

# THE ROYAL TOWN PLANNING INSTITUTE

## RIVER BASIN PLANNING GUIDANCE

A response to the Department of Environment, Food and Rural Affairs and the Welsh Assembly Government on their consultation draft practice guidance

March 2006

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### BACKGROUND

1. The Water Framework Directive (WFD) sets a framework that should provide substantial benefits for the long term sustainable management of waters in England and Wales. At the heart of the Directive is a new river basin planning system that will enable us to manage our waters in a more holistic and transparent way, following the principles of better regulation.
2. DEFRA and the Welsh Assembly Government are consulting on a draft of the statutory guidance they propose to issue to the Environment Agency on river basin planning, setting out their expectations and principles for the planning process.

### GENERAL COMMENTS

3. The Institute's main concern with the draft guidance is that it almost totally ignores the potential read across between the spatial plans introduced in England and Wales by the 2004 Planning & Compulsory Purchase Act and the River Basin Management Plans (RBMPs) required by the WFD. The draft is written as though the Environment Agency will start with a clean sheet of paper when it prepares RBMPs, whereas the reality is that many of the issues that will be considerations for RBMPs are equally properly included within the ambit of the new style of integrative and inclusive spatial plans. As a consequence, much of the work required of the Environment Agency will already have been started by regional planning bodies (RPBs) or local planning authorities (LPAs) in connection with their work on regional spatial strategies (RSSs) and local development frameworks (LDFs), respectively.
4. We believe that the draft guidance misses a trick by not recognising this crucial relationship "up front" and so not steering the Environment Agency firmly in the direction of constructive partnerships with RPBs and LPAs. In England, the main interface is that between RBMPs and RSSs. The scale, and the number of plans, is similar. (The map in *Annex 2* shows 10 river basin districts in England and Wales, which compares with 8 Government Office regions (the basis for RSSs) in England, plus London and Wales.) That the boundaries hardly coincide at all - because the river basin districts are defined on hydrological considerations - is not an insurmountable problem, given a suitable consultation regime. If there is compatibility between the policies in RSS and RBMP, the requirement for general conformity between the two tiers of the development plan system will ensure that local planning - through LDFs - takes place within the same policy framework, and seeks to implement those policies at the local level. In other words, the development planning system should be seen as a key tool in implementing WFD policy. Not only is this facility not recognised, but, through its interpretation of the

transposing regulations, the draft guidance suggests that RBMPs should take precedence over all other plans and strategies affecting river basin districts. This is an unrealistic aspiration, especially where the other plans and strategies have been endorsed by the community and tested before an independent third party.

5. The two planning systems are also strongly linked through the flood risk management process. In England, *Draft PPS 25* not only firmly roots implementation of its policies in the development planning system, but also strengthens the Environment Agency's role in flood risk assessment and in "policing" policy implementation. The Agency, therefore, is uniquely placed – without wrestling with issues of precedence - to ensure consistency and compatibility between the two planning systems. This strength should be built on in the statutory guidance.

## DETAILED COMMENTS

### 2. INTRODUCTION

6. *Paragraph 2.4:* The move from chemistry to ecology in assessing water quality underlines the need for strong linkage with the development planning system and its policies for environmental improvement, biodiversity, nature conservation, etc, etc.

### 3. ROLE OF THIS GUIDANCE

7. *Paragraph 3.4,* in referring to the need for the Environment Agency to work "*in partnership with the range of public, private and voluntary sector organisations*" fails to give explicit recognition of the need for "*partnership*" to include regional planning bodies and local planning authorities. The reference, in *paragraph 3.5,* to the need for a two-way relationship between RBMPs and "*other organisations' plans and strategies*" is little more reassuring, and avoids the issue of precedence.

### 4. KEY STEPS

#### *River basin planning timeline*

8. *Paragraphs 4.1-4.4:* The six-yearly review cycle for RBMPs, and the iteration built into the process should also point up the need for an iterative relationship with the review of RSSs. As the Institute understands it, implementation of some of the RBMP's "*measures*" will be achieved through regulatory processes, but others will require "development". How will these be put in place except through the spatial planning process?
9. *Paragraphs 4.5-4.6:* The Institute acknowledges that the timescale for RBMPs, imposed by the WFD, is very tight, but this underlines the need for transparency, and efficiency, in stakeholder involvement and consultation. There may, for example, be scope to use RSS or LDF consultation processes if working partnerships are developed with RPBs and LPAs. Referring to *Table 1,* it is important that there is a round of consultation before publication of the "*summaries of significant water management matters*". If there is not, the Agency is likely to be (rightly) accused of presenting stakeholders with a "done deal" - a lesson learned from the pre-2004 Planning & Compulsory Purchase Act development planning system. Primarily for this reason, we would not support the suggestion of bringing forward consultation on the summaries by 6 months. This would leave less time for data collection, but, more importantly, less time for "frontloading" and permitting stakeholder engagement before issues have been set in stone. (There is a mistake in the third row, third column of *Table 1* – "*22 June 2008*" should read "*22 June 2009*".)

## **5. THE PRINCIPLES OF RIVER BASIN PLANNING**

### **iii. Focus at the river basin district level**

10. *Paragraphs 5.9-5.10:* We are not altogether clear what is intended here. Is this simply saying that some issues will require finer-grained examination than can be achieved at the broad river basin district level, and that the Agency will need to be equipped to recognise this? A great deal of wheel-reinvention can be avoided by collecting data at the most detailed level likely to be required and aggregating this as appropriate for larger geographic scales.

### **iv. Work in partnership with other regulators**

11. *Paragraphs 5.11-5.12:* The title here should refer to “stakeholders” rather than “*other regulators*”, which has the wrong connotations. The Institute suggests that the engagement described here should be partnership working with stakeholders, not the implied two-tier process.

### **vi. Make use of alternative objectives to deliver sustainable development**

12. *Paragraphs 5.16 and 5.18:* The Institute is unclear why DEFRA and the Assembly appear happy to accept “*alternative objectives*” rather than the WFD’s full environmental objectives for water. This represents a “lowest common denominator” approach that should be the exception rather than the rule if the WFD’s overall objective of driving up standards of water quality is to be achieved.

### **vii. Use “better regulation” principles and compare cost-effectiveness of the full range of possible measures**

13. *Paragraphs 5.21-5.22:* The comparisons should also include the non-monetary costs and benefits to the environment.

### **viii. Seek to be even-handed across different sectors of society and sectors of industry**

14. *Paragraph 5.24:* Should the principle of “polluter pays” not be applied here? The guidance appears to encourage simply going for the easiest targets.

### **ix. Seek to be even-handed and transparent in the management of uncertainty**

15. *Paragraph 5.29* describes the “precautionary principle”. Why is this well-understood concept not used?

## **6. STATEMENT OF STEPS AND CONSULTATION MEASURES**

16. *Paragraph 6.4:* See the comment at paragraph 11, above.

## **8. THE RIVER BASIN MANAGEMENT PLAN**

### **Including scenarios and workings in the draft River Basin Management Plan**

17. *Paragraph 8.12:* It is the Institute’s interpretation that “*more than one scenario*” – ie more than one option – will be required as part of the process of SEA. This is not discretionary, nor simply a question of the best use of the Environment Agency’s resources. It also, again, raises the issue of the relationship between RBMPs and RSSs, and the mandatory sustainability appraisal (incorporating SEA) of RSS policies.

## **9. SUPPLEMENTARY PLANS**

18. *Paragraph 9.1:* The flexibility to prepare supplementary, more-detailed plans only where required by local circumstances is sound and avoids unnecessary prescription.

## **10. OBJECTIVES, ALTERNATIVE OBJECTIVES AND DEFENCES**

19. *Paragraph 10.7:* The Institute believes that encouraging the use of “*alterative objectives*” is setting the sights too low (see paragraph 12, above).

## **11. THE PROGRAMME OF MEASURES**

### ***What is the proposal for environmental objectives and a programme of measures which should be submitted to the Secretary of State and/or the Assembly for approval?***

20. We do not understand the message in *paragraph 11.16*. It would seem entirely appropriate to include environmental standards or the proposed monitoring regime in the programme of measures; otherwise how are these requirements to be broadcast? As it reads here, the guidance appears to suggest that a lot of important detail will, or can, be omitted from the programme of measures. We would also like to see some examples of the bodies or individuals who might have a right of appeal to the Secretary of State, or Assembly, and under what powers.
21. We note that *paragraph 11.17* uses the term “*deliverer*” as an alternative to “*regulator*”. This might have been an appropriate alternative in the title preceding *Paragraphs 5.11-5.12* (see paragraph 11, above).

## **12. WORKING IN PARTNERSHIP**

22. *Paragraph 12.1:* The guidance here must specifically refer to working in partnership with the Regional Planning Bodies. How else are RBMPs to integrate water management objectives and balance these with “*other environmental, economic and social priorities*”? The fact that river basin planning will involve the Environment Agency in issues that are outside its control is acknowledged in *paragraph 12.2*, but that then goes on to suggest that the Agency can act as judge and jury through chairing a group of “*key decision makers and deliverers...*” The RPB, in preparing a spatial strategy for its region, is already charged with doing much of the work the guidance suggests the Agency should “*organise*”.
23. *Paragraph 12.3:* The guidance should not satisfy itself with meeting the minimum requirements for the engagement of interested parties in the river basin planning process. This is paying no more than lip service to the involvement of stakeholders and communities, many of whom may feel newly empowered by the provisions of the 2004 Planning & Compulsory Purchase Act. The Agency’s consultation/engagement arrangements will not be taking place in a vacuum.

### ***River basin district liaison panels***

24. *Paragraphs 12.4-12.9:* On their own, the Institute considers the proposals to establish River Basin District Liaison Panels totally inadequate. One liaison panel representing more than a tenth of the population of England and Wales, or covering more than a tenth of the geographical area, can never fulfil a proper representative role, and when the guidance goes on to suggest that one member may be wearing more than one hat (*paragraph 12.6*), the inadequate becomes the unsatisfactory.
25. A hierarchy of consultative bodies is clearly necessary to cover this geographical scale of river basin districts satisfactorily. Again, this might be related to the consultation arrangements for spatial planning with which there will be a great deal of commonality of interest. The use of Local Strategic Partnerships might also be considered.

**Dispute resolution**

26. *Paragraphs 12.10-12.12:* The arrangements for dispute resolution, like those for consultation, appear weak and insufficiently thought through. What are the Secretary of State or Assembly to do with the information about disagreements that they may receive from the Environment Agency? There ought to be some facility for arbitration by an independent third party.

**Relationship with other public bodies and their plans and strategies**

27. *Paragraphs 12.13-12.15:* Many of the comments earlier in this response have been about this relationship, but the advice here is weak and inconclusive and likely to be unhelpful to the Environment Agency. The draft guidance talks of “good links between RBMPs and other relevant plans and strategies” and “the partnership should be a two-way process”, but advises little on how what links should be developed, or how two-way partnerships are to be developed, and with whom. This vague advice needs to be strengthened and made much more specific. It needs to refer specifically to RSSs in England and stress the need for compatibility and consistency between RBMPs and RSSs and other regional strategies (see **paragraph 29, below**).
28. *Paragraph 12.16:* If this is to be read as meaning that the RBMP takes precedence over any other plan or strategy prepared by a public body, it is unrealistic and impractical, especially where the other plans or strategies are statutory – as in the case of development plans prepared under the 2004 Planning & Compulsory Purchase Act. At the very least it is bound to lead to tensions between the Environment Agency and other public bodies unless the respective plans have been prepared in a regime of constructive partnership.
29. *Paragraph 12.17:* Again, this interpretation of the transposing regulations appears to give RBMPs precedence over other plans and strategies, and again the Institute questions the practicalities. Regional planning bodies and local planning authorities, in preparing and implementing statutory development plans, are “exercising functions affecting river basin districts”. As we have suggested throughout this response, it is in the interests of all parties to try and ensure compatibility between RBMPs and statutory spatial plans, but where this does not prove possible, for whatever reason, the plan that has widespread community support, and has been through a process of public examination by an independent inspector, is the one that must prevail over a plan prepared by technocrats with minimal consultation.
30. *Paragraph 12.18:* Development plans prepared under the 2004 Act are also subject to SEA under the terms of the EU Directive. In practice, this will be incorporated into the wider, and mandatory, sustainability appraisal. This, again, underlines the need for consistency between RBMPs and development plans.
31. *Paragraph 12.19* refers to *Annex 8* where there is guidance on the relationships between RBMPs and other groups of plans. We find the guidance in *Annex 8* is generally good and wonder why the messages there are not adopted throughout the body of the draft guidance. Had they been, much of the criticism earlier in this response could not have been justified.
32. *Paragraph 12.20*, as a free-standing statement, is unhelpful, and should be combined with *paragraph 12.21*. Timescales for plan preparation will never dovetail completely. This is as true of plans within the same system, such as adjacent RBMPs, as it is of different planning regimes, such as RSSs or LDFs. It is the experience of operating successive systems of town and country planning in England and Wales that with co-operation and iterative working arrangements the problems of these mismatches can largely be overcome.

33. *Paragraph 12.22:* It will be more useful for the Environment Agency to show how the content of its plans complements, or conforms with, the current iteration of the other relevant plans and strategies than to dwell on process issues.

**13. APPROVAL, AMENDMENT AND REVIEW**

***Approval of River Basin Management Plans***

34. *Table 6:* The Institute is happy to endorse *criterion v*, but is still concerned that the draft guidance does not do enough to steer the Environment Agency down the road to this outcome. Should not an important approval criterion be that the RBMP meets the objectives of the WFD?