

ANGUS COUNCIL

PLANNING AND TRANSPORT POLICY COMMITTEE

7 MARCH 2002

**SUBJECT: THE FUTURE FOR SCOTLAND'S WATERS – PROPOSALS FOR LEGISLATION**

**REPORT BY DIRECTOR OF PLANNING AND TRANSPORT**

**Abstract: This report comments on the Bill provisions put forward by the Scottish Executive in their document "The Future for Scotland's Waters – Proposals for Legislation" and forms the suggested basis for the Council's response to the consultation document.**

**1 RECOMMENDATION**

It is recommended that the Committee note the publication of the consultation document and agree the contents of this report as forming the basis of a response to the Scottish Executive on their legislative intentions for the environmental component of the Water Environment and Water Services Bill to implement the European Water Framework Directive.

**2 INTRODUCTION**

- 2.1 The Scottish Executive has issued its second consultation document "The Future for Scotland's Waters – Proposals for Legislation" relating to proposals for implementing the EC Water Framework Directives (WFD) 2000/60/EC which came into force on 22 December 2000.
- 2.2 The Council's earlier response to the first consultation document "Rivers, Lochs, Coasts : The Future for Scotland's Waters" was the subject of Report No. 922/01 which was considered by the Planning and Transport Policy Committee on 23 August 2001.
- 2.3 The second consultation document outlines the proposals for the Water Environment and Water Services Bill, which it is hoped will be introduced in the Scottish Parliament in May 2002. It sets out the proposed Bill provisions, identifies some of the areas to be covered by secondary legislation and indicates some of the aspects where further investigation and/or consultation is needed. Responses to the consultation document are requested by 5 April 2002.
- 2.4 This report considers and comments on areas of concern in the proposed provisions for primary legislation, concentrating on those elements relating to the land use planning process.
- 2.5 A full copy of the consultation document is available in the Members' Lounge and a comparison of comments made on the first consultation document and current proposals is set out in Appendix 1 to this report.

### 3 KEY PRINCIPLES

3.1 The key elements of the Directive are quoted as being:-

- the introduction of a new system of management and planning of our water environment – our rivers, lochs, coastal water and groundwaters – based around natural catchments; and
- the requirement to control all impacts on the water environment to ensure “good status” for most of these waters by specified deadlines.

3.2 The document claims “the overall purpose of the Directive and the proposed Bill is to establish a framework for the protection of the water environment which:-

- prevents its further deterioration and protects and enhances its status;
- promotes sustainable water use;
- enhances the protection and improvement of the aquatic environment through specific pollution control measures;
- progressively reduces and prevents further pollution of groundwaters; and
- contributes to mitigating the effects of floods and droughts.

This should, in turn, contribute to the achievement of:-

- the provision of a sufficient supply of good quality water for human use;
- a significant reduction in groundwater pollution;
- the protection of the marine environment; and
- compliance with other international measures to protect the water environment.

3.3 The central requirement of the Directive is the production of strategic management plans for River Basin Districts (RBD) that establish environmental objectives (quality targets) for each water body and describe the measures that will have to be put in place to achieve them.

**3.4 As the Directive has already come into force it is important that all agencies, including local authorities ensure their activities do not lead to a deterioration in status of the water environment.**

### 4 BILL PROVISIONS

#### River Basin Management Plans (RBMPs) : Purpose, Form and Content

4.1 The introduction of River Basin Management Planning is recognised as a complex matter but the document does little to clarify how this will work in practice and indicates the need for more consultation on the process.

4.2 There appears to be contradictory requirements of the RBMP. A RBMP must be produced for the River Basin District (ie the proposal is for a single Scotland wide plan plus cross border districts plans). The proposal is for a strategic document yet the proposals also call for ‘localised and detailed information about the environmental objectives that will apply in the catchments covered.’ How this will be resolved is not clear as the Bill provisions give Ministers “powers to prescribe matters to be covered in river basin district plans in secondary legislation.”

#### Lead Role for the Scottish Environment Protection Agency

- 4.3 Whilst supporting the proposal to give SEPA a lead role in this matter it is important that they are fully resourced to undertake the task and the wider duty it places upon the agency.
- 4.4 The Bill provisions concentrate on addressing, securing and protecting the water resource and do little to support the new duty to promote the sustainable use of water proposed for SEPA.

#### Integration with Other Policy Areas

- 4.5 The provision that SEPA will have a duty to carry out RBMP functions “in consultation with other relevant authorities” and have regard to their views is welcomed. The reciprocal arrangement whereby **relevant authorities will have a duty to assist in the preparation and implementation of RBMPs** is recognised. Given the already complex situation with regard to the water environment where different agencies have different duties this Bill may afford the opportunity to clarify responsibilities. Whilst many mechanisms exist for collaborative working there may be a need to find new ways of working together to meet some of the requirements of RBMPs.
- 4.6 River basin management planning is recognised as needing to integrate with a wide range of other plans such as Local Biodiversity Action Plan (LBAPs), coastal zone management and development plans. River basin management planning is seen as being the **primary** means for meeting water environment objectives. The document calls for development plans to “cross refer” to RBMPs and to “apply and interpret the water environment priorities in the RBMP in terms of development constraints.” The relationship between statutory development plans and RBMPs needs to be clarified as it appears the latter will not be publicly scrutinised. This could raise Human Rights issues and could create difficulties if a development plan has used RBMP as a material consideration and is subsequently challenged. The need for SEPA and planning authorities to work closely is recognised in the document and whilst some existing mechanisms, such as issuing the weekly list of planning applications to SEPA, will contribute to this, further co-operation with each local authority is likely to require additional arrangements and more resources. One such potential area highlighted is that of ‘water and licensing’ and there is also the possibility of introducing complementary planning conditions where the water environment objectives of the RBMP are involved.

#### The Importance of Wide Participation

- 4.7 The Bill provisions give SEPA a duty to seek and have regard to the views of interested parties. In particular SEPA must establish a network of consultative fora in each river basin district to act as standing consultative panels. It is envisaged that these fora would be based on major river catchments such as the Tay. Given the strategic nature of the RBMP, experience from the development plan process indicates that it is difficult to fully engage the community in meaningful dialogue despite investing considerable time and effort in the process. There is a need to ensure adequate resources are put into this. The extra pressure this process will bring to bear on local authority and other agencies should also be recognised.

### Robust Characterisation and Monitoring

- 4.8 The characterisation of river basin districts is required to determine the environmental objectives to be applied to each water body. This requires the compilation of a vast range of data: to categorise the type of body; to assess the status of a surface water body ie High, Good, Moderate, Poor, Bad; to identify human activities which could potentially impact on the status of the water; to assess the deviation from natural state of the water due to pressures; to identify and map groundwaters. All this work needs to be completed before the end of 2004 and it is envisaged that local authorities would have an important role to play in this process which could result in considerable resource implications. SEPA have been asked to consult on the Directive's technical requirements in respect of environmental characterisation and monitoring and are due to issue its consultation this Spring. It is unfortunate that this document, along with the report on the South West Area RBMP pilot project, were not available to agencies in advance of the Bill provisions being published, had that been the case, a clearer picture of how the process is envisaged would have been available to agencies and more informed responses to the current document would have been possible.
- 4.9 SEPA are given a responsibility to co-ordinate the collection of environmental and economic data and relevant authorities will also have a duty to provide information or undertake monitoring. As the document states "this may mean altering the purpose for which data is collected or the protocols under which it is collected." This will obviously impact on local authorities.

## **5 FINANCIAL IMPLICATIONS**

- 5.1 There are no direct financial implications arising from this report.

## **6 HUMAN RIGHTS IMPLICATIONS**

- 6.1 There are no Human Rights implications arising from this report. Any Human Rights issues arising from the Bill will need to be addressed by the Scottish Executive in the first instance.

## **7 CONSULTATION**

- 7.1 The Chief Executive, Directors of Law and Administration, Finance, Environmental and Consumer Protection, Leisure Services and acting Director of Road have been consulted in the preparation of this report.

## **8 CONCLUSION**

- 8.1 The introduction of River Basin Management Planning is welcomed. The complex nature of the process and the need to integrate with a wide range of plans will necessitate partnership working and co-operation of a wide range of public authorities and other bodies. The document does little however to further clarify how things will operate in practice, and calls in some instances for further investigation and consultation which is to be welcomed. It is envisaged existing procedures will be used wherever appropriate and augmented if necessary. However entirely new mechanisms will also be required which will inevitably have resource implications for those involved.

- 8.2 One major recommendation is the establishment of a network of consultative fora. These fora would be representatives of all the interests in the water environment and are expected to act as standing consultative panels. The number of fora to be set up is not prescribed but it is anticipated one would be established for the Tay.
- 8.3 The Directive sets out various deadlines by which various stages are to be achieved. Although the finalised plan is not due until the end of 2009 the deadline for characterisation of river basin districts, by the end of 2004, sets a particular challenge and may involve considerable input by the Council.
- 8.4 One aspect of the Directive, which the Council must continue to have regard to in this period before all the RBMP mechanisms are in place, is that no deterioration of the water status must be allowed through any activities the Council undertakes.

#### **NOTE**

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

- The Future of Scotland's Waters – Proposals for Legislation, consultation paper, published by Scottish Executive; February 2002.
- Rivers, Lochs, Coasts : The Future of Scotland's Waters, consultation paper, published by Scottish Executive; 2001

AA/PC/SC  
26 February 2002

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## APPENDIX 1

**COMPARISON OF BILL PROVISIONS OUTLINED IN “THE FUTURE FOR SCOTLAND’S WATERS – PROPOSALS FOR LEGISLATION”  
AND THE COUNCIL’S COMMENTS ON THE FIRST CONSULTATION DOCUMENT  
“RIVERS, LOCHS, COASTS : THE FUTURE OF SCOTLAND’S WATERS**

<b>Previous Angus Council Comment – Report No. 922/01</b>	<b>Proposed Bill Provisions from The Future for Scotlands Waters – Proposals for Legislation</b>	<b>Comment</b>
<p><b>River Basin Districts</b> <i>Given the need to remain strategic (in European terms) the three River Basin Districts areas proposed would seem the most appropriate course of action and would make best use of existing administrative structures.</i></p>	<p>1.4 No. of River Basin Districts (RBD) not prescribed – regulations to be introduced to define geographical boundaries. But plan is to identify one RBA to cover all Scottish waters except those in cross border catchments.</p>	<p>Note: Further consultation to be held by Scottish Executive.</p>
<p><b>Seaward Limits</b> <i>Agree that the zone for protection of ecological status of coastal waters should extend to 3 nautical miles, in order to match the extent of the current SEPA pollution control powers.</i></p>	<p>1.8 Seaward limits of RBDs will not be set – chemical status will be covered through rules to territorial waters. However reserved matters that could affect ‘the status of the waters’ are outwith Scottish Parliament control and therefore will not be addressed.</p>	<p>Further consideration to be given to costs and benefits of protecting ecological status of sea to the 3 mile limit.</p>

Previous Angus Council Comment – Report No. 922/01	Proposed Bill Provisions from The Future for Scotlands Waters – Proposals for Legislation	Comment
<p><b>River Basin Management Plans : Purpose, Form and Content</b>  <i>New technology will play an important role in information transfer, data capture, interpretation and presentation of findings/results. Particular attention will need to be given to the compatibility of systems not only within each River Basin District, but across Scotland. This will require full investigation prior to preparation of the River Basin Management Plans and will undoubtedly have resource implications.</i></p>	<p>1.11            Bill will specify that RBMPs are to include all elements in Annexe III of the Directive.            Secondary legislation will give ministers powers to prescribe matters to be covered in River Basin District Plans.</p>	<p>Form and content of RBMP will not be tightly specified.</p>
<p><b>Lead Role</b>  <i>Agree, with recommendation that SEPA be the lead authority.</i></p>	<p>1.13            SEPA to act as lead authority for river basin management planning and will have duty to have regard to social and economic considerations. Will also have duty to promote sustainable use of water.</p>	<p>Concurs with Angus Council comments. Consultees raised need to ensure SEPA is adequately resourced.</p>
<p><b>Integration with Other Policy Areas</b>  <i>The Scottish Executive would need to be sure that the bodies allocated the right mix of powers and duties have or, are given, the appropriate resources to fully undertake these duties. Given the range of functions undertaken by local authorities they would be well placed to contribute fully to the RBMP process subject to additional resources being made available.</i></p>	<p>1.18            RBMP function – SEPA must work in consultation with other relevant authorities and have regard to their views. <u>Ministers will have powers to identify relevant authorities and to impose duties on them. Relevant authorities will have a duty to assist in the preparation and implementation of RBMPs.</u> Individual authorities may have specific duties conferred on them.</p>	<p>Resource implications for both SEPA and the relevant authorities eg local authorities not mentioned or catered for. The need for cooperative working and for integration with other plans is recognised in the text of the document.</p>

Previous Angus Council Comment – Report No. 922/01	Proposed Bill Provisions from The Future for Scotlands Waters – Proposals for Legislation	Comment
<p><i>(cont'd)</i>  <i>A specific duty is acceptable but there is a need to make sure that local authorities get sufficient information/guidance to ensure the correct interpretation. Will RBMP's give sufficient guidance to land use planners? Issues relating to data protection matters will also require to be fully clarified.</i></p>		
<p><b>Accountability</b>  <i>Whilst agreeing that the final decision on RBMP should rest with Scottish Ministers it is unclear from the proposed timetable how much time has been allowed between Ministerial approval and the need to have the programme of measures fully operational. There seems to be no appeal mechanism. Given that RBMPs will to some extent dictate how other statutory measures are formed (eg Local Plans/Structure Plans) should something be put in place?</i></p>	<p>1.19            SEPA given a duty to submit finalised RBMP's to Ministers. Ministers can endorse, modify or ask for a resubmission with modifications. SEPA to publish finalised plan.</p>	<p>Note: The Directive sets firm deadlines for finalising plans.</p>



Previous Angus Council Comment – Report No. 922/01	Proposed Bill Provisions from The Future for Scotlands Waters – Proposals for Legislation	Comment
<p><b>Wide Participation</b>  <i>The active involvement of “interested parties and stakeholders” from such a diverse area as the south east SEPA region could create a large forum. Concerns in the Angus Glens may therefore be overshadowed by those around the highly developed Forth Estuary. Whilst agreeing that a forum would provide an opportunity for dialogue, consideration should be given to consultation by interest or focus groups eg agriculture, public agencies. It may be feasible that some agencies could act as watchdog for others, be they members of the public as in the case of local authorities or other public body. It must also be recognised that new consultation processes create additional substantial administrative burdens on organisations such as local authorities. Existing Flood Appraisal Groups could for example usefully form a basis for consultation forums in the different RBD areas with different compositions for different parts of the catchment.</i></p>	<p>1.23  SEPA given duty to have regard to the views of interested parties.  Proposal for SEPA to: (i) establish a <u>network</u> of consultative fora in each River Basin District. Sub-groups may be formed to seek views on particular issues and problems; (ii) publish and consult for 6 months minimum on (a) a timetable; (b) overview of significant issues; (c) full draft plan.</p> <p>Ministers to have powers to issue guidance to SEPA re participation of interested parties in production, updating and implementation of plan.</p>	<p>It is envisaged a forum would be set up for the TAY as a standing consultative panel.</p> <p>The difficulties associated with consultation raised by Angus are recognised in the proposals paper.</p>

Previous Angus Council Comment – Report No. 922/01	Proposed Bill Provisions from The Future for Scotlands Waters – Proposals for Legislation	Comment
<p><i>(cont'd)</i>  SEPA the body due to be charged with managing our water environment is not currently represented on the Community Planning Steering Group in Angus. However, given that various members of the CP panel represent organisations which will also be directly involved in the RBMP process consultation by commenting on various stages of the RBMP may be sufficient to ensure both the CP and RBMP are compatible. In terms of engaging the general public there is a need to be wary of consultation overload. The strategic nature of these RBMPs and their wide geographic spread is likely to mean the general public will have difficulty relating to them and feel they would have little influence on them. Public consultation requires a lot of time and effort to fully engage the public and is a slow process.</p> <p>Experience through the development plan process for Local and Structure Plans suggests that this needs to be recognised as a major time/resource commitment not just for the lead authority SEPA, but for the range of agencies etc. with powers and responsibilities connected with the Directive.</p>		

Previous Angus Council Comment – Report No. 922/01	Proposed Bill Provisions from The Future for Scotlands Waters – Proposals for Legislation	Comment
<p><b>Sub River Basin Plans</b> <i>It is not clear what would happen if there is found to be a need for a management plan but no voluntary body is established and there is resistance to one, due perhaps, to conflict of interests. Would the lead authority set one up; would it become an action in the RBMP?</i></p> <p><b>Protected Areas</b></p> <p>Not previously raised.</p>	<p>1.27 SEPA and other bodies to have power to establish ‘sub’ river basin plans. Ministers will have powers to direct SEPA to establish such plans if necessary</p> <p>1.28 SEPA will have duty to establish a register of protected areas for the River Basin District. Ministers to have powers to designate areas for the protection of economically significant aquatic species (shellfish waters and freshwater).</p>	<p>Angus Council points now resolved.</p>
<p><b>Part 2 – Environmental Outcomes : Environmental Objectives</b></p> <p><b>Protecting the Water Environment</b></p> <p>Not previously raised.</p>	<p>2.6 <u>All relevant authorities will have responsibility of ensuring that, in carrying out their functions, they comply with the general aims and objectives listed under para 2.4 of the document (and para 3.2 of this Committee Report).</u></p>	<p>This puts an additional responsibility on Angus Council.</p>
<p><b>Definition of Water Environment</b></p> <p>Not previously raised.</p>	<p>2.8 A general definition of the “water environment” will be provided.</p>	<p>This is to be welcomed.</p>

Previous Angus Council Comment – Report No. 922/01	Proposed Bill Provisions from The Future for Scotlands Waters – Proposals for Legislation	Comment
<p>Not previously raised.</p> <p><b>Robust Characterisation and Monitoring</b></p> <p>Not previously raised.</p>	<p>2.9 Ministers will be given powers to determine the boundaries between the specific categories by surface waters.</p> <p>2.17 SEPA will have a duty to carry out the environmental and economic characterisation and must have regard to views of other authorities.</p>	<p>There must be scientific and economic appraisal and environmental monitoring to determine which of the objectives apply to a water “body”.</p>
<p><i>It is proposed that SEPA co-ordinate monitoring by a range of agencies and this is supported.</i></p> <p><i>Included in the list of current organisations carrying out monitoring are Biological Recording Centres. Angus does not currently have such a resource, partly due to lack of resources. This raises the question of how the further development of existing monitoring systems will be resourced. Would funds be made available to fill the gaps in existing systems before enhancement is undertaken to ensure an even base line for monitoring?</i></p>	<p>2.21 SEPA will have responsibility to co-ordinate and collect environmental and economic data, and must draw up a Scottish Monitoring Strategy. Duty on relevant authorities to provide any environmental or economic information reasonably requested by SEPA. Ministers to have powers to issue guidance and make regulations in relation to environmental monitoring and data sharing, and powers to direct other relevant authorities to undertake any necessary monitoring.</p>	<p>Position with regard to biological recording centres previously noted. Angus does not have such a centre. Would require considerable resources to establish.</p> <p>Data provision may have potential resource implications for Angus Council</p>
<p>Not previously raised.</p>	<p>2.23 SEPA will get ‘new’ powers to gain information from water users to assess pressures and impacts on the water environment.</p>	

Previous Angus Council Comment – Report No. 922/01	Proposed Bill Provisions from The Future for Scotlands Waters – Proposals for Legislation	Comment
<p><b>Costs and Benefits</b>  <i>The impact of implementing the WFD and particularly the financial implications arising for the business community, local authorities and the various organisations affected by the proposals is one which requires considerable further work. At this stage information is very sketchy and no mention is made of how the proposals are to be resourced. It must be stressed to the Scottish Executive that much of the implementation of the WFD is new work and consequently sufficient financial resources will need to be made available to enable River Basin Planning as envisaged by the proposals to be implemented within the timescale set by the Scottish Executive. In terms of business costs this raises the prospect of compliance costs determining where businesses operate. This could lead to local economic problems if companies move to ‘less demanding areas’.</i></p>	<p>2.28            Costs to public and private sectors are anticipated to be around £840 million at present values, the majority of which will occur in the period from 2007 to 2012. However benefits to business and society of the improvements in the water environment is valued at £1.5 billion</p>	<p>As the document states these are preliminary estimates as the Bill will only set out the principles and framework for RBMP and the regulatory controls. Further costs may emanate from the secondary legislation.</p>