

Our Ref: JCC/ND/LD/SC/JW/  
ORG13-A1817

Your Ref: -

22 May 2006

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By email: [transport&works@scotland.gsi.gov.uk](mailto:transport&works@scotland.gsi.gov.uk)

Dear Mr Cruickshank

## **CONSULTATION ON PROPOSALS FOR A NEW APPROACH TO DELIVERING PUBLIC TRANSPORT INFRASTRUCTURE DEVELOPMENTS**

Thank you for providing the Scottish Environment Protection Agency (SEPA) with the opportunity to comment on the above consultation document.

SEPA welcomes the bringing forward of proposals to replace the Private Bill process for transport related developments by placing Scottish Ministers at the centre of an order-making process, with Parliamentary approval expressly required at more than one point in that process.

Delivery of public transport development proposals for new rail, tram, guided busways and inland waterway developments will be increasingly important as Scotland embraces the challenges it faces in delivering the objectives of the Sustainable Development Strategy and the Climate Change Programme. Transport is the second largest contributor to Scotland's greenhouse gas emissions<sup>1</sup> (17% of total emissions in 2003) and total emissions from this sector have increased by 6% since 1990. Encouraging a modal shift to more sustainable transport options is an important means of delivering sustainable development objectives. Ensuring that the process for considering such schemes is robust, fit for purpose and transparent is therefore very welcome.

It is important to recognise that individual public transport infrastructure projects can lead to local environmental effects. SEPA has in the past expressed concerns about the operation of the current process in terms of the availability of appropriate information to allow full and proper consideration of the environmental effects of projects at an early stage. The revised process should address this area of weakness.

Detailed comments on the consultation paper and the issues raised in it are provided in the Annex attached.

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<sup>1</sup> Cf Scottish Executive (2006) Changing our ways: Scotland's Climate Change Programme p29



As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record. If you require further clarification on any aspect of this correspondence, please contact Neil Deasley, Principal Policy Officer, Environmental and Organisational Strategy, SEPA Corporate Office, at the address shown above, or at [neil.deasley@sepa.org.uk](mailto:neil.deasley@sepa.org.uk) or on 01786 452431.

Yours sincerely

*James C. Curran*

**Professor James C Curran**  
**Head of Environmental Strategy**

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## **Annex – Detailed Comments on Consultation Paper**

### **General Comments**

Generally, the Procedures Committee's proposed 6-step approach provides a clear and systematic process that is easier to follow than the current arrangements. The process is designed to broadly mirror where possible Scotland's future modernised planning system and this will assist understanding of the process. The commitment to early engagement with bodies such as SEPA and to an open and transparent decision making process is most welcome. The involvement of an independent reporter to consider representations is also a considerable step forward, although SEPA notes that the Scottish Ministers can decide to accept, modify or reject the Reporter's recommendations.

### **Detailed Comments**

The following provides more detailed comments either in response to the questions raised or relating to particular proposals in the text:

### **Outline of Proposal**

**Q1** - SEPA is content that the proposed process will apply to public transport proposals involving rail, tram, guided busways and use of inland waterways.

### **Step 1 – Application**

Paragraph 4.14 sets out the proposal to ensure that statutory bodies such as SEPA are advised of proposed developments through formal contact from the promoter. SEPA supports this in principle and welcomes the proposed 6 month statutory pre-application period. It is important though during this stage that the promoter provides SEPA with sufficient details about the proposal and its potential environmental effects in order that this pre application stage works effectively. It is not clear whether the information required in the promoter's application (as set out in 4.22) is expected during the six month pre-application period and this should be clarified accordingly. SEPA is of the view that this type of information should be required at the pre-application stage and that it would be useful for this requirement to be set out either in the Bill or in guidance.

**Q2** – SEPA is of the view that the pre-application period can be lengthened or shortened depending on the quality of the submitted information. Clearly if all of the required information is made available within an agreed timescale or a programme of assessment is agreed to provide the information, then it would seem reasonable to adjust the pre-application period accordingly.

Paragraph 4.17 – suggest deleting the word, “attempt” in line 3.

**Q3** – This proposal appears to transfer access rights to appropriate bodies with safeguards at 4.20 to avoid speculative access. This is satisfactory.

Paragraph 4.22 provides a list of matters that should be covered in the promoter's application. While SEPA largely agrees with this list, we would request clarification about use of the term “environmental statement”. SEPA interprets this to mean that promoters would be expected to undertake a full environmental assessment and prepare an Environmental Statement consistent in form, content and nature with those required under the Environmental Impact Assessment (Scotland) Regulations 1999 and other comparable EIA Regulations. However, this is left open to interpretation in the consultation paper and SEPA would request that this is clarified. It is imperative that if SEPA is to be able to play its role effectively in the process then the Agency must be provided with appropriately detailed information



in order for it to come to an informed view about the likely environmental effects of a proposal. SEPA considers that this should be clarified in the wording of the Bill.

**Q4** – see commentary above re Paragraph 4.22

## **Step 2 – Objections**

SEPA would be content with 42 days as a time period for raising objections so long as the information requirements cited above are met by the proposer. Supporting guidance should encourage objectors to provide early notice of substantive objections, such that matters of principle are dealt with.

**Q5** – see text immediately above

Paragraph 4.26 is supported.

## **Step 3 – Initial Ministerial Decision**

Paragraph 4.29 seeks at bullet point 1 to ensure compliance with environmental legislation, however in the absence of final and detailed design details this is not always possible and any comments provided by SEPA up to this point would therefore be without prejudice to its regulatory functions.

SEPA is largely content with these proposals and supports the commitment in paragraph 4.36 to publicising decisions. Paragraph 4.34 states that proposals identified in the adopted National Planning Framework will already have been considered to be in the public interest. The future consultation arrangements for and scrutiny of the NPF are still matters of debate as the Planning etc (Scotland) Bill progresses through Parliament. SEPA has raised concerns about the lack of scrutiny of the NPF in its evidence to the Bill. SEPA notes that the Community Committee's Stage 1 Report on the Planning Bill considers that the opportunity to participate in the NPF consultation should apply to as wide a range of participants as is practicable and that the consultation process is inclusive, transparent and robust. SEPA also notes that the Committee has recommended that the Executive extends the period for Parliamentary consideration from 40 to 60 days.

## **Step 4 – Initial Parliamentary Consideration**

SEPA has no comments on these proposals.

**Q6** – SEPA has no comment

## **Step 5 – Detailed Consideration**

SEPA welcomes the proposed appointment of an independent reporter to consider representations. This process works well in the planning system and we have confidence that it has the potential to serve equally well for this purpose. However, SEPA notes that the Scottish Ministers can decide to accept, modify or reject the Reporter's recommendations and wishes to contrast this with the Planning Bill which proposes less flexibility for a planning authority to decline to take the Reporter's recommendations into account in the modification of a development plan.

SEPA also supports the proposal to limit the scope of amendment by the promoter once an application has been lodged. Any amendments which are agreed however should also be with the consent of relevant statutory bodies as well as the promoter and any objectors, where that amendment is likely to have environmental implications.

Paragraph 4.47 proposes that any amendments required following the Reporter's recommendations should, where necessary, be subject to further environmental assessment. This is supported.

### **Step 6 – Final ministerial Decision and Final Parliamentary Approval**

The proposals in paragraph 4.50 should be subject to the same provisions as those in 4.47 – i.e. that if Ministers propose alterations which may have environmental effects then an assessment of those effects should be conducted and taken into account before a final decision is reached.

### **The Scottish Parliament's Role**

It is not SEPA's role to comment on what proposals should be subject to consideration by Parliament, however use of the term "national developments" would seem sensible – although as noted earlier, concerns about scrutiny of the NPF and the national developments it lists should be given due consideration.

### **Q7 – SEPA has no comment**

**END**