

EAST AYRSHIRE COUNCIL

GOVERNANCE AND SCRUTINY COMMITTEE - 23 OCTOBER 2009

MATTERS ARISING UPDATE REPORT

Report by the Depute Chief Executive/Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1** The purpose of this report is to provide the Committee with a consolidated response to information requests made by Members at previous meetings.

2. BACKGROUND

- 2.1** As Members are aware, during the course of discussions at meetings of the Governance and Scrutiny Committee, Members, from time to time, seek information or clarification from Officers on particular matters which requires to be provided after the meeting. Such requests arise from, and reflect, the role of the Committee in respect of its scrutiny function.

- 2.2** The Committee at its meeting held on 3 April 2009 agreed that, in future, a report be submitted to the Committee to consolidate all responses to information requests made by Members of the Committee at previous meetings or, otherwise, provide an explanation as to why the relevant information is not yet available. This approach will formalise the various matters arising into report format thereby facilitating presentation of the information to Members and recording of the origin and progress of the issues raised.

3. UPDATE

- 3.1** The outstanding matters arising from previous meetings of the Committee and the current position with regard to the provision of information relative to each item is set out in detail in Appendix I to this report.

4. FINANCIAL/LEGAL/POLICY/COMMUNITY PLANNING/RISK IMPLICATIONS

- None arising directly from this report.

5. RECOMMENDATION

- 5.1** The Committee is asked to note the information provided in response to the matters arising as set out in Appendix I.

Elizabeth Morton
Depute Chief Executive/Executive Director of Corporate Support

9 October 2009
SN/FM

LIST OF BACKGROUND PAPERS - NIL

Any person wishing further information on this report should contact Bill Walkinshaw, Head of Democratic Services on Telephone Number (01563) 576135.

Implementation Officer: Stuart Nelson, Administrative Officer.

APPENDIX I

<u>NO</u>	<u>ORIGIN</u>	<u>ISSUE</u>	<u>UPDATE</u>
1.	Governance & Scrutiny Committee, 3 April 2009 (Item 7(ii), Page 675, 07/12)	<u>Planning and Listed Building Consent Appeal Decisions - 1 May 2007 to 31 January 2009</u> - Agreed that the Head of Legal, Procurement and Regulatory Services provide information to Members of the Committee on the amount of expenses awarded to the Council arising from the application by AMEC Project Investment PLC for a Windfarm at Kyle Forest, near Dalmellington.	The Head of Legal, Procurement and Regulatory Services advises that the costs arising from this application have been assessed by an independent Law Accountant and final negotiations are ongoing to determine the settlement amount.
2.	Governance & Scrutiny Committee, 25 September 2009 (Item 6(iii), Page 859, 07/12)	<u>Flood Risk Assessments: SEPA Requirements</u> - The Executive Director of Neighbourhood Services to provide further information and clarification to Members on the requirements of SEPA with regard to flood risk assessment having regard to the relevant legislation.	Briefing Note by Executive Director of Neighbourhood Services attached at Annex I.

6 October 2009

SN/FM

ANNEX I

EAST AYRSHIRE COUNCIL

IMPLEMENTATION OF THE FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009

Briefing Note by Executive Director of Neighbourhood Services

1. PURPOSE OF NOTE

- 1.1 The purpose of this note is to update Members of the Governance and Scrutiny Committee of the tasks, phased timescales, identification of responsibilities and cost implications for implementation of the 'Flood Risk Management (Scotland) Act 2009' highlighting in particular the cost and resource impact on local authorities.

2. BACKGROUND

- 2.1 The Flood Risk Management (Scotland) Act 2009 has two distinct drivers, namely compliance with the EU Floods Directive (2007/60/EC), and the determined need to substantively update the Flood Prevention and Land Drainage (Scotland) Act 1961 as amended in 1997.
- 2.2 The provisions in the Act will create a framework that will ensure that all persons and organisations involved in flood risk management can coordinate their efforts to deliver sustainable approaches to managing all forms and consequences of flooding. By protecting and working with the environment, sustainable flood risk management is intended to provide the maximum possible social and economic resilience against flooding for current and future generations. In essence, one of the intended thrusts of the Act is to decentralise power and responsibility, for assessing / implementing sustainable flood risk management measures, to the responsible authorities, primarily SEPA, Scottish Water and Scottish Local Authorities. Refer Appendix 1 for outline of duties under the Act.
- 2.3 To deliver this framework, the Act makes substantive provision in five policy areas:
- Coordination and cooperation in flood risk management;
 - Assessment of flood risk and preparation of flood risk management plans, including transposing the EC Floods Directive;
 - Amendments to local authority and SEPA functions for flood risk management;
 - A revised statutory process for flood risk management measures; and
 - Creating a more uniform approach to the enforcement of the Reservoirs Act 1975.

- 2.4 The new Act brings in the entire water environment including sewers, and demands integrated working between the responsible bodies, by requiring such integration to be formally addressed within an agreed Plan. This is a substantive move in decentralizing power from central government to local government within Scotland, albeit the Local Flood Risk Management Plans developed will require Ministerial approval.

3. COMMENCEMENT

- 3.1 The Flood Risk Management (Scotland) Act 2009 received royal assent on the 16th June 2009. Upon receiving royal assent, only sections 3 to 6, 55, 71, 94, 95 and 97 of the Act have been commenced. These are mainly interpretative provisions. The Government is now in the process of setting in place a workable timetable for commencing different Parts and Sections of the Act. Of key concern is creating a seamless transition from the 1961 Act to the new duties and processes set out in the Flood Risk Management (Scotland) Act 2009.
- 3.2 The Scottish Government's intention is to prepare two commencement orders. The first will cover Parts 1-3, 5, 8 and some of Part 6. The second order will deal with Part 4 and outstanding sections of Part 6 (LA functions). Both commencement orders will have implications for local authorities, and some of the provisions will be accompanied by transitional arrangements. Part 7 (Reservoirs) will be commenced at a later stage so as to meet the target date for transferring reservoir enforcement responsibilities to SEPA in 2011.
- 3.3 The first commencement order will come into force in time to ensure that the Scottish Government transposes the EU Floods Directive by the deadline of 26th November 2009. The second commencement order, which will be accompanied by transitional arrangements dealing with the transfer from the 1961 Act to the new statutory process, is likely to come into force in second half of 2010.
- 3.4 The Act allows the Scottish Ministers to set deadlines for key tasks, including the preparation of maps of bodies of water by local authorities and assessment of sewerage flooding by Scottish Water. The Government intends to review all deadlines, with a view to preparing Ministerial Direction on statutory deadlines. A key consideration will be ensuring that these tasks are completed in sufficient time to allow the information to be used in the preparation of flood maps and plans. The target date for Ministerial Direction is early 2010.

4. TIMESCALES AND COSTS ON LOCAL AUTHORITIES

- 4.1 The Act will have both cost and resource implications for local authorities. It is difficult to estimate the likely total cost of these new duties. This is because the scale and scope of the work required is dependent on the scale

and number of areas identified as being at significant flood risk during the initial flood risk assessments. The majority of the additional work which local authorities will have to undertake will be done after 2010.

- 4.2 As a responsible authority, local authorities will be required to contribute to the flood risk assessments. These must be completed by December 2011. The role of local authorities will be to provide SEPA with assistance with available or readily derivable information that they hold or can obtain on flood risk in their area. There will also be additional preparatory work required in the lead up to the production of preliminary flood risk assessments, including establishing a basis for collaborative and partnership working, and stakeholder engagement, including advisory groups.
- 4.3 Local authorities will be under a duty to act with a view to managing flood risk, which will include providing assistance and information to SEPA in the preparation of flood hazard maps and flood risk maps (by December 2013) and management plans (by December 2015). The Act also places a duty on local authorities to produce local flood risk management plans that will supplement the plans produced by SEPA. Once the first set of assessments and plans are produced in 2015, the documents will need to be reviewed and updated on a six year cycle. It should be noted that local authorities are placed under a new duty to prepare maps of bodies of water and sustainable urban drainage systems in their areas. Local authorities will need good information on the location of watercourses, SUDS and other forms of drainage.
- 4.4 Flood management planning is a new and challenging task, and the Scottish Government anticipate that costs incurred by local authorities for implementing the EC Floods Directive for the first planning cycle (2010 to December 2015) will be in the region of £1.14 million per local authority. The Scottish Government also anticipates that the annual running costs of implementing the EC Floods Directive after December 2015 will be in the region of £0.24 million per local authority.
- 4.5 The Act also sets out a new statutory process for flood protection schemes which will replace those provisions in the 1961 Act that specify the current statutory process. The provisions in the Act remove the requirement to go through a separate planning approval process by the way of deemed planning permission. The Scottish Government recognises that it is difficult to estimate the costs or savings to local authorities that will arise as a result of these changes.

5 BIENNIAL REPORTS

- 5.1 Local authorities will be expected to prepare their next set of Biennial Reports in November 2009. Once the Act is commenced, biennial reporting will be replaced by the preparation of local flood risk management plans and interim reports on these plans.

It is hoped that this note will be helpful to Elected Members.

William Stafford
Executive Director of Neighbourhood Services

WS/JB

9 October 2009

Appendix 1

A BRIEF OUTLINE OF THE FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009

SM Scottish Ministers
 SEPA Scottish Environment Protection Agency
 LA Local Authority
 SW Scottish Water

Flood Risk Management (Scotland) Act 2009	Responsible Body
<p>An Act of the Scottish Parliament to make provision about the assessment and sustainable management of flood risks, including provision for implementing European Parliament and Council Directive 2007/60/EC; to make provision about Local Authorities', Scottish Water and the Scottish Environment Protection Agency's functions in relation to flood risk management; to amend the Reservoirs Act 1975</p>	
<p>S1 General Duty The Scottish Ministers, SEPA and responsible authorities must exercise their flood risk related functions with a view to reducing overall flood risk</p>	SM / SEPA / LA / SW
<p>S2 Directions and Guidance Scottish Ministers may give directions/ guidance to SEPA and any responsible authorities</p>	SM
<p>S5 Responsible authorities LA's, Scottish Water and others</p>	LA / SW
<p>PART 3 – Flood Risk Assessments, Maps and Plans</p>	
<p>S8 Flood risk management districts River basins and districts including coast</p>	
<p>S9 SEPA to prepare flood risk assessments To be based on reliable information for any flood risk for each district by December 2011</p>	SEPA
<p>S10 Flood risk assessments: review By 22 December 2018</p>	SEPA
<p>S11 Flood risk assessments : regulations SM's may make regulations</p>	SM
<p>S12 Flood risk assessments ; availability for public inspection</p>	SEPA
<p>S13 SEPA to identify potentially vulnerable areas and local plan districts (No fixed date yet, SM to determine)</p>	SEPA
<p>S14 Potentially vulnerable areas and local plan districts: review (6 year cycle)</p>	SEPA
<p>S15 Potentially vulnerable areas and local plan districts : regulations</p>	SM

S16 Scottish water to assess flood risk from sewerage systems (no fixed date yet)	SW
S17 Local authorities to prepare maps of bodies of water etc. LA must prepare a map which shows relevant bodies of water and SUDS in its area. LA must review the map and make available for public inspection (no date yet, SM to determine)	LA
S18 Local authorities to assess bodies of water (1 a) Assess risk of flooding of land (1 b) Prepare schedule of clearance and repair works that would substantially reduce risk of flooding (4) make schedule available for public inspection	LA
S19 SEPA to prepare maps of artificial structures and natural features (where removal would increase flood risk)	SEPA
S20 SEPA to assess possible contribution of alteration etc of natural features and characteristics	SEPA
S21 SEPA to prepare flood hazard maps and flood risk maps Flood hazard maps and flood risk maps must be prepared by 22 December 2013	SEPA
S22 Flood Hazard maps Show floods with low / medium / high probability Show flood extent / water depths / velocity	SEPA
S23 Flood Risk Maps To show indicative number of inhabitants who could potentially be affected. To show type of economic activity which could be flooded.	SEPA
S24 Flood Hazard maps and Flood Risk maps review By 22 December 2019 review and where appropriate update each flood hazard map and each flood risk map prepared under section 21.	SEPA
S25 Flood hazard maps and flood risk maps: available for public inspection	SEPA
S26 Flood Hazard maps and flood risk maps: regulations	SM
S27 SEPA to prepare flood risk management plans SM to approve by 22 December 2015	SEPA
S28 Flood risk management plans: objectives and measures	SEPA
S29 Flood risk management plans: guidance By 22 December 2012	SM
S30 Flood risk management plans: publicity of drafts etc. and consultation	SEPA

S31 Flood risk management plans: submission for approval	SEPA / SM
S32 Flood risk management plans: approval and publication	SM / SEPA
S33 Flood risk management plans: review SM to approve before 22 December 2021	SEPA
S34 Local authorities to prepare local flood risk management plans The lead authority for each local plan district: (1) to supplement flood risk management plan (2) details objectives, measures, timetables, and includes surface water and urban drainage.	LA
S35 Local flood risk management plans: publicity and consultation Lead authority	LA
S36 Local flood risk management plans: completion and publication Lead authority	LA
S37 Local flood risk management plans: interim report 2 to 3 years after local flood risk management plan is finalised, lead authority must review plan and publish a report	LA
S38 Local flood risk management plans: final report 5 to 6 years after local flood risk management plan is finalised, lead authority must publish a report	LA
S39 Local flood risk management plans: joint working	LA
S40 Regulations relating to flood risk management plans and local flood risk management plans	SM
S41 Duty to have regard to flood risk management plans and local flood risk management plans SM's must in determining funding for SEPA and any responsible authority have regard to plans published by SEPA and LA	SM / SEPA / LA / SW
S42 Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008	
S43 Power of SEPA to obtain information, documents and assistance	SEPA / SM / LA / SW
S44 Power of lead authorities to obtain information, documents and assistance	LA
S45 Power of local authorities to obtain information	LA
S46 Power to obtain information, documents and assistance: supplementary	SEPA / LA
S47 Power to obtain information, documents and assistance: offence	
S48 Consistency and co-ordination with characterisations and plans under the 2003 Act	SEPA

Water Environment and Water Services (Scotland) Act 2003	
S49 District flood risk advisory groups	SEPA / LA / others
S50 Sub-district flood risk advisory groups	SEPA / LA
S51 Power to give effect to Community obligations etc.	SM
S52 Annual report on implementation of Directive	SM
S53 Availability of documents for public inspection	
S54 Publicity of matters	
S55 Interpretation of Part 3	
PART 4 – Flood Risk Management – Local Authority Functions	
S56 General power to manage flood risk (1) (a) will contribute to implementation of measures described in any relevant local flood risk management plan (b) reduce the risk of a flood in its area	LA
S57 Limits of general power	LA
S58 Limits of general power: statutory undertakings	LA
S59 Duty to carry out clearance and repair works Works described in a Schedule under section 18	LA
S60 Flood protection schemes Procedure to promote a scheme	LA
S61 Orders under the Land Drainage (Scotland) Act 1958	LA
S62 Registers of flood protection schemes	LA
S63 Registers of flood protection schemes: information about schemes under 1961 Act	LA
S64 Registers of flood protection schemes: regulations etc.	SM
S65 Deemed planning permission for scheme work	LA / SM
S66 Acquisition of land	LA / SM
S67 recovery of expenses	LA
S68 Information about ownership etc. of land	LA
S69 Damage to certain flood protection work	
S70 Repeal of Flood Prevention (Scotland) Act 1961	
S71 Interpretation of Part 4	
PART 5 – SEPA :Other Flood Risk Management Functions	
S72 Advice to planning authorities and others as to flood risk	SEPA
S73 Other assessment and maps of flood risk	SEPA
S74 Flood Warning	SEPA
S75 Assessment of whether flood warning system should be provided or altered	SEPA
S76 Provision, alteration etc. of flood warning system	SEPA
S77 Consultation required by sections 75 and 76	
S78 SEPA's power to obtain information about land	SEPA
PART 6 – Powers of Entry and Compensation	
S79 Powers of Entry	SEPA / LA
S80 Warrants authorising entry	
S81 Powers of entry: supplementary	
S82 Compensation	SEPA / LA

S83 Compensation: supplementary	SEPA / LA
PART 7 : Reservoirs	
S84 SEPA to be enforcement authority under the Reservoirs Act 1975	SEPA
S85 Transitional arrangements	LA / SEPA
S86 Service of documents	
S87 Extension of enforcement authority's reserve powers	
S88 Incident reporting	
S89 Flood plans	
S90 Reservoirs Act 1975: Crown application	
PART 8: General	
S91 Crown application	
S92 Offences by bodies corporate etc.	
S93 Ancillary provision	SM
S94 Orders and regulations	SM
S95 Interpretation: general	
S96 Minor and consequential modifications	
S97 Consequences and short title	
Schedule 1	
Part 1 Matters to be included in every plan	
Part 2 Components of the subsequent update of flood risk management plans	
Schedule 2	
Flood Protection Schemes : Procedure etc	
Schedule 3	
Minor and consequential modifications	
Schedule 4	
Introduced by section 95 (3)	