

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 23 OCTOBER 2001

RIVERS, LOCHS & COASTS: THE FUTURE FOR SCOTLAND'S WATERS

Report by Director of Development Services

1. INTRODUCTION

- 1.1 To advise the Committee of the main findings and conclusions of the consultation paper "Rivers, Lochs and Coasts: The Future for Scotland's Waters", which outlines the Scottish Executive's ideas on the implementation of the EC Water Framework Directive in Scotland, to seek the Committee's views on the document and to homologate the action taken to date by the Director of Development Services.

2. BACKGROUND

- 2.1 The EC Water Framework Directive will update how Europe's water environment is managed and protected. The Directive came into force on 22 December 2000 and the Scottish Executive has three years from that date to translate its provisions into Scots law. They propose to do this through introducing a Bill to the Scottish Parliament in 2002. The consultation paper sets out the policy that the Scottish Executive believe should form the basis for that Bill.

3. DETAILED PROVISIONS OF PAPER

- 3.1 The EC Water Framework Directive's central purpose is to ensure that for the first time, the water environment in Europe is managed in a co-ordinated and sensible manner through requiring that all activities having an adverse impact on the quality of the aquatic environment are controlled. Water quality is measured, not by the quality of the drinking water but by the quality of the environment within which water is found. For example the quality of any river, body of ground water or other body of water will be determined not just by what happens within its banks but also by what happens in the land around it.
- 3.2 The Directive describes the river basin planning system and the timetable for its implementation. It establishes a cyclical planning system whereby:-
1. the condition of the waters in each river has to be regularly assessed and described
 2. based on the results of the above assessment environmental objectives are set for each body of water (river, loch, etc)
 3. measures to meet set objectives are detailed

4. environmental conditions are then re-assessed to determine whether or not above objectives have been met

The proposed timetable for implementation of this process is shown in the Annexe to this report.

- 3.3 The Scottish Executive proposes that there should be three river basin districts in Scotland – in the north, east and west, respectively (see Map in Appendix), and that SEPA should be the lead authority in the river basin planning process, charged with drawing up and implementing the River Basin Management Plan (RBMP). It suggests that SEPA could establish a consultative forum in each river basin district to inform the drafting of the RBMP and that such forums could enable involvement of local authorities and other public sector bodies, and the private and voluntary sector.
- 3.4 The Scottish Executive suggests that Scottish Ministers should approve RBMPs in a similar way to the system for Structure Plans. The lead authority, probably SEPA, would consult the above forum participants and send the RBMP to the Scottish Executive for approval.
- 3.5 The Consultation Paper specifically provides that RBMPs may be supplemented by sub-basin plans to deal with particular aspects of water management, either at a smaller geographical scale or in respect of certain pressures.
- 3.6 The Consultation Paper points out the need for cross-referencing of existing Structure Plans, Local Plans and other planning initiatives with any approved RBMP and vice versa as any development could have adverse effects on the quality of water. To that end the paper proposes that planning authorities would be required to take account of the Water Framework Directive expressed in RBMPs when preparing Structure or Local Plans.
- 3.7 The Consultation Paper concludes that current environmental regulatory powers are not sufficient to control activities which cause harm to the aquatic environment and sets out the additional controls required by the Directive to deal satisfactorily with such activities. These additional controls would relate to the following; and are covered in the attached annex to this report.

- point source pollution (pollution traceable to a specific source e.g. a pipe)
- diffuse pollution (pollution which cannot be traced to a single source)
- water abstraction (removal of water from a source of supply)
- water impoundment (storage of water behind a dam or other barrier)
- engineering operations

4. CONCLUSIONS

- 4.1 This is a very confusing consultation paper which is full of jargon and lacks precision and clarity about roles and responsibilities. Detailed comments are contained in the attached annex and the central concerns remain

The need for Ayrshire to be recognised as a separate river basin

It is considered that there could be 4 (not 3 as proposed) river basin districts in Scotland because the Ayrshire valleys and the Lower Clyde estuary is a self contained area in terms of its river systems and should be administered as such.

The negative effect of any charging regime applied uniformly in a Scottish context which has a significant adverse effect on development in to less wealthy areas

Any proposal to impose a unified charging regime to cover regulatory costs of remove reasonable cost contributing could be an impediment to development in areas like East Ayrshire as developments are less able to absorb such costs.

The imposition of these policy changes on a statutory planning system which is already in place

As the Ayrshire Structure Plan has been approved and the East Ayrshire Local Plan is moving towards Adoption, any such changes to policy would involve amendment to the statutory planning system. The determination of planning applications during this transition period can be difficult and the lack of precision in roles and responsibilities only compounds these difficulties.

Implementation of water quality controls through sustainable urban drainage systems

There remain serious concerns regarding the implementation of SUDS as identified in paragraph 2.4.2 of Annex 1. There also remains a concern regarding the increase in costs to Local Authorities and the development industry of implementing SUDS.

The increased workload on Local Authorities involved in the process of implementing these policy changes.

5. RECOMMENDATION

- 5.1 It is recommended the Committee agree that the Head of Planning and Building Control and Head of Roads and Transportation should confirm their response to the Scottish Executive referred to in Section 4 above and set out in Annex 1.**

**Stephen Chorley
Director of Development Services**

11 October 2001
JT/MLS/SA
FV-AN

LIST OF BACKGROUND PAPERS

- 1. Rivers, Lochs, Coasts: The Future for Scotland's Waters – Scottish Executive (July 2001).**

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Implementation Officer: Alan Neish

ANNEX 1

1. PLANNING IMPLICATIONS

1.1 It is considered that River Basin Plans will have an important role in providing an integrated way of addressing local water related issues. The East Ayrshire Local Plan has already identified the following such local issues within East Ayrshire:-

(i) Preventing Contamination

Groundwater is an important resource which is vulnerable to possible contaminants. The Contaminated Land Provisions under Part 11A, Environmental Protection Act 1990, place a requirement on local authorities to produce a strategy for dealing with contaminated land within their area. The requirement for Councils to be responsible for identifying contaminated land, taking appropriate remediation measures and maintaining remediation registers relating to contaminated sites is designed to ensure that potential contamination of groundwater is prevented.

It is considered that, indirectly, the proposals for point source and diffuse pollution control under the Directive will reinforce the existing provisions under the Environmental Protection Act 1990 referred to above. Data being assembled by Council in terms of contaminated land should assist SEPA in formulating its RBMPs. Conversely, by providing a more accurate local geographical assessment of such pollution, RBMPs will better able the Council to justify individual decisions on development proposals based Local Plan policies.

(ii) Flood Prevention

A number of areas within East Ayrshire have in the past been seriously affected by flooding, particularly in Kilmarnock and along the Irvine Valley. Such affected areas have included residential, commercial and industrial property. The issue of flooding is therefore an important consideration in the preparation of all development proposals, In policy terms, this is currently addressed in the Local Plan through the Council consulting SEPA on proposals and requiring developers to investigate implications of flood risk on their proposals and on adjoining property.

2. OTHER IMPLICATIONS

2.1 River Basin Planning in Scotland

2.1.1 It is considered there should be 4 river basin districts in Scotland, because the Ayrshire valleys and the lower Clyde estuary is a self-contained area in terms of its river systems and other water bodies and should be administered as such. It is considered SEPA is the most appropriate body to undertake River Basin planning. However, it is unclear in the Paper what form the basis of such interaction would be

under the proposed system. This requires clarification as does the relative status of the RBMP to Structure Plans and Local Plans. The process of engineering controls is not clearly defined in terms of developer requirements. There would seem to be no link between the RBMP and any planning application. The suggested licensing system for operations is not explained and it is also unclear which body has the powers of refusing such operations and under what statute.

2.1.2 It is agreed that consultative forums for each River Basin District would be a sensible approach. However, it is unclear what the Paper means by utilising existing Scottish public authorities and what role/duties local authorities might have in respect of the functioning of these forums. Again this requires clarification, as similar experience with SEPA leading on the National and Area Waste Strategies has shown that fitting emerging strategies into the Statutory Planning System has proved difficult particularly in the transition period.

2.1.3 With regard to the relationship of the proposed new River Basin system to the planning system the Ayrshire Joint Structure Plan and Transportation Committee agreed that while it did not envisage any issue regarding the relationship in the long term between Development Plans and River Basin Plans, there could potentially be considerable workload issues for development control staff in consideration of individual proposals on single bodies of water.

2.2 Delivering Environmental Improvements

2.2.1 The mandatory measures required by the Directive are already covered by statute. The Paper would appear to be suggesting a merging of existing controls to minimise the regulatory burden but is not clear as to how this can be achieved. The suggested charging schemes to cover regulatory costs would have implications in terms of developers potentially covering such costs. It is unclear whether or not regulatory bodies would be self-financing through the above charging regime. Any such charges is an impediment to development in the more depressed areas.

2.3 Point Source Pollution (pollution traceable to specific source, eg an end of pipe discharge)

2.3.1 It is agreed that a unified regime for the control of point source pollution would be advantageous and that a new offence of failing to comply with a condition attached to a SEPA consent be created. This would for example be of value in terms of protecting nature conservation sites, such as SSSIs, which might be particularly sensitive to pollution of water systems. A prime issue for the Roads and Transportation Division is how the impact of gritting/road salt could be dealt with under the proposed regime. It is considered that an exemption should be made for this service because no effective method has yet been devised for dealing with its effects.

2.3.2 The Paper suggests that a potential solution to the problem of cumulative connection to public sewers might be though SEPA being able to refuse consent for such connections when developers can supply their own at reasonable cost. It is our opinion that as WOSW have capacity data, not SEPA, WOSW should continue to

regulate proposed connections to public sewers and that private systems should only be considered in exceptional circumstances.

2.3.3 It is agreed that the proposals to give applicants rather than SEPA the burden of advertising discharge applications seems fair. It is also considered reasonable that the discharger should be allowed more flexibility by being able to apply for a review of their SEPA consents, thus avoiding SEPA having to consider new consents. The call-in procedure should remain in place.

2.4 Diffuse Pollution (pollution which originates from various activities and which cannot be traced to a single source)

2.4.1 It is considered that regulation of diffuse pollution is a high priority as it perhaps constitutes the greatest threat to river and groundwater systems and therefore to biodiversity, including human health. The Paper refers to the importance of Sustainable Urban Drainage Systems (SUDS) in reducing its impact. However, at present, SUDS good practice, as enshrined in PAN 61, see Sections 3 and 4 above, has no basis in law. The Paper's suggestion that there should be a statutory force to updated codes of practice, including SUDS, that developers or others causing diffuse pollution, would require to comply with it is strongly supported, in principle. While it is agreed that supplementary measures such as education would also be necessary, the Paper does not indicate who would undertake and finance this.

2.4.2 Although implementation of codes of practice is in principle supported, codes must be very carefully thought through particularly in relation to implementation and future maintenance requirements. The recent CIRIA publication on SUDS and PAN 61 on Planning and SUDS is a case in point. In relation to SUDS there are very real and practical difficulties in relation to:

- Securing future maintenance agreements

- Its application to brownfield developments and regeneration initiatives

- The level technical understanding and knowledge required of staff

- The financial implications for local authorities

- Ensuring the appropriate involvement of planning staff.

- Technical limitations of the SUDS manual with regard to design, specification and maintenance regimes.

In addition there are concerns about the negative impact that full implementation of SUDS could have on development activity in areas (such as East Ayrshire) suffering from relatively low levels of investment, high unemployment and social exclusion.

2.5 Abstraction (removal of water from a source of supply)

2.5.1 It is agreed that there should be special plans drawn up to deal with exceptional circumstances. Such plans could include attenuation schemes to mitigate downstream flooding, particularly applicable locally in the case of the River Irvine and its tributaries.

2.6 Impoundment (the storage of water behind a dam or other barrier)

2.6.1 The value of impoundments in controlling water flow are acknowledged. However, it is agreed that impoundment and abstraction should be managed together under water resource management strategies. Such strategies will have to take account of the potential wide-reaching effects of such proposals on river profiles and the local eco-system. It should, however, be realised that such proposals could have potential beneficial effects in creating new areas for nature conservation and/or recreational use.

2.7 Engineering Operations

2.7.1 It is unclear as to what the proposed “water engineering regime” would comprise, who the regulator would be and their role. The need for engineering operations would have important implications for developers in terms of design and implementation costs. As with SUDS above, good practice for engineering operations should be carried out through reference to a statutory code and this needs to be defined.

2.7.2 As regards restoration of historical river works, there are very significant implications as to who would carry out design work, fund restoration and carry out maintenance. The Paper does not indicate how such a system of restoration would work and the role, if any, local authorities would have. It is considered essential that local authorities should be represented on any co-ordinating group, such as CoSLA, that has to consider how such a system might operate.

2.8 Water Pricing Policies

2.8.1 The Consultation Paper states that water prices must “take account” of the principle of full cost recovery, ie, costs of water services would be recovered from users. While the Council supports more efficient use of the water supply, the limits to which efficiency savings can be made by industrial users, particularly the wood processing plants and textile firms operating within East Ayrshire, should be acknowledged. There are potentially serious economic implications in terms of increased business rates for firms which could affect the existing local economy and provide disincentives for potential incoming investment.

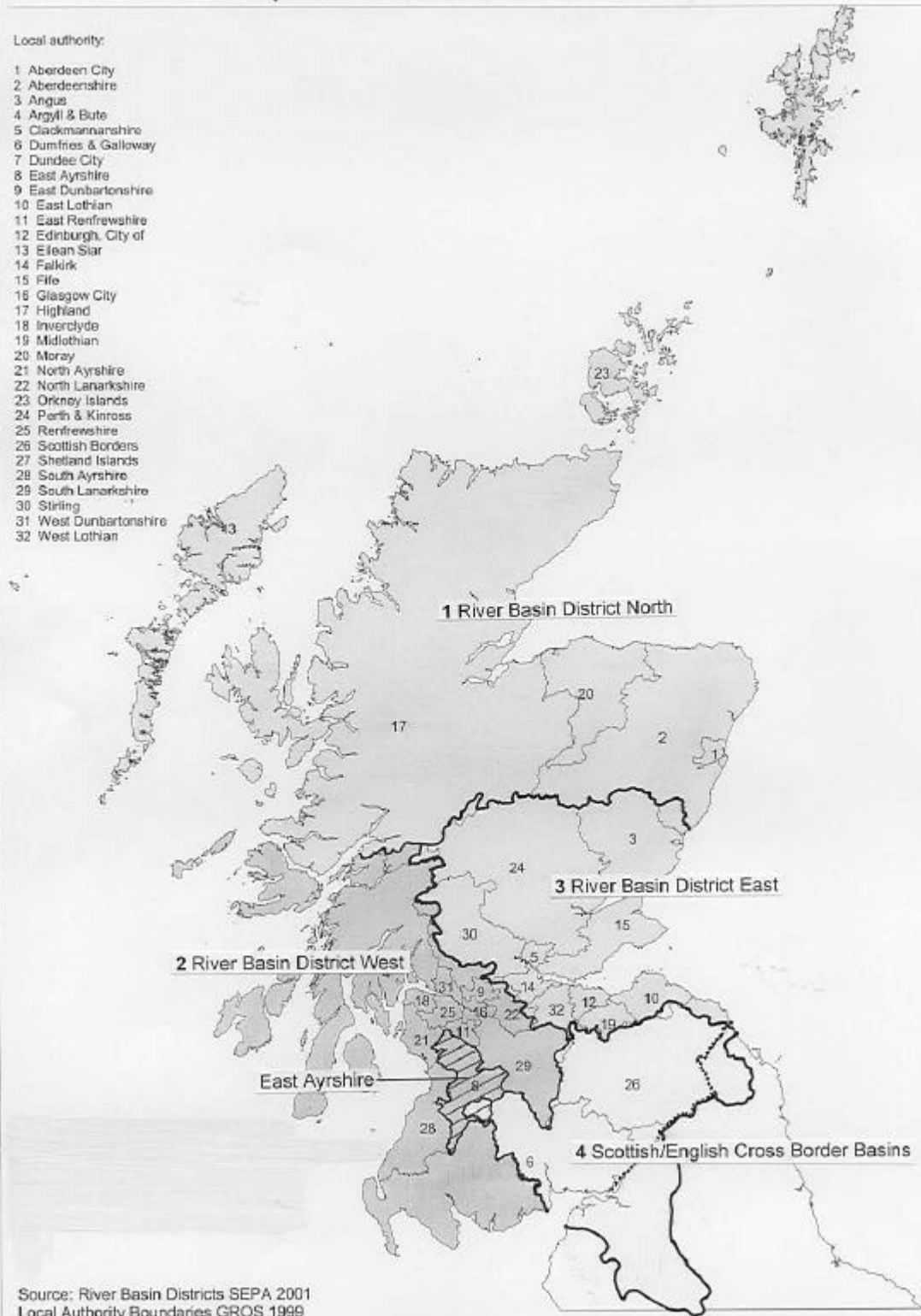
ANNEX 2 - TIMETABLE FOR PROPOSED ACTION UNDER EC WATER FRAMEWORK DIRECTIVE

- 2003 - Transpose EC Water Framework Directive into domestic law
 - Identify river basin district and the competent authorities who will be empowered to implement the Directive
- 2004 - Characterisation of river basin districts
- 2005 - Establish a register of protected areas in each river basin district
- 2006 - Establish environmental monitoring
 - Publish a work programme for producing the first RBMP
- 2007 - As a precursor to the full plan, publish an interim overview of the significant water management
- 2008 - Publish draft RBMPs for consultation
- 2009 - Finalise and publish RBMP
 - Establish the programme of measures to meet the objectives
- 2012 - Programmes of measures fully operational
 - Publish timetable and work programme for second RBMP
- 2013 - Repeat characterisation of river basin districts
- 2014 - Publish second draft RBMP
- 2015 - Deadline for achieving environmental objectives
 - Finalise and publish second RBMP with revised Programme of Measures
- 2021 - Third RBMP
- 2027 - Fourth RBMP

River Basin Proposed River Basin Districts boundaries

Local authority:

- 1 Aberdeen City
- 2 Aberdeenshire
- 3 Angus
- 4 Argyll & Bute
- 5 Clackmannanshire
- 6 Dumfries & Galloway
- 7 Dundee City
- 8 East Ayrshire
- 9 East Dunbartonshire
- 10 East Lothian
- 11 East Renfrewshire
- 12 Edinburgh, City of
- 13 Eilean Siar
- 14 Falkirk
- 15 Fife
- 16 Glasgow City
- 17 Highland
- 18 Inverclyde
- 19 Midlothian
- 20 Moray
- 21 North Ayrshire
- 22 North Lanarkshire
- 23 Orkney Islands
- 24 Perth & Kinross
- 25 Renfrewshire
- 26 Scottish Borders
- 27 Shetland Islands
- 28 South Ayrshire
- 29 South Lanarkshire
- 30 Stirling
- 31 West Dunbartonshire
- 32 West Lothian



Source: River Basin Districts SEPA 2001
Local Authority Boundaries GROS 1999

Scottish Executive Geographic Information Service 7 September 01 Job:ac1636

AGENDA