

Planning Committee

10.00am, Thursday, 30 March 2017

Flood Impact of New Developments - Certification Process

Item number	8.1
Report number	
Executive/routine	Executive
Wards	All

Executive Summary

The purpose of this report is to seek approval to permanently implement a certification procedure in the assessment of the flooding impact of new development during the planning application process. The Council has a duty under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk. This can, in part, be achieved by ensuring that any new development is scrutinised to ensure that the adverse effects of flooding are considered at the initial stage of the planning process. A certification process has been piloted for 18 months which allows qualified professionals, on behalf of the applicant, to certify the flooding impacts of a new development prior to checking by the Council. This report details the outline principles of the procedure.

Links

Coalition Pledges	P8, P28
Council Priorities	CP4, CP5, CP7, CP8, CP10, CP12
Single Outcome Agreement	SO1

Flood Impact of New Developments - Certification Process

1. Recommendations

- 1.1 It is recommended that the Planning Committee approves, for development management purposes, the permanent implementation of a certification process in relation to the flooding impact of new development, supported by an external flooding consultant.

2. Background

- 2.1 The Council has a duty under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and have regard to the social, environmental and economic impact of this. The Council must promote sustainable flood risk management and act in a way best calculated to contribute to sustainable development. This can, in part, be achieved by ensuring that any new development is scrutinised to ensure that the adverse effects of flooding from all sources are considered at an early stage.
- 2.2 As part of organisational change, resources have been re-aligned within the Infrastructure - Flood Prevention team of Planning and Transport and new ways of working are being progressed. The certification procedure for flooding impacts of new development allows officers dealing with flood consultations to deal with other priority projects within the Infrastructure – Flood Prevention section whilst still liaising with planning officers on complex cases where there is potential for flooding impacts. Currently, due to resources, flooding consultations are largely outsourced to an external consultant.
- 2.3 As part of a review of how flooding consultations are carried out, a pilot scheme for the certification of flood impacts of new developments has been in operation since October 2015. The findings have been used to develop the final process.

3. Main report

Flooding Consultations on Planning Applications

- 3.1 To ensure that development does not result in increased flood risk for the site being developed, or elsewhere, it is necessary to take cognisance of flooding when

considering planning applications. Planning officers take advice from the Council's Infrastructure – Flood Prevention team on such matters. Scottish Planning Policy dictates that the planning system should promote a precautionary approach to flood risk, avoid flooding by safeguarding flood storage, reduce flooding where possible and avoid increased surface water flooding.

- 3.2 Flood Protection is considered in the Local Development Plan (LDP) and planning permission will not be granted for development that would:
 - 3.2.1 increase a flood risk or be at risk of flooding itself;
 - 3.2.2 impede the flow of flood water or deprive a river system of flood water storage within the areas shown on the Proposals Map as areas of importance for flood management; and
 - 3.2.3 be prejudicial to existing or planned flood defence systems.
- 3.3 To ensure that flood risk is appropriately considered, it is essential that Surface Water Management Plans (SWMPs) are prepared and Flood Risk Assessments (FRAs) are undertaken for areas known to be at risk of flooding.
- 3.4 SWMPs comprise calculations and plans from the developer to demonstrate that surface water is suitably contained, or managed, to prevent flooding to the property or neighbouring property. These are required for most developments with some exceptions (see sections 3.12 and 3.13).
- 3.5 In addition, full FRAs are required for developments which are in an area of identified flood risk. Areas of flood risk are identified on the SEPA flood maps, but may also include known areas of historical flooding, sites adjacent to watercourses or buried watercourses (culverts). A FRA comprises surveys and calculations to demonstrate that flood risk is properly identified and either contained or managed to prevent flooding to the proposed development or neighbouring property.

Scottish Environmental Protection Agency (SEPA)

- 3.6 SEPA is a key agency in the land use planning process in Scotland, providing environmental advice to local authorities, developers and the wider public. It is a statutory consultee where the development is likely to result in a material increase in the number of buildings at risk of being damaged by flooding. SEPA is consulted on all national and major developments and those that require Environmental Impact Assessment. In addition, there are several other types of development where statutory consultation is required e.g. cemeteries and waste management applications.
- 3.7 Where the planning authority considers there is flood risk in relation to other developments, SEPA can be consulted for advice. However, if the risk is low, standing advice is available. In addition, SEPA expects local authorities to manage the assessment of Sustainable Urban Drainage Systems (SUDS).

The Pilot Certification Scheme for Flood Impacts

- 3.8 A pilot scheme was introduced to help inform the development of the certification process. Prior to the introduction of the pilot scheme, planning officers consulted the Flood Prevention Team and delays were caused as the necessary information was often not in place to give a fully detailed response. This has improved since the certification process was introduced in October 2015. The lessons learned from the pilot have informed a simpler and more robust procedure. It should be noted that currently the pilot certification process is ongoing.
- 3.9 Under the pilot scheme, applicants are sent flood packages detailing what information is needed to progress the planning application. As part of this process, the planning officer has to assess whether the application site is a flood risk and identify the appropriate package using a flow chart. The onus is on the applicant, using qualified flooding consultants, to provide that information. For more major developments, the information has to be certified by another qualified flooding consultant. Applicants are advised whether they need SWMPs or FRAs or both.
- 3.10 A survey of flooding consultants and Council planning officers was carried out in September 2016 as part of the finalisation of the certification process. Responses were received from 16 consultants and the main issues raised were:
- The certification process should save time by ensuring that proposals either meet guidelines or where they do not meet guidelines, reasons can be clearly provided for Council review;
 - The certification process may remove a degree of control and co-ordination from the Council and lead to a less consistent approach;
 - Concerns that only chartered engineers can certify and that for some developments another chartered engineer has to double certify;
 - Flooding needs to be dealt with holistically, not on a site by site basis. Concern that it removes the onus from the Council to control flood prevention and more resource should be provided for flood risk officers;
 - Similar certification processes have been successful in other Council areas;
 - For complex sites, it is difficult to provide all the requested information;
 - Acceptance that flood information is needed before the application can be determined; and
 - Whilst the guidance was generally considered sufficient, there were some concerns about conflicting advice.
- 3.11 The survey of planning officers in the Council provided 17 responses. The main issues raised were;
- There were differing views on whether the flowcharts and guidance, on which flood package requests are determined, are easy to understand or not;
 - The computer systems do not allow planners to suitably identify the potential flood risk (this will be addressed in the next IT upgrade);

- Planning officers are getting drawn into discussions about flooding impacts but do not have the knowledge or expertise to respond to detailed technical questions. Some planners wanted to revert back to the previous consultation system;
- Applicants receive the flood package requests but often do not understand what is required of them;
- Disagreements with applicants/agents over whether the information is sufficient or not. This causes delays with the application;
- More training would be helpful to understand the requirements with a possible surgery service by Flood Prevention officers;
- Sustainable Urban Drainage Schemes need to be included in more detail;
- The potential risks of the certification process are serious and there are questions regarding liability; and
- A simpler, easier to understand system would be better.

3.12 Each of the issues raised by consultants and planners has been addressed by considering the details of a certification system. Overall, provided a robust system is put into place with the necessary safeguards and applying lessons learned from the pilot period, a permanent certification system is feasible. Other councils have implemented such certification schemes for flooding impacts and experiences will be shared as part of wider benchmarking exercises.

The Proposed Certification Process for Flood Impacts

3.13 The flooding impact of new development is not confined to major development. Smaller local developments can have a significant effect on the storage capacity of the functional floodplain or cause local flooding problems. The certification process needs to be proportionate but still meet the Council's flood risk responsibilities.

Householder Development

3.14 The certification scheme does not apply to householder development. The flooding impacts of these developments are deemed to be small and it would be disproportionate to request SWMPs/FRAs and consult the Flood Prevention Team on them.

Local Development (a)

3.15 Local developments which do not involve new buildings or structures, such as changes of use and shopfront alterations, also do not require SWMPs/FRAs and consultation with the Flood Prevention Team. The only exception is change of use from non-residential to uses that involve any form of sleeping accommodation such as residential institutions, houses, flats, student housing and hospitals. In these cases, the impacts may be severe if flooding occurs.

Local Development (b) and major development

3.16 In all other cases, a surface water management plan will be required. In addition, if the proposal is within 10m of a watercourse, including buried watercourses and/or within the pluvial, fluvial or coastal outline then a flood risk assessment is also

required. These require certification from a chartered engineer that they meet the standards set out in flooding guidance. For major developments, the information has to be additionally certified through an independent check by a suitably qualified professional from a separate organisation.

Advice for Applicants and Officers

- 3.17 Detailed guidance will be prepared for applicants and Council Officers to aid the efficient and consistent implementation of the certification scheme. In addition, the Flood Prevention Team will give flooding advice to applicants and planning officers as required.
- 3.18 When the information has not been submitted as part of the planning application, applicants will be directed to the Council website to find the guidance and forms. The planning application will not be progressed until the flooding information has been submitted. A checklist will be included with the forms and provided this has been completed, the information will be sent to the Flood Prevention Team for a review. If the information is complete (including an independent check if necessary), it will be signed off as being accepted by the Flood Prevention Team.

Legal Implications of the Certification Process

- 3.19 Legal advice has been received about the proposed certification process. Provided the Council does not ignore obvious deficiencies in flood risk assessments and takes sufficient steps to ensure the adequacy of information relating to the flood risk of any particular sites, the proposed procedure is not contrary to the Council's statutory duty.
- 3.20 Crucially the legal advice does not consider that the Council's liability will change as a result of the scheme although there is potentially more risk if incorrect flood risk assessments are approved without proper assessment. The developer or landowner is likely to be liable in the first instance although a claim may be made against the Council if the developer is no longer in existence. This is no different from the current situation.

Acceptance and Monitoring

- 3.21 The Flood Prevention Team will review submissions made to establish if the requirements of the certification scheme have been adhered to. It is proposed to sample check submitted flood information to ensure that the certification system is robust. This will involve checking the accuracy of information and calculations in SWMPs and FRAs. It will be necessary to engage a consultant to review the samples which have been the subject of certified flood information and to assist the Council on complex cases which cannot be dealt with by the Flood Prevention Team.
- 3.22 Currently anyone can submit a SWMP and FRA. The scheme requires certification by chartered engineers thus reducing the risk of sub-standard or inaccurate information.

- 3.23 This new way of working will streamline and improve the current flood assessment process in the Council. There are benefits for the planning application process in terms of efficiency and speed of decision-making whilst maintaining the provision of specialist information to support planning recommendations.

4. Measures of success

- 4.1 An efficient planning process where the flooding impacts of new development are fully taken into account as part of the Council's flood risk responsibilities and there are no adverse flooding impacts in relation to new development.

5. Financial impact

- 5.1 Planning application income is not structured in its current form to contribute to the financing of this type of supporting assessment for a development proposal. That cost is borne by the local authority as a whole. In a manner consistent with other supporting information, the proposed change of procedures means that the applicant will bear the cost of producing certified information.
- 5.2 At present approximately £50,000 per annum is used to engage a consultant to assist Council staff in reviewing 100% of planning applications. This cost will be reduced if, for example, only 5% of applications are sampled.
- 5.3 The cost of engaging a consultant to sample check flood information on planning applications is estimated at £2,500 per annum and can be met from the Flood Prevention Revenue Budget.
- 5.4 The cost of engaging a consultant to provide support in relation to more complex or major applications is dependent upon the applications received and is estimated to be £15,000 per annum. This can also be met from the Flood Prevention Revenue Budget.

6. Risk, policy, compliance and governance impact

- 6.1 There are potential risks to the Council if the certified flood risk assessment submitted by applicants turn out to be erroneous and there are unacceptable flood impacts from the new development. However, the risks are less than the current assessment system as chartered engineers will produce the information, the system will be streamlined, sample checks will be carried out and the application will not be progressed until all the information is received.
- 6.2 In addition, Flood Prevention Officers will be available for general advice to planning officers and consultancy support will be available for major and complex applications.

7. Equalities impact

- 7.1 An Equalities and Rights Impact Assessment has been carried out. The impacts are summarised below:
- 7.1.1 The efficient processing of planning applications and, in particular, ensuring the flood impacts of new development are mitigated can make a valuable contribution to managing the city's infrastructure and so improve standards of living and reduce issues of poverty and health inequality;
 - 7.1.2 The flood risk assessment process is part of the statutory planning process and has no positive or negative impacts on the duty to advance equality of opportunity as it applies equally to all parties; and
 - 7.1.3 The procedure for dealing with flood risk can foster good relations by promoting understanding of planning processes and the expected outcomes from them.

8. Sustainability impact

- 8.1 The impact of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties has been considered, and the outcome is summarised below:
- 8.1.1 The proposals in this report do not affect carbon emissions;
 - 8.1.2 The proposals in this report will increase the city's resilience to climate change impacts because it sets out a more efficient procedure for assessing the flood impacts of new developments by qualified chartered engineers as part of the planning process;
 - 8.1.3 The proposals in this report will help achieve a sustainable Edinburgh in terms of social justice because they involve the implementation of a planning process which is applicable equally to all cases;
 - 8.1.4 The proposals in this report will help achieve a sustainable Edinburgh in terms of economic well being because it encourages the efficient processing of planning applications which will have a positive impact on economic growth; and
 - 8.1.5 Environmental good stewardship is not considered to impact on the proposals in this report because there is no relevance to the use of natural resources.

9. Consultation and engagement

- 9.1 A consultation exercise was carried out in September 2016 to assess the outcomes of the pilot certification process. The survey was sent to planning consultants and engineering consultants who had submitted flood risk assessments as part of the

pilot scheme. In addition, all planning officers in Planning and Transport were surveyed about their experience of the certification process.

9.2 The results of the consultation are set out in sections 3.8 and 3.9 of the main report.

10. Background reading/external references

10.1 [Flood Risk Management \(Scotland\) Act 2009](#)

10.2 [Flood Risk Management Strategy](#)

10.3 [Local Flood Risk Management Plan](#)

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11. Links

Coalition Pledges	<p>P8 – Make sure the city’s people are well housed, including encouraging developers to build residential communities, starting with brown field sites.</p> <p>P28 – Further strengthen our links with the business community by developing and implementing strategies to promote and protect the economic well being of the city.</p>
Council Priorities	<p>CP4 – Safe and empowered communities.</p> <p>CP5 – Business growth and investment.</p> <p>CP7 – Access to work and learning.</p> <p>CP8 – A vibrant, sustainable local economy.</p> <p>CP10 – A range of quality housing options.</p> <p>CP12 – A built environment to match our ambition.</p>
Single Outcome Agreement	<p>SO1 Edinburgh’s economy delivers increased investment, jobs and opportunities for all.</p>
Appendices	<p>none</p>