

## **EAST AYRSHIRE COUNCIL**

**DEVELOPMENT SERVICES COMMITTEE: 27 AUGUST 2002**

### **WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL**

#### **Report by Director of Development Services**

## **1 PURPOSE OF REPORT**

- 1.1** To recommend that the Council support an amendment being submitted by CoSLA to the Water Environment and Water Services (Scotland) Bill currently being scrutinised by the Transport and Environment Committee of the Scottish Parliament.

## **2 BACKGROUND**

- 2.1** The Water Environment and Water Services (Scotland) Bill as currently being considered by the Scottish Parliament is the second stage in a two stage process of changing the legislative framework within which water services are managed in Scotland. The first stage was completed earlier this year and resulted in the establishment of Scottish Water, incorporating the former regional water authorities, and setting out the powers for the Water Commissioner. The Bill currently before Parliament relates to:

- ◆ The introduction of a river basin management planning system and associated regulations: and
- ◆ Changes in the duties of Scottish Water and other controls relating to the provision of infrastructure required to service new developments

## **3 RIVER BASIN PLANS**

- 3.1** As set out in a previous report to the Committee there is a requirement under a European Directive to introduce river basin management planning. This will involve comprehensive assessment of the quality of all water resources within river basins and the establishment of a control regime aimed at securing defined improvements. As previously reported Scottish Ministers are proposing to invite SEPA to take a lead in the preparation of these plans, largely because they will also be the key agency involved in the regulatory regimes designed to implement improvement programmes.
- 3.2** These plans have the potential to result in a significant impact on the control of development and the provision of new development opportunities. As previously reported to Committee the relationship between these plans and development planning falling within the responsibility of local authorities will be critical to their success. Local authorities will require to be consulted on the plans, and it is envisaged that they will be involved in management arrangements.

- 3.3** In previous submissions on consultation reports the Ayrshire authorities have indicated that they would prefer a river basin management area to be defined for Ayrshire. This is unlikely – Ayrshire is likely to be included within a wider West of Scotland area. There is, however, provision in the Bill for sub-basin plans to be formed. This should provide an operational framework for effective liaison between SEPA as the lead organisation in developing river basin plans and local authorities as the development planning authorities.
- 3.4** No specific proposals are advanced for amendment of the Bill as currently being considered.

## **4 WATER AND SEWERAGE SERVICES – NEW INFRASTRUCTURE**

- 4.1** There has been growing concern in a number of areas of Scotland about the mismatch between the development requirements of local plans and investment in new infrastructure capacity by Scottish Water. This is currently resulting in major constraints on development in a number of parts of Scotland including some of the most economically deprived areas. East Ayrshire has been identified as one of the most seriously affected areas. In this area Scottish Water is unable to approve connections to its sewerage systems for applications which have been subject to planning approval (in some cases without any indication of objection by Scottish Water at the stage of planning approval). Lack of capacity in the water system could prevent development of a number of industrial sites essential to attract new jobs to an area of high unemployment and to new housing schemes, including brownfield sites central to secure the regeneration of the local economy. Information is provided in Annex 2.
- 4.2** This issue has previously been reported to Committee and has been raised with Scottish Ministers. There has been some positive response:
- ◆ Scottish Water is currently preparing an assessment of capacity in all parts of Scotland, and identifying investment required to meet development pressures.
  - ◆ The Scottish Executive has requested Scottish Water to join local forums to be established by local authorities in the worst affected areas. Participation in these forums has been agreed in principle and the Head of Planning and Building Control has taken initial steps to establish a forum for East Ayrshire.
  - ◆ The analysis set out in Annex 2 was drawn up following a meeting with the Chief Executive of Scottish Water at which he recognised the concerns of the Council.
  - ◆ The Structure Plan Joint Committee is undertaking an Ayrshire-wide assessment of the impact of deficiencies in drainage and sewerage capacity and is awaiting the outcome of an Area Drainage Assessment currently being carried out by Scottish Water.

- 4.3** The new Bill proposes changes in the basis on which Scottish Water will be required to contribute to the cost of infrastructure required for new development. This has historically been based on the concept of "reasonable cost". This is the contribution which the water authorities are required to make to infrastructure required for a new connections. The formulae for establishing these costs have previously been set out in the relevant statutes. Essentially the cost has been based on a fixed sum for each household connection, and a proportion of the rateable value of commercial premises. The formula has been criticised for its rigidity – in some cases it may produce a contribution which is more than sufficient to meet the cost of connections, in other cases it may act as a deterrent to development.
- 4.4** Under the new Bill it is proposed that the way in which reasonable cost is determined should be established by Scottish Ministers through Regulations. This will provide for greater flexibility. It is envisaged that the procedures will be more complex than in the past and reflect a cost benefit analysis which relates the future income expected to the water authority to the cost of making the connection. This will in many respects have advantages over the current arrangements – it should result in levels of contribution which are better matched to the costs of individual connections. But there is at present no suggestion that the calculation of reasonable cost will adequately take into account system capacity constraints in areas which are identified for development through the development planning process.
- 4.5** In addition, the principle on which it is proposed to base the new methods of assessment is to pass a higher proportion of costs onto developers. This will exacerbate current differences between prosperous areas and areas requiring regeneration. In the latter investment returns tended to be much lower, and consequently the capacity of developers to meet the costs of new water services infrastructure from development profits will be less.
- 4.6** For these reasons CoSLA has submitted suggestions that the Bill should be amended to require Scottish Ministers to take into account both of these factors in determining Regulations for assessing reasonable cost. The detailed amendments suggested and the supporting justification are set out in Annex 1. If agreed this would support the development of a local infrastructure investment programme which may emerge through the work of the proposed local forums. Even if the suggested amendment is not accepted the submission will serve to highlight to the Scottish Parliament and Scottish Ministers this important issue.

## **5 FINANCIAL AND LEGAL IMPLICATIONS**

- 5.1** There are no immediate financial or legal implications for East Ayrshire Council.

## **6 RECOMMENDATIONS**

- 6.1** It is recommended that the Committee support the amendments being proposed by CoSLA to the Water Environment and Water Services (Scotland) Bill currently being considered by the Scottish Parliament.

**Stephen Chorley**  
**Director of Development Services**

13 August 2002

SC/JR

### **BACKGROUND PAPERS**

- 1 Water Environment and Water Services (Scotland) Bill**
- 2 Water Environment and Water Services (Scotland) Bill – Explanatory Notes**
- 3 Water Environment and Water Services (Scotland) Bill – Policy Memorandum**

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**WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL**

**Suggested amendment to Part 2 of the Bill submitted by CoSLA.**

Suggested amendment:

- ◆ Add after 26 (7) (2D):

**(2E):**

**“In determining what is a reasonable cost for the purposes specified Scottish Ministers will have regard to the requirements of development plans prepared within the terms of the Town and Country Planning (Scotland) Act and the river basin plans prepared in the terms of Part 1 of this Act.”**

**(2F):**

**“In setting criteria to be applied and the method of calculation to be adopted as prescribed under (2D) above, Scottish Ministers will be required to have regard to variations in development returns in different locations.”**

The context for this proposed amendment is the growing concern about the mismatch between the development requirements of Local Plans and investment in new infrastructure capacity by Scottish Water. This is currently resulting in major constraints on development in a number of parts of Scotland including some of the most economically deprived areas. East Ayrshire has been identified as one of the most seriously affected areas. In this area Scottish Water is unable to approve connections to its sewerage systems for applications which have been subject to planning approval (in some cases without any indication of objection by Scottish Water at the stage of planning approval). Lack of capacity in the water system could prevent development of a number of industrial sites essential to attract new jobs to an area of high unemployment and to new housing schemes, including brownfield sites central to secure the regeneration of the local economy. Information is provided in Annex 2.

It is drawn to the Committee’s attention that the proposed amendment is consistent with the stated intentions of the Scottish Executive as set out elsewhere in the Bill and in the associated policy memorandum and explanatory notes. The following points are drawn to the Committee’s attention:

- ◆ Clause 2 of Part 1 of the Bill requires “Scottish Ministers, SEPA and responsible Authorities to have regard to the social and economic impact of such exercise of their functions.”

- ◆ Under Part 1 of Schedule 1 of the Bill river basin plans are required to take account of “significant pressures, and the impact of human activity, on the status of surface water and ground water within the district.”
- ◆ Paragraph 19 of the Explanatory Memorandum makes it clear that the Clauses quoted above are specifically to enable Scottish Ministers, SEPA and responsible Authorities to take into account social and economic considerations when exercising the relevant functions.
- ◆ The modifications to previous Acts relating to the setting of “reasonable costs” which may be contributed by Scottish Water to the provision of a new infrastructure is to replace a non-variable definition of reasonable costs by a definition which will be determined, and varied by Scottish Ministers to take account of the circumstances of individual proposals and other considerations (which would be specified in Regulations). The imposition of requirements may presumably be taken into account in financial arrangements between the Scottish Executive and Scottish Water.
- ◆ Paragraph 172 of the Explanatory Memorandum indicates that the intention of modifying the definition of reasonable cost is to increase the proportion of new infrastructure costs met by developers. It is crucial that the Scottish Executive should reflect in determining relevant regulations the variation in commercial returns to developers across different parts of Scotland. In areas where there is a relatively high return on investment by developers it is reasonable to expect that any cost benefit formula will result in a view that a higher proportion of new infrastructure costs may be met by developers. In areas such as East Ayrshire, however, where development returns are often inadequate to cover basic construction costs there is no scope for developers to increase their contribution to new infrastructure. Even under the present regime cost of contributing to new infrastructure can have the effect of deterring investment. These are the areas in which generally our investment is most needed to support economic regeneration.
- ◆ Paragraph 31 of the Policy Memorandum makes it clear that the Scottish Executive expects there to be close interaction between river basin planning and development planning. To the extent that river basin plans are reflected in the determination by Scottish Ministers of reasonable costs for contributions by Scottish Water to new infrastructure the proposed amendment will reinforce this recognition of the importance of the interaction of the two systems.
- ◆ In paragraph 84 of the Policy Memorandum the advantages of the proposed new system for determining reasonable costs are set out. The objectives are, however, more restrictive than the commitments elsewhere in the legislation to take into account economic considerations. The proposed amendment would, however, clearly extend the range of considerations to reflect the underlying objectives set out in the Bill.
- ◆ Paragraph 88 of the Policy Memorandum reports on consultation responses. It notes that the proposed changes relating to contribution to the cost of new infrastructure represented a significant proportion of the responses. This

indicates that the Scottish Executive accepts that strategic network development and liaison with planning authorities should be reflected in the determination of reasonable cost. It indicates that these factors will be taken into account in regulations determining reasonable cost. It is submitted by CoSLA, however, that this matter is too fundamental to be left entirely to Scottish Ministers in drawing up regulations and should be imposed as a general duty in drawing up the relevant regulations.

The Committee has also been engaged in recent months in reviewing the Scottish Executive's proposals for changes in the development of planning framework. Their proposals are intended amongst other objectives to make development plans more effective as a means of co-ordinating the activities of all organisations with a role in development, which would include Scottish Water. The Executive has also requested Scottish Water to participate in local forums set up by local planning authorities in areas where infrastructure capacity is forming a major constraint in order to ensure that forward investment plans are brought more closely into a line with development plan requirements. The proposed amendments would be entirely in line with the thrust of these initiatives by the Scottish Executive.

An underlying purpose of the Bill is to establish a democratically accountable regime for managing the relationship between Scottish Water and developers in the context that Scottish Water is no longer itself democratically accountable. The proposed amendments would ensure that Scottish Ministers will be required to reflect strategic development policies of the Government and the Scottish Parliament in controlling this relationship.

**WATER AND SEWERAGE SERVICE CONSTRAINTS ON DEVELOPMENT IN  
EAST AYRSHIRE**

During the Public Local Inquiry into the East Ayrshire Local Plan, Scottish Water indicated that many of the sites identified for future development in the Local Plan are constrained in terms of capacity of existing sewerage infrastructure. Some of these sites are included in Scottish Water's current investment programme to have their constraints removed by 2006, other sites still require to be programmed for improvement.

Sewerage capacity constraints exist within 19 of the 28 Local Plan settlements with all identified housing sites within the settlements of Auchinleck, Crosshouse, Crookedholm, Dalrymple, Dalmellington, Galston, Hurlford, Kilmaurs, Mauchline, Muirkirk, Newmilns and Stewarton being affected. 10 of the 17 housing sites identified in Kilmarnock are also affected and 2 of the 6 sites in Cumnock, the two principle centres within the Authority Area. One other settlement seriously affected is the settlement of Darvel. A total of 74 of the 113 housing sites identified in the Local Plan (65%) are subject to a potential drainage constraint as identified by Scottish Water, the constraint affecting 2503 of the 3857 individual housing units (65%) contained therein.

The housing sites identified by Scottish Water as being constrained have been classified as such because it is not considered possible for those sites to be serviced within Scottish Water's reasonable cost criteria. It is, however, considered likely that many of the identified constraints can possibly be overcome by individual developers agreeing to contribute additional moneys into drainage provision for the sites concerned. A review of Scottish Water's reasonable cost criteria may also help address this problem. It is interesting to note that of the 74 Local Plan housing sites identified by Scottish Water as constrained 20 sites (27%) are currently under construction or have been completed.

It is not only housing sites which are considered as constrained by Scottish Water; a number of Industrial and Business Development Sites, essential for the development of the East Ayrshire economy, are experiencing similar drainage constraints. Most notable amongst these are the single user industrial site at Meiklewood/Mossie (Kilmarnock), the Northcraig/Rowallan (Kilmarnock) and Templeton Roundabout (Auchinleck) strategic industrial sites, and other identified local industrial sites particularly in Kilmarnock, Auchinleck and Hurlford. It is of paramount importance for the drainage constraints on these sites to be removed as a matter of priority.

Taking into account the drainage constraints experienced on both housing and business/industrial sites identified in the Local Plan, the Council has identified 10 areas/settlement which it is considered should made priorities for remedial action by Scottish Water. These are shown in the following table.

## Scottish Water Constraints

<b>Site</b>	<b>Reason</b>
Auchinleck, Templeton Industrial Area	To serve an important strategic industrial area
Ayr Road Industrial Area, Kilmarnock	To assist in future industrial and possible residential expansion
Crosshouse	To serve a settlement where there is little remaining housing land
Darvel	To serve an important settlement where there is a demand for housing land
Galston	To serve an important settlement with little spare capacity
Hurlford/Crookedholm	To serve a number of housing sites and also the Mauchline Rd Industrial site
Kilmaurs	To serve an important settlement where there is demand for housing land
Mauchline	To serve an important settlement where there is a strong demand for housing land
NW Kilmarnock and the Northcraig/Rowallan and Meiklewood/Mossie Industrial Areas	To serve a large scale proposed housing area and important strategic industrial site
Stewarton	To serve an important settlement where there is a strong demand for housing land

### **AGENDA**