriate candidate for the role of lead local authority for the FRM district – Tay Estuary & Montrose Basin.

However it may be that another local authority is best placed to undertake this role. Please discuss your views with the other local authorities in the flood risk management district and inform us of who is the agreed lead local authority by 30 November 2011.

I would be grateful if you could disseminate this information to the relevant staff in your authority.

Yours faithfully,

[Signature]

Ian Mitchell
Deputy Director, Environmental Quality
Scottish Government.