

Review of SG Safeguarding1: Protection and Conservation of the Water Environment.

1. Introduction

1.1 This paper will review the Aberdeenshire Local Development Plan SG Safeguarding1: Protection and Conservation of the Water Environment and assess whether any changes are required in light of amendments to national policy/legislation and changes in the local context. It will also assess whether the guidance forms a sound basis for making planning decisions on development which may impact on the water environment in Aberdeenshire.

1.2 SG Safeguarding1: Protection and Conservation of the Water Environment aims to support the implementation of the EU's Water Framework Directive; to contribute to the Scotland District River Basin Management Plan; to promote the enhancement of the water environment and the creation of good quality riparian habitat and protect Aberdeenshire's aquatic environment from new development that could result in unacceptable ecological impacts.

2. Current Approach

2.1 The current policy will refuse development if:

- it will not adversely effect water quality/flow and prevent water bodies from maintaining or achieving 'good ecological status' in the future. In addition, development must contribute to the objectives and targets of the Local Biodiversity Action Plan and, when required, lead to the creation or enhancement of new habitats. Adequate buffer strips must also be provided.

The policy also encourages applicants to improve the ecological status of water bodies whenever possible.

3. Background

National Context

3.1 While water bodies are part of wider geographic catchments, which integrate a wide range of issues and sectors, i.e. nature conservation and water related infrastructure, the traditional approach to water management was based on a narrow definition of water quality, in terms of whether it was 'fit' for human consumption and activities. This led to a focus on individual water bodies and a narrow and reactive approach to water regulation; i.e. controlling 'end of pipe' discharges.

3.2 The EU Water Framework Directive 2000 (WFD) established a broader and more integrated approach to water management and regulation; covering the protection, improvement and sustainable use of all inland surface water, coastal water and groundwater in member states. For example, it addresses water issues on a catchment scale, introduced a new concept of "ecological status" and set targets for all water bodies to reach 'good ecological' status by 2015.

3.3 The WFD was adopted by the UK in 2000 and transposed into Scottish legislation by the 2003 Water Environment and Water Services (Scotland) Act (WEWS), with the principal controls provided by The Water Environment (Controlled Activities) (Scotland) Regulations 2005, commonly known as CAR.

3.4 The CAR regulations came into force in 2006 and constitute a comprehensive, integrated and risk based water regulation framework. For example, the level of

regulation is proportionate to the potential risk to the water environment. Controlled activities include potential pollution discharges, abstractions, impoundments and aquatic engineering works, all of which are all regulated by SEPA.

- 3.5 The WEWS Act also introduced a planning system for the water environment, requiring the preparation of River Basin Management Plans (RBMP's) for the Solway-Tweed and the Scotland River Basin Districts. The RBMP's, which were produced in 2010, adopt a strategic approach to water management, establishing environmental objectives for each water body, i.e. restoration, along with a programme of measures through which to achieve these.
- 3.6 The need for Safeguarding¹ is directly supported by Annex 8 of the River Basin Management Plan for the Scottish River Basin District (2010), which addresses links to other planning processes. For example, it states that local planning authorities and SEPA should "*ensure the economic, social and environmental objectives in forthcoming plans reflect those of the Scotland RBMP wherever possible...*"
- 3.7 More generally, while SEPA is the lead authority on WFD implementation, the WEWS Act (2003) also identified Local Authorities as a responsible authority and stated that, as such, they "*must exercise their designated functions so as to secure compliance with the requirements of the (WFD) Directive*". In light of this, the LDP is required to demonstrate how it complies with the WFD.
- 3.8 Restoration/enhancement of water bodies is empowered through the Nature Conservation (Scotland) Act 2004 which introduced a duty on all public bodies to further the conservation of biodiversity. The Scottish Biodiversity Strategy (2004), which provides the framework for action under the Nature Conservation Act, requires that "*Biodiversity – and Local Biodiversity Action Plans – are taken into account in all significant development programmes.... policy, planning, design and development decisions taken by government and business*".
- 3.9 The Planning etc. (Scotland) Act 2006 reinforces the importance of planning in WFD implementation by requiring development plans to contribute to sustainable development; a concept which underpins the WFD.
- 3.10 In line with the above, Scottish Planning Policy (2010) indirectly supports the need for Safeguarding¹ by pointing out that planning can make an important contribution to sustainable development through consideration of the location, layout and design of new development. SPP directly supports the protection of the water environment under Safeguarding¹ when it states that "*decision making in the planning system should take into account the implications of development for water, air and soil quality*". The need for specific guidance on the water environment is supported by the statement "*decisions on the layout and design of new development should support sustainable water resource management*". In addition, SPP also states that "*Lochs, ponds, watercourses and wetlands....should be protected and enhanced wherever possible both as part of developments and green networks*". SPP also makes particular reference to culverts, stating that "*watercourses should not be culverted as part of a new development unless there is no practical alternative and existing culverts should be opened whenever possible*".
- 3.10 Planning Advice Note 51 (2006) details the respective roles and interaction between the planning system and the environmental regulation regime, with regard to impacts on water, air and soil quality etc. It broadly supports the need for LDP guidance on the impacts of development on the water environment (Safeguarding¹) when it states that "*there are... cases where the planning system*

may be the most appropriate mechanism to provide environmental protection or improvement". While Safeguarding¹ considers impacts already covered by the environmental regulation regime, i.e. Controlled Activities Regulations, this approach aligns with PAN51, which states that *"the planning authority should have regard to the impact of a proposal on air or water quality although the regulation of emissions or discharges will fall to be dealt with under other legislation."*

3.11 Impacts on the water environment are also covered by PAN61 and 79: Water and Drainage, which provide good practice advice on the provision of water and drainage infrastructure.

3.12 The National Planning Framework² (NPF2) outlines the importance of River Basin Management Plans and states that *"Planning authorities will have to have regard to them when preparing development plans"*.

Strategic/Regional context

3.14 One of the key aims of the Proposed Aberdeen City and Shire Strategic Development Plan (SDP) is the promotion of sustainable development, which broadly supports the need for Safeguarding¹. The proposed plan directly supports Safeguarding¹ when, under the quality of the environment section, it identifies one of the targets is to *"avoid new development preventing water bodies achieving 'good ecological status' under the Water Framework Directive"*. The proposed SDP also highlights the need to limit water abstraction through increased water efficiency.

Local Context

3.15 In 2008 50% of all water bodies in the North East of Scotland were classified as being at good or high ecological status. In terms of water body type, 39% of rivers, 58% of lochs, 86% of groundwaters, 86% of estuaries and 93% of coastal waters were in good or better ecological condition.

3.16 The North East Local Biodiversity Action Plan (NELBAP) directly requires the support of Safeguarding¹, with one of the operational objectives stating that there is a need to *"Ensure that development plan policies...promote the protection of this habitat (and)... promote opportunities through development proposals and public schemes, for rehabilitation and restoration of physically degraded watercourses"*.

3.17 With regard to development pressures, the NELBAP points out that development often has negative impacts on the water environment and associated biodiversity through culverting, hard engineering and the replacement of bankside habitats with open space "amenity" areas. Land drainage and flood defence works can also reduce watercourse habitats.

3.18 The policy SG Safeguarding 1 contributes to the above objectives and requirements in the following ways. Criterion 1 aligns with the WEWS Act requirement for local authorities to comply with the requirements of the WFD.

3.19 Criterion 2 supports the Nature Conservation Act (2004) duty to further biodiversity, and SPP, which states that *"decision making in the planning system should...protect and enhance the natural environment, including biodiversity..."*

3.4 Criterion 3 supports SPP, which states that *"where possible, planning authorities should seek benefits for species and habitats from new development including the restoration of degraded habitats"*.

- 3.5 Paragraph 3 of the justification text aligns with the National Planning Framework², which states that “*Planning authorities will have to have regard to them when preparing development plans*”.
- 3.6 Paragraph 8 of the justification text makes applicants aware of the CAR regulations and is supported by PAN51, which states that “*Local plans may need to refer to particular environmental protection regimes if they are likely to impose constraints or limitations on development*”. Paragraph 8 also points out that the CAR licensing scheme is independent of any requirement for planning permission. This supports PAN51, which states that “*the granting of planning consent does not therefore establish anything so far as other licences, permissions or authorisations are concerned*”.
- 3.8 While the need to limit water abstraction through increased water efficiency is highlighted in the Proposed SDP, this is covered by LSD2.
- 3.9 While Safeguarding¹ does not refer to coastal waters, SG STRL addresses negative impacts on coastal waters directly.

4. Drivers of Change

- 4.1 The National/Regional policy and legislative context for the protection and conservation of the water environment has not changed significantly since SG Safeguarding¹ was written.
- 4.2 The impacts of aquatic engineering are comprehensively addressed by both the CAR regulations and Safeguarding¹. In practice, they are often regulating the same issue, which results in unnecessary duplication. While PAN51 provides scope for planning to cover issues which are also addressed under an environmental regime, on the basis that planning is assessing the sum total of environmental impacts from a development, it also states that “*it is imperative that they complement each other*”. With the duplication identified above, Safeguarding¹ and CAR cannot be viewed as complimentary. It would be more efficient if Safeguarding¹ included a criterion requiring any aquatic engineering works associated with a development to be licensed under CAR. This would enable the impacts of aquatic engineering to be considered by planning policy, but assessed/regulated under CAR, thereby effectively removing the duplication. However, whether planning policy can defer to CAR on this issue may require approval from the Scottish Government.
- 4.3 If the above approach is not taken forward, a criterion could be included in Safeguarding¹ requiring development to be ‘capable of being consented’ under CAR. This would align with PAN51, which points out that whether a development is ‘capable of being licensed’ under an environmental regime is a material consideration. It would also meet PAN51’s requirement for the two regimes to be complimentary.
- 4.4 SEPA’s ‘Engineering Activities in the Water Environment’ webpage states that “*developments should be designed, wherever possible, to avoid engineering works in the water environment*”. This should be included in the justification text.
- 4.5 SPP requires that “*Watercourses should not be culverted as part of a new development unless there is no practical alternative and existing culverts should be opened whenever possible*”. A new paragraph to this effect should be included in the justification text.

5. Recommendations

- Amend criterion 1 to read 'achieving good ecological status'
- Amend criterion 2 so that it reads 'it contributes to the relevant freshwater objectives and targets identified in the North East Local Biodiversity Action Plan'.
- Further consideration should be given to the possibility of adding another criterion to Safeguarding1, requiring any aquatic engineering works associated with a development to be licensed under CAR. Alternatively, if this approach cannot be taken forward, consideration should be given to the addition of another criterion, requiring development to be 'capable of being consented' under CAR.
- Amend paragraph 1 of the justification text to read 'The Directive requires the sustainable management of Scotland's water resource.....'
- Amend paragraph 2 of the justification text to read 'The River basin Management Plan for the Scotland River Basin District (RBMP) sets out the objectives necessary for water.....good ecological condition'.
- Amend paragraph 4 of the justification text to read 'applicants are encouraged to contribute to the restoration and/or enhancement of the water environment, including riparian habitats for mammals, birds, insects and other aquatic insects. This is likely....'
- Paragraph 4 should also be amended to make reference to Planning Advice 1/2012 Opportunities for Biodiversity Enhancement in New Development.
- Amend paragraph 8 to read 'when any works which could impact on the water environment are contemplated'.
- The following paragraph should be added to the justification text, 'Developments should be designed, wherever possible, to avoid engineering works in the water environment. Watercourses located within a proposed development should not be culverted unless it is demonstrated that there is no practical alternative. Existing culverts should be opened whenever possible'.
- Where required, the current guidance on carrying out works in the aquatic environment should be updated. All relevant guidance, including planning advice and wider guidance by SEPA and SNH, should be made available from a single webpage, which the justification text will reference.

6. Summary of main points

6.1 Current national legislation and planning policy/advice supports the need for Safeguarding1. The guidance forms a sound basis for assessing the impacts of development on the water environment, while also encouraging restoration/enhancement. While the legislative and policy context has not changed significantly since Safeguarding1 was written, this paper recommends further consideration is given to the addition of a new criterion which requires aquatic engineering works associated with a development to be licensed under CAR. If this approach cannot be taken forward, consideration should be given to the addition of a criterion requiring development to be 'capable of being consented' under CAR. It is also recommended that the justification text be amended to advise applicants on the issue of culverting and direct Development Management and applicants to relevant planning advice.

References

Aberdeen City and Shire *Proposed Strategic Development Plan* (2013)

Aberdeenshire Council (2012) *Aberdeenshire Local Development Plan*
North East Scotland Biodiversity (2011): *Local Biodiversity Action Plan*
Scottish Government (2010) *Scottish Planning Policy*
Scottish Government (2009) *National Planning Framework for Scotland 2*
Scottish Government (2004) *Scotland's Biodiversity: It's in Your Hands*
Scottish Government (2006) Planning Advice Note PAN51: *Planning, Environmental Protection and Regulation*
SEPA (2010) *Scotland River Basin Management Plan*