

CAIRNGORMS NATIONAL PARK AUTHORITY

Title: Scottish Executive Consultation on Strategic Environmental Assessment (SEA)

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Purpose

The main purpose of this paper is to raise the Board's awareness and promote discussion of the implications for the CNPA of proposed Scottish legislation that will introduce Strategic Environmental Assessment (SEA) to all new strategies, plans, and programmes developed by the public sector in Scotland. The paper outlines the principles of SEA, summarises the proposed legislation, and provides a synopsis of the consultation questions being asked by the Scottish Executive. It also seeks the Board's approval in providing a brief response to the Scottish Executive on the future clarification of issues.

Recommendations

Members are invited to:

- Note the implications of the proposed legislation for the CNPA, in terms of its contribution to the National Park Aims and future resource, skills and training implications for the CNPA.
- Authorise a short response to the Scottish Executive intimating qualified support for the proposed legislation.

Executive Summary

The CNPA have been invited to respond to the Scottish Executive consultation document: 'Strategic Environmental Assessment - A Consultation on Proposed Legislative Measures to Introduce Strategic Environmental Assessment in Scotland'. The legislative proposals are designed to implement the European Directive 2001/42/EC on 'The Assessment of the Environmental Effects of Certain Plans and Programmes' which must be implemented by member states by 24 July 2004.

The proposed legislation will place a requirement on the CNPA as a public body, to conduct SEA on plans, programmes and strategies that are formally developed after 21 July 2004. While the timing of the legislation may allow some CNPA plans, programmes or strategies to 'slip through the net', it is likely that many that many future plans will require SEA. This will have resource, training and awareness implications for the CNPA.

Strategic Environmental Assessment (SEA) is the extension of the Environmental Impact Assessment (EIA) process to policies, plans and programmes. In the UK, the technique has been employed on development plans in particular since the early 1990s, and evolved during the 1990s to adopt a more holistic approach by placing an equal emphasis on social and economic sustainability as well as environmental factors. This approach became known as sustainability appraisal or assessment. The proposed legislation is for strategic *environmental* assessment only, and specifically excludes social and economic factors.

SCOTTISH EXECUTIVE CONSULTATION ON STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)

Background to Strategic Environmental Assessment (SEA)

1. Strategic Environmental Assessment (SEA) is the term used to describe the extension of the Environmental Impact Assessment (EIA) process to policies, plans and programmes. The consultation paper describes SEA as “providing a systematic method of considering the likely effects on the environment of strategies, plans and programmes that set a broad based context for the future of development activity.”
2. The use of SEA was recognised at a Europe-wide level in 1992ⁱⁱ and in 1997 the European Union Commission produced a draft Directive on SEAⁱⁱⁱ. Those proposals have since been formalised in the Directive 2001/42/EC on the Assessment of Environmental Effects of Certain Plans and Programmes, which forms the basis of the Scottish Executive’s proposals.
3. The techniques of SEA have been used irregularly on UK development plans for a number of years following guidance in 1991^{iv} and 1993^v from the Department of the Environment. The techniques have been recommended as tools for helping to achieve more sustainable development. During the 1990s, as the concept and interpretations of sustainable development evolved, it was recognised that the process should encompass a greater consideration of social and economic issues. This led to the concept of Sustainability Appraisal (SA), incorporating social and economic priorities, as a more effective tool for promoting sustainability, and has been carried out on many UK development plans. However, the development of SA has been somewhat stilted due to both the knowledge that SEA was likely to become a legislative requirement under Directive 2001/42/EC, and the additional resource implications of considering social and economic interactions with the natural environment.
4. In spite of the cautious adoption and development of SA, its value was acknowledged recently in Scottish Executive Interim Planning Advice on the Environmental Assessment of Development Plans^{vi}. This document was prepared to help guide development planners through the SEA process in advance of the Directive. It recognises that a SA will exceed the legislative requirements of SEA but that it will be more resource and expertise intensive than SEA. The advice also notes that for plans which deal with environmental, social, and economic issues in an integrated manner (in this case development plans), the wider remit of SA may be more consistent with the plan’s approach.

The Proposed Legislation

5. The Scottish Ministers intend to go beyond the requirements of the Directive by applying SEA to most new strategies, plans and programmes developed by the public sector in Scotland. The definitions of plans and programmes are broad and will include many of the functions of the CNPA, including the statutory plans such as the Park, and Local Plans, the Core Path Network Plans, non statutory plans such as the Corporate Plan or other strategies or programmes. The CNPA may be the lead

authority in other joint plans, programmes or strategies and therefore be obliged to perform SEA on those in addition to those prepared wholly by the CNPA. The draft legislation is following the lead of the Directive by specifically excluding social and economic factors from the SEA process.

6. The process of SEA will be broadly comparable with the process of EIA and will involve:
- screening to identify whether SEA is required and what issues will need to be covered by SEA. This would involve consulting statutory consultees in much the same way that EIA scoping opinions are requested;
 - subsequent application of SEA during the formulation of the plan, programme or strategy;
 - public consultation during the process - it will differ from EIA here in having a greater emphasis on public and NGO consultation, and there will be a requirement for all comments to be taken into account.
 - the production of an environmental report either as a separate document or an identifiable part of the plan, strategy or programme document.

Timing of Legislation

7. The provisions of Directive 2001/42/EC must be implemented by member states by the 21st July 2004. The Scottish Ministers propose that the Scottish Legislation will apply to all plans, programmes and strategies where the first formal preparatory act is after the 21st July 2004. It will also apply to items where the first formal preparatory act was before that date but where they are adopted or submitted to legislative procedure after the 21st July 2006.

The Consultation Process

8. The CNPA has been invited (along with many other public and private bodies) to respond to the proposed SEA legislation. The timescale for consultation on the legislative proposals does not allow for the CNPA to make detailed comments on the legislation. Responses have been requested by 11 March 2004, and the CNPA have been advised that only responses received by 12 March are likely to be included within the analysis. Also, given the timescale for implementation of the legislation, it is unlikely that this consultation will result in any significant changes to the final Statutory Instrument. In practical terms, it will not be possible for the CNPA to provide a detailed response to the Scottish Executive within their timescale but may be possible to provide a brief response following the Board meeting of 12 March 2004. However, the main value of the consultation for the CNPA is likely to be through raising awareness and stimulating discussion over the implications of the proposals for future CNPA work.

The Consultation Questions

9. The consultation paper presents 50 questions relating the draft legislation and allows for more general responses to be made. Many of the questions asked are specific to proposed mechanisms and definitions within the legislation, and require detailed

consideration of the proposed texts. Of more concern to the CNPA may be the broader issues of the principles of SEA and, over time, the resource and expertise requirements on the CNPA. Some of the broader issues raised by the questions are highlighted in this paper.

10. Questions 21-23 relate to the avoidance of duplication in assessment. These may be questions for the CNPA to consider given the distinct geography of the Park, the depth of information available through past and future survey of the Park, and the likely overlap and commonality between many plans, strategies and programmes that will be created within the common framework of the National Park aims, the Corporate Plan and Park Plan.
11. Of particular interest for the CNPA may be question 43 which asks: *“Do you agree with the approach set out in Paragraph 4.66 (relating to the exclusion of social and economic issues) that notwithstanding the importance of socio-economic factors in reaching final implementation decisions, the SEA report should only contain environmental factors?”* It is difficult to see a justification for the CNPA rigorously auditing the potential environmental impacts of its actions without at the same time employing an equivalent approach to social and economic issues. The Sustainability Appraisal (SA) approach may therefore be a more appropriate tool with which to assess the environmental, social and economic sustainability of many of the CNPA’s plans, programmes and strategies. However, the proposals do not clarify whether an SA, integrating social and economic concerns with the environment, could be seen as having fulfilled the requirements of an SEA, or whether proof of a stand-alone SEA would be required.
12. Question 44 asks whether there is a case from excluding some plans, strategies or programmes, or organisations from the requirements of the legislation. It is unlikely that CNPA-wide initiatives could be exempted, but there may be smaller plans, strategies or programmes that could be exempted within the CNP.
13. Finally, the consultation paper asks for estimations of how many plans, programmes or strategies that may be produced will require an SEA, and what the likely resource implications will be. This could include, if necessary, the use of private companies to fulfil CNPA functions or the SEA function, including the screening of issues, consultation with other bodies, and consultation with the public.

Next steps

14. This paper should promote discussion within the CNPA of the future implications of the proposed SEA legislation. Initial discussions between CPNA officers have highlighted a general support for the principle of assessing plans, programmes and strategies, combined with the observation that SEA as it is proposed will not meet with the aims of the Park or the spirit of the Park as it excludes social and economic interactions with the natural environment. The Board will need to come to a view on the level of assessment that will be required within the CNP, both to meet the legislative requirements and the aims of the National Park.
15. There will be complex resource implications, both in terms of direct assessment of plans, programmes and strategies, and in terms of management and coordination of

requirements over the CNPA's work, which need more detailed consideration. In principle, an organisation with as broad a remit as the CNPA may have much of the necessary expertise within its structures to complete SEA. However, it is likely that additional training of staff in the processes and management of processes may be required to ensure successful delivery. Whatever approach is adopted by the Park Board in the future, whether SEA, SA, or a combination of these processes, it will be important that the CNPA is aware that these should be iterative processes and should be carried out in parallel and as part of the preparation of other plans, strategies and programmes.

16. The assessment process will be most effective and least disruptive if it is built into the work of the CNPA at an early stage. It may be that even plans that will miss the legislative deadlines should incorporate some form of SEA or SA to both test and develop the techniques for the CNP, demonstrate good or best practice, and allow for efficient delivery of assessments required by the legislation.
17. If the Board wish to provide a response to the Scottish Executive on the proposals following the Board meeting of the 12 March, it is suggested that it comprises the following general statements:
 - That the CNPA supports the general intention of the proposed legislation in pursuing greater environmental sustainability.
 - Highlights that the CNPA would be obliged to consider the social and economic sustainability of its plans, strategies and programmes in addition to environmental sustainability, and would prefer that the legislation allow these factors to be considered in an integrated assessment which still meets the SEA requirements.
 - Encourages the Scottish Executive to produce appropriate guidance and training opportunities for staff in the processes and techniques envisaged for SEA.

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ⁱ Scottish Executive Environment Group, December 2003, Strategic Environmental Assessment, A Consultation on Proposed Legislative Measures to Introduce Strategic Environmental Assessment in Scotland, Paper 2003/31.

ⁱⁱ CEC, 1992, Towards Sustainability - A European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development, COM (92), 23 final-Volume II, Directorate General XI, Commission of the European Communities, Brussels, Belgium.

ⁱⁱⁱ European Commission, 1997b, Proposals for a Council Directive on the assessment of the effects of certain plans and programmes on the environment, Official Journal of the European Communities, C129, 14-18.

^{iv} DoE, 1991, Policy Appraisal and the Environment: A Guide for Government Departments, Department of the Environment, Stationery Office, London.

^v DoE, 1993, Environmental Appraisal of Development Plans: A Good Practice Guide, Department of the Environment, Stationery Office, London.

^{vi} David Tyldesley and Associates, 2003, Environmental Assessment of Development Plans, Scottish Executive Social Research August 2003, Scottish Executive Development Department.