

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE - 29 JUNE 2004

SEPA: CONSULTATION ON THE SCOTTISH RIVER BASIN MANAGEMENT PLANNING STRATEGY

Report by Executive Director of Development and Property Services

1. PURPOSE OF REPORT

- 1.1 To advise and obtain the views of the Committee on a consultation by the Scottish Environment Protection Agency on the Scottish River Basin Management Planning Strategy.

2. BACKGROUND INFORMATION

- 2.1 The Water Framework Directive, introduced into European legislation in December 2000, has been translated into Scottish law through the Water Environment and Water Services Act of 2003. It is recognised that, in order to deliver this Act, Scotland will need to produce a River Basin Management Plan (RBMP). The RBMP is due for publication in 2009.
- 2.2 It is proposed that Scotland will have two River Basin Districts, one covering most of the country and the other covering the cross border Tweed and Solway area, shared with England. SEPA has been charged with leading the River Basin Management Plan process and intends to produce a River Basin Management Plan strategy in the autumn of 2004. This consultation has been produced to further inform the plan preparation process and comments on the consultation are requested by 21 July 2004.

3. THE CONSULTATION PAPER

- 3.1 The consultation paper makes proposals and sets out various development options relating to three key aspects of River Basin Management Planning:

- (i) Developing administrative arrangements and principles to support RBMP production;

It is proposed that a RBMP National Advisory Group be formed to coordinate and inform RBMP production across Scotland. A series of options for the formation of Area Advisory Groups covering the whole of the Scottish River Basin Management District are also presented for consideration. SEPA's preferred option for eight groups based on surface water catchments, coastal water units and aligned, wherever possible, with local authority boundaries, is clearly stated. In this regard, SEPA specifically recognises that the relationship between RBMP and statutory Development Plans is important and that the alignment of advisory group areas with local authority boundaries will assist and encourage the efficient contribution of local and planning authorities to the RBMP process.

- (ii) Delivering effective participative and consultation opportunities;

It is anticipated that members of the proposed National RBMP Advisory Group will comprise representatives from national stakeholders and organisations working at a strategic level including, amongst others, the Scottish Executive, SEPA, SNH, Scottish Water, Local Authorities/CoSLA and the Forestry Commission as well as Area Advisory Group representatives. With regard to Area Advisory Groups, it is considered that group composition will be different in each area, reflecting the priorities and activities important in each location. However, it is considered that representatives from public and responsible authorities, including Local Authorities, as well as key water users and industries should be invited to participate.

- (iii) Effectively integrating the RBMP with other plans and planning.

It is recognised in the consultation that RBMPs are not the only plans with an important role in the water environment and that it will be necessary to integrate and coordinate the RBMP with other planning frameworks. A cooperative approach will also help deliver any RBMP objectives and programmes that rely on other plans for implementation or support. This particular part of the Consultation is of particular relevance to the Council and is explored in more detail in section 5 below.

4. EAST AYRSHIRE COUNCIL AND THE RIVER BASIN DISTRICTS

- 4.1 The consultation indicates that the whole of East Ayrshire is located within the Scotland River Basin District and, in particular, the Clyde RBMP Advisory Group Area. This is not actually the case, as part of East Ayrshire falls within the River Nith Catchment Area which, in turn, forms part of the Solway Tweed Cross Boundary River Basin District. This has not been picked up or recognised in the consultation paper and is considered to be a serious omission in so far as East Ayrshire is concerned. It is strongly recommended that this error be rectified by SEPA in the finalised version of the strategy.
- 4.2 With East Ayrshire falling within two proposed River Basin Districts, it is likely that Council representation could be requested or required on two separate RBMP Advisory Groups ie. the Clyde RBMP Group and any advisory Group that may be envisaged for the River Nith Catchment Area. This could have certain manpower and other implications for the Council although the precise level and degree to which the Council may be affected cannot yet be ascertained.

5. RELATIONSHIP BETWEEN RIVER BASIN MANAGEMENT PLANS, THE PLANNING SYSTEM AND OTHER PLANNING PROCESSES

- 5.1 There are a number of ways in which River Basin Management Plans and the Planning system will inter-relate. In particular, it is recognised in the consultation that:
 - (i) Existing and future statutory development plans prepared by planning authorities may provide a starting point for the first RBMPs. In particular, where development agreements and investment decisions based on the development plan are consistent with the provisions of the Water Framework Directive, they will need to be accommodated in the policies and measures of the RBMP.

Suggested Council Comment

While RBMPs will need to accommodate development plan development agreements and investment decisions that are consistent with the provisions of the Water Framework Directive, it is implicit in the consultation that some such agreements and decisions may be outwith the scope of the Directive or not be entirely in accord with it. Development agreements and investment decisions made by Councils in their Development Plans often relate to wider social or economic issues in addition to environmental matters. Consideration urgently needs to be given to how those agreements and decisions which are justified mostly in socio-economic terms will be taken forward before, during and after completion of the RBMP.

- (ii) Where development plans are reviewed and altered, they will require to accommodate the requirements of the RBMP, which will have set environmental objectives and measures to achieve them. It is considered that a number of measures identified in the RBMP will be deliverable through the planning system.

Suggested Council Comment

While noting the above, it is considered imperative that, in the preparation, review and alteration of RBMPs, SEPA must equally be legally required to accommodate the requirements of adopted development plans or to take into consideration the content of development plans that are in the process of preparation.

- (iii) The RBMP will be a material consideration in decision making on planning applications.

Suggested Council Comment

Noted

- 5.2 In order to deliver close integration between the RBMP and Planning systems, SEPA proposes that:

- (i) A working group should be convened from 2005 with representatives from the key stakeholder organisations including the Scottish Executive, SEPA, Planning Authorities and other planning interests. This group would aim to identify significant issues, inform coordination processes and advise on the need for guidance in advance of the first RBMP in 2009.

Suggested Council Comment

It is considered that specific guidance would be invaluable in clarifying the interaction and relationship between the RBMP and planning systems, possibly through the production of a dedicated SPP or Planning Advice Note by the Scottish Executive. It is also considered essential that clarification is obtained as to the status of RBMPs in the overall planning process and any hierarchical relationship between River Basin Plans and statutory development plans, if such a hierarchy is deemed to exist.

- (ii) Model Development Plan policies, as proposed by the Scottish Executive in its Review of Strategic Planning, may be useful in the consideration of River Basin Management Planning and other water environment issues.

Suggested Council Comment

The Council would agree that further consideration should be given to the introduction of model policies as part of the Executive's ongoing review of the planning system. It is considered imperative that while development plans must take into account the provisions of RBMPs, RBMPs should also be required by statute to take into account the provisions of development plans, including model development plan policies, in their preparation and execution.

- (iii) Consideration should be given to synchronising and coordinating the production of River Basin Management Plans and development plans and to embodying RBMP provisions within the 2 year Action Plans proposed by the Scottish Executive in its recent consultation on Making Development Plans deliver.

Suggested Council Comment

The Council would agree with SEPA that synchronisation of the two plans would be difficult, if not impossible, to achieve. It is considered, however, that the potential to embody RBMP provisions in Action Plans should not be discounted out of hand but given further consideration by all interested parties.

- (iv) Advisory Groups should include representatives from Local Authorities, allowing coordinated input from a range of Local Authority functions, including Planning. More specific input from planning authorities could be considered by the Advisory Group and the particular authorities involved.

Suggested Council Comment

The Council would strongly agree that Local Authorities should be represented on the Advisory Groups to be set up and that various elements of the Council, other than the Council as Planning Authority, would have a valuable contribution to make to the RBMP process. In so far as planning input into the process is concerned, the Council would agree that the establishment of 'planning issues groups' within an Area RBMP Advisory Group is an acceptable way forward and essential in order to deal adequately and efficiently with particular planning related matters.

- (v) To avoid and resolve potential differences between the RBMP and development plans through partnership working, compliance with Water Framework Directive legislation, the treatment of RBMPs as material considerations in making planning decisions and continuing use of SEPA as a statutory consultee for structure and local plans. This particular role will be strengthened through the statutory duty likely to be imposed on SEPA, as described in the Executive's recent 'Making Development Plans Deliver' publication, to engage in development plan preparation.

Suggested Council Comment

The Council is supportive of the measures proposed to resolve any potential differences that are likely to arise. It is also considered that the role of SEPA in the development plan process will be strengthened by the designation of SEPA as a Responsible Authority in the assessment of Strategic Environmental Assessments to be prepared in association with local authority development plans.

The Council is of the opinion that joint working arrangements should be put into place at all stages of the RBMP preparation process to ensure that full integration between RBMPs, or any sub-basin plans, and any adopted development plan for the area is achieved. The Council is of the view that future development in the area should not be determined solely by environmental matters but that it should be properly balanced with socio-economic considerations. In this regard, the Council is concerned that the flexibility within current arrangements for planning the area could be unacceptably compromised if these issues are not fully explored and resolved.

- 5.3 The consultation also addresses the relationship of RBMPs with other planning processes, a number of which are of relevance to East Ayrshire, namely Community Plans, Local Biodiversity Action Plans, Natura 2000 sites, Agricultural Policy, Indicative Forestry Strategies, Freshwater Fishery Plans, Catchment Management Plans and Flood Management and Control. The consultation makes a number of specific proposals relating to these processes which can be summarised as follows:
- SEPA will seek to use Community Planning to assist in engagement, participation and consultation activities during RBMP production.
 - SEPA will seek to use statutory Schemes of Management and River Conservation Strategies to provide the objectives of SPAs and SACs for the RBMP, particularly where these provide more stringent objectives to support the conservation designation.
 - SEPA will work with LBAP initiatives to agree means by which LBAPs can support RBMP production and implementation within Area Advisory Groups.
 - SEPA will secure agriculture and forestry sector and fishery interest representation within National and Area RBMP Advisory Groups.
 - SEPA will work with the Forestry Commission Scotland to ensure the forestry planning procedures are considered during, and integrated with, RBMP production.
 - SEPA will work with the Scottish Executive National Technical Advisory Group to develop guidance informing delivery of sustainable flood management duties.
- 5.4 In addition to the above, the consultation also recognises that River Basin Management Plans will be subject to Strategic Environmental Assessment which SEPA will undertake in accordance with the proposed SEA Regulations. SEPA will also work with the Environment Agency in England to clarify and agree an approach to SEA in the production of the cross-boundary RBMP. Furthermore, SEPA will seek to integrate RBMP water quality objectives and measures within other plan objectives and policies through its role as a SEA consultee.

6. FINANCIAL IMPLICATIONS

6.1 There are no direct financial implications for the Council as a result of the consultation.

7. LEGAL / AUTHORITY IMPLICATIONS

7.1 There are no direct legal or authority implications for the Council as a result of the consultation.

8. PERSONNEL IMPLICATIONS

8.1 There are no direct personnel implications for the Council as a result of the consultation.

9. RECOMMENDATIONS

9.1 It is recommended that the Council agrees:

- i) to approve the contents of this report; and
- ii) to authorise the Head of Planning, Development and Building Standards to forward a copy of this report to SEPA as representing the views of the Council on the Consultation.
- (iii) to authorise the Head of Planning, Development and Building Standards to make further representations to the Scottish Executive, in accord with Section 5 above, as part of the 'Making Development Plans Deliver' consultation (reported to Committee on 4 May 2004), requesting that due consideration be given to defining the role and status of RBMPs in the ongoing review of the planning system.

James Lavery
Executive Director of Development and Property Services
31 May 2004

LIST OF BACKGROUND PAPERS

1. Consultation on the Scottish River Basin Management Planning Strategy: Scottish Environment Protection Agency

Anyone wishing to inspect the above paper please contact John Lilley on (01563) 576754.

Implementation Officer: Alan Neish