

Issue 21	Policy 50 New Development and Flooding	
Development plan reference:	Policy 50: New Development and Flooding, pages 79-82, Perth Area Strategy p249-281	Reporter:
Body or person(s) submitting a representation raising the issue (including reference number):		
Scottish Natural Heritage (SNH) (0353) Alistair Godfrey (0410) Scottish Environment Protection Agency (SEPA) (0742)		
Provision of the development plan to which the issue relates:	Policy 50: New Development and Flooding, and Perth Area Strategy section	
Planning authority's summary of the representation(s):		
Inclusion of a coastal policy		
<p>SNH (0353/01/019): Recommend revising this policy or introducing a new coastal policy. TAYplan spatially identifies the coast downstream of Perth and along the Tay estuary as unspoiled coast i.e. generally unsuitable for development (SPP para 89) (CD004, p24). Consider this should be shown in the LDP including areas at risk from sea level rise and areas of potential managed realignment (SPP para 88) (CD004, p23-24). Note Council's reference to Perth and Kinross Structure plan approved June 2003 findings but expect a new policy to contain measures set out in TAYplan policy 9D (CD022, p50). Climate change adaption measures also have potential to deliver ecological benefits for existing and new coastal habitat and refer to Scottish Governments "National Coastal Change Assessment" (NCCA) (CD285) which provides a shared evidence base on coastal erosion.</p>		
Policy 50: New Development and Flooding		
<p>Alistair Godfrey (0410/01/015): Concerned that there is disagreement between the Council and SEPA and seeks resolutions, considers that flood defences can fail, and mentions that policy must respond to climate change.</p>		
<p>SEPA (0742/02/023, 0742/01/087 + 097 + 107): Information submitted to SEPA by the Flood Management staff in Perth and Kinross Council confirmed that the current best estimate with regards the standard of protection of the Flood Protection Scheme (FPS) in Perth is 1 in 250 years and the scheme does not currently have any provision for climate change. SEPA review of their closest upstream gauging station records at Ballathie indicated that a 1 in 250 year standard of protection equates to 1 in 200 year level plus only 4% allowance for climate change. The information that the Council provided also clarifies that the Almond FPS does not offer a standard of protection equal or greater than 1 in 200 year plus climate change.</p>		
<p>This issue comes up in relation this policy and also to H1 Scott Street/Charles Street, H319 Ruthvenfield, and MU73 Almond Valley so a common summary of SEPA's position is given under the sub heading below 'Land allocations defended by appropriate flood protection schemes (FPS)'.</p>		

Land allocations defended by appropriate flood protection schemes (FPS)

SEPA consider Flood protection schemes (FPS) can reduce flood risk but cannot eliminate it entirely as reflected in the Scottish Government's online planning advice on flood risk (para 21) (CD043, p4). SEPA consider that their primary purpose is to protect existing development from flood risk rather than to facilitate new development. SEPA consider that the policy principle of avoidance should be promoted for and a precautionary approach should be taken to proposed allocations in areas protected by a FPS, even those designed to the appropriate standard.

SEPA consider that breaching or overtopping of flood defences is often unexpected and can lead to swift inundation of the protected area resulting in more damaging floods. Water trapped behind defences following a flood can also lead to greater overall damage. Therefore SEPA consider that ensuring that development protected by a FPS is an appropriate land use for the location and designed to be resilient, contributes to the delivery of sustainable flood risk management by reducing the number of sensitive receptors exposed to residual risk if the defences are breached or overtopped.

In order to provide clarification of SEPA's position on development protected by FPS, SEPA produced: SEPA Planning Information Note 4 SEPA Position on development protected by a Flood Protection Scheme (CD010) and further detail is provided in their SEPA Development Plan Flood Risk guidance (CD011) and SEPA planning background paper (CD013). SEPA Land Use Vulnerability guidance (CD012), aligned with the SPP risk framework provides further clarity on the relative susceptibility and resilience of land uses to flooding. Scottish Government's online planning advice on flood risk (para 17) (CD043, p3) states that the SPP flood risk framework should be read in conjunction with SEPA's Land Use Vulnerability Guidance to aid decision making.

Ensuring that the vulnerability of the land use is appropriate for the location and degree of flood risk is considered an adaptation measure that will help make future development resilient to a changing climate. This accords with the high level sustainability principle in SPP (para 29) (CD004, p9-10) that states policies and decisions should support climate change adaptation, including taking account of flood risk. Local authorities also have a duty under the Climate Change (Scotland) Act 2009 (CD025) to contribute to the delivery of the Climate Change Adaptation Programme (May 2014) (RD052). This programme identifies the integration of climate change adaptation into planning processes and decisions as a strategic principle.

In summary, SEPA are of the opinion that the Council's approach does not accord with the SPP risk framework in para 263, or the policy principles set out in para 255, (CD004 p58 and p57) which include a precautionary approach. In addition, SEPA believe it does not accord with your authority's duties under The Planning etc. (Scotland) Act 2006 (CD036) to ensure that development plans contribute to sustainable development and the authority's duties under The Flood Risk Management (Scotland) Act 2009 (CD030) to reduce overall flood risk and promote sustainable flood risk management.

With regard to MU73 the SEPA guidance identifies that highly vulnerable uses (which include residential), are only acceptable where the standard of protection is equal or greater than 1 in 200 year (0.5% Annual Estimated Probability (AEP)) plus climate change. The information that the Council provided clarifies that the Almond FPS does not offer this standard of protection. SEPA therefore seek that highly or most vulnerable uses should be located on land outwith 0.5% AEP flood plain, so it is not situated on land

defended by the FPS and that flow paths are established. Furthermore SEPA also require that the developer requirement identifies that areas behind the FPS should incorporate appropriate mitigation measures as this accords with the Risk Framework in paragraph 263 of SPP (CD004, p58).

With regards site H1, SEPA guidance identifies that highly vulnerable uses, which are defined by SEPA vulnerability guidance and include residential use, are only acceptable where the standard of protection is 1 in 200 year (0.5% Annual Estimated Probability) plus climate change. The information provided clarifies that the Perth FPS does not offer this standard of protection, and the developer requirement identifies this area as being protected by the FPS, so SEPA seek removal of H1.

With regards to site H319, SEPA require alteration of developer requirement with regards Drainage Impact Assessment (DIA) and Flood Risk Assessment (FRA), to require that development avoids the functional flood plain of the lade and to remove the text regarding appropriate mitigation measures should be provided in area protected by Flood Protection Scheme (FPS). With regards site H319, the guidance identifies that highly vulnerable uses, which are defined by SEPA vulnerability guidance and include residential use, are only acceptable where the standard of protection is equal or greater to 1 in 200 year (0.5% Annual Estimated Probability) plus climate change. The information that has been provided by Perth and Kinross Council Flood Management staff is considered to clarify that the Almond FPS does not offer this standard of protection.

Policy 50: New Development and Flooding wording amendments

SEPA (0742/02/029): Disagrees with the scoring set out in Addendum to Environment Report, Appendix F with regards SEA objectives 7 and 11 (safeguarding functional flood plain and avoid flood risk and reducing vulnerability of area to climate change) (CD080, p10). Considers the following changes to the policy are required to provide mitigation of significant environmental effects.

Removal of wording 'within the parameters as defined by this policy'

SEPA (0742/01/017): Seeks to remove the policy wording "Within the parameters as defined by this policy" and gives the following reasons:

The limitation to the commitment to delivering the actions and objectives of the Flood Risk Management Strategies and Plans would not be in keeping with Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (as amended 2011) Section 10 (1) (d) (CD273, p5), which requires a local authority to have regard to any approved flood risk management plan or finalised local flood risk management plan in preparing a LDP. Furthermore, para 260 of SPP (CD004, p58) states that development plans should "take account of finalised and approved flood risk management strategies and plans", and NPF3 para 4.25 (CD003, p48) states that the Government expects Flood Risk Management Plans to become an integral part of development planning in the context of achieving climate change adaptation.

Flood Risk Management Strategies and Local Flood Risk Management Plans identify actions that seek to avoid an increase in flood risk and reduce overall flood risk across Scotland. Land use planning related actions form a critical element and should help guide the management of flood risk within the development plan area.

SEPA intend to further develop actions and objectives for the second cycle of Flood Risk Management Strategies and Plans to be published in 2021, and this policy should not preclude these actions.

SEPA require that the words “Within the parameters as defined by this policy” are removed so the plan policy offers clear and unqualified support for the implementation of relevant actions and objectives in both the current and future Flood Risk Management Strategies and Plans. Lastly, SEPA note that committing to supporting the delivery of Flood Risk Management Strategies and Plans in the context of climate change adaptation accords with the Vision for A Low Carbon Place set out in Section 3.2 of the proposed LDP.

Removal of wording ‘There will be a general presumption against’ and addition of ‘should be avoided unless it accords with the risk framework in SPP’

SEPA also seek removal of the words “There will be a general presumption against” from the start of the second paragraph and within the first sentence under category 1:

In the first sentence of the second paragraph add “should be avoided unless it accords with the risk framework in SPP” to the end of the second paragraph and make the same amendment to the first paragraph under category 1 after “flooding elsewhere”.

for the following reasons:

The proposed changes would strengthen a precautionary approach (SPP paragraph 255) (CD004, p57) and explicitly state that proposals for built development on a functional flood plain and in areas at medium to high risk of flooding from any source or where the proposal would increase the probability of flooding elsewhere will be avoided, unless the development accords with the risk framework in SPP.

It is considered that these changes will make the policy accord with SPP. SPP paragraph 255 (CD004, p57) promotes a precautionary approach whilst 256 (CD004, p57) states that development which would have a significant probability of being affected by flooding should not be permitted.

Paragraph 13 of the Scottish Government’s online planning advice on flood risk (CD043, p3) recognises that the avoidance of flood risk, by not locating development in areas at risk of flooding, is a key part of delivering sustainable flood risk management and paragraph 37 advises that flood risk policies are based on the principle of flood avoidance in accordance with SPP.

Furthermore approved TAYPlan 2017 policy 2c requires LDPs to be “Resilient and future-ready by ensuring that adaptability and resilience to a changing climate are built into the natural and built environments through:

i. a presumption against development in areas vulnerable to coastal erosion, flood risk and rising sea levels;”

The planning authority has a duty under The Planning etc. (Scotland) Act 2006 (CD036) to ensure that the development plan contributes to sustainable development. The Flood Risk Management (Scotland) Act 2009 (CD030) also places a duty on SEPA and local authorities to reduce overall flood risk and promote sustainable flood risk management when exercising their flood risk related functions.

Expansion of wording to read 'All development within areas of low to high flood risk must incorporate a suitable climate change allowance, as well as a 'freeboard' allowance.'

SEPA seek an expansion to the wording of the fourth paragraph to read "All development within areas of low to high flood risk must incorporate a suitable climate change allowance, as well as a 'freeboard' allowance." For the following reasons:

This change will ensure the policy accords with SPP. Paragraph 29 of SPP (CD004, p9-10) identifies supporting climate change mitigation and adaptation including taking account of flood risk as one of the principles that should guide policies, while para 255 (CD004, p57) states that the planning system should promote a precautionary approach to flood risk from all sources, taking account of predicted effects of climate change.

Furthermore Adopted TAYPlan 2017 policy 2 c requires LDPs to be "Resilient and future-ready by ensuring that adaptability and resilience to a changing climate are built into the natural and built environments through:

- i. a presumption against development in areas vulnerable to coastal erosion, flood risk and rising sea levels;
- ii. assessing the probability of risk from all sources of flooding;
- iii. the implementation of mitigation and management measures, where appropriate, to reduce flood risk; such as those envisaged by Scottish Planning Policy, Flood Risk Management Strategies and Local Flood Risk Management Plans when published;"

Local authorities have a duty under the Climate Change (Scotland) Act 2009 (CD025) to contribute to the delivery of the Climate Change Adaptation Programme (May 2014) (RD052). This programme identifies the integration of climate change adaptation into planning processes and decisions as a strategic principle.

Amendment to require that a Flood Risk Assessment for any development proposed in medium-high risk category areas should be undertaken in accordance with SEPA's technical guidance.

SEPA also consider that the policy should require a Flood Risk Assessment (FRA) for any development proposed in medium-high risk category areas, which should be undertaken in accordance with SEPA's technical guidance for the following reasons:

The wording as proposed does not clarify that an FRA is required to inform any development proposed in medium to high risk areas. The current requirement relates specifically to development proposed in built up areas or any important component of the development plan settlement strategies.

This does not confirm with SPP para 255 (CD004, p57) including the principle of flood avoidance, taking a precautionary approach, and ensuring that planning prevents development which would have a significant probability of being flooded or increasing risk elsewhere.

Paragraph 266 of SPP (CD004, p57) states that FRA should be required for development in the medium to high category of flood risk.

SEPA's Technical Flood Risk Guidance (RD053) outlines appropriate methodologies for modelling fluvial, pluvial and coastal flood risk and lists the information required to be

submitted as part of a FRA. It is the most comprehensive guidance available and is continually updated to reflect new data sources and modelling techniques.

Amendments to the policy wording under the heading of category 1 with regard to development behind flood protection schemes (FPS)

SEPA consider that the Council should amend the policy wording under the heading of category 1 with regard to development behind flood protection schemes (FPS), specifically:

- Remove the wording “or any important component of the development plan settlement strategies”.
- Amend the wording of point 1 of category 1 to state that flood protection measures are “complete and operational” rather than in place.
- Clarify that in order for highly vulnerable uses (suggest cross reference to our Land Use Vulnerability Guidance (LUVG)) to be acceptable behind a FPS, the scheme would need to be built to an equal or less than a 0.5% AEP standard of protection plus climate change allowance.
- Clarify that most vulnerable uses (suggest cross reference to our LUVG) are not acceptable behind a FPS
- Include wording to identify the limited types of development generally acceptable behind a FPS that provides a standard of protection that is equal or less than a 0.5% AEP standard of protection within a built up area without an allowance for climate change, as set out in our flood risk guidance
- Change the word civil to “essential” in point 7

Include "and most vulnerable uses" to the end of point 1 in the third paragraph, for the following reasons:

Flood protection schemes (FPS can reduce flood risk but cannot eliminate it entirely). Their primary purpose is to protect existing development from flood risk rather than to facilitate new development. Avoidance should be promoted and a precautionary approach should be taken to proposed allocations in areas protected by a FPS, even those designed to the appropriate standard.

Breaching or overtopping can lead to swift inundation resulting in more damaging floods. Water trapped behind defences can also lead to greater overall damage. Ensuring that development protected by a FPS is an appropriate land use reduces the number of sensitive receptors exposed if defences are breached or overtopped.

SEPA have produced SEPA Planning Information Note 4 SEPA Position on development protected by a FPS (CD010), and further detail is provided SEPA Development Plan Flood Risk guidance (CD011), Scottish Government Development Plan Guidance Topic: Flood Risk (CD043), and SEPA planning background paper (CD025). These documents set out the types of development acceptable behind FPS in built up areas and vary depending on the standard of protection the scheme affords and the vulnerability of the land use.

Most vulnerable uses are not considered acceptable behind a FPS as the level of protection required is unlikely to be achievable. SPP the risk framework identifies that medium to high risk areas are generally not suitable for most vulnerable uses.

SEPA vulnerability guidance, which is considered to be aligned with the SPP risk

framework, provides further clarity on the relative susceptibility and resilience of land uses to flooding. Scottish Government's online planning advice on flood risk (para 17) (CD043, p3) states that the SPP flood risk framework should be read in conjunction with SEPA's Land Use Vulnerability Guidance (CD012).

Ensuring that the vulnerability of the land use is appropriate to degree of flood risk is also an adaptation measure that will help make future development resilient to a changing climate. This accords with the high level sustainability principle in SPP (para 29) (CD004, p9-10), and Local authority's duty under the Climate Change (Scotland) Act 2009 (CD025) to contribute to the delivery of the Climate Change Adaptation Programme (May 2014) (RD052).

SEPA consider the policy wording as currently proposed not to accord with: the SPP risk framework in para 263 (CD004, p58-59), or the policy principles set out in para 255 (CD004, p57), which include a precautionary approach. SEPA consider this does not meet:

- the authority's duties under The Planning etc. (Scotland) Act 2006 (CD0036) to ensure that development plans contribute to sustainable development; and
- the authority's duties under The Flood Risk Management (Scotland) Act 2009 (CD030) to reduce overall flood risk and promote sustainable flood risk management.

Modifications sought by those submitting representations:

Inclusion of a coastal policy

SNH (0353/01/019): Recommends revising this policy or introducing a new coastal policy. Considers unspoiled coast should be shown in the LDP including areas at risk from sea level rise and areas of potential managed realignment (SPP para 88) (CD004, p23).

Policy 50: New Development and Flooding

Alistair Godfrey (0410/01/015): No specific change sought.

Land allocations defended by appropriate flood protection schemes (FPS)

SEPA (0742/02/023 + 0742/01/107): Seeks removal of the H1 Scott Street/Charles Street.

SEPA (0742/02/023 + 0742/01/097): Require alteration of developer requirement H319 Ruthvenfield with regards Drainage Impact Assessment (DIA) and Flood Risk Assessment (FRA), to require that highly and most vulnerable use development avoids the 0.5% Annual Estimated Probability flood, and make reference to need for mitigation for appropriate uses behind FPS and that flow paths are established.

SEPA (0742/02/023 + 0742/01/087): Require alteration of developer requirement MU73 Almond Valley with regards Flood Risk Assessment (FRA), to require that highly and most vulnerable use development avoids the 0.5% Annual Estimated Probability flood, and make reference to need for mitigation for appropriate uses behind FPS and that flow paths are established.

SEPA (0742/02/029): Disagree with the scoring of this policy in the SEA and with it being identified as significantly positive with regards to SEA objectives 7+11 (safeguarding the

functional floodplain and avoid flood risk and reducing the vulnerability of the area to climate change).

Removal of wording 'within the parameters as defined by this policy'

SEPA (0742/01/017): Seeks removal of the policy wording "Within the parameters as defined by this policy" in relation to delivery of actions and objectives associated to SEPA Flood Risk Management studies and Local Flood Risk Management Plans.

Removal of wording 'There will be a general presumption against' and addition of 'should be avoided unless it accords with the risk framework in SPP'

And removal of the words "There will be a general presumption against" from the start of the second paragraph and within the first sentence under category 1.

Seeks in the first sentence of the second paragraph addition of "should be avoided unless it accords with the risk framework in SPP" to the end of the second paragraph and suggests making the same amendment to the first paragraph under category 1 after "flooding elsewhere".

Expansion of wording to read 'All development within areas of low to high flood risk must incorporate a suitable climate change allowance, as well as a 'freeboard' allowance.'

Seeks expanded wording of the fourth paragraph to read as follows: "All development within areas of low to high flood risk must incorporate a suitable climate change allowance, as well as a 'freeboard' allowance."

Amendment to require that a Flood Risk Assessment for any development proposed in medium-high risk category areas should be undertaken in accordance with SEPA's technical guidance.

Seeks amendment of '~~Development within the built-up area or any important component of the development plan settlement strategies~~ may be acceptable for residential, institutional, commercial and industrial development (including access roads/paths, parking, and waste storage areas) provided:'

Then also seeks amendment to the second bullet for Category 1 Medium to High Flood Risk to '(2) a Flood Risk Assessment is undertaken in accordance ~~with the Flood Risk and Flood Risk Assessments Supplementary Guidance~~ SEPA's technical guidance (in addition a Drainage Impact Assessment will usually be required)'

Amendments to the policy wording under the heading of category 1 with regard to development behind flood protection schemes (FPS)

Seeks amendment of the policy wording under the heading of category 1 with regard to development behind flood protection schemes (FPS), specifically:

- Remove the wording "or any important component of the development plan settlement strategies".
- Amend the wording of point 1 of category 1 to state that flood protection measures are "complete and operational" rather than in place.
- Clarify that in order for highly vulnerable uses (suggest cross reference to our Land Use

Vulnerability Guidance (LUVG) to be acceptable behind a FPS, the scheme would need to be built to an equal or less than a 0.5% AEP standard of protection plus climate change allowance.

- Clarify that most vulnerable uses (suggest cross reference to our LUVG) are not acceptable behind a FPS
- Include wording to identify the limited types of development generally acceptable behind a FPS that provides a standard of protection that is equal or less than a 0.5% AEP standard of protection within a built up area without an allowance for climate change, as set out in our flood risk guidance
- Change the word civil to “essential” in point 7

And seeks inclusion of "and most vulnerable uses" to the end of point 1 in the third paragraph

Summary of responses (including reasons) by planning authority:

Inclusion of a coastal policy

SNH (0353/01/019): It is not clear what issues SNH have with the current policy framework and why this change is being sought. There is no isolated/unspoiled coastline in the Perth and Kinross area as determined when this was assessed during preparation of the Perth and Kinross Structure Plan approved June 2003 (CD008). TAYplan Strategic Development Plan (SDP) 2012-2032 identified this entire coastline as being undeveloped (CD023, p9) TAYplan Strategic Development Plan (SDP) 2012 did not identify this area as isolated coast which is the equivalent to the SPP 2014 unspoiled coast. This undeveloped coast from TAYplan SDP 2012 should have been translated into being the SPP (CD004, p24) “areas subject to significant constraints” rather than unspoiled (as unspoiled coast was previously known as the isolated coast).

TAYplan SDP 2012 did not identify any isolated coast here. TAYplan Strategic Development Plan SDP 2016-2036 (CD022, p11) says “The unspoiled coast is illustrated on Map 1..... Local Development Plans will define the nature and extent of these areas, as appropriate, and the types and scale of appropriate development where necessary”. TAYplan SDP 2016 does suggest there might be some unspoiled coastline within these areas however it is not saying this entire coastline is unspoiled. Although there is a largely undeveloped coastline from Invergowrie to Perth it is not a wild or remote unspoiled coastline, never being far from settlement, the road network and railway line, or other signs of human activity. The previous assessment of the coastline carried out for the Perth and Kinross Structure Plan approved June 2003 confirmed that there are no areas of isolated/unspoiled coastline.

The Proposed LDP2 guides the sustainable development and use of Perth and Kinross’s coastal zone whilst safeguarding its natural and cultural heritage assets. The LDP identifies appropriate opportunities for development within the settlements that lie along this coastline and its policies allow limited development outwith these settlements with greater control applied within the Perth Greenbelt which covers areas from the edge of Perth to Inchyra/Balhepburn to the west, and for designated areas. This respects Scottish Planning Policy (SPP) (CD004, p24) which states that Plans should identify “areas of largely developed coast that are a major focus of economic or recreational activity that are

likely to be suitable for further development,” and “areas subject to significant constraints.” The Proposed LDP2 could not identify any unspoiled coastline within Perth and Kinross.

With regard to potential future sea level rises this will be considered through planning application and FRA processes as necessary. Policy 50 New Development and Flooding already states that ‘built development should avoid areas at significant risk from landslip, coastal erosion, wave overtopping and storm surges.’

With regard to coastal change it is noted that SPP does require ‘Where appropriate, development plans should identify areas at risk and areas where a managed realignment of the coast would be beneficial.’ Within the limited Perth and Kinross Council area coastal area there is only one very limited area which the National Coastal Change Assessment (NCCA) suggests is vulnerable from coastal erosion otherwise this coastline is subject to gradual increase (accretion). The area at risk of erosion is a discrete area at Kingoodie at the western edge of the Invergowrie settlement boundary (CD281). By 2051 the NCCA projects that erosion could potentially affect some properties within the settlement boundary as well as an area to the immediate east. The Proposed LDP2 boundary already discourages development outwith the settlement boundary.

Preparing a coastal policy is not appropriate given the limited scope and would be less effective than a direct reference within the settlement summary for Invergowrie.

No modification is proposed to the Plan. However if the Reporter considered it would make the erosion risk clear the Council would not object to adding to the settlement summary of Invergowrie the following text, ‘The National Coastal Change Assessment indicates that there is a risk of erosion at the western edge of Invergowrie at Kingoodie. This could affect some existing properties, and would affect the potential for future development further west of the settlement boundary here. New development requiring new defences against coastal erosion would not be supported except where there is a clear justification for a departure from the general policy to avoid development in areas at risk.’

Policy 50 New Development and Flooding

Alistair Godfrey (0410/01/015), SEPA (0742/02/023 +29 + 0742/01/087 + 097 + 107):

SEPA have objected to the Council’s approach to development on sites defended by appropriate FPS. This is both a policy issue and a site specific issue with SEPA objections to remove H1 Scott Street/Charles Street and to amend the site specific developer requirements for H319 Ruthvenfield and MU73 Almond Valley. The common response to the issues SEPA raises to the Council’s site allocation and policy approach in relation to allocations defended by FPS is provided below.

Land allocations defended by appropriate flood protection schemes (FPS)

Undeveloped land on the natural flood plain behind appropriate flood protection schemes may be suitable for most types of development. SPP differentiates differently to SEPA and focusses instead on it generally not being suitable for ‘civil infrastructure, and the most vulnerable uses’ and, ‘development in undeveloped and sparsely developed areas’ and, ‘new caravan and camping sites’ from these areas and does not generally exclude

residential uses. The SPP para 263 (CD004, p58-59) refers to land within the built up area behind appropriate flood defences as “may be suitable for residential, institutional, commercial and industrial development” rather than discriminating as SEPA do between these uses and determining that residential and institutional uses are more vulnerable than employment land uses. Rather than removing residential uses from these allocations they can be made suitable subject to appropriate mitigation measures including through minimum floor height of any properties built behind an appropriate flood defence.

SEPA's paragraph 269 definition of 'flood protection measures to the appropriate standard' (CD004, p59) as being 1 in 200 year plus climate change standard is too onerous. This is beyond simply adding detail to SPP as it introduces a standard that is unlikely to be met by many if any FPS in Scotland, addresses climate change in FPS design when this could be more appropriately addressed in other ways such as raised finished floor levels, and as already mentioned introduces a new different discrimination between residential and employment land uses. If this stance is to be pursued by SEPA it is a fundamental change to policy approach and it should be done so through the scrutiny of a SPP review. Addressing climate change is important but not necessarily through the FPS design. The Council's current Developers Guidance Note on Flooding and Drainage Supplementary Guidance (CD055, p9-10) requires the following on greenfield sites “0.5% AP (200-year) plus climate change flood event must be a minimum of 300mm from the lowest garden ground level and 600mm from property finished floor levels (FFL).” Also the standard of protection of the FPS in Perth is 1 in 250 years plus freeboard (300-400mm). Due to this freeboard, SEPA's assertion that the scheme only provides a 4% allowance for climate change is incorrect as it will actually be greater than this allowing for freeboard.

SPP paragraph 255 (CD004, p57) states that there is a need for 'locating development away from functional flood plains and medium to high risk areas'. When SPP defines flood plain and the functional flood plain (CD004, p72) it is noted that the flood plain is about where water would flow 'but for the presence of flood prevention measures' and functional floodplain will 'generally have a greater than 0.5% (1 in 200 year) probability of flooding in any year'. The position on flood risk and development SEPA take is based on medium to high risk in an undefended scenario. This runs contrary to the SPP position which is to consider risk in a defended scenario. SPP is not focussed on the undefended scenario with regard to residential development. Also the reference to the functional flood plain having a greater than 1 in 200 year flood risk probability suggests that a FPS designed to defend against 1 in 200 year flood risk is the SPP definition of 'flood protection measures to the appropriate standard' (CD004, p59).

This SEPA's position could have very serious insurance and development finance implications, hampering continued investment in our existing built up areas. By inference it could affect residential proposals within a large area of Perth city centre and at North Muirton, including possible affordable housing development opportunities. It would also have big implications elsewhere in the country.

If Scottish Government wishes to revise its vulnerability approach to flood risk and the appropriate standard of FPS in the way SEPA suggest, it should do so through revision of the SPP. SEPA revising this approach in their guidance does so without the required level of scrutiny, SEPA guidance should provide more detail on flood risk matters but it should not contradict SPP. Neither, the SEPA Position on development protected by a Flood Protection Scheme (CD010), SEPA Development Plan Guidance Topic: Flood Risk (CD011), or the SEPA Flood Risk and Land Use Vulnerability Guidance (CD012) were subject to the SEA process and the legal status of these policy documents and the weight

that should be given to them in decision making is questionable.

It could be more appropriate to differentiate between types of flood risk and flood defences focussing on the particular health and safety concerns involved. This is the key difference in the vulnerability between employment and residential uses. In Perth the approach taken for the least (commercial and industrial development) and highly vulnerable uses (residential, institutional, development) should be the same. This is because there is an appropriate River Tay FPS in place, and the River Almond FPS will shortly be operational, and there is unlikely to be any significant health and safety issues associated to flooding even if these defences were to be overtopped. Local Authorities have a legal responsibility for maintaining their Flood Protection Schemes under the Flood Risk Management (Scotland) Act 2009 and specifically sections 18 Local authorities to assess bodies of water and 59 Duty to carry out clearance and repair works (CD030, p10 + 35). A level of autonomy is required, and where the Local Authorities are willing to commit to maintaining schemes and protecting existing/future residents then this should be a decision available to Local Authorities.

There are maintenance and inspection obligations that the Council follow which should avoid a major breaching scenario where health and safety implications would be important. If FPS were to be overtopped then there is likely to be a higher economic cost associated to the SEPA least vulnerable (commercial and industrial development) uses so overall the SPP and LDP approach to considering vulnerability is more responsive and reflective of the risks involved in Perth.

Residential development behind appropriate FPS would sometimes be more sustainable (such as Perth H1) rather than pushing development outwith (if flood risk issues are suitably mitigated). Flood Risk is a very important consideration, but it is not the only one, and where flood risk is suitably addressed by a FPS and suitable mitigation is required then Local Authorities should have the scope to consider development within these areas if the alternatives are much less desirable overall. Allocations within the settlement boundary of Perth where the flood scheme has incidentally offered protection rather than by design should be carefully considered through review of the LDP and its Strategic Environmental Assessment (SEA). To be clear, the Council do not support designing a flood defence scheme to specifically increase the developable area but where the logical engineering solution provides protection, and then such opportunities should be carefully considered.

The Development Plan should provide sufficient certainty to developers, and SEPA's revised approach would undermine the certainty provided in LDP1 and the current SPP. A future revision of SPP would allow sufficient scrutiny and consideration of the fundamental change in approach (based on SEPA vulnerability guidance, and the definition of appropriate standard flood protection measures) which is proposed. SEPA's current approach is too blunt and does not consider the relative health and safety/economic risks. It does not give enough autonomy to the Local Authority who has a duty to maintain its FPS. SEPA's position on the appropriate FPS being interpreted as being to 1 in 200 year plus climate change before allowing residential within the built up area is too onerous and climate change can be factored in through minimum floor heights. SEPA's position risks blighting existing properties that lie within the built up area in terms of insurance and securing investment.

H1 Scott Street/Charles Street

This is resisted for the reasons given in the common response. In terms of this site it was identified for housing in Perth and Kinross LDP 2014 (CD014, p81) and it is proposed this allocation continues in LDP2. The approach to allocation of land on areas of land defended by an appropriate Flood Protection Scheme (FPS) is consistent with SPP. H1 includes an existing building at 88-90 Scott Street, along with a public carpark which lies to the rear. The building at 88-90 Scott Street has a planning permission 16/00875/FLL granted on the 14 July 2016 which is effective for 3 years (CD270) for student accommodation on the upper 3 floors of the four-storey retail building.

No modification is proposed to the Plan.

H319 Ruthvenfield

This is resisted for the reasons given in the common response. The FRA provided for the Almond Valley application covered H319 and looking at the mapping of the 1 in 200 year risk defended scenario it appears that the developable area should not be impacted (CD275). SEPA position is different in that they seek no development within 1 in 200 year areas currently at risk (pre defended scenario). A map showing the areas at risk cannot be made publically available but can be provided to the Reporter on request. However this would not prejudice H319 delivery but just limit areas that would be undevelopable.

No modification is proposed to the Plan.

MU73 Almond Valley

This is resisted for the reasons given in the common response. If the Reporter disagreed this would not prejudice MU73 delivery, but it may have a minor impact on the developable area. The areas affected by flood risk have been identified for open space due to their high amenity so at the moment it looks unlikely to impact the developable areas. However the planning permission specifies detailed flood risk assessment at each phase in the delivery plan so the affected areas could change.

No modification is proposed to the Plan.

Removal of wording 'within the parameters as defined by this policy'

The Council supports the delivery of the actions and objectives to avoid an overall increase, reduce overall, and manage flood risk as set out within the relevant SEPA Flood Risk Management Strategies and the Local Flood Risk Management Plans but within the parameters as defined by this policy. The approach stated in the Tay Local Plan District Flood Risk Management Plan (FRMP), Annex 3 Approach to Land Use Planning (CD283, p247-248) (see extract below) considers under category (i) that any important component of the development plan settlement strategies may be acceptable under certain stated circumstances as follows:

“The Scottish Planning Policy sets out a flood risk framework to guide development. Areas of medium to high risk – where the annual probability of coastal or watercourse flooding is greater than 0.5% (1:200 years) – may be suitable for development provided flood protection measures to the appropriate standard (1:200 years) already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan. This is a matter for careful consideration through review of the Development Plan and its Strategic Environmental Assessment. However if the site is an

important component of the settlement strategy and no other equally suitable site is available then development (apart from civic infrastructure and the most vulnerable uses) may be suitable. Any development in such areas would also be subject to appropriate mitigation measures: including water resistance, and water resilience measures and evacuation procedures.”

However the Flood Risk Management Plan (FRMP) (CD283, p247-248) then goes on to say:

‘The following objectives and actions reflect national Land Use Planning policies and Guidance:-

AVOID DEVELOPMENT IN MEDIUM TO HIGH RISK AREAS’

Since the Tay Local Plan District Local FRMP needed to align with the National FRM it ended up compromising the subtlety of its earlier stated position. Therefore the LDP2 policy should say within the parameters of this policy to ensure that this contradiction is not furthered by LDP2.

Where the FPS has been logically designed there should be scope for allocations behind it. In Perth the FPS have not been designed to create opportunities so there should be scope to consider any incidental opportunities created by them through review of the LDP and its Strategic Environmental Assessment (SEA). The Council do not support designing a FPS to specifically increase the developable area but where the logical engineering solution provides protection then such opportunities should be considered. The LDP needs to provide sufficient certainty to developers, and SEPA’s approach would undermine the certainty provided in LDP1, and provide an unnecessary constraint.

No modification is proposed to the Plan.

Removal of wording ‘There will be a general presumption against’ and addition of ‘should be avoided unless it accords with the risk framework in SPP’

The Council would resist the suggested changes to remove this caveat for development proposals on a functional flood plain and in areas where there is a medium to high risk of flooding from any source, or where the proposal would increase the probability of flooding elsewhere to replace it with the SPP caveat. As already outlined above the Council has confirmed a small variation on the SPP approach in the Tay Local Plan District Flood Risk Management Plan (CD283, p247-248). This approach allows the LDP to consider sites outwith the built-up area to identify that any important component of the development plan settlement strategies may be acceptable. SEPA partially agree with this approach as they do not object to the northern part of E3 which by their guidance would be assessed as being outwith the built up area. SEPA’s planning information note 4 (CD010, p3) says a site is not considered to be within the built up area if, ‘it is within a settlement boundary but is located on the periphery of the settlement and is predominantly or completely surrounded by undeveloped land.’

No modification is proposed to the Plan.

Expansion of wording to read ‘All development within areas of low to high flood risk must incorporate a suitable climate change allowance, as well as a ‘freeboard’ allowance.’

With regard to freeboard allowance it is considered appropriate to cover this detail in Supplementary Guidance as it can be more readily updated when the evidence base requires it. In accordance with recent DEFRA research, PKC require a climate change (CC) allowance (a 20% increase in the estimated peak flow) to be applied to the 0.5% AP (200-year) and this is set out in our Flood Risk and Flood Risk Assessment Supplementary Guidance (CD055, p13). This guidance is currently being revised and will be consulted on October 2018.

No modification is proposed to the Plan.

However if the Reporter is so minded to recommend that the proposed modification is adopted, the local authority would be comfortable with this modification as it would not have any implications for any other aspect of the plan.

Amendment to require that a Flood Risk Assessment for any development proposed in medium-high risk category areas should be undertaken in accordance with SEPA's technical guidance.

In terms of requiring a Flood Risk Assessment (FRA) in accordance with SEPA's technical guidance the policy currently requires 'a Flood Risk Assessment is undertaken in accordance with the Flood Risk and Flood Risk Assessments Supplementary Guidance' (CD055). In the Supplementary Guidance the Council endorses technical guidance provided by SEPA and requires developers to strictly adhere to them. However additional PKC requirements for a FRA are also outlined and so the reference should be kept unchanged.

The sought amendment to the policy text to delete text as follows: '~~Development may be acceptable within the built-up area or any important component of the development plan settlement strategies may be acceptable for residential, institutional, commercial and industrial development~~ (including access roads/paths, parking and waste storage areas) provided' is resisted. As already outlined above the Council has confirmed a small variation on the SPP approach in the Tay Local Plan District Flood Risk Management Plan (CD283). This approach allows the LDP to consider sites outwith the built-up area to identify that any important component of the development plan settlement strategies may be acceptable. SEPA partially agree with this approach as they do not object to the northern part of E3 which by their guidance would be assessed as being outwith the built up area.

No modification is proposed to the Plan.

Amendment of the policy wording under the heading of category 1 with regard to development behind FPS

• Remove the wording "or any important component of the development plan settlement strategies"

See response above on deletion of 'There will be a general presumption against' along with addition of the caveat 'unless it accords with the risk framework in SPP' where the need for some diversion from SPP is explained.

No modification is proposed to the Plan.

- Amend the wording of point 1 of category 1 to state that flood protection measures are “complete and operational” rather than in place.

It is agreed that this proposed wording offers more clarity but this could be covered in the Supplementary Guidance.

No modification is proposed to the Plan. However if the Reporter is minded to accept the modification the Council would be comfortable with making this change as it would not have any implications for any other aspect of the plan.

- Clarify that in order for highly vulnerable uses (suggest cross reference to our Land Use Vulnerability Guidance (LUVG)) to be acceptable behind a FPS, the scheme would need to be built to an equal or less than a 0.5% AEP standard of protection plus climate change allowance.

- Clarify that most vulnerable uses (suggest cross reference to our LUVG) are not acceptable behind a FPS

- Include wording to identify the limited types of development generally acceptable behind a FPS that provides a standard of protection that is equal or less than a 0.5% AEP standard of protection within a built up area without an allowance for climate change, as set out in our flood risk guidance

And include "and most vulnerable uses" to the end of point 1 in the third paragraph

Disagree with these suggested amendments. Please refer to the response given above under Land allocations defended by appropriate flood protection schemes (FPS) for reasons why.

SEPA's approach is considered to be contrary to SPP. If Scottish Government wishes to revise its vulnerability approach to flood risk or define an appropriate FPS in the way SEPA suggest it should do so though revision of the SPP with the scrutiny that provides. SEPA's interpretation of the appropriate FPS being 1 in 200 year plus climate change before allowing residential within the built up area is too onerous as climate change can be factored in through minimum floor heights.

No modification is proposed to the Plan.

- Change the word civil to “essential” in point 7

It is agreed that SEPA's proposed wording better reflects SPP.

No modification is proposed to the Plan. However if the Reporter is minded to accept the modification the Council would be comfortable with making this change as it would not have any implications for any other aspect of the plan.

Reporter's conclusions:

Reporter's recommendations:

