

THE HIGHLAND COUNCIL

TRANSPORT, ENVIRONMENTAL AND COMMUNITY SERVICES COMMITTEE – 18 March 2010

Agenda Item	
Report No	

Response to Scottish Government Reservoir Safety in Scotland Consultation

Report by Director of Transport, Environmental and Community Services

SUMMARY

This report invites Members to approve the Council's response to the Scottish Government's Consultation on Reservoir Safety in Scotland.

1. Introduction

1.1 The Scottish Government are seeking comments on their proposals for Reservoir Safety, and have issued a consultation paper setting out the main reasons it believes there is a need to change the law, and how it proposes to implement these changes. 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 (The 2009 Act).
- Provide greater security for people, property and critical infrastructure from the risk of flooding from reservoirs.

1.2 The Consultation can be viewed at:

<http://www.scotland.gov.uk/Publications/2010/01/22134722/0>

1.3 The Consultation closes on 18 April 2010 and the Council's response is contained in **Appendix A**.

2. The Current Arrangements

2.1 The safety of reservoirs in Scotland is currently governed by the Reservoirs Act 1975 and the basic features of this legislation have not changed from the Reservoirs (Safety Provisions) Act which was passed in 1930.

2.2 The current legislation only applies to Large Raised Reservoirs (LRRs) which are capable of retaining more than 25,000 cubic metres of water. The current safety regime does not take account of the level of risk posed by the reservoir and provides for all LRRs to be subject to the same level of engineering supervision even if failure would not pose a threat. Reservoirs below the 25,000 cubic metres level are not covered by the current legislation even though they may pose a danger.

2.3 Responsibility for enforcement of the 1975 Act lies with Local Authorities.

3. Purpose of Consultation

3.1 The Scottish Government is seeking views on proposals to introduce a new regime for ensuring the risk from flooding from reservoirs in Scotland is appropriately managed. Any new regime will be required to deliver a proportionate system which protects the public from the risk of flooding from reservoirs without placing unnecessary burdens on reservoir undertakers. The consultation deals with two main proposals:-

- The implementation of Part 7 of the 2009 Act.
- The introduction of a risk based reservoir safety regime in Scotland.

3.2 Implementation of Part 7 of the 2009 Act will transfer the powers of Enforcement Authority from the Local Authority to SEPA thus ensuring a uniform application of legislative power throughout Scotland. SEPA will take over all of the enforcement responsibilities and activities currently carried out by Local Authorities and will also have additional duties and powers conferred by the 2009 Act. The proposals will introduce regulations for a post incident reporting regime and also introduce regulations for reservoir flood plans.

3.3 The introduction of a risk based reservoir safety regime will focus on modernising the legislation covering reservoir safety and minimising the risk of flooding from reservoirs by introducing a proportionate, targeted and risk-based approach to reservoir safety. To this end The Scottish Government are seeking to make the following changes:-

- Require any reservoir with a capacity of 10,000 cubic metres or more to be included on the Reservoirs Register.
- Require SEPA to classify each reservoir according to whether it poses a significant threat to human life, property and critical infrastructure.
- Specify the duties of reservoir undertakers.
- Specify Panel Engineers duties based on the level of risk.

3.4 The proposed legislation will not cover the emergency response to a flooding event as this comes under the auspices of the Civil Contingencies legislation.

4. Resource Implications

4.1 There are no direct resource implications arising from this report, however if the enforcement powers are transferred from the Local Authority to SEPA, this will release staff time within the Local Authority.

5. RECOMMENDATION

- 5.1 Members are invited to approve the Council's response to the Scottish Government's Consultation on Reservoir Safety in Scotland, as contained in **Appendix A.**

Signature:

Designation: Director of Transport, Environmental and Community Services

Date: 5 March 2010

Author: A MacLeod, Roads & Community Works

Background Papers:

Appendix A – Response to Reservoir Safety in Scotland Consultation Document

	Implementation of the Flooding Act 2009	
	<i>Reservoir Flood Plans</i>	<i>Response</i>
1	What should be the criteria for determining whether a reservoir requires preparation of a flood plan?	The criteria should be risk based.
2	Should there be different levels of flood plans for high, medium and low risk reservoirs? If not what alternative system should be adopted?	Yes. There should be different levels of flood plans for high, medium and low risk reservoirs. No alternatives are suggested.
3	If 3 different categories are used, what information should be included in a flood plan for each of them?	Agree with information as proposed in the consultation ie low risk being a standard template, medium and high risk being bespoke plans with Panel Engineer input.
4	Should all flood plans include an inundation map?	Yes.
5	Should SEPA prepare basic inundation maps for all reservoirs over 10,000 cubic metres?	Yes.
6	How often should plans be reviewed and updated?	Satisfied with proposed timescale of every 6 years provided there is no material change either to the reservoir itself or downstream of the reservoir.
7	How often should plans be tested?	Satisfied with proposed timescale of every 6 years provided there is no material change either to the reservoir itself or downstream of the reservoir.
8	Should Panel Engineers have a role in the preparation, testing and approval of flood plans? If so, what should their role be?	Not for those deemed to be low risk. Technical input likely to be required from Panel Engineers for medium and high risk.
9	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 the new legislation?	The Scottish Government should provide financial assistance to certain undertakers, particularly those whose reservoirs have no financial benefit, which are between 10,000 and 25,000 cubic metres and where the undertaker is restricted in the actions they can take to mitigate the costs incurred due to other factors such as environmental legislation eg. SSSI.

10	Who should have access to flood plans?	No comment on proposed access arrangements.
11	Who should have access to inundation maps?	No comment on proposed access arrangements.
	<i>Incident Reporting</i>	
12	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?	Yes.
13	What information should be provided in the report?	Agree with information as proposed in the consultation.
14	Who should be made responsible for reporting the incident?	The undertaker for the reservoir involved.
	A Risk-Based Approach to Reservoir Safety	
15	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.	Yes
16	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.	Yes. There may be circumstances where alternative criteria should be used.
17	What information should be requested at the point of registration to enable an effective risk based approach thereafter?	Agree with information as proposed in the consultation.
18	How can we design the registration process to minimise the burdens imposed by registration?	No comment to make.
19	Do you agree with the proposed risk based classification for reservoirs? If not, on what basis do you think risk should be defined?	Yes.
20	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?	Yes. As stated in the consultation.
21	How can the financial burden on owners of reservoirs which are being brought into the regulatory regime for the first time be minimised?	No comment to make.
22	Should there be a flat rate charge for registration, or should	The charge should be proportionate to the level of risk.

	the charge be proportionate to the risk/consequence of an uncontrolled release of water from the reservoir?	
23	Should registration be free for an initial period to encourage new sites to register?	Yes.
24	Should existing reservoirs have to be re-registered?	No. The information should already be to hand although additional or up-to-date information may be required in some instances.
25	Should SEPAs ongoing enforcement costs be recovered through subsistence fees and should they be on a sliding scale?	Cost should be recovered on a sliding scale.
26	Should SEPA be able to reclaim costs of emergency works from the undertaker for measures taken in the interests of public safety?	Yes but such costs must be shown to be fair, reasonable and best value. Undertakers should be able to appeal if they believe the costs incurred are excessive.
27	Which is your preferred implementation model and why?	Option 2. Gives the greatest benefit for the least disadvantage =, is risk based and retains use of Panel Engineers.
28	Are there any elements of the other models which could be usefully incorporated into your preferred model?	No comment to make.
29	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.	No comment to make.
30	Do you agree with the proposed arrangements for creating panels of engineers?	Yes.
31	What lessons can be learned from the current appointment process for panel engineers?	No comment to make.
32	Do you agree with each of the proposed minor amendments? <ul style="list-style-type: none"> • The proposed changes to reporting requirements and • The proposed requirement to erect notice boards. 	The proposed minor amendments appear reasonable.
33	Are there any other minor changes to the current regime you would recommend?	No.