Written Submission from Brian Shannan

I wish to provide evidence to the committee.

Policy exists in and through practice and I am writing from experience of having dealt with both SEPA and the planning system at a local level. If significant players such as SEPA do not have robust internal procedures to enforce climate change that match those in the public domain, then the targets set by the Scottish Government in any climate legislation are aspirations without teeth.

I have been advised by the Scottish Parliament’s administrative team that I can only refer to the 2013 planning matter and not the 2016 one, even though the documents are in the public domain. I therefore, refer to the 2013 matter only but reference it to documents that are relevant.

I was involved in a planning matter on a site with a history of flooding. Under the Flood Risk Management Act a Flood Risk Assessment is required. This was completed and recommended a climate change allowance be added to the functional floodplain. This is in keeping with recent DEFRA research, that requires a climate change (CC) allowance (a 20% increase in the estimated peak flow) to be applied to the 0.5% AP (200-year). SEPA have this in their Technical Guidelines which all Flood Risk Assessments must comply with. SEPA even signed a Memorandum of Understanding with COSLA (Policy 41) where these guidelines and climate change are specifically referenced.

This is in keeping with SEPA’s responsibilities as set out in The Flood Risk Management Act (2009) which outlines general duties in section 1. The 3 most relevant to climate change are:

- act in the way best calculated to manage flood risk in a sustainable way (clearly climate change);
- promote sustainable flood management (again climate change);
- act in the way best calculated to contribute to the achievement of sustainable development (again climate change).

However, in 2013 when a planning application was presented to Perth and Kinross Council by an agent who was a SEPA manager, the organisation failed to apply the climate change allowance as per their own guidelines. The matter went to the SPSO and my complaint that SEPA had unreasonably removed climate change was upheld. In evidence to the SPSO, SEPA claimed the inclusion of climate change as a ‘required element of a FRA’ is not mandatory and that they will accept Flood Risk assessments without climate change. This raises several issues:

If the Scottish Government is serious about addressing climate change why would you not apply a climate change allowance consistently?

How do you provide leadership under the current Climate Change (Scotland) Act 2009 and any future legislation if the agencies involved at both local government and
SEPA level can have public policies on climate change but internal procedures that mask the practice that is happening on the ground?

If the information regarding your approach to climate change is not in the published documents, then the only people that would know that SEPA will accept a floodplain without climate change would be SEPA employees and associates. Such insider knowledge would allow SEPA employees to act as agents in planning matters and gain a possible advantage, this is not acceptable.

Equally serious is that you have an organisation that will apply climate change in a non-standardised manner. In my case, there have been 4 flood risk assessment reports on the same river (River Devon) 3 have had climate change applied, and the one relating to a SEPA manager has not. The River Devon has a history of flooding but within a very short distance we have had very different outcomes.

If your published guidelines state you apply climate change then elected politicians and others will assume this is SEPA’s policy. In 2016 ClimateXChange commissioned a report called Assessing the Consideration of Flood Risk by Scottish Local Planning Authorities. In the report, it states:

1. The Technical Guidelines on Flood Risk issued by SEPA requires climate change to be applied to the floodplain level.

2. On page 59 it states ‘Additional SEPA involvement may also have assisted in securing more effective consideration of the effects of climate change – most likely through the provision of FRA.’

3. That of 20 FRA’s reviewed by LUC, only 1 did not include climate change (not sure if it was the case involving their manager or not).

This then raises further questions:

1. How can SEPA be accountable if politicians, the public and those compiling Flood Risk Assessments assume the published guidelines is the policy position of SEPA but those inside the organisation are not applying the climate change allowance in the FRA.

2. How can climate change targets be met if SEPA is working to another set of internal guidelines? The planning site in 2013 is a recognised flood risk area and so assume this would meet any criteria for climate change.

3. How can you meet targets if SEPA and others have internal workings that are different?

Scottish Planning Policy is clear that there should not be land raising (unless in exceptional circumstances) or development on the functional floodplain. The FRA regulations include a climate change allowance.

SEPA’s Technical Guidelines recommends a freeboard allowance in addition to any climate change allowance. This also raises questions:
1. How can SEPA apply climate change to the mitigation measures but not the floodplain itself?

2. Where is SEPA’s role in leading on climate change that falls under the Climate Change (Scotland) Act 2009?

3. How will the new draft legislation ensure that such inconsistencies do not happen in future?

4. If you have a body such as SEPA that applies climate change indiscriminately then this raises questions of accountability. If, as in the 2013 application the difference between being granted planning approval is dependent on the climate change allowance – if climate change is not applied then planning can be approved as the floodplain is at a lower level, if climate change is applied then planning cannot be approved as the development is on a floodplain. There could be cases where planners have been turned down an application as the site was on the floodplain with climate change but if they knew that SEPA has a different set of internal rules then they may have had planning approved. This could be a very problematic area.

ClimateXChange, the Scottish Government’s Centre of Expertise on Climate Change, commissioned LUC to undertake research to assess the effectiveness of Scotland’s local planning authorities in implementing national planning policy in both planning for flood risk and the effects of climate change, and ensuring new development is avoided in areas at risk of flooding.

It made several recommendations. These include:

- Greater emphasis on the value and importance of the application of a precautionary approach to planning for flood risk
- More effective understanding and application of the avoidance principle in policies, overarching spatial strategies and especially assessment of land allocations.
- Need for greater political buy-in and leadership on flooding as a critical local and national issue.
- Need for a ‘culture change’ in attitudes to flood risk in development management – moving from mitigation to avoidance.
- Need for guidance for local authorities to assist in understanding climate risks, interpreting available data and translating this into robust, sustainable spatial strategies.

Finally, in 2013 SEPA unreasonably removed the climate change allowance. As SEPA are a significant player in the climate change legislation I would suggest that the committee needs to ensure that the agency is operating as it portrays itself in the public domain (I refer you again to the 2016 ClimateX report). The issues are:
1. In response to the 2013 decision by the SPSO did SEPA ensure that all those involved in the organisation ensure that climate change is applied to the floodplain as per their guidelines?

2. Is it still SEPA’s position that it will provide advice without climate change applied? If so where is the lead on climate change?

3. If so, where does it state this in their new technical guidelines? Surely, if this is their policy then it should be in the public domain.

The new draft legislation is welcomed but I would suggest that there needs to be a more rigorous enforcement of the current legislation and how the agents that are supposed to enforce it work and operate. If you do not ensure that SEPA comply with their published guidelines and responsibilities, then there will be no improvement. It could be argued, that people working for an organisation should not be able to use insider knowledge - public bodies should be accountable to their published guidelines. Finally, climate change has an impact on those with protected characteristics under the Equalities Act and until we embed climate change as real - like human rights - then any new legislation will not be effective.

Brian Shannan