

Report To: Regeneration Committee

Date 25 May 2010

**Report By: Corporate Director Regeneration and
Environment**

**Report No
R140/10/JL/DG**

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**Subject: Inverclyde Council's response to the Scottish Government's
Consultation Document on Reservoir Safety in Scotland**

1.0 PURPOSE

- 1.1 To advise the Committee of Inverclyde's response to the Scottish Government's consultation document on reservoir safety in Scotland.

2.0 SUMMARY

- 2.1 In January 2010 the Scottish Government published a document entitled Reservoir Safety in Scotland seeking comments on its proposals for draft reservoir safety legislation.
- 2.2 The draft legislation will introduce a more risk based approach to the reservoir safety regime, include regulations to take forward the implementation of Part 7 of the Flood Risk Management (Scotland) Act 2009, and provide greater security for people, property and critical infrastructure from the risk of flooding from reservoirs.
- 2.3 The consultation document sought views on its proposals to introduce a new regime for ensuring the risk from flooding from reservoirs is managed appropriately. The views were to be expressed in the form of responses to a set of 33 questions set out in the Consultation Document. These responses had to be submitted to the Scottish Government by 18 April 2010.

3.0 RECOMMENDATION

- 3.1 That the Committee note the responses made to the questions in the Consultation Document.

Joe Lynch
Head of Property Assets and Facilities Management

4.0 BACKGROUND

- 4.1 The safety of reservoirs in Scotland is currently governed by the provisions in the Reservoirs Act 1975. The responsibility for enforcement of the 1975 Act lies with local authorities, but provision has been made to transfer these functions to SEPA under the Flood Risk Management (Scotland) Act 2009 (hereinafter referred to as the 2009 Act).
- 4.2 There are two distinct parts to this consultation. Firstly views are sought on proposals to implement Part 7 of the 2009 Act. Secondly views are sought on proposals to make further improvements to reservoir safety legislation through the introduction of a new risk-based regime.
- 4.3 The 2009 Act made a number of changes to the 1975 Act. In order to implement these changes the Scottish Government seeks further detailed views in respect of reservoirs on the more detailed legislation required to take them forward.
- 4.4 The consultation document seeks views on the following:
Proposed Regulations under Section 88 of the 2009 Act which provide for the reporting of incidents at reservoirs in Scotland to the enforcement authority.
Proposed Regulations under Section 89 of the 2009 Act which provide for the preparation of flood plans for reservoirs in Scotland.
- 4.5 In line with DEFRA's proposals to update the reservoir safety regime in England and Wales the Scottish Government intends to further amend the 1974 Act and introduce a risk based reservoir safety regime for Scotland. Views are therefore sought on the following points:
The models which could be used to implement a risk based regime.
The proposal that all reservoirs above a minimum volume capacity of 10,000 cubic metres be included on a SEPA register.
The proposal to require SEPA to classify each reservoir according to whether it poses a threat to human life, property and critical infrastructure, or meets technical conditions (to be specified) which in effect mean the risk is negligible.
Proposed duties of reservoir managers.
The role of panel engineers in the proposed models.

5.0 PROPOSALS

- 5.1 It is proposed that the committee notes the responses made to the consultation document that were made within its required time scale of 18 April 2010.
The consultation document can be viewed on the consultation web pages of the Scottish Government website at: <http://www.scotland.gov.uk/consultations>

6.0 IMPLICATIONS

- 6.1 Financial: There are no financial implications at this stage.
- 6.2 Legal: There are no legal implications at this stage.

7.0 CONSULTATION

- 7.1 None

8.0 EQUALITIES

- 8.1 This report has no impact on the Council's Equality Agenda

9.0 CONCLUSION

- 9.1 The Committee notes the responses made to the Scottish Government's Consultation Document – Reservoir Safety in Scotland.

ATTACHMENTS

Summary of Questions and Responses
Implementation Part 7 of the Flood Risk Management (Scotland) Act 2009

SUMMARY OF QUESTIONS and RESPONSES

Implementation Part 7 of the Flood Risk Management Scotland Act 2009

1. Reservoir flood plans and Inundation Maps

Q1. What should be the criteria for determining whether a reservoir requires preparation of a flood plan?

A1.

Reservoirs in excess of 10,000m³ capacity should require a flood plan.

Also reservoirs under 10,000m³ capacity where these carry a significant degree of risk and cascade systems should require a flood plan.

Q2. Should there be different levels of flood plans for high, medium and low risk reservoirs?

If not, what alternative system should be adopted?

A2.

The level of flood plan should reflect the degree of risk.

Q3. If 3 different categories are used, what information should be included in a flood plan for each of them?

A3.

Low Risk: Extent of inundation, nature and type of properties affected, environmental considerations, financial quantification of the risk and general measures required to mitigate the risk.

Medium Risk: As Low Risk, above, plus specific measures to mitigate the identified risks.

High Risk: As Medium Risk, above plus options to address all identified possible scenarios.

Q4. Should all flood plans include an inundation map?

A4.

Yes, because this can be significant in development control.

Q5. Should SEPA prepare basic inundation maps for all reservoirs over 10,000 cubic metres?

A5.

Basic inundation maps for all reservoirs over 10,000 m³ should be prepared. Whether these inundation maps are prepared by SEPA or by a third party is immaterial, provided the maps are prepared to an acceptable standard stipulated by SEPA.

Q6. How often should plans be reviewed and updated?

A6.

Every 6 years

Q7. How often should plans be tested?

A7.

The plans should be tested following the 6 yearly updates if the update is significant. If there are no changes recommended in the update the plans should be tested at a minimum of every 12 years.

Q8. Should Panel Engineers have a role in the preparation, testing and approval of flood plans?

If so, what should their role be?

A8

Panel Engineers should review and approve the completed flood plans and their tests for risk category 1 and possibly also risk category 2 reservoirs. Panel Engineers' advice on the standard of plans required, and the levels of test should be sought approved and standardised by SEPA. This advice should be issued by SEPA to reservoir undertakers and owners prior to the plans being prepared and the tests being carried out.

Q9. Should the Scottish Government provide financial assistance towards the preparation of reservoir flood plans in order to assist smaller private businesses and individuals to comply with new legislation?

A9.

If financial assistance is to be provided by the Scottish Government this should be provided to all undertakers and owners in proportion to the characteristics of their individual reservoirs.

Q10. Who should have access to flood plans?

A10.

Anyone with reasonable cause.

Q11. Who should have access to inundation maps?

A11.

Anyone with reasonable cause.

Incident Reporting

Q12. Do you agree that the criteria proposed are the correct criteria for determining whether an incident should be reported?

If not, please suggest the criteria which should be used and why.

A12.

Severity level 1 should include any incident resulting in loss of life or physical harm.

Severity level 2 should include any incident resulting in property damage (e.g. vandalism) as direct immediate action may be required to, for example, to restrict access.

All 3 severity levels should also include near misses as valuable lessons can be learned from these.

Severity level 3 should be revised to read “An unscheduled visit by an inspecting engineer *resulting in the engineer’s recommending any action.*” This would obviate the necessity of reporting visits that later proved unnecessary.

Q13. What information should be provided in the report?

A13.

The information in the report should be as given plus:-

Proposed remedial action.

Proposed timescale for implementation of remedial action.

Q14. Who should be made responsible for reporting the incident?

A14.

The undertaker should be responsible for reporting the incident, but the report should be countersigned by the Supervising Engineer thereby confirming the accuracy of the undertaker's report.

2 A Risk-Based Approach to Reservoir Safety

Q15. Do you agree that the minimum volume figure should be 10,000 cubic metres, or another figure?

If you are proposing a different figure, please explain why.

A15.

Agreed that the minimum volume should be 10,000m³ in accordance with DEFRA's practice. However, SEPA should have a mechanism to assess the risk category of reservoirs under this volume that could fall into Severity Categories 1 or 2.

Also, it should be made clear to undertakers that cascade effects have to be included where the cumulative volume exceeds 10,000m³.

Q16. Do you agree that the criteria for inclusion and/or exemption can be based on other objective criteria such as embankment height, elevation, type of construction etc?

A16.

The criterion for inclusion should be significant risk, whatever that comprises.

Q17. What information should be requested at the point of registration to enable an effective risk-based approach thereafter?

A17.

In addition to the information listed in 3.10 details of existing draw down mechanisms and their serviceability could be given, also any known available flood attenuation measures.

Vehicular access should be noted.

Q18. How can we design the registration process to minimise the burdens imposed by registration?

A18.

The level of registration fee could be proportioned to the level of acceptable information submitted by owners and undertakers.

Q19. Do you agree with the proposed risk based classification for reservoirs? If not, on what basis do you think risk should be defined on?

A19.

Yes.

It is simple, straightforward and in alignment with the 2009 Act.

Q20. Do you consider that particular categories or types of reservoirs should be exempt from the proposed regulatory regime?

If so, what are the categories or types and why?

A20.

No.

Any reservoir poses a degree of risk. If the risk is insignificant, the reservoir should be categorised appropriately.

Q21. How can the financial burden on owners of reservoirs which are being brought into the regulatory regime for the first time be minimised?

A21.

Government financial assistance could be made available for owners of reservoirs which are being brought into the regulatory regime for the first time.

Q22. Should there be a flat rate charge for registration, or should the charge be proportionate to the risk/consequence of an uncontrolled release of water from the reservoir?

A22.

The registration charge should be proportionate to the level of SEPA's costs for the various categories of reservoir

Q23. Should registration be free for an initial period to encourage new sites to register?

A23.

Yes.

This will encourage registration, although it should be made clear that this free registration is for the initial period only.

Q24. Should existing reservoirs have to be re-registered?

A25.

Yes.

All reservoirs should be registered to establish continuity of records.

Q25. Should SEPA's ongoing enforcement costs be recovered through subsistence fees and should they be on a sliding scale?

A25.

A scale based on the level of SEPA's costs for the various categories of reservoir would be fairest. (Similar to answer number 22.)

Q26. Should SEPA be able to reclaim costs of emergency works from the undertaker for measures taken in the interests of public safety?

A26.

Yes.

Consideration should be given to SEPA ensuring that an undertaker carries adequate insurance to cover the costs of emergency works.

Q27. Which is your preferred implementation model and why?

A27

Option 2 is preferred for the reasons outlined in section 3.32 together with the points made in this response.

Q28. Are there any elements of the other models which could be usefully incorporated into your preferred model?

A28.

Linked reservoir systems should be combined under one licence

Q29. If you think another approach not outlined here would deliver reservoir safety more efficiently, please provide details of the approach and how it will deliver reservoir safety.

A29.

Consideration could be given to bringing Panel Engineers and Supervising Engineers under the direct control of SEPA.

Q30. Do you agree with the proposed arrangements for creating panels of engineers?

A30.

No.

Panels of engineers should be created and regulated through SEPA. Given the limited number of Panel Engineers it would be advisable if the regulation was done by SEPA in conjunction with the Environmental Agency, and the same standards should apply across the border.

Q31. What lessons can be learnt from the current appointment process of panel engineers?

A31.

Panel Engineers should be appointed by SEPA to individual reservoirs. It should not be up to undertakers to select the Panel Engineer of their choice.

Q32. Do you agree with each of the proposed minor amendments?

The proposed changes to reporting requirements; and

The proposed requirement to erect notice boards.

A32.

Agree with each of the proposed amendments.

The notice board's contents proposal is unnecessarily complex. It should give reservoirs name together with the enforcement agency's name (SEPA) and contact number only.

It should be SEPA's responsibility to record, handle and respond to queries/comments from the public,

Q33. Are there any other minor changes to the current regime you would recommend?

A33.

It should be SEPA's responsibility to record, handle record and respond to queries/comments from the public, if necessary referring these through the appropriate reservoir Supervising Engineer, undertaker or owner.

Notice boards should be constructed to a standard pattern specified by SEPA.