

## **Amendments sought to National policy**

Perth and Kinross Council is supportive of the general flood risk policy approach as set out in SPP but considers clarification and minor amendment of the policy approach for areas behind Flood Protection Schemes (FPS) would be appropriate. With regards to clarification on approach for development behind a FPS, SPP 2014 does not clearly define an appropriate standard FPS. This should be addressed in NPF4, and defined as 1 in 200 year plus freeboard, whilst acknowledging that climate change would need to be addressed through development design including raised finished floor levels. In terms of modification where there is an appropriate standard FPS, vulnerability and the presumption against civil infrastructure and the most vulnerable uses within the medium to high risk areas could also be reconsidered with cognisance of the specific vulnerability within that catchment.

## **Assessing the specific vulnerability within a catchment**

With regard to the assessing flood risk and the appropriateness of allowing for the most vulnerable uses within areas behind a 1 in 200 year plus freeboard FPS, there could be a more nuanced flexible policy approach based on:

- the type of flood risk within the catchment;
- a climate change modelling assessment of the FPS; and
- consideration of the existing areas protected by the FPS

The flood risk type and a climate change modelling assessment of the FPS could be used to determine the risk to life. If it is a flash flood type catchment, or if it is a larger catchment with good advance warning that is important. Perhaps a modelling assessment of the FPS could consider climate change scenarios to establish how likely it is that the FPS could be breached or whether overtopping was the concern.

These factors would help determine vulnerability and the best approach to addressing that vulnerability. In a large catchment where there is good advance warning there can be significant lead in times for emergency responders to put provisions in place to reduce the impact of flooding. If this is combined with a FPS which is very unlikely to be breached but might be overtopped (with minimum depth of flood water) then in this catchment vulnerability might be best addressed by finished floor levels, flood warning systems, and water resilience measures rather than restricting the type of uses which are appropriate. The health and safety risks can be very limited where there is a 1 in 200 year plus freeboard FPS and overtopping from climate change can be addressed in finished floor levels.

Also, the amount of existing properties protected behind the FPS and likelihood of significant onward investment could influence the proper response. Sometimes the most sustainable approach would be to allow additional development within the FPS protected area. The FPS should not be designed to protect new areas but where they incidentally protect areas these opportunities should not be ignored. Particularly so if the FPS protects

significant village/town/city centre areas or a significant amount of properties within other areas which are also crucial in cultural, social and economic terms. In this type of scenario restricting particular uses may not be the best solution. It might be considered because the risk in this scenario is minimal overtopping flood water that economic damages would be the biggest concern and vulnerability.

Alternatively, if the risk in the catchment is flash floods, or if the FPS could be significantly breached in the scenario modelling then the risk to life is a significant factor. Or if you were looking at a FPS that met the 1 in 200 year plus freeboard standard but it protected a limited amount of existing properties and maintenance/robustness of the FPS going forward was less clear then this could also influence the appropriate response.

A Council assessment of vulnerability for all its FPS could inform the policy approach. Engaging with SEPA both the assessment of vulnerability and proposed response could be prepared and clarified in the evidence report that the LDP submits to Scottish Ministers at the outset of plan preparation.

### **Addressing vulnerability**

It is recognised that FPS are intended to reduce flood risk to existing development, however, SEPA's current position (planning information note 4) would effectively prevent new residential development and other SEPA highly vulnerable uses behind a FPS. SEPA presumes against residential and other SEPA highly vulnerable uses behind a FPS unless the scheme is constructed to the 1:200 year plus climate change standard of protection, including a further allowance for freeboard. Local Authorities may strive to provide FPS's with a greater standard of protection, but Perth and Kinross Council would find it extremely difficult to achieve the standard that SEPA are promoting.

Perth and Kinross Council agree that climate change needs to be taken into account. The Council's response is for new residential development to set floor levels 600mm above the peak flood level corresponding to the 1:200 year + climate change flood event (the peak river flow being increased by 20% to allow for future climate change). The key is that this approach deals with climate change through development design rather than through FPS. Climate change can be addressed just as effectively and more achievably through development design and Perth & Kinross Council successfully argued that this approach was in line with Scottish Planning Policy at LDP Examination. The Council's approach provides equal protection, if you take SEPA's approach (FPS includes for climate change rather than finished floor levels), so the new residential property is just as likely to be subject to flooding impact. There is no difference between SEPA and Perth and Kinross Council's standards in terms of acceptable exposure to flood risk for new residential properties. If SEPA's approach is meant to encourage higher standard FPS to reduce flood risk for existing properties, then this should be taken forward in a different way.

Desire for higher standard FPS is understandable but it needs to be carefully balanced against the danger that if the bar is set too high (without a feasible way to meet these targets) you effectively lessen the importance of other planning considerations, or ignore other ways of addressing that risk, and set a tone which also potentially discourages essential investment in existing properties within our communities. Sometimes the most sustainable approach is to allow additional development, particularly if the high standard (1 in 200 year, plus freeboard) FPS protects a village/town/city centre, or a large amount of existing properties which are vital to cultural, social and economic prospects. Under the Flood Risk Management (Scotland) Act 2009 there is a duty which requires reduction in overall flood risk but it does not require the reduction of flood risk in every instance.

We support national policy to continue with a balanced approach with flexibility in how you address that risk (allowing for climate change to be addressed through finished floor levels). It is important to encourage development behind FPS in situations like in Perth, Almondbank where the need to maintain suitable and effective FPS, flood warning and emergency planning response is of paramount importance regardless. Where there is already a relatively high number of existing properties/people protected by FPS the reason that a high standard FPS was chosen is reflective of the significance of the area it protects and future commitment to its protection. Admittedly there may be other flood risk areas where Councils are forced to take tough decisions but when FPS is of a high standard, residual risk is minimal, and significant existing communities are impacted then we should do all we can to maintain confidence in their future and encourage them to remain robust and successful.

### **Debate on how to interpret National Policy**

SEPA have produced their own SEPA Planning Information Note 4 and have interpreted the appropriate FPS varying this for different development types in a way which is contrary to SPP. SPP para 263 refers to land behind appropriate flood defences as 'may be suitable for residential, institutional, commercial and industrial development' rather than discriminating between these uses as SEPA have and determining that residential, and institutional uses are more vulnerable than employment land uses and should have a higher appropriate standard FPS. SEPA's position was not accepted by Perth and Kinross Council, or the Reporter from the DPEA who considered the Perth and Kinross Local Development Plan 2019 at Examination. Perth and Kinross Council has prepared a table which sets out the main differences between the Council's and SEPA's position (see Appendix 1).

The Examination concluded July 11th 2019, and the Reporter agreed with Perth and Kinross Council that climate change could be addressed through development design (including raised finished floor levels). The Reporter stated, 'the proposed plan is consistent with the National Planning Framework and the strategic development plan. It accords with the provisions of the Scottish Planning Policy and reflects the Scottish Governments planning advice on flood risk.' The Reporter in their conclusions also clearly states, "I fully acknowledge the planning information notes and guidance produced by the Scottish

Environment Protection Agency. However, I am required to determine whether the proposed plan takes account of the National Planning Framework, is consistent with the strategic development plan and has regard to guidance produced by Scottish Ministers.” The corollary implication is that SEPA Planning Information Note 4 is currently contrary to Scottish Planning Policy.

SEPA’s position was also not accepted by the Scottish Government Flood Team, or the reporter involved with the Leith planning application decision (please see appendix 2). This decision reflects Perth and Kinross Council’s approach. This application was submitted to Scottish Ministers due to an objection from SEPA because the FPS did not include the full climate change standard (a 20% increase in peak river flow). The Scottish Government flood protection team, ‘highlight that the WLFPS does not include a climate change allowance of 20%, which is what SEPA deem to be required to meet the projected increase in flood risk in future years.’ However, the flood protection team also highlight that the development does include mitigation measures which the Council’s Flooding Team have deemed adequate and that the development is designed for a 1 in 200 year flood event with a 30% allowance for climate change. As a result, whilst the FPT do note SEPA’s concerns about the uncertainties associated with the standard of protection, they are of the view that the Council have appropriately assessed the issue of flooding at the site and that the proposed mitigation measures are satisfactory.’ Edinburgh City Council, like Perth and Kinross Council, considered they should be able to deal with climate change through development design. The Scottish Ministers decided not call in the application and did not discriminate on how climate change was taken into account.

## **Conclusions**

The current SPP, the Scottish Government Flood Team, and the DPEA in their Perth and Kinross LDP Examination conclusions, all suitably balance the interests and encourage further development behind an appropriate FPS (1 in 200 year plus freeboard) allowing climate change to be addressed through development design including finished floor levels. The current SEPA position in planning information note 4 should be reviewed to acknowledge this position.

The desire for ever greater standards of FPS and for additional precaution might be considered again through this future National planning policy review and/or new SEPA mapping and guidance. If so, there is a need to continue the current balance provided by SPP and also further clarify this position. Perth and Kinross Local Development Plan 2019’s approach subjects the new residential properties to the same level of risk it just addresses it in a different way and this should continue to be supported.

The assessment work to inform the approach outlined in Assessing Vulnerability section could be set out and form part of the evidence report prior to LDP preparation. This could allow for a yet more nuanced and flexible policy which responds to each catchments’ flood

risk and the risk to life. However, alternatively, the appropriate standard FPS should simply be defined as (1 in 200 years plus freeboard) with only the most vulnerable uses considered inappropriate within a medium to high risk annual probability area. The policy should continue to allow for 'residential, institutional, commercial and industrial development within built-up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planning measure in a current flood risk management plan.'

Alternatively, if enhancing FPS to protect existing properties is the aim, then Scottish Government should help resource upgrades to FPS to enable them to reach full climate change projections. Alternative approaches such as natural flood mitigation measures, and how their contribution towards meeting the standards can be quantified, is likely to be the best way to address the issue. With some defences it might also be possible if the foundations have been specified to allow them to be raised. Some worked examples and good practice guidance to set out how this enhanced standard is best achieved would be helpful.

Appendix 1

<p><i>Directorate for Local Government and Communities</i> <i>Planning and Architecture Division (PAD)</i></p> <p><i>Assessment Report</i></p>		<p><b>Scottish Government</b> Riaghaltas na h-Alba gov.scot</p>
--	--	---

<b>Case reference</b>	NA-EDB-045
<b>Application details</b>	Demolition of existing commercial buildings and erection of 52 residential flats (as amended units reduced to 49 residential flats)
<b>Site address</b>	70, 72 Newhaven Road, Edinburgh
<b>Applicant</b>	Queensberry Properties Ltd
<b>Determining Authority</b>	The City of Edinburgh Council
<b>Local Authority Area</b>	
<b>Reason(s) for notification</b>	Category 2 (Objection by SEPA)
<b>Representations</b>	6 plus Leith Central Community Council
<b>Date notified to Ministers</b>	4 September 2018 but not fully documented until 5 September 2018
<b>Date of recommendation</b>	25 September 2018
<b>Decision / recommendation</b>	Clear

**Description of Proposal and Site:**

- Planning Permission (17/01183/FUL) is being sought for the demolition of existing commercial buildings and erection of 49 residential flats at Newhaven Road, Bonnington, Edinburgh.
- The site (figure 1) is roughly triangular in shape and has an area of 0.45 hectares. It is bound by Newhaven Road to the west with housing beyond. To the north is the Water of Leith and to the south there are light industrial buildings. New housing is being constructed to the south east of the site.
- The site currently accommodates a former industrial site and is known as Bonnington Mills. The site comprises a collection of industrial buildings of two storey cottages and a number of three storey workshops, offices, studios, commercial units and a large car park to the east that extends to the Water of Leith walkway. All of the buildings are currently vacant. The bridge to the north west of the site is Category B listed.
- The site is not identified as housing within the 2016 Edinburgh LDP

**EIA Development:**

As the development is below the threshold for Environmental Impact Assessment, it did not need to be screened. However, the application was supported by a number of supporting statements, including an ecology report, a bat assessment and an archaeology assessment.

Figure 1 - Site Context (adapted from developer submission)



### **Consultations and Representations:**

#### **SEPA**

- The Scottish Environmental Protection Agency object on the grounds that it may place buildings and persons at flood risk, contrary to Scottish Planning Policy (SPP)

#### **Council's Flooding Team**

- The committee report highlights that the flooding risk has been assessed by the Council's Flooding Team who have no objection to the proposal, as they consider the flooding arrangements for the site to be acceptable.

#### **Scottish Government Flooding Policy Team**

- Following notification to Scottish Ministers, the Scottish Government Flooding Policy Team were consulted and consider that the proposed development does not raise any issues of national importance that would warrant its call in by Scottish Ministers.

#### **Leith Central Community Council (LCCC)**

- LCCC submitted representations to the application stating that it had no issue with the principle of housing in this location but raised a number of concerns, which included flooding issues.

- Following notification to Scottish Ministers, LCCC have since written to the Chief Planner highlighting that they believe this application should be called in given the inconsistencies and unresolved issues between SEPA and the Council's Flooding Team.

## Other

- Six objections were received for this application. The committee report highlights that none of these objections were concerned with flooding.

## Assessment:

1. As SEPA object on flood risk grounds, the application has been notified to Ministers to ascertain whether there any issues of national importance which warrant them calling in the application for their own determination.
2. The site is located adjacent to the Water of Leith and benefits from the Water of Leith Flood Protection Scheme (WLFPS). In August 2017, SEPA published Planning Information Note 4 which sets out SEPA's position for development that occurs behind a flood protection scheme. The guidance highlights that, where development will result in a land use change to a highly vulnerable use, such as residential, SEPA requires that the development should be protected to a 1 in 200 year standard, including an appropriate allowance for climate change.
3. SEPA in their objection do acknowledge that the site is afforded some level of protection by the WLFPS. However, they raise concerns that the climate change allowance of the WLFPS may not be sufficient, and therefore object to the principle of residential development on the site.
4. In the response dated 2 August on the Council's portal, the Council's Flooding Team commented that the WLFPS provides defence to a 1 in 200 year flood event with a 12% allowance for climate change and that the development has been designed for a 1 in 200 year flood event with a 30% allowance for climate change.
5. The Council in their committee report also highlight that SEPA in their initial objection stated that should the Council be minded to approve the application, they recommend a number of flood prevention measures. The Council state that the applicant has amended the proposals to meet these requirements and the Council's Flooding Team are satisfied that the proposed mitigation is acceptable. However, when SEPA were reconsulted, they acknowledged these amendments but maintained their objection as the proposal is still at risk to flooding.
6. SPP states that areas with medium to high flood risk, in built up areas may be suitable for residential development, provided that flood protection measures to the appropriate standard already exist and are maintained, are under construction or are a planned measure in a current flood risk management plan.
7. The Scottish Government Flood Policy Team (FPT) highlight that the development is not contrary to SPP as it is a behind a flood protection scheme which the Council say provides defence to a 1 in 200 year event with a 12% allowance for climate change.
8. The FPT highlight that the WLFPS does not include a climate change allowance of 20%, which is what SEPA deem to be required to meet the projected increase

in flood risk in future years. However, the FPT also highlight that the development does include mitigation measures which the Council's Flooding Team have deemed adequate and that the development is designed for a 1 in 200 year flood event with a 30% allowance for climate change.

9. As a result, whilst the FPT do note SEPA's concerns about the uncertainties associated with the standard of protection, they are of the view that the Council have appropriately assessed the issue of flooding at the site and that the proposed mitigation measures are satisfactory.
10. In light of the above information, it is not considered that this proposal raises any issues of national importance to warrant intervention by Scottish Ministers.

**Decision/Recommendation:**

- It is recommended that this application be cleared back to The City of Edinburgh Council.



## Appendix 2

### Summary of the differences in Council and SEPA's position

Issue	SEPA's position	The Council's position
<p><b>What Flood Protection standard (FPS) is appropriate to allow residential development in the protected areas behind them?</b></p>	<p>SEPA are concerned about new residential development in areas which are protected by Flood Protection Schemes (FPS). They consider the FPS should be to 1 in 200 year plus climate change standard.</p>	<p>The Council considers that the FPS should be minimum 1 in 200 year standard. Both Perth and Almondbank schemes meet this standard. This is a very high standard of protection.</p>
<p><b>How should we protect against the effects of climate change?</b></p>	<p>SEPA object to residential development in areas which are protected by FPS, unless the FPS is to 1 in 200 year plus climate change standard.</p>	<p>The Council agrees that climate change needs to be taken into account.</p> <p>The Councils proposals are to set floor levels 600mm above the flood level corresponding to the 1:200 + climate change flood event. This approach deals with climate change through development design rather than through FPS.</p>
<p><b>What are the pros and cons of the different approaches to dealing with climate change?</b></p>	<p>SEPA has not stated why the Council's approach to climate change is not appropriate.</p> <p>SEPA have stated their preference is for the FPS to provide the protection, this would mean that existing properties would benefit from the same level of protection as new properties.</p>	<p>There is comparable residual risk to the new residential development in view of what the Council proposes. The difference is in approach, and possibly in the protection standard for existing properties (if this led to the Council deciding to improve the FPS).</p> <p>FPS is already to a very high standard, further improvement for climate change would be difficult due to high financial costs, and due to the visual impact of increased height.</p> <p>The raised height required for finished floor levels is generally much less than the increased FPS height which involves containing water in a much smaller area rather than dispersing it over the entirety of the floodplain. Climate change can be addressed just as effectively and much more attainably through development design.</p>

Issue	SEPA's position	The Council's position
<p><b>Is there any difference in the vulnerability of different land uses?</b></p>	<p>There are health and safety risks associated to flooding during the night for residential areas.</p> <p>For health and safety reasons SEPA consider residential development to be more vulnerable to flooding than most employment developments and therefore they set different standards for them in their guidance.</p>	<p>The Council's approach provides equal protection, if you take SEPA's approach (FPS includes for climate change rather than property floor levels), the new residential property is just as likely to be subject to flooding impact.</p> <p>Economic development has different but not less vulnerability due to high economic damages often associated to them.</p> <p>Residential uses could be slightly more vulnerable than employment uses at night. However with monitoring of the catchment through river gauges, events are forecasted in advance (5 day flood guidance statements are issued) for both Perth and Almondbank. The SEPA Floodline standard is 36 hours advance for a flood alert, and 3-6 hours for a flood warning. This means there are good lead in times for emergency responders to put preparations in place to reduce the impact of flooding.</p>
<p><b>What is the Scottish Governments position on the issue?</b></p>	<p>Through the Reporters further information requests SEPA have suggested a Conon Bridge decision as being the Scottish Government setting precedence against residential development when the FPS does not meet 1 in 200 year plus climate change standard.</p>	<p>The Scottish Government did not responded to the Examination Reporter's request for comment. The Conon Bridge FPS did not even meet 1 in 200 year standard so this example is not comparable. The Council refer to recent Scottish Government Leith decision as precedence because the FPS met 1 in 200 year but not climate change standard. Scottish Government did not consider the application to be contrary to Scottish Planning Policy. Like this Council, Edinburgh City Council considered they should be able to deal with climate change through development design. For the Leith application the Scottish Government did not call in the application despite an objection from SEPA.</p>