
CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DECISION

Title: **FLOOD RISK MANAGEMENT ACT –
CONSULTATION ON RESPONSIBLE AUTHORITIES**

Prepared by: **Hamish Trench
Strategic Land Use Director**

Purpose

To seek the board's response to the recommendation by Scottish Government to designate the National Park Authority as a responsible authority in terms of the Flood Risk Management Act.

Recommendations

That the Board

- a) Accept the case for designating the Cairngorms National Park Authority as a responsible authority under the Flood Risk Management Act; and
- b) Delegate to officers CNPA's response to the consultation, to include the implications for CNPA, with sign-off by Committee, David Cameron and Planning Convener.

Executive Summary

The Flood Risk Management Act places duties on Scottish Ministers, SEPA, and responsible authorities to take a risk-based, long term sustainable view to managing flood risk from all sources of flooding. Currently, Scottish Water and all Local Authorities are named as responsible authorities. The Scottish Government is currently consulting on which other public bodies should be designated as responsible authorities. It recommends that National Park Authorities should be responsible authorities in terms of the Act.

Designation would bring statutory duties to CNPA, the practical implication of which are likely to be some additional officer time to participate in local partnerships to develop flood risk management plans.

FLOOD RISK MANAGEMENT ACT – CONSULTATION ON RESPONSIBLE AUTHORITIES FOR DECISION

Background

1. The Scottish Government is currently consulting on the designation of additional responsible authorities under the terms of the Flood Risk Management Act. The consultation proposal recommends that National Park Authorities, alongside Forestry Commission, should be designated as responsible authorities. The relevant extract dealing with National Park Authorities is at Annex I.

The Flood Risk Management Act

2. The FRM Act places duties on Scottish Ministers, SEPA, and responsible authorities to take a risk-based, long term sustainable view to managing flood risk from all sources of flooding. The FRM Act sets out the roles and responsibilities of these organisations. Currently, Scottish Water and all local authorities are named as responsible authorities under the FRM Act. However, there are other public bodies and office holders in Scotland that can (and do) play a role in helping to manage flood risk.
3. The Scottish Government is now consulting on recommendations for additional responsible authorities that should be designated under the FRM Act. It aims to clarify which organisations should have a legal obligation to help deliver sustainable flood risk management in Scotland.
4. Responsible authorities are expected to contribute to sustainable flood risk management through their contribution to the development and implementation of flood risk management plans. The specific duties of responsible authorities are set out in the FRM Act, and include:
 - a) General duties, which indicate how flood risk related functions should be exercised (Section 1 of the FRM Act) (see Annex 2)
 - b) Compliance with Ministerial directions, and regard to Ministerial guidance (Section 2 of the FRM Act)
 - c) Opportunity to respond to consultations such as draft flood risk management plans (Subsection 30(5) of the FRM Act)
 - d) Agree to the contents of local flood risk management plans (Subsection 35(6) of the FRM Act)
 - e) Gather and provide information, where reasonable, to SEPA (Section 43 of the FRM Act)

- f) Provide information, where reasonable, to the lead local authority (Section 44 of the FRM Act)
 - g) Opportunity to input into advisory groups (Sections 49 and 50 of the FRM Act)
5. The responsible authorities will be expected to support SEPA in the production of flood risk management strategies, and support lead local authorities in the production of local flood risk management plans. This input will involve providing information, helping to set objectives and select measures for managing flood risk, and helping to agree an implementation plan.
6. Statutory guidance on Delivering Sustainable Flood Risk Management was issued by Scottish Ministers in 2011, which sets out how Ministers wish responsibilities to be delivered. Collective responsibility for delivering flood risk management strategies and plans will take place through the set up of local partnerships. SEPA and the Scottish Government have also published The Arrangements for 2012 - 2016 for flood risk management planning in Scotland, which indicates how the local partnerships might be structured and function; it is the involvement in these partnerships that is likely to be the greatest new role for responsible authorities including CNPA.

Implications for CNPA

7. The case for designating the National Park Authority as a responsible authority is clearly set out in the consultation and is based largely on our function as a planning authority. Even without designation as a responsible authority we would be likely to be closely involved in the implementation process. We already work to meet the objectives of the FRM Act through our planning service and wider land use work.
8. The most significant implication for CNPA is likely to be the officer time incurred in participation in potentially four local partnerships to contribute to flood risk management plans.
9. The benefit of both the FRM Act and designation as a responsible authority is the additional impetus it brings to sustainable flood management techniques, including natural flood management in which the National Park, comprising the upper catchments of major rivers, is well placed to deliver solutions. This will support the work we already undertake through catchment management initiatives in the Park.

Recommendation

10. That the Board
 - a) Accept the case for designating the Cairngorms National Park Authority as a responsible authority under the Flood Risk Management Act and;
 - b) Delegate to officers CNPA's response to the consultation, to include the implications for CNPA – sign-off by Committee, David Cameron and the Planning Convener.

Next Steps

11. The consultation closes on Thursday 21st June.

Hamish Trench

26th April 2012

hamishtrench@cairngorms.co.uk

Annex I: Extract from Scottish Government Consultation

3.3.1 National Park Authorities

1. The purpose of a National Park Authority is to ensure that the four statutory aims of the National Park are achieved in a collective and co-ordinated way.
2. These aims are:
 - a) To conserve and enhance the natural and cultural heritage of the area
 - b) To promote sustainable use of the natural resources of the area
 - c) To promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public
 - d) To promote sustainable economic and social development of the area's
 - e) Communities
3. There are two National Park Authorities (NPAs) in Scotland: the Loch Lomond and the Trossachs National Park Authority, and the Cairngorms National Park Authority. There are some differences in the roles and responsibilities of the two organisations; however, we treat them both in the same way for the purposes of designation.
4. NPAs play an important role in land use planning, thereby carrying out activities and granting permission for activities that can play a key role in managing and reducing flood risk.
5. Firstly, the NPAs produce strategic plans that could play a significant role in flood risk management. Under the [National Parks \(Scotland\) Act 2000](#), the NPAs are responsible for producing National Park Plans. The park plans set out the aims and objectives for the park, and bring together the activities of a number of different organisations to help deliver the plans. The National Park Plans already consider flood risk management – for example, the current [Cairngorms National Park Plan 2007-2012](#) aims to promote management of natural floodplains and promotion of sustainable flood management.
6. Secondly, NPAs produce local development plans, which set out where most new developments will happen and policies that will guide decision-making in planning applications. Under the [Town and Country Planning \(Scotland\) Act 1997](#), NPAs also have powers to grant planning permission. (All planning applications within the boundary of the Loch Lomond & the Trossachs National Park are made to the Park Authority, whereas the Cairngorms NPA has call-in powers⁴).
7. The Scottish Government's planning policies are set out in the [National Planning Framework](#) (NPF2) and [Scottish Planning Policy](#) (SPP), [Designing Streets](#) and

Circulars. Of particular relevance to flood risk management are the statements contained within SPP and NPF2. SPP provides the statement of the Scottish Government's policy on nationally important land use planning matters. This includes subject policies on flooding and drainage. NPF2 is the Scottish Government's strategy for the long term spatial development of Scotland until 2030. It includes references to sustainable flood management, integrated approaches and sustainable catchment management. The [Planning etc. \(Scotland\) Act 2006](#) requires planning authorities to take NPF2 into account in development plans and development management decisions. Policies expressed in SPP should inform the content of development plans, should be a consideration in decisions on planning applications and should be used to inform development proposals from initial concept to implementation.

8. For example, the SPP states that planning authorities 'must take the probability of flooding ...and risks involved into account when preparing development plans and determining planning applications'. This is reflected in development plans which are produced by planning authorities and National Park Authorities. For example, the [Loch Lomond & the Trossachs National Park Adopted Local Plan 2010-2015](#) considers where development should not take place due to high or moderate flood risk.
9. Given the key role of development planning in managing flood risk, the planning functions of NPAs, and the need to ensure consistent approach between development planning and flood risk management from all planning authorities (i.e. NPAs and local authorities), we propose that the NPAs are designated as responsible authorities under the FRM Act.

Annex 2: General duties of Scottish Ministers, SEPA and the Responsible Authorities

- I. Section 1 of the FRM Act sets out general duties for Scottish Ministers, SEPA and the responsible authorities. The general duties provide direction to these organisations on how they should exercise their flood risk related functions, including the duty to act with a view to reducing overall flood risk. Flood risk related functions are clearly defined in Section 1(4) of the FRM Act. For any new responsible authorities, flood risk related functions include the functions under Part 3 of the FRM Act and any other existing functions, as designated by Ministers, outside of the FRM Act. When exercising their flood risk related functions, Ministers, SEPA and the responsible authorities should:
 - a) Act with a view to reducing overall flood risk
 - b) Act so as to secure compliance with the EC Floods Directive
 - c) Act with a view to achieving the objectives set out in flood risk management plans
 - d) Adopt an integrated approach by co-operating with each other to coordinate the exercise of their respective functions. (Scottish Ministers, SEPA and the responsible authorities may enter into agreements with each other for this purpose) The organisations should also, so far as is consistent with the purposes of the flood risk related function:
 - e) Act in the way best calculated to manage flood risk in a sustainable way
 - f) Promote sustainable flood risk management
 - g) Act with a view to raising public awareness of flood risk
 - h) Act in the way best calculated to contribute to the achievement of sustainable development