

# Planning Committee

10am, Thursday 5 December 2013

## Planning Scotland's Seas consultations by Marine Scotland

Item number	7.1
Report number	
Wards	All

### Links

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Coalition pledges	<a href="#">P15</a> , <a href="#">P50</a>
Council outcomes CO7,CO8	<a href="#">CO7</a> , <a href="#">CO8</a> , <a href="#">CO18</a> , <a href="#">CO19</a>
Single Outcome Agreement	<a href="#">SO1</a>

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# Executive summary

## Planning Scotland's Seas: Consultations by Marine Scotland

### Summary

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On 25 July 2013, Marine Scotland, a Directorate of the Scottish Government, published a number of documents for consultation purposes aimed at delivering an integrated system of marine planning for Scotland's seas. Under the collective title of 'Planning Scotland's Seas', these include the National Marine Plan and Planning Circular which explains the relationship between the marine and terrestrial planning and systems.

This report summarises proposals contained in the documents and invites the Committee to approve the Council's responses. Most of the comments concern land use planning, though the Council's response also includes input from other services within the Council.

While generally supportive of the guidance, this response raises concerns about the lack of clarity regarding the role of local authorities in the new marine planning system. The dearth of information on the regional marine planning process, the Council's main interface with the process, is a particular concern. The Council suggests that the regional marine plan for the Forth be prepared through a partnership working arrangement similar to those operated by the Forth Estuary Forum and SESplan.

The deadline for responding to the consultation was 13 November. Because of the timescale for consultation, it has not been possible to bring it to Committee before responding. Therefore, the proposed response was submitted by the Acting Head of Planning and Building Standards, explaining in the covering letter that the response may be amended following Committee's consideration.

The Draft National Marine Plan will be revised in the light of comments received during the consultation. Scottish Ministers propose to issue the plan and the circular in final form in the early part of 2014.

### Recommendations

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It is recommended that the Committee approves the Council's responses to the consultation documents referred to as 'Planning Scotland's Seas'.

### Measures of success

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Integration of the existing land use planning system with the emerging marine planning system.

## Financial impact

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There are no direct financial impacts arising from this report.

## Equalities impact

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The Scottish Government published an Equalities Impact Assessment for the Draft National Marine Plan. There are no equalities impacts associated with the Council's responses to 'Planning Scotland's Seas.'

## Sustainability Impact

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The Scottish Government published a Sustainability Appraisal for the Draft National Marine Plan.

## Consultation and engagement

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The Scottish Government organised a number of public consultation events throughout Scotland, one of which was held in Edinburgh in August.

## Background reading / external references

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- 1 Scotland's National Marine Plan Consultation Draft and accompanying documents
- 2 Planning Circular: The relationship between the statutory land use planning system and marine planning and licensing
- 3 Possible Nature Conservation Marine Protected Areas Consultation
- 4 Consultation on Marine Priority Features
- 5 Draft Sectoral Marine plans for Offshore Renewable Energy in Scottish Waters: Consultation Paper

The above documents are available for viewing on The Scottish Government's website using the following link:

<http://www.scotland.gov.uk/Consultations/Current>

Report to Planning Committee 4 December 2008: Sustainable Seas for All: A Consultation on Scotland's First Marine Bill.

## Planning Scotland's Seas Consultations by Marine Scotland

### 1. Background

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- 1.1 **The Marine Scotland Act**, which came into force on 10 March 2010, provides the legislative and management framework for marine planning in Scotland. The Council responded to the relevant consultation document entitled 'Sustainable Seas for All' in 2008. The Act introduced a duty to protect and enhance the marine environment and includes measures to help boost economic investment and growth in areas such as marine renewables. The marine planning system will therefore interact with other planning and consenting regimes within the Scottish marine area.
- 1.2 The Act created a simpler more effective legislative regime, replacing the previous system of reserved and devolved regulatory powers. At present, Scotland's inshore waters (up to 12 nautical miles) are governed by the Marine (Scotland) Act 2010, while the UK Government legislates for Scotland's offshore waters (12 to 200 nautical miles) through the Marine and Coastal Access Act 2009. However, the UK and Scottish governments have agreed that both inshore and offshore matters should be covered by the **National Marine Plan** in Scotland.
- 1.3 The higher level policy context for the marine planning system is the **Marine Policy Statement (MPS)** which was agreed between the UK Government and the three devolved governments in March 2011. It presents a shared UK vision of "clean, healthy, safe, productive and biologically diverse oceans and seas".
- 1.4 The National Marine Plan, once approved, will form the basis for a network of local or **regional marine plans** extending out to 12 nautical miles. It is the Minister's intention to devolve marine planning powers to a regional planning partnership for each region. The Scottish Marine Regions Order 2013, which will identify and establish their boundaries, is expected to come in to force later this year.
- 1.5 Therefore, the marine plan for an area will consist of the National Marine Plan and a regional plan. Both plans are adopted by Scottish Ministers and in so far as it relates to Scotland's offshore waters, adoption of the Scottish National Marine Plan must be with the agreement of the Secretary of State. Plans must

be prepared at least every five years after which Ministers must decide whether these need to be amended or replaced.

- 1.6 The National Marine Plan, once approved by Scottish Ministers, will sit alongside and interact with existing planning regimes, including the National Planning Framework.
- 1.7 Marine Planning also falls within an international regulatory framework which governs a number of aspects of marine management. This includes EU Directives such as the Marine Strategy Directive and the Water Framework Directive.

## 2. Main report

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### **Draft National Marine Plan**

- 2.1 The National Marine Plan has been published in draft form and follows the publication of a **pre-consultation draft** and **Scotland's Marine Atlas**, the evidence base, in 2011.
- 2.2 The draft plan contains nineteen general policies which are designed to ensure that all future decisions lead to sustainable economic growth which is sensitive to the environment, other users and the long-term health of Scotland's seas.
- 2.3 Specific policies for certain activities, relating to economic productivity, environmental limits, interactions with other users and climate change are also included in the plan. Activities covered include: Fisheries, Aquaculture, Wild Salmon, Oil and Gas, Carbon Capture and Storage, Renewables, Recreation and Tourism, Transport, Telecommunications, Defence and Aggregates.
- 2.4 The plan encourages integration between the **marine and terrestrial planning systems**. To this end, The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2011 requires terrestrial planning authorities to give consideration to marine plans which apply to inshore waters, when developing strategic and local development plans.
- 2.5 The plan also refers to the wide range of marine decisions and consents, including licences issued by public bodies, including local authorities.
- 2.6 Finally, marine planning will also provide one delivery mechanism for **River Basin Management Plans**.

### **Draft Planning Circular (Terrestrial/Marine Planning)**

- 2.7 The Scottish Government has also produced a new planning circular in draft form which accompanies the consultation on the draft National Marine Plan. The circular explains the relationship between the marine and terrestrial planning systems, including related regimes such as marine licensing and consenting for

offshore energy generation, ports and harbour development and aquaculture. It also provides guidance on joint working.

- 2.8 The Circular suggests a number of ways in which effective working can be achieved, including ensuring consistency between policies in the terrestrial and marine plans and developing an integrated coastal management approach.

### **Marine Protected Areas and Marine Priority Features**

- 2.9 One of the main aims of the Marine (Scotland) Act 2010 was to improve marine nature and historic conservation including the protection and management of areas of importance for marine wildlife, habitats and historic monuments.
- 2.10 The new powers afforded by the Act extend to selecting and managing Marine Protected Areas (MPAs). In the consultation document, the Scottish Government is proposing that 33 new nature conservation Marine Protected Areas (MPAs) be identified for species, habitats and geology that require more protection than is offered by existing protected areas.
- 2.11 The Scottish Government is also proposing a list of Priority Marine Features (PMFs) representing 80 habitats and species of marine conservation importance for which it would be appropriate to use either area-based measures such as Marine Protected Areas, or non-area based mechanisms or a mixture of both to achieve better protection.

### **Draft Marine Plans for Offshore Renewable Energy in Scottish Waters**

- 2.12 The Scottish Government has also published A 'Sectoral Marine Plan for Offshore Wind, Wave and Tidal Energy in Scottish Waters –Consultation Draft' to complement the national marine plan (and regional plans at a later date). This identifies options for offshore wind, wave and tidal energy developments throughout Scotland. However, the East Region, which is nearest to Edinburgh includes no additional options for offshore, wind, wave and tidal energy. The plan notes that the Forth Array scheme which was identified previously has since been withdrawn by The Crown Estate Commissioners.

## **Summary of Response**

### **Draft Marine Plan**

- While economic development is a primary objective of the Plan, the Council is pleased to see that this is underlain by sustainable principles.
- Under the new marine planning system, it is not clear what duties and powers the Council will have to carry out and what level of knowledge/expertise/training will be required. The additional demands placed on planning authorities, particularly at a time of budget constraint, is a further issue to be addressed.
- No reference is made in the plan to the Port of Leith's enterprise area status and its national role in relation to the manufacture and servicing of equipment to support the off-shore renewables industry.

- Limited mention is made of the future pressures the Firth of Forth (FOF) is likely to face from the growing number of commercial and recreational users. The FOF is a sensitive environment, requiring careful management of development to avoid impacting on internationally protected habitats and species
- No reference is made to the proposed expansion of Grangemouth aimed at improving freight capacity on the Forth which is identified as a 'National Development' in Draft National Planning Framework 3.

### **Circular**

- The opportunity to align the marine and terrestrial planning systems as suggested by the Circular is unlikely to arise for some time in Edinburgh. Furthermore, the different timescales identified for preparing plans under each system may make synchronisation difficult.
- The Council's main interface with the new system is likely to be through participation as a key partner in the relevant Scottish Marine Region (SMR), though little reference is made to this in the Circular. The document is also vague on what the proposed relationship between the SMRs and Marine Scotland is likely to be.
- In relation to the preparation of the Forth SMR, the Council would wish to see the establishment of a partnership working arrangement, for which the existing Forth Estuary Forum and SESPlan are considered useful models.

## **3. Recommendations**

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- 3.1 It is recommended that Committee approves the Council's responses to the consultation documents referred to as 'Planning Scotland's Seas'.

### **Mark Turley**

Director of Services for Communities

### **Links**

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<b>Coalition pledges</b>	<p>P15 Work with public organisations, the private sector and social enterprise to promote Edinburgh to investors</p> <p>P50 Meet greenhouse gas targets, including the national target of 42% by 2020</p>
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<b>Council outcomes</b>	<p>CO7 Edinburgh draws new investment in development and regeneration</p> <p>CO8 Edinburgh's economy creates and sustains job opportunities</p> <p>CO18 Green - We reduce the local environmental impact of our consumption and production</p> <p>CO19 Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm</p>
<b>Single Outcome Agreement</b>	<p>SO1 Edinburgh's Economy Delivers increased investment, jobs and opportunities for all</p>
<b>Appendices</b>	<p>Appendix 1: Text of letter from Acting Head of Planning to The Scottish Government in response to the documents forming part of the 'Planning Scotland's Seas' consultation</p>

## **APPENDIX 1**

### **Scotland's National Marine Plan – Consultation Draft**

#### **Comments on Chapter 4: General Policies**

Generally, the Council supports the plan's strategy which includes general and specific objectives aimed at mitigating and adapting to climate change.

When the Council previously submitted comments to Scottish Government on Scotland's first Marine Bill in 2008 it raised concerns regarding the emphasis placed on developing the economic potential of the marine environment over its conservation. While economic development is still a primary objective of the Draft National Marine Plan, the Council is pleased to see that this is underlain by sustainable principles. The fact that the first three of its general policies (GEN1-GEN3) concern sustainable development reaffirms Scottish Government's commitment towards that objective. Furthermore, two of the documents published for consultation purposes alongside the Draft National Marine Plan (on marine protected areas and marine priority areas) relate to marine conservation. In that respect the plan should sit well with existing and emerging terrestrial planning documents prepared by the Council.

Policy GEN 6 is particularly relevant to the Council as planning authority since it is concerned with the interaction between the terrestrial and marine planning systems. The area where the two systems converge in the inshore area will be administered by the regional level of marine planning which has yet to be established. This is the level at which the Council is expected to have greatest involvement in the marine planning system. (Further comments are provided regarding the relationship between these two systems in relation to the draft circular below.)

While the Council is supportive of this policy and its aim within the context of the national plan, it does have a number of concerns about the lack of detail set out here in relation to its new role in the marine planning system. As commented previously, it is not clear what duties and powers planning authorities are likely to have to carry out and what level of knowledge/expertise/training will be required.

Previously, the Council also raised concerns about the likely resource implications of the new marine planning system when commenting on the draft marine bill. The additional demands placed on planning authorities, particularly at a time of budget constraint remains a concern. Policy GEN6 would require the Council to work with a wide range of agencies and organisations in implementing proposals which straddle the marine and terrestrial planning systems. As this is likely to require partnership working, there should be a reference to this in the final plan.

#### **Using Sound Evidence**

Policy GEN 10 says that decision making in the marine environment should be based on a sound evidence base as far as possible. In the paragraph immediately below the policy the Council suggests that the second sentence should read '*New social, economic, environmental and historic information.....*'

## **Historic Environment**

The paragraph of page 32 should read '*.....Monuments of Scotland and/or the adjacent Local Authority Archaeology Service.*'

## **Nature Conservation, Biodiversity and Geodiversity**

When considering planning applications, as a competent authority, the Council already takes account of Special Protection Areas (SPAs) and protected species in its development plan policies. The Council is a member of the Forth Estuary Forum and the Firth of Forth Collaboration Group (FCG), both of which play a co-ordinating role in relation to the Firth of Forth SPA.

## **Coastal Processes and Flooding**

In relation to Policy GEN 17, reference should be made to the overlap between the marine and river (fluvial) systems in inter-tidal locations such as Leith.

Policy GEN 17 says that developments and activities in the marine environment should be resilient to coastal change and flooding and not adversely impact on coastal processes. In the Council's view, built developments can only be made 'resilient to coastal change and flooding' by the construction of heavy defences, engineering structures and/or raising of land. Such infrastructure will inevitably have an impact on coastal processes.

No definition of 'coastal infrastructure' (referred to in the second paragraph of page 36) is provided. It is unclear which locations are considered less vulnerable to flooding and erosion on the coast. This section should also include guidance on the reclamation of coastal land for development (including within harbours), and on the type of development that is acceptable

The guidance in the third paragraph of page 36 understates the significance of geomorphological changes resulting from activities or developments in coastal locations.

The fourth paragraph of page 36 reads satisfactorily though this only applies to flood management issues rather than to developments in coastal locations.

## **Comments on Chapter 5: Sector Chapters**

Of the eleven specific chapters in the National Marine Plan, the three considered most relevant to Edinburgh are offshore renewable energy, transport and recreation and tourism.

## Renewable Energy

In relation to renewable energy, page 86 of the plan refers to the potential for Scotland's supply chain companies to benefit '*directly in development manufacturing, assembly, deployment, operations and maintenance*'. Though identified in Map 19 of the 'Transport' chapter, no reference is made here to the Port of Leith's enterprise area status and its national role in relation to the manufacture and servicing of equipment to support the off-shore renewables industry. The Port of Leith, which is identified in the National Renewables Infrastructure Plan, is expected to develop strong ties with the first round of offshore wind energy developments located off the east coast of Scotland.

## Transport

On the subject of transport, the reference made to the importance of ports and marine transport to the economy of eastern Scotland on page 106 of the plan is acknowledged.

However, as a shipping channel, the Firth of Forth is likely to come under increasing pressure from a wide range of commercial and recreational users in the future. While the potential conflict between some competing uses is referred to on page 112, no mention is made as to how this might be managed. The Firth of Forth is also a sensitive environment, requiring careful management of development to avoid impacting on internationally protected habitats and species.

The plan supports the growth in capacity of ports and harbours in the section on Transport. However, no reference is made to the expansion of port capacity at Grangemouth as part of the Forth Estuary infrastructure improvements referred to in Draft NPF3. This is also identified as a 'National Development' aimed at ensuring future demand for freight handling facilities is met and realising the potential of the location as Scotland's largest container port, main freight distribution centre and a centre for low carbon energy and chemical sciences. It is also one of a number of proposals included in the Firth of Forth 'Area for Co-ordinated Action' (Area 4).

## Recreation and Tourism

In relation to recreation and tourism, the table on page 97 identifies some of the most popular recreational pursuits. The Council suggests that under 'Cruising', Rosyth and South Queensferry be included in the table since both can accommodate larger vessels.

The second paragraph on page 98 includes a typographic error. The sentence beginning 'A integrated' should read 'An integrated.'

Under the heading 'Sailing', the third bullet point underestimates the importance of the East Coast market.

Under 'Sporting events' on pages 98 and 99, reference could be made to the Clipper Race which Scotland/Edinburgh has participated in previously. This could also help to raise awareness of the event.

The cruise industry is referred to on page 100. The Council's Business Partnerships are currently focusing on the Edinburgh cruise market.

The plan makes limited reference to passenger ferries in the recreation and tourism chapter despite these also being required to support tourism (though they are referred to in the transport chapter). Additionally, no mention of organised boat tours is made.

This section does not recognise the contribution of local commercial boats to tourism i.e. boat trips, as opposed to ferries.

### **Marine Historic Environment**

The Council would like to see a separate subject chapter on the Historic Marine Environment included in the Plan. Chapter 7 of the Pre-Consultation Draft Plan included a section on this topic along with Marine Environment and Nature Conservation. Though referred to under 'General Policies' (GEN 13), the plan does not go into sufficient detail regarding how the full potential of the marine historic environment as a cultural, educational, economic and social resource might be realised.

### **Other**

The Council notes that the additional regulations proposed in the plan could make it more difficult to secure funding in coastal and marine areas. There may also be economic implications for areas having to adapt existing plans to the new regulations.

The plan should perhaps include some system of cross-referencing with the relevant sections of Draft NPF3 since the two documents are meant to sit alongside each other. Draft NPF3 is also more up to date than the plan in terms of key subject areas, in particular, renewable energy and transport.

### **Comments on Draft Planning Circular - 'The relationship between the statutory land use planning system and marine planning and licensing'**

#### **Marine Planning**

On page 5, the possibility of programming marine and terrestrial plans so that key stages are aligned is discussed. The Circular also suggests that the aim should be to achieve consistency between policies and proposals in both plans. The first wave of 'new style' development plans covering Edinburgh are now at an advanced stage of preparation. The Strategic Development Plan for Edinburgh and South East Scotland was approved by Scottish Ministers in June and work on SDP2 is already underway. Work on the Local Development Plan (LDP) for Edinburgh is also at a fairly advanced stage; the Proposed LDP was published in March 2013. Therefore, the opportunity to align key stages in the two systems is unlikely to arise for some time. Furthermore, the different timescales identified for preparing plans under each system may make synchronisation difficult.

Little reference is made in the Circular to the regional system of marine planning, the groundwork for which will be laid later this year. The Council's main interface with the new system is likely to be through participation as a partner in the relevant Scottish Marine Region (SMR). It is also expected to be a member of the SMR Board which is tasked with making decisions at regional level regarding the SMR. The consultation document is also vague on what the proposed relationship between the SMRs and Marine Scotland is likely to be.

In the absence of any guidance in the circular on the proposed geographic areas at a Scotland wide level, the work and relationships already established through the Forth Estuary Forum (FEF) might be a useful basis for the establishment of a potential Forth Estuary SMR. The FEF, of which the Council is a member, is overseen by a core group of members from a wide range of private, public and bodies, its aim being to promote the wise and sustainable use of the Forth. It operates under Integrated Coastal Zone Management principles and is a useful model for successful partnership working.

An alternative example of successful partnership working which might be used as a basis for the establishment of an SMR in the Forth is the Strategic Development Planning Authority for Edinburgh and South East Scotland (SESplan). SESplan is the statutory authority responsible for preparing and maintaining a strategic development plan (SDP) for the SESplan and involves six local authorities working together collaboratively.

### **Comments on Possible Nature Conservation Marine Protected areas**

Though located in offshore waters to the east of Scotland, geographically the Firth of Forth Banks Complex is the closest proposed Marine Protected Area (MPA) to Edinburgh. This includes the Berwick, Scalp and Montrose Banks and the Wee Bankie. However, there are no direct consequences of this designation to the functions of the Council.

### **Comments on Priority Marine Features**

The Edinburgh Biodiversity Action Plan includes a Coastal Habitat Action Plan and associated species action plans, including for otters and seagrass beds. Both species are designated Priority Marine Features. Otters are given due consideration during the planning process, through the application of appropriate local development plan policies. The EBAP has an action to survey and map the extent and condition of seagrass beds (a UK Priority Habitat) in the Edinburgh area. This action is subject to funds becoming available.