SEPA – Planning Authority Protocol (Policy 41)
Development at Risk of Flooding: Advice and Consultations
# Preface

Development at Risk of Flooding: Advice and Consultations

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Development at Risk of Flooding: Advice and Consultations

Preface

The SEPA - Planning Authority Protocol was first produced by a working group of officials from SEPA, COSLA and the former Scottish Executive in September 2000. The Protocol was provided for planning authorities under the Memorandum of Understanding between COSLA and SEPA. The arrangements set out in the document were endorsed by SEPA, COSLA and the former Scottish Executive.

The Protocol was updated in 2012 to take account of legislative and policy changes which had taken place in relation to land use planning and flooding, notably the agenda for Delivering Planning Reform and the Flood Risk Management (Scotland) Act 2009. The update was produced by SEPA’s Flood Risk and Land Use Planning Working Group which includes representatives from the Scottish Government and Heads of Planning Scotland. The document was endorsed by COSLA on behalf of its local authority members and by the Cairngorms and Loch Lomond and Trossachs National Parks.

The Protocol has now been updated to take account the updated SPP and new guidance on the use of the surface water maps as well as a number of other minor changes to reflect updated information.
SEPA - Planning Authority Protocol (*SEPA Policy 41*)

Development at Risk of Flooding: Advice and Consultations

**Introduction**

1. The SEPA - Planning Authority Protocol contains principles to be followed by SEPA and planning authorities regarding advice and consultation on flood risk issues. The assessment of flood risk is a specialist subject and the Protocol is intended to enable planning authorities and SEPA to work together effectively on planning matters where there is considered to be a flood risk.

2. The Protocol was originally produced in September 2000 to help planning authorities and SEPA address the issues involved when flooding has to be considered in the determination of planning applications. The Protocol was in part prepared to help facilitate Section 25(2) of the Environment Act 1995, which gave SEPA a duty, if requested by a planning authority, to provide flood risk advice, based on such information as it holds, in any part of an authority’s area. Section 25 of the 1995 Act has now been replaced by Section 72 of the Flood Risk Management (Scotland) Act 2009 which retains that duty. The Protocol was also prepared because SEPA and planning authorities identified a need for greater mutual understanding in relation to the advice which SEPA can provide to planning authorities and the difficulties that planning authorities can encounter in interpreting that advice, particularly in determining planning applications and in notifying cases to the Scottish Ministers.

3. The Protocol was updated in 2012 to take account of legislative and policy changes which had taken place in relation to land use planning and flooding, notably the agenda for Delivering Planning Reform and the Flood Risk Management (Scotland) Act 2009. The updated Protocol recognised the need for frontloaded, proportionate and targeted advice as central to the planning reform agenda. The Protocol also reflected the duties which the FRM Act places on Scottish Ministers, SEPA and local authorities to exercise their flood related functions with a view to managing and reducing flood risk and promoting sustainable flood risk management.

4. The Protocol has now been updated to take account of changes to planning policy, new guidance documents including guidance on the use of the surface water maps as well as a number of other minor changes to reflect updated information. The Protocol is intended to promote clarity and consistency in the provision of advice and to assist the decision making process. The Protocol comprises three sections:

- The framework for consultation: the statutory position, the roles of SEPA and planning authorities and consultation arrangements.
- Information sources for screening and flood risk assessment.
- SEPA’s formal comments to planning authorities on planning applications.
Part 1: Framework for Consultation

The Statutory Position

5. The legislative context for land use planning and flooding in relation to the Protocol is provided by the following statutes and regulations. Ultimately the interpretation of statutory provisions is a question of law for the Courts. However, the Scottish Government has indicated that in its view the statutory provisions should be considered as a whole.

(a) Flood Risk Management

6. The Flood Risk Management Act (Scotland) Act 2009 has set in place a statutory framework for delivering a sustainable and risk based approach to managing flooding. This includes assessing both the likelihood and impacts of flooding, from all sources. SEPA and responsible authorities have a general duty, under section 1 of the Act, to exercise their flood risk related functions with a view to reducing overall flood risk. The functions that are affected by this duty are set out in the FRM Act, and include the duty on SEPA under Section 72 of the FRM Act to provide advice and information on flood risk to planning authorities. More generally, under section 41 of the Act, FRM Strategies and Local Flood Risk Management Plans require to be taken into account by every public body and office-holder in exercising any function so far as affecting a flood risk management district.

(b) Development Management

7. The main legal procedures for dealing with applications for planning permission are set through the Town and Country Planning (Scotland) Act 1997, the Planning etc. (Scotland) Act 2006, the Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2013 and the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

8. The Town and Country Planning (Scotland) Act 1997 makes clear that it is for planning authorities to approve or refuse planning applications. The 1997 Act requires that decisions on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise.

9. The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 require that planning authorities must, before determining an application for planning permission for development, consult with SEPA where the development is likely to result in a material increase in the number of buildings at risk of being damaged by flooding (Schedule 5.1(1). Planning authorities must take SEPA’s advice into account alongside the development plan and other material considerations in the determination of planning applications involving flood risk.
10. The Town and Country Planning (Notification of Applications)(Scotland) Direction 2009 provides criteria which planning authorities should use in determining the need to notify the Scottish Ministers of an application where SEPA has objected to the granting of planning permission or has recommended conditions relating to flood risk which the planning authority do not propose to attach to the planning permission.

11. Circular 3/2009 explains the rationale in the Notification Direction for the more proportionate national involvement in planning cases. Subsequently, the Chief Planner stated that, while the primary concern of Ministers with notified cases is with those which raise a national issue, with regard to flooding, it is not possible to be absolutely certain that a relatively small scale development might not do that. Acknowledging flood risk to be a serious issue and one which is expected to become more prevalent due to climate change, he indicated that Ministers have decided that they should continue to be notified so that they can determine on a case-by-case basis whether to intervene in the national interest.

12. The above provisions clearly give SEPA a role in advising planning authorities in relation to certain applications. They do not give SEPA the power to decide any such applications.

(c) Development Planning

13. The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006, provides the overarching statutory context for the preparation of development plans by Councils and National Park Authorities.

14. Section 3D of the Town and Country Planning (Scotland) 1997 Act requires that functions relating to the preparation of development plans by planning authorities must be exercised with the objective of contributing to sustainable development.

15. Section 17(4) of the Planning etc. (Scotland) Act (2006) places a duty on SEPA as a key agency to co-operate with the planning authority, within development planning, in the compilation of the main issues report. Sections 18 and 21 of the Act require SEPA to co-operate in preparation of the proposed plan and action programme.

16. The Town and Country Planning (Development Planning)(Scotland) Regulations 2008, as amended in April 2011, require that in preparing a strategic development plan or a local development plan the planning authority has regard to any approved flood risk management plan or finalised local flood risk management plan relating to the development plan area.

NB: The Protocol does not concern the arrangements which apply for Strategic Environmental Assessment under the Environmental Assessment (Scotland) Act 2005.
The Role of SEPA

17. SEPA requires to carry out its functions for the purpose of protecting and improving the environment, including managing natural resources in a sustainable way, to contribute to;

a) improving the health and well-being of people in Scotland; and,

b) achieving sustainable economic growth.

The above General Purpose was introduced by section 51 of the Regulatory Reform (Scotland) Act 2014 and inserted as section 20A in the Environment Act (1995). The creation of a statutory purpose formalises SEPA’s role in protecting and improving the environment. This reinforces its role in flood risk management under the FRM Act.

18. The roles and responsibilities of SEPA in connection with planning and flood risk are significantly influenced by the general duties outlined in section 1 of the FRM Act. These require the Scottish Ministers, SEPA and all responsible authorities (including local authorities)* to:

- exercise their flood risk related functions with a view to reducing overall flood risk;
- act in the way best calculated to manage flood risk in a sustainable way;
- promote sustainable flood management;
- act in the way best calculated to contribute to the achievement of sustainable development; and,
- adopt an integrated approach by co-operating with each other so as to co-ordinate the exercise of their respective functions.

(*NB the planning functions of local authorities have not yet been designated as flood risk related functions under the FRM Act.)

19. Since 1996, SEPA has had a statutory role in relation to the provision of flood risk advice to planning authorities. This role is expressed in Section 72 of the FRM Act, 2009. As a key agency, SEPA also has a duty to co-operate with planning authorities in the preparation of development plans.

20. When consulted in relation to planning applications for development or site allocations in development plans, where the planning authority considers there may be a risk of flooding, SEPA will provide advice with respect to the risk of flooding on the basis of the information it holds which is considered suitable for planning purposes, in line with the principles and duties set out in the FRM Act.
21. Within development management, SEPA will engage in pre-application discussions and will respond positively to any request for processing agreements associated with major or national developments. SEPA is also committed to frontloading advice via effective development plan engagement consistent with the principles of Delivering Planning Reform. SEPA will engage early in the development plan preparation process and provide clear and consistent advice to local planning authorities on flood risk within their areas.

22. The SEPA Interim Position Statement on Planning and Flooding generally sets out SEPA’s role and policy position on flooding relative to land use planning. For fuller information on SEPA’s roles in development management and development planning refer to SEPA guidance notes LUPS-GU1 and LUPS-DP-GU1.

The Role of Planning Authorities

(a) Implementation of Scottish Planning Policy

24. SPP has introduced a presumption in favour of development that contributes to sustainable development. This requires planning authorities to support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

25. In terms of SPP policy principles for managing flood risk and drainage, the planning system should promote:

- A precautionary approach to flooding from all sources, taking account of the effects of climate change.
- Flood avoidance by safeguarding flood storage and conveying capacity.
- Flood reduction by assessing flood risk and, where appropriate, undertaking natural and structural flood management measures.
- Avoidance of increased surface water flooding.

26. In terms of delivery, SPP requires that planning authorities must take the probability of flooding from all sources and the associated risks involved, into account, when preparing development plans and determining planning applications. SPP states that development plans should use Strategic Flood Risk Assessment (SFRA) to inform choices about the location of development and policies for flood risk management. They should have regard to the flood maps prepared by SEPA and take account of finalised and approved flood risk management strategies and plans and river basin management plans.
27. The development management system should operate in support of the Scottish Government's central purpose – increased sustainable economic growth. This means planning authorities should provide greater certainty and speed of decision making as a means of creating economically, environmentally and socially sustainable places (ref: Circular 3/2013 Development Management Procedures).

28. Planning authorities must ensure that flood risk is properly taken into account and are required to consult SEPA in circumstances prescribed by development management regulations. Planning authorities should determine planning applications in accordance with the plan-led system unless material considerations indicate otherwise. The SPP Risk Framework and advice from SEPA on flood risk are both important material considerations. It is for the planning authority, as decision-maker, to determine the appropriate weight to be given to material considerations in each case.

29. The primary responsibility for operating the development planning system lies with local, national park and strategic development planning authorities. Planning authorities are required to consult with SEPA as a key agency and have regard to any views expressed in the preparation of development plans (strategic and local).

30. Circular 6/2013 (Development Planning) indicates that through full and early engagement, plan-making authorities will have early access to much of the key information they need to produce effective plans. This should help the plans to be realistic and deliverable and tie in with the strategic objectives of other agencies, with these agencies 'buying-in' to the strategy and proposals of plans and assisting in their delivery.

Consultation Arrangements

(a) Proportionality

31. SEPA wishes to prioritise, simplify and accelerate engagement with the planning system in a manner which reinforces the roles and responsibilities of planning authorities, other key agencies and developers and reduces the consultative burden on all parties.

32. Prior to SEPA consultation, planning authorities should screen a development proposal against the information outlined in paragraph 44, below. If the proposal constitutes a lower risk type of development as identified in SEPA Guidance (LUPS-GU8) then reference should be made to
the standing advice provided. A consultation should be supported by a Flood Risk Assessment if the proposal is within the following categories of development as indicated in SPP:

- development in the medium to high category of flood risk,
- development in the low to medium category in the circumstances described in the risk framework, or where other factors indicate heightened risk.

Further information may be obtained from SEPA’s web briefing note on how and when to consult SEPA, LUPS-GU9. This briefing note also includes updated guidance regarding consultation on surface water flood risk.

33. SEPA seeks to enhance its service to planning authorities as part of its commitment to the Planning Performance Framework. As part of this commitment, SEPA proposes to report annually on the effectiveness of its flood risk advisory role, working in partnership with planning authorities to obtain relevant information on planning decisions.

(b) Development Management

34. In circumstances where a development is likely to result in a material increase in the number of buildings at risk of being damaged by flooding, a planning authority must consult with SEPA before determining the application for planning permission.

35. If the planning authority considers that there may be flood risk issues outwith the above criteria, then SEPA may be consulted, specifying that flood risk advice is required in line with section 72 of the FRM Act.

36. Planning authorities must take SEPA’s advice into account alongside the development plan and other material considerations in the determination of a planning application involving flood risk.

37. In line with its duty to reduce overall flood risk, SEPA will, if it becomes aware of flood risk for a development site via any other means, take reasonable steps to alert the planning authority.

(c) Development Planning

38. SEPA wishes to provide clear, helpful and consistent advice to planning authorities from the outset to ensure it can support the development of a genuinely plan-led system. SEPA will provide formal comment on the main issues report, proposed plan, action programme and supplementary guidance. SEPA has identified, in its development plan guidance, issues in relation to the protection of human health, economic activity, environment and cultural heritage from risk of flooding which should be taken into account in the development plan process (see LUPS-GU2a).
39. In order to be in a position to accept, in principle, the development proposals contained in adopted plans, SEPA needs to be satisfied that planning authorities have afforded due weight to flood risk throughout the plan preparation process. SEPA has provided guidance to encourage planning authorities to use Strategic Flood Risk Assessments (SFRAs) to inform the development planning process and help to establish the principle of development.

40. SPP expects development plans to use SFRA to inform choices about the location of development and policies for flood risk management. However, where SFRA has not been undertaken, to establish the principle of development, SEPA would recommend that a flood risk assessment or other appropriate information is submitted in support of the suggested individual allocations.

41. Other appropriate information may be provided in a scoping type flood risk assessment and could include information on:
   - a master-plan layout of the development site;
   - pre and post development site levels with finished floor levels related to nearby watercourses;
   - appropriate photographs;
   - any nearby historical flood levels.

European Convention on Human Rights

42. SEPA recognises the importance of giving due consideration to the human rights impacts of environmental decisions, in particular under Article 2 of the European Convention on Human Rights (ECHR).

43. It is the responsibility of local authorities to satisfy themselves that any decision made by them is compatible with the ECHR.

Part 2: Information Sources for Screening and Flood Risk Assessment

Screening

44. Before consulting SEPA, the following information sources should be used by planning authorities to determine the potential existence of a flood risk in a preliminary screening of development proposals:
a) In connection with the publication of the **Flood Maps** for Scotland in January 2014, SEPA provided planning authorities and national park authorities with a Planning Sub-folder of mapped information on flood risk for land use planning purposes. The mapped information for fluvial and coastal flood risk should be used to screen planning applications and development plan land allocations prior to a SEPA consultation on development affected by these sources of flooding, viz:

- the medium probability (1:200yr) and the low probability (1:1,000yr) fluvial and coastal flood extents provide the means to identify flood risk areas as categorised by the SPP Risk Framework and to assist consideration of appropriate planning responses.

- SEPA’s observed historical flood extents have been provided to support use of the medium probability extents.

- For purposes of screening for residual flood risk behind flood defences, the low probability (1:1,000yr), fluvial extent may be used as a proxy for the medium probability (1:200yr) extent. The medium probability, fluvial layer takes account of structures and flood defences. Consequently, residual flood risk (e.g. in circumstances where flood defences fail) cannot be derived from the mapped flood extent. The low probability extent has been combined with information indicating flood defence structures and areas of benefit.

- The modelling of the coastal flood extent does not take account of structures and flood defences and thus can be used to provide an indication of areas at residual flood risk behind defences. However, as a function of the LiDAR DTM used, some existing sea walls and other structures may be modelled as defences thus underestimating the extent of coastal flooding locally.

- NB: The fluvial and coastal hazard maps are strategic products developed at a national scale using national datasets and consistent methodologies. They are not suitable for use at the individual property level. Due to the strategic nature of the output and the methodologies used, there are limitations associated with the maps. Given the strategic limitations of the maps and their focus on only two sources of flooding, if SEPA makes no comment on flood risk, planning authorities should not assume that no such risk exists.

b) Historic flood information held by the local authority in connection with its flood risk management functions may be available from the Flood Officer within the local authority, who should be consulted on proposed planning matters as routine, given their potential wealth of local knowledge.
c) Previous Flood Risk Assessments or information provided in support of previous planning applications in the vicinity of the proposed allocation should also be referred to if appropriate.

d) Local authority biennial flood prevention reports, although now not required under the FRM Act, are a valuable source of information on all scales of past flood events that have affected a local authority area. Information on remedial measures which were undertaken to reduce the flood threat at any given location is also often listed.

e) Information held by the local authority on any formal Flood Prevention Schemes* owned and maintained by the said authority, if relevant to the site of interest, should be considered in light of SPP risk framework.

f) Some planning authorities may be able to draw upon valuable information collated through the strategic flood risk assessment of their development plans.

* The Scottish Flood Defence Asset Database provides information on the location of flood prevention schemes designed and constructed under formal legislation (formerly the Flood Prevention (Scotland) Act 1961, now repealed and replaced by Part 4 of the Flood Risk Management (Scotland) Act 2009).

45. Reference should also be made to Flood Liaison and Advice Groups (FLAGs). These groups, convened by local authorities, provide a forum for the key public and private stakeholders to share knowledge and offer advice on flooding issues.

46. To assist the consultation process, local authorities should continue to develop an appropriate understanding of flood risk issues and concepts, such as estimation techniques and commonly used statistical expressions for the quantification of flood risk.

**Use of the Surface Water Hazard Map**

47. SEPA seeks to promote proportionate, collaborative and integrated working on surface water management with local authorities and Scottish Water, recognising shared responsibilities for surface water management.

48. The surface water hazard map has been delivered to planning authorities to provide them with a high level awareness of surface water flooding issues to support the consideration of such matters within the land use planning system. The surface water hazard map may provide a starting point for planning authorities in their technical assessment of surface water management solutions. The hazard map combines pluvial sources and sewer model outputs to provide a strategic assessment of surface water flood risk.
SEPA would advise planning authorities to ensure appropriate assessment of surface water flood risk in consultation with their Flood Officers. Consultation with Scottish Water may also be necessary to clarify surface water drainage and flooding constraints from the sewerage system. Planning authorities should not use the surface water hazard map as a basis for routine consultation with SEPA.

49. Surface water flooding can be managed in many developments by engineering interventions. Scottish Planning Policy (SPP) states that surface water drainage measures should have a neutral or better effect on risk of flooding both on and off site, taking into account the rain falling on the site and run-off from adjacent areas. In the assessment of management solutions, due regard should be given to any pluvial hazard. Where the technical assessment indicates that there is a pre-existing risk of pluvial flooding, SEPA may be consulted for flood risk advice regarding the consideration of pluvial risks in cases where those issues are particularly complex.

50. However, it should be noted that the management of surface water drainage and exceedance of surface water drainage systems are matters for the local authority to consider in conjunction with Scottish Water. Consequently, SEPA does not expect to be routinely consulted on these issues as they can be addressed by Sustainable Drainage Systems (SUDS) designed in accordance with the CIRIA SUDS Manual and, where the scheme is to be adopted by Scottish Water, the Sewers for Scotland Manual. (See further information in paras 60-61 and 72).

Flood Risk Assessment

51. Flood risk needs to be assessed in order to inform decisions at all stages of the planning process.

(a) Development Management

52. Flood Risk Assessments (FRAs) should be supplied in support of applications for development to planning authorities where flooding is recognised as a potential issue or where there is uncertainty. SPP advises that FRAs should be required for development in the medium to high category of flood risk, and may be required for the low to medium category in the circumstances described in the Risk Framework or where other factors indicate heightened risk. Planning authorities have powers under Regulation 24 of the Development Management Procedure Regulations to require additional information and evidence, including FRA, for in principle and detailed planning applications.

53. A FRA should be carried out to predict and assess the probability of flooding from all sources for a particular site or area and should recommend mitigation measures, including maintenance. The four key risk receptors to consider are human healthy, economic activity, environment and cultural
heritage. A pre-development flood risk assessment should provide an input to subsequent surface water drainage design (see paras 59-60).

54. The technical requirements of a FRA for any site can range from the provision of detailed topographical information to demonstrate the relative level of the development site in relation to the river, sea, canal or other hazard, to technically detailed hydrological and one or two dimensional hydraulic modeling to investigate the risk to the development or its impact elsewhere. SEPA’s Technical Flood Risk Guidance for Stakeholders should be referred to for further information.

55. SEPA will review FRA reports and provide advice and comment to the planning authority on the appropriateness of the study, its conclusions and the acceptability of the proposed development in line with SPP and the FRM (Scotland) Act 2009. This will include:

- the flood risk to the development itself;
- assessment of any mitigation measures proposed by the developer or planning authority;
- the impact upstream and downstream and to adjacent sites /existing development;
- any comments on any nearby hydraulic structures, including formal flood prevention measures;
- any comments on potential erosion related hazards;
- sustainability considerations such as climate change;
- any comments on habitats issues.

56. Reference will be made to possible flood impacts for human health, economic activity, the environment and cultural heritage throughout. Such matters should demand careful consideration from both SEPA and the respective planning authority.

57. SEPA provides a FRA checklist which should be attached to the front cover of any assessment issued to planning authorities in support of a development proposal which may be at risk of flooding. The checklist is intended to assist those undertaking a FRA and also SEPA in reviewing the assessment.

58. An assessment carried out by a third party and submitted as part of the planning application will usually become information held by SEPA. SEPA has a duty to advise planning authorities of flood risk based on such information.

(b) Development Planning

59. Strategic Flood Risk Assessment (SFRA) constitutes a strategic overview of flood risk to the development plan area and should involve the collection, analysis and presentation of all existing available and readily derivable information on flood risk from all sources. SFRA applies a risk based approach to identifying land for development and can help to inform
development plan flood risk policy and supplementary guidance. Planning authorities should prepare SFRAs in consultation with SEPA and other stakeholders with an aim of achieving co-ownership of the assessment. Fuller information on flood risk assessment in development plans is provided in LUPS-GU2a.

(c) SEPA’s Role in Drainage Assessment

60. The purpose of a Drainage Assessment is to provide site specific information on drainage issues and arrangements to inform decisions on development of the site. Where pluvial flood risk has not been previously considered in a Flood Risk Assessment, it may be assessed in a Drainage Assessment. In such circumstances, the assessment may include consideration of the flow route for the 1:200 year return period pluvial flood event and should seek to demonstrate no detriment to the site, the external built environment and watercourses.

Uncertainty and Levels of Confidence

61. There is always uncertainty in the estimation of flood risk, including the potential effects of climate change. Whenever SEPA issues advice on flood risk it will include a warning of the likely accuracy of risk estimates, in particular due to the likely influence of global climatic change. As further guidance becomes available SEPA will include more refined estimates of the effect.

62. Due to the uncertainty associated with the estimation of flood risk, planning authorities should be aware that the advice given by SEPA is underpinned by varying degrees of confidence. For example, in cases where recorded data, observed evidence and good quality flood risk assessments are available, SEPA would have a high degree of confidence in its advice. Alternatively, there would be limited confidence in the advice given where that advice is based on limited information and is reliant on unsubstantiated anecdotal evidence. SEPA will endeavour to express the confidence attached to any statement as to flood risk with appropriate qualifying statements related to the nature, source and type of information upon which an assessment is based.

63. Planning authorities should also be aware of the following standard caveat which will be included in all advice on flood risk offered to planning authorities:

“The advice contained in this correspondence is supplied to you by SEPA in terms of Section 72 (1)/(2) of the Flood Risk Management (Scotland) Act 2009 on the basis of information held by SEPA and considered suitable for the purposes of providing planning advice as at the date hereof. It is intended as advice solely to the relevant Council/ National Park as Planning Authority in terms of the said Section 72 (1)/(2). Our briefing note entitled: “Flood Risk
Management (Scotland) Act 2009: flood risk advice to planning authorities” outlines the transitional changes to the basis of our advice in line with the phases of this legislation.

Part 3: SEPA’s Formal Comments on Planning Applications

64. SEPA will provide a bespoke response suited to the individual case. This may utilise one of several standard paragraphs to help ensure a nationally consistent approach.

Where SEPA holds no information

65. Where SEPA is requested to comment on the flood risk relevant to a planning application, planning authorities should be aware that SEPA may not hold any information on flooding in relation to specific sites. The mapping of flooding is a dynamic process and the SEPA Flood Maps will be subject to review and change as input data, methodologies and techniques are developed. If SEPA does not hold the information required to advise on flood risk the following words should be included as part of the response:

“We have reviewed the enclosures submitted with this consultation in respect of flood risk and from the information supplied no flood risk is immediately apparent. If you require us to provide additional comments on this issue, please re-consult us and specify the nature of the perceived flood risk.”

Planning Applications without Flood Risk Assessments

66. Where a planning authority requests SEPA advice, having screened an application to determine that flooding is an issue, but has not obtained a flood risk assessment from the applicant, SEPA’s response will often be based on the proposed development location and the vulnerability of the development in relation to the mapped information contained within the Planning Sub-folder (see para. 44a). Local knowledge and additional information will always be used where appropriate, including reference to FRAs for nearby sites which SEPA hold.

67. In consideration of whether a flood risk assessment is, or is not, required, SEPA flood risk specialists make use of standard responses to assist the preparation of SEPA’s formal response to the planning authorities. The response will commonly incorporate a flood map location from the list below. The list summarises the most common scenarios encountered when examining a proposed development site relative to the fluvial and coastal flood hazard maps.
### Flood Map Location

<table>
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<th>Standard Response Type</th>
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<tr>
<td>fluvial flood risk identified</td>
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<td>coastal flood risk identified</td>
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<td>alteration/ small scale extension</td>
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<tr>
<td>fluvial flood risk</td>
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<tr>
<td>coastal flood risk</td>
</tr>
<tr>
<td>minor watercourse identified</td>
</tr>
<tr>
<td>record of flooding identified</td>
</tr>
<tr>
<td>culvert/structure identified</td>
</tr>
<tr>
<td>no fluvial/ coastal flood risk identified</td>
</tr>
</tbody>
</table>

*Reference to the low probability extent is relevant where development comprises of the most vulnerable uses and civil infrastructure as described in the SPP Risk Framework.*

68. A number of caveats and additional points of information are appended to all formal responses from SEPA. The limitations of the information contained within the flood maps for detailed flood risk assessment are outlined. A reference is provided to SEPA's Technical Flood Risk Guidance for Stakeholders. Reference is also made to SEPA's web briefing note entitled: "Flood Risk Management (Scotland) Act 2009: flood risk advice to planning authorities". This outlines transitional changes to the basis of SEPA advice in line with the phases of the legislation.

### Formal response on a Flood Risk Assessment (FRA)

69. Where SEPA receives a FRA in connection with a planning application that raise fluvial or coastal flooding issues, it will:

- audit the FRA and advise on the soundness of the methodology, conclusions and recommendations proposed; and,
- provide its own advice and comment on flood risk to the planning authority based on the audited FRA, any other relevant information
70. The SEPA response will set out clearly if SEPA has objections to the development, requires modifications or planning conditions. The response will make use of standard paragraphs under one of the following headings:

- **Objections to proposed development (due to lack of information, modifications required or with conditions attached).**
- **No Objections to proposed development.**
- **No Objections to proposed development - National Park**
- **Objections in principle to proposed development**

71. Planning authorities should follow the process set out in ‘How and When to Consult with SEPA guidance (LUPS GU-9)’ when considering a Drainage Assessment or Flood Risk Assessment that seeks to address surface water flood hazard. Where SEPA receives a consultation on a Drainage Assessment or Flood Risk Assessment which seeks to manage a particularly complex pluvial flood hazard, SEPA’s response will provide proportionate advisory comment, recognising shared responsibilities for surface water management. SEPA will seek to avoid use of formal objections. SEPA may object if it is judged that insufficient information has been provided to determine whether the proposed development is acceptable in principle to SEPA in terms of its environmental or health impacts, however SEPA will not request further information or object on the basis of lack of information if it is considered that there is enough information to support the principle of development. In our response we will, if appropriate, highlight any deficiencies in the technical report as advisory comments and recommend that the planning authority address these issues with the applicant in satisfying themselves that surface water is appropriately managed. It is the planning authority’s responsibility to ensure that surface water is appropriately managed and that the information submitted by the applicant is adequate for this purpose. (see para. 60).

72. To enable planning authorities to judge when the advice given by SEPA may require the application to be notified to the Scottish Ministers, SEPA will include the following text as part of its response in appropriate cases:

“*In the event that the planning authority proposes to grant planning permission contrary to this advice on flood risk, the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 provides criteria for the referral to the Scottish Ministers of such cases. You may therefore wish to consider if this proposal falls within the scope of this Direction.*"
Next Steps

73. Planning authorities and SEPA are asked to implement this revised protocol in order to further improve the role of the land use planning system as the key non-structural mechanism for dealing with flood risk.