



Implementation processes for the Flood Risk Management (Scotland) Act 2009



Final Report

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1.0 INTRODUCTION

This document provides evidence to SEPA and the Scottish Government relating to the implementation processes for the Flood Risk Management (Scotland) Act 2009 (hereafter FRM Act) within existing policy frameworks. It gives guidance on the roles and processes of the Flood Risk Management local advisory groups. These groups are now termed local advisory groups as opposed to 'sub-district' advisory groups as termed in the FRM Act. These local advisory groups will be established by autumn 2012. Much of the report is based on recent findings relating to good practice for catchment management and research into how Area Advisory Groups (AAGs) have undertaken their responsibilities in Area Management Planning under the Water Framework Directive (WFD).

2.0 BACKGROUND

The FRM Act was enacted on June 16, 2009. The biggest change it has brought to flood management is the emphasis on managing flood risk in a sustainable way. This new approach moves away from a predominantly reactive system to one where the impacts of floods are pre-empted using better information, and data, on the causes and impacts of floods. This approach will prompt a wider range of co-ordinated actions, with public bodies working closely with each other, as well as with communities and businesses at risk. This means considering where floods are likely to occur in the future and taking action to reduce the impact of flooding, without moving the problem elsewhere. It requires the analysis of all sources of flooding, whether from rivers, the sea or from the surface water run-off in our towns and cities. It also requires the selection of actions that help preserve the environment, whilst meeting the needs of present and future generations. Many of the flooding issues and problems facing the water environment are best understood, and addressed, at the catchment level.

The FRM Act aims to ensure a co-ordinated approach to Flood Risk Management across Scotland. This means the need to work with existing stakeholders, statutory bodies and those implementing other policies such as the Planning (Scotland) Act 2011 and the Water Environment and Water Services (Scotland) Act 2003 (WEWS), and the Habitats Directive as well as land-use planning and marine planning. SEPA is leading the delivery of River Basin Management Plans and Flood Risk Management Plans and will ensure that there is integration and co-ordination between them. This co-ordination, particularly in regard to consultation and engagement, will be important for stakeholders many of whom have an interest in the objectives of both plans. The FRM Act requires the production of Flood Risk Management Plans covering Scotland. These will be produced for each Local Plan District and there will be two sets of complementary plans, Flood Risk Management Strategies produced by SEPA, and Local Flood Risk Management Plans produced by lead local authorities.

3.0 SCOTTISH ADVISORY AND IMPLEMENTATION FORUM FOR FLOODING

The Scottish Advisory and Implementation Forum for Flooding (SAIFF) was set up by the Scottish Government to manage the implementation of policies under the FRM Act. SAIFF provides a forum for SEPA, Scottish Water, local authorities and other key stakeholders to work collectively towards implementation of the legislation that will result in improved, practical and cost effective flood management in Scotland. The Scottish Government has established a set of advisory groups under the

umbrella of SAIFF and these advise on technical issues including the development of the methodology to support the production of a National Flood Risk Assessment, and national policy issues, such as guidance on delivering sustainable Flood Risk Management.

SEPA with the Scottish Government and through SAIFF developed the proposals set out in the document 'Flood Risk Management Planning in Scotland: Arrangements for 2012 – 2016' (February 2012) which sets out how and when Flood Risk Management Strategies and Local Flood Risk Management Plans will be produced. It also describes the proposed arrangements for the delivery of local advisory groups.

National Flood Risk Assessment

The National Flood Risk Assessment was published in December 2011 and this assessment improves our understanding of the causes and consequences of flooding, and helps identify areas most vulnerable to flooding. The National Flood Risk Assessment is the foundation upon which SEPA has built the new risk-based, sustainable and plan-led approach to Flood Risk Management to be delivered within catchments.

Potentially Vulnerable Areas

Based on the National Flood Risk Assessment, areas have been identified where the potential impact of flooding is sufficient to justify further national assessment and appraisal of Flood Risk Management actions. In Scotland, 243 Potentially Vulnerable Areas have been identified. They have been grouped together for planning purposed within Local Plan Districts.

Local Plan Districts

Following two consultations¹ SEPA has divided Scotland into 14 Local Plan Districts. Local Plan Districts are the geographical areas for the production of Flood Risk Management Strategies and Local Flood Risk Management Plans. For each Local Plan District a Lead Local Authority, local partnership and a local advisory group will be established.

SEPA is responsible for establishing local advisory groups and this includes setting the remit, membership and their working procedures. SEPA and the Lead Local Authority must have regard to any advice they provide. The broad remit, membership and procedure of the local advisory groups were outlined in Section 6.4 of the 'Flooding in Scotland: A consultation on Potentially Vulnerable Areas and Local Plan Districts' with overall support by respondents. Local advisory groups will have representations from the following:

- Local authorities and Scottish Water;
- Category 1 responders;
- Scottish Natural Heritage, relevant National Parks, and;
- Other local stakeholders with an interest in flood management identified by SEPA e.g. Forestry Commission, British Waterways.

¹ 'Planning for floods – planning for the future' (September 2010) and 'Flooding in Scotland: A consultation on Potentially Vulnerable Areas and Local Plan Districts' (June 2011).

Views expressed to SEPA's 2011 consultation called for an expansion to this list to ensure more comprehensive involvement from environment groups, NGOs and the different departments from local authorities.

The broad remit of the local advisory groups will be to advise on the key deliverables of the FRM Act, including:

- Production and review of the Local Flood Risk Management Plans, Flood Risk Management Strategies, maps and assessments, and;
- The identification of objectives and sustainable actions to reduced flood risk.

The local advisory group will also be required to provide advice on co-ordination and integration with other strategic plans and policies, as well as to generally encourage partnership working and the participation of stakeholders in the Flood Risk Management planning process.

SEPA must ensure consistency and co-ordination with River Basin Management Planning, as specified under Section 48 of the FRM Act. It is important that links between the two planning processes identify areas with potential for multiple benefits or where conflicting objectives will need to be managed. There is an overlap between RBMP stakeholders and those identified for inclusion to local advisory groups under the FRM Act.

For the delivery of local advisory groups SEPA in their 2011 consultation asked a question about using Area Advisory Group boundaries as the basis for establishing local advisory groups. SEPA generally had good support for this proposal and many respondents acknowledged the importance of establishing close links between River Basin Management Planning and Flood Risk Management planning. Where respondents opposed it was because they believed that local advisory groups should more closely align with Local Plan Districts. **Figure 1** shows the Area Advisory Group boundaries and **Figure 2** shows the Local Plan District boundaries.

Stakeholder groupings already existed in the form of non-statutory Flood Liaison and Advice Groups (FLAGs), established by 28 of the 32 local authority planning departments since 1998. However, many of these groups are no longer active, and following consultation in 2010 SEPA stated that FLAGs were not seen as suitable fora for local advisory groups. Subsequently, under Flood Risk Management, 14 Local Planning Districts have been established based on a set of principles and following two consultations. Local Plan Districts have slightly different boundaries to AAGs however there are proposals to adjust AAG boundaries to align better to Local Plan District boundaries. Such proposals will be contained in an RBMP document: 'Working together to protect and improve Scotland's water environment: Getting involved in developing the second river basin management plan' to be published in August 2012. SEPA will work with partners to prepare a co-ordinated set of Flood Risk Management Strategies for each of the 14 Local Plan Districts. Taken together these will represent a national strategic plan for Scotland.

Figure 1. Water Framework Directive Advisory Group Boundaries

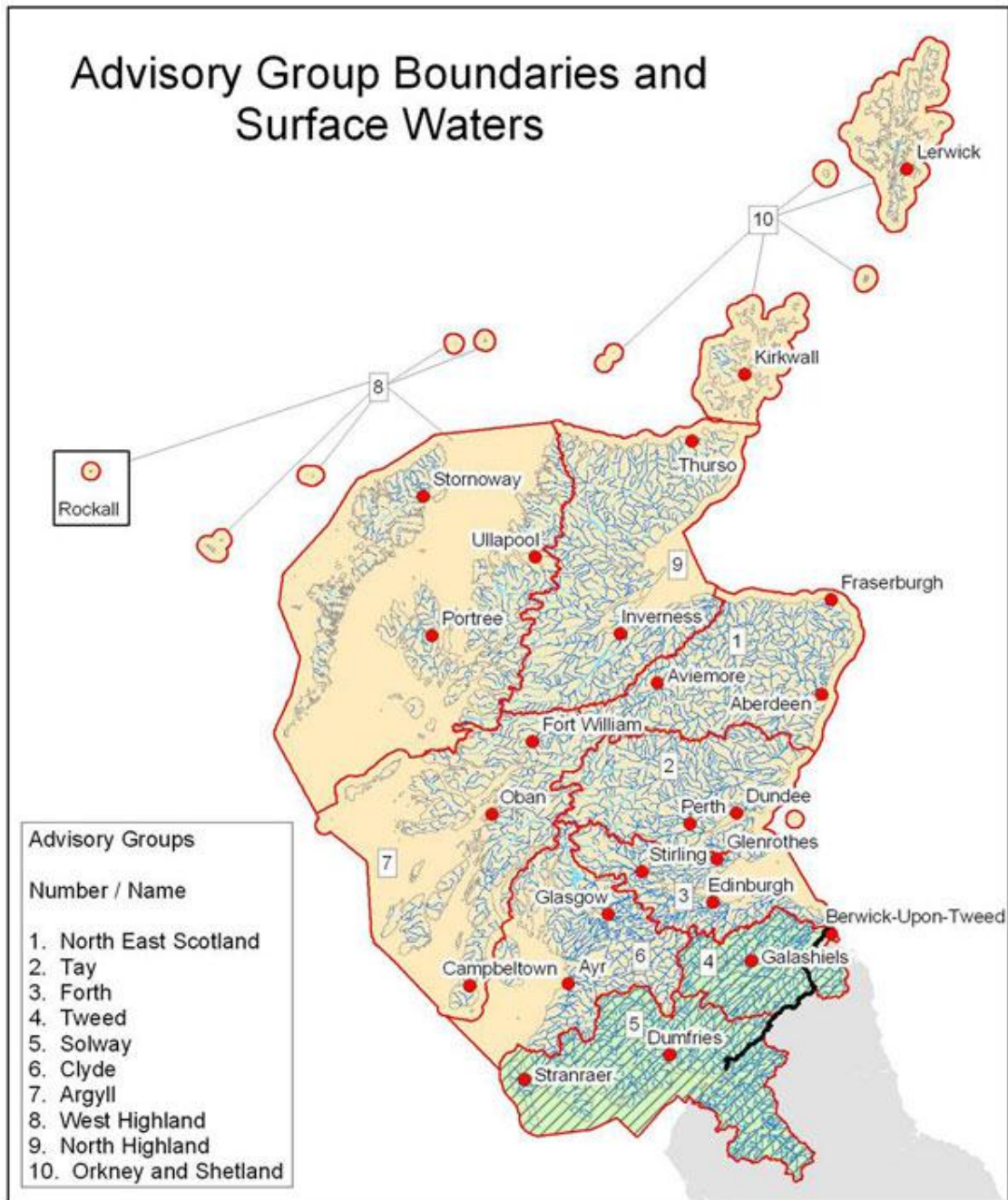
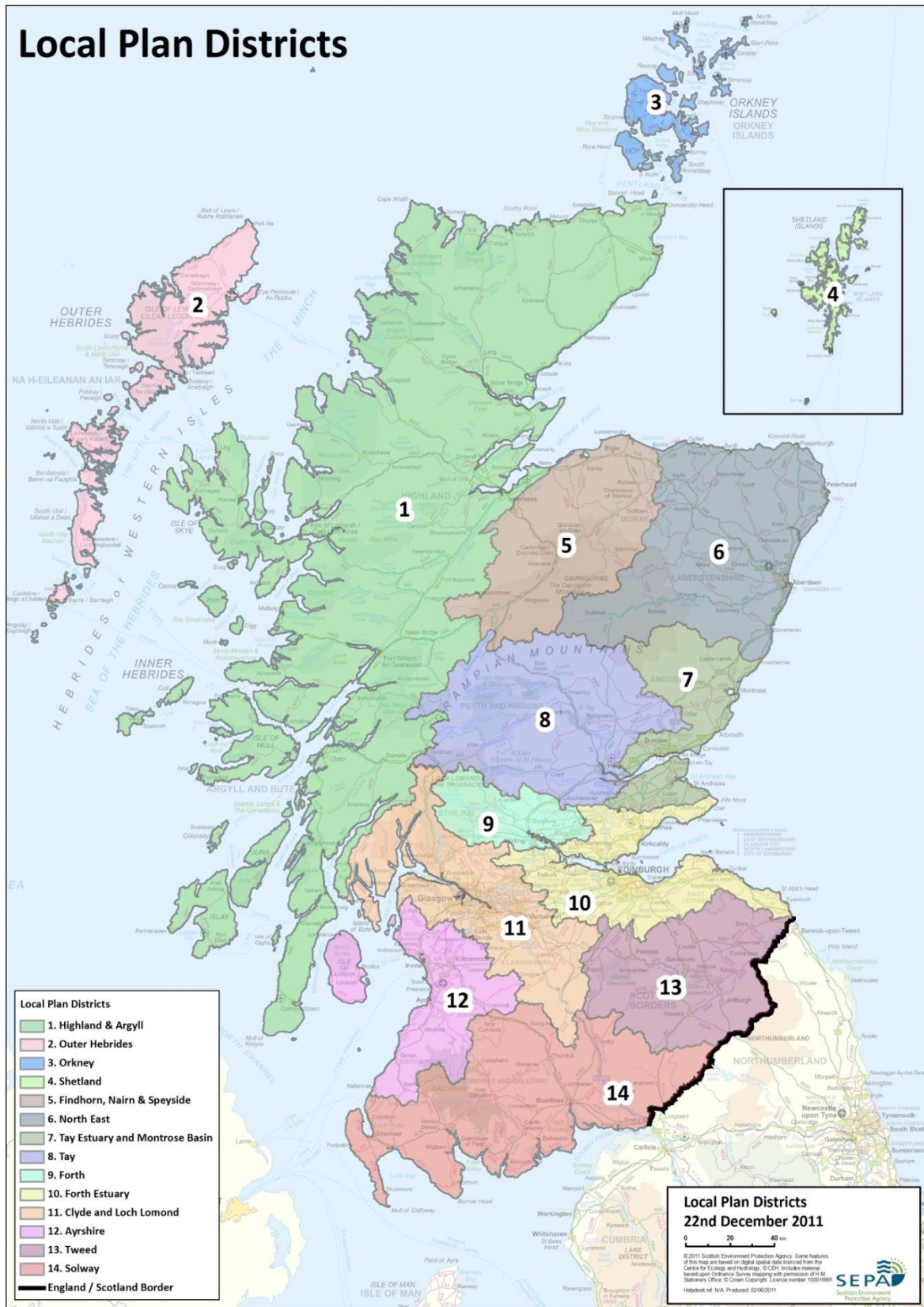


Figure 2. Flood Management Local Plan District Boundaries



The National Planning Framework (2009), which is led by local authorities, means that planning authorities require applicants to provide an assessment of flood risk where a development is likely to result in a material increase in the number of buildings at risk of being damaged by flooding. The main elements of Flood Risk Management relevant to the planning system are assessing flood risks and undertaking structural and non-structural flood management actions or best combination of these actions.

4.0 FLOODING AND CATCHMENT MANAGEMENT

River Basin Management Plans have been developed for Scotland under WEWS, with many stakeholder led catchment management processes (CMP) continuing to operate alongside. However, WEWS only directly addresses three core issues: diffuse pollution; morphology; and invasive species, whereas the existing integrated catchment management processes tend to engage with a broader range of context specific issues.

Statutory agencies and policy makers have a part to play in creating conditions that facilitate 'good practice' being followed in both WFD and the CMP processes. Such agencies need to be responsive to the context-specific needs of the catchments or basins which are influenced by such things as the different prioritisation of issues, the degree of engagement with relevant stakeholders and their geographical location and scale. The WFD planning cycle is currently in the implementation stage, and revisiting its targets and measures in light of progress and emerging issues. This means that there is an opportunity to align FRM and WFD objectives and measures and identify potential conflicts between the objectives of these processes. Many of the stakeholders (bar perhaps development planning and insurance) will already have been engaged in the WFD process and this provides an opportunity to build on existing stakeholder relationships and understanding. However, rather than imposing additional responsibilities and time pressures on stakeholders in relation to flooding, the processes by which FRM implementation operates needs to respect the existing responsibilities of stakeholders and this is the approach that SEPA is adopting. SEPA recognises that many stakeholder organisations interested in catchment issues such as flooding, water quality and biodiversity are the same for both Flood Risk Management and River Basin Management Planning. However, it should be noted that, where the Local Authority area FLAGs exist, they are likely to include stakeholders not present on AAGs, and therefore be able to provide key representatives for these (e.g. insurance interests, property developers, academics and community bodies) and provide input in relation to flood defences, insurance availability, flood warning communication and emergency planning.

A key difference between the WFD and FRM issues is the nature of the relationship between flood mitigation and adaptation. Sub-catchment flood risk (and alleviation) plans need to work with both upstream and downstream stakeholders in order that a water storage and flow can be balanced along the length of the river network, avoiding areas where flooding impact would be high by absorbing that impact elsewhere in the system. The spatial scale of the flood management areas (i.e. how many sub-catchments to include) will in part be dependent on the number of stakeholders and the diversity and location of interests exposed to flood risk. In addition to this, any proposed flood management will need to address the key impacts as identified by the range of stakeholders, and this will require the adoption of a multi-functional approach to natural flood management.

Both the scale at which the RBMP process management plans were focussed and the limited scope (morphology, diffuse pollution and invasive species) has raised issues relating to how the relationship between national and catchment scale management might work. While it may be possible to identify common goals and use resources more efficiently where top-down policy drivers such as WFD meet more bottom-up CMP, the institutional arrangements required to achieve these are likely to take time and effort to develop. All those involved need to be aware of this and the many factors which impact on the ability of CMP processes to deliver improvements to the catchment.

5.0 LESSONS FROM WFD IMPLEMENTATION AND CATCHMENT MANAGEMENT

Experience of implementing the WFD in Scotland to date demonstrates how different interests need to be represented at different scales for instance: at the national level to gain strategic overview; at the regional level for integration and inclusion; and at the water body level for planning and reporting purposes. The current efforts to learn from and adopt a catchment level approach to issues reveal challenges in relation to maintaining consistency and transparency across catchments within a basin, and managing engagement of key stakeholders at both the national and local scales. This will result in some compromises having to be made across scales which would be facilitated by developing effective cross-scale planning and management processes.

Therefore those responsible for implementing the FRM should ideally undertake regional stakeholder analyses (as was done prior to and during the first iteration of WFD) to establish those who should sit on advisory groups, what their position(s) might be and who precisely they would be representing. Indeed, the WFD AAGs in Scotland each had their own distribution of stakeholder representatives reflecting the regional context. Local advisory groups will provide advice to SEPA and the lead local authority, but will not ultimately make decisions. Decision making will be the responsibility of the Local Plan District partnerships. Local advisory group meetings will need to give consideration to questions such as who benefits, who pays and who will be required to act?

In recent years, collaborative and cross-sectoral approaches have been recommended as the most effective and equitable way to achieve better catchment management. However, the realisation that such an approach is often the right thing to do does not mean that this is a simple and predictable process. Several rivers in Scotland currently have groups planning or implementing catchment scale management plans. These are the Tweed Forum, Spey, South Esk, River Dee (Aberdeenshire), Annan/Nith, Dee-Ken and the Devon. There are on-going lessons that can be learned from their experiences.

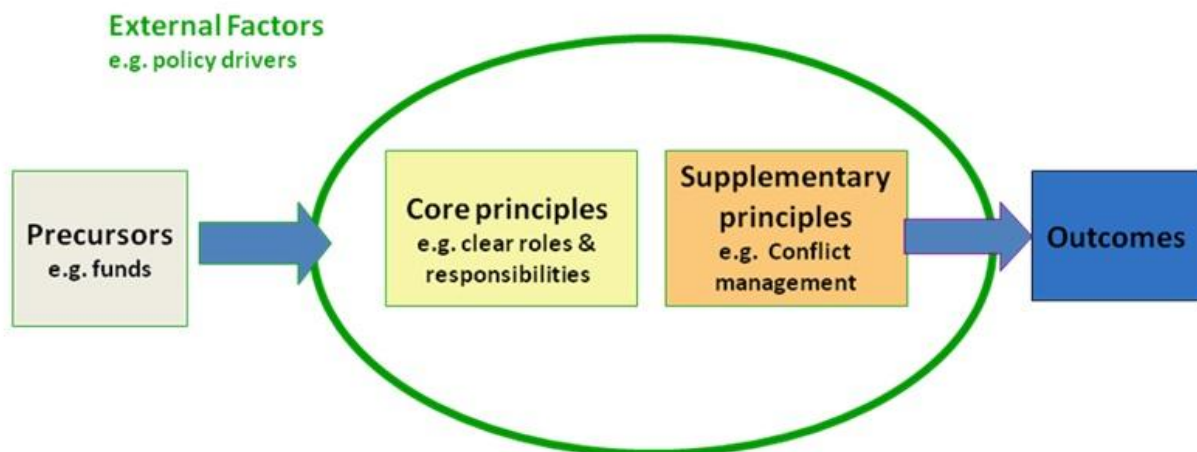
Good practice in catchment management is best viewed as a framework or set of principles to guide management processes. These elements include the precursors to a process and the external factors impacting on a process over time (see **Figure 3**). These all affect the degree to which management might be able to make use of good practice principles themselves. A coherent and well managed process may not achieve its overall objectives due to external factors such as lack of finances or ability to retain staff, poor stakeholder buy-in, or inadequate data. Related policy areas (e.g. planning, agriculture, hydro-electric renewables, habitats and species, and forestry) also influence catchment management

processes. For instance rural policy payments for land management might facilitate flood management objectives being met, while policy drivers promoting micro-hydro schemes may conflict with the need to maintain good ecological status under WFD within a catchment.

Core principles such as clear decision-making processes or clearly defined and agreed roles and responsibilities are considered necessary whatever the context. Supplementary principles (e.g. good communication flow, accommodation of related issues, conflict management) are seen as context specific enablers of a process, not a central requirement in all cases.

Different catchments have different characteristics. This means that each process needs to apply good practice as appropriate to its setting, and evaluated in consideration of this.

Figure 3. Context matters - principles of good practice in collaborative catchment management are dependent on the precursors on which a process is based and the external factors influencing it.



A key element of any multi-stakeholder planning is the need for all concerned to be engaged in planning *as a process which leads to outcomes*. This was highlighted during the WFD implementation process by the necessary shift from those involved seeing planning *as a series of meetings leading to an output* (the 'planning document') to *adaptive management resulting in activities* designed to address the identified issues.

6.0 SUMMARY

Given that flooding issues and problems facing the water environment are best understood, and addressed, at the catchment level and that there is a recognised overlap of stakeholders involved in River Basin Management Planning and Flood Risk Management it is advisable to ensure co-ordination between the two. Linking local advice for the two planning processes will help identify areas with potential for multiple benefits or which conflicting objectives in Flood Risk Management and the Water Framework Directive need to be managed.

SEPA is ideally placed to identify conflicts and synergies between activities planned under RBMP and FRM planning and managing stakeholder fatigue. If this process, of bringing the implementation of the

two pieces of legislation, is sufficiently resourced then SEPA will be able to work with others to ensure an efficient use of stakeholders' time and resources, and effective Flood Risk Management planning.

7.0 USEFUL REFERENCES

Introducing the new approach to flood risk management

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Detail of how and when Flood Risk Management Strategies and Local Flood Risk Management plans will be produced:

http://www.sepa.org.uk/flooding/flood_risk_management/national_flood_risk_assessment.aspx

David Crichton – advice to flooding enquiry

<http://archive.scottish.parliament.uk/s3/committees/rae/inquiries/flooding/DavidCrichton.htm>

National Planning Framework implications for Flood Risk Management

<http://www.scotland.gov.uk/Publications/2010/02/03132605/8>

Planning advice note on Flood Liaison and Advice Groups (2004)

<http://www.scotland.gov.uk/Publications/2004/08/19805/41600>

Renfrewshire and other local authorities: Community Flood Liaison and Advice Groups

<http://www.renfrewshire.gov.uk/ilwwcm/publishing.nsf/Content/pt-ab-Cartsfloodliasionandadvicegroup>

North East Scotland Flood Liaison and Advice Group (NESFLAG)

<http://www.aberdeenshire.gov.uk/flooding/nesflag.asp>

Highland Flood Liaison Group

<http://www.highland.gov.uk/yourenvironment/flooding/03flood-liaison-and-advisory-group.htm>

WWF Slowing the Flow report – page 16 relates to co-ordination of FLAGS with RBMP etc.

http://www.wwf.org.uk/filelibrary/pdf/slowingflow_web.pdf

Local authority advice etc. relating to flooding policy implementation

<http://www.scotsnet.org.uk/iss-flooding.php>

Scottish Flood Forum (coordinates Community Flood Action Groups)

<http://www.scottishfloodforum.org/flood-groups/>

Scottish Advisory and Implementation Forum for Flooding (SAIFF)

<http://www.scotland.gov.uk/Topics/Environment/Water/Flooding/FRMAct/saif>

SAIFF advice to local authorities regarding implementation

<http://www.scotland.gov.uk/Resource/Doc/1057/0085736.pdf>

SEPA: National flood risk assessment plans, December 2011

http://www.sepa.org.uk/flooding/flood_risk_management/national_flood_risk_assessment.aspx

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LA responsibilities under the FRM

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CATCH Handbook: Integrated catchment management planning: a handbook for project officers.

http://catch.macaulay.ac.uk/sites/catch.macaulay.ac.uk/files/Catch%20Booklet%20Web%20Version_3.pdf

Marshall, K. et. al. (2010) Factors influencing the success of collaborative catchment management processes.

<http://www.informaworld.com/smpp/content~db=all?content=10.1080/09640560903399780>

Knowledge Scotland Policy Brief: Putting 'Good Practice' in Context - Lessons for Catchment Management. <http://www.knowledgescotland.org/briefings.php?id=260>

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