

WIRRAL COUNCIL

CABINET – 7<sup>TH</sup> JUNE 2007

REPORT OF THE DEPUTY CHIEF EXECUTIVE/DIRECTOR OF CORPORATE SERVICES

**CENTRAL GOVERNMENT CONSULTATION ON “A SEA CHANGE - A MARINE BILL WHITE PAPER”**

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**1. EXECUTIVE SUMMARY**

1.0 The Government has issued for consultation a White Paper outlining the scope and content of a proposed Marine Bill. It follows on from an initial consultation in 2006 (to which Wirral responded) and proposes a new system of Marine Spatial Planning, a new marine Management Organisation, changes to marine consents, fisheries licensing and marine nature conservation. Comments are invited to the Department of Environment Food and Rural Affairs (DEFRA) by 8<sup>th</sup> June. This report recommends that the Director’s comments in section 9 form the basis of the Council’s response to DEFRA.

**2. BACKGROUND**

2.2. In 2006, DEFRA published a document which discussed the aims and scope of a possible Marine Bill, outlining the background to, and proposed contents of the Bill, summarising main components and how they were expected to fit together. The document outlined proposals for a new marine spatial planning system, Marine management organisation, improvements to marine consents procedures, improvements to marine nature conservation and changes to fisheries licensing. The Council’s response to this document was agreed by the Executive Board on 19<sup>th</sup> June 2006 (minute 84 refers). Having considered all the responses to this document, the Government has now issued a White Paper for comment – the final step prior to legislation - which sets out the UK Government’s intention for the scope and content of the Marine Bill. The views of anyone with an interest are being invited by the Government with the consultation period ending on 8th June 2007. Unlike the previous consultation, consultees are not invited to respond to specific questions.

**3. The scope and content of the White Paper**

3.1 The White Paper outlines the UK Government’s and devolved administrations’ shared vision and strategic goals for the marine environment. The vision is one of clean, healthy, safe, productive and biologically diverse oceans and seas. The vision is supported by five strategic goals.

3.2 The White Paper proposes the introduction of a new marine spatial planning system, reforms to licensing of marine activities, changes to marine nature

conservation and the regulation of fisheries and the creation of a Marine Management Organisation (MMO) which will be responsible for many of these activities. These measures are set out in more detail below.

#### **4. Marine Spatial planning**

- 4.1 The Government intends to introduce a two-tier marine spatial planning process. Although it is likely that ministers will be nominally responsible for marine planning, it is likely that most or all marine planning functions would be delegated to the proposed Marine Management Organisation (MMO).
- 4.2 The first tier would be a UK marine policy statement, agreed by all UK Government departments, the devolved administrations and adopted within two years of a Marine Act receiving Royal Assent. The statement would set out the Government's vision and objectives for the marine environment and its uses, covering issues such as energy, biodiversity, heritage, transport, mineral extraction, major infrastructure, defence, and future activities (such as carbon capture and storage).
- 4.3 The second tier would comprise a series of marine plans, implementing the UK wide policy statement in specific areas. The first plans would cover a period of 20-25 years and be reviewed at least every 6 years. Plans would cover the seabed and area below it, the water column and area above it and extend from Mean High Water Springs (MHWS) to the fullest extent of the UK's marine jurisdiction (the UK continental shelf and fisheries limits). This will overlap with the terrestrial planning system between MHWS and the Mean Low Water Mark (MLWM). The geographic area of each marine plan would be determined by the planning body following consultation. Some areas may need more detailed or smaller scale plans than others, for example, estuaries or near busy ports, or where local issues or conflicts have already arisen.
- 4.4 Marine plans would consider all of the relevant activities in an area and the impact they may have on each other. There would be a particular focus on those activities which are licensed and regulated. The plans would address both the current situation, and also emerging and future marine uses and technologies. The planning body would carry out an economic, environmental and social appraisal and sustainability assessment during plan preparation.
- 4.5 The planning body would be required to consult at the issues and draft plan stages and a document similar to the Statement of Community Involvement would be prepared. After consultation, the planning body, or Government ministers would consider the need for a formal public examination or hearing (which could be similar to those used in land use planning) on all, or parts, of the plan. The emphasis is however on securing maximum consensus at the earliest stages of the process. The intention is that all decisions made in the marine area, or with implications for the marine area, would be made in accordance with the shared UK marine policy statement and any relevant marine plan. However, it

is proposed that the decision-maker could depart from the plan if relevant considerations favoured a different course of action

## **5. A new Marine Management Organisation**

- 5.1 The Government has decided that a new Marine Management Organisation (MMO) should be the vehicle for delivering the new marine spatial planning system and other functions such as marine licensing (including regulation of harbour developments), fisheries management, marine nature conservation, monitoring and enforcement and data management. The intention is that the MMO would be set up soon after the Marine Bill became law.
- 5.2 The MMO would be established as an “Executive Non-Departmental Public Body” (NDPB) which would work for all relevant UK Government Departments in England and Northern Ireland. Scotland and Wales would implement their own delivery arrangements for devolved matters. The Government intends that its proposals would enable the different administrations to prepare plans jointly across administrative boundaries, or across the division between territorial and offshore waters. This could be important in cross-border estuaries, such as the Dee.
- 5.3 The MMO would have a Board with corporate responsibility for ensuring it fulfils the aims and objectives set by Government. The Board would comprise a mix of members from the public, private and voluntary sectors. To take forward planning effectively in areas such as estuaries where there are often complex planning and regulatory arrangements, the Government proposes to set up a small number of ‘marine planning steering groups’ comprising individuals/organizations with relevant local interests or responsibilities.

## **6. Licensing marine activities**

- 6.1 The Government’s proposed changes to marine licensing are intended to result in better, more consistent licensing decisions, delivered more quickly and at less cost by a system that is easier to understand and to use. For as many sectors as possible, the Government would like there to be one application per project, submitted to one authority, which will deliver one decision and issue one licence. Licensing decisions would be made in the context of marine plans. The specific proposals are to:
- create a reformed marine licensing regime based on the consolidation of Part 2 of the Food and Environment Protection Act 1985 (FEPA) and Part 2 of the Coast Protection Act 1949 (CPA);
  - Include all forms of dredging, including marine minerals dredging and currently unregulated forms of dredging, within the reformed regime;
  - Enable ministers to introduce new rules to regulate Carbon Capture and Storage (CCS), if appropriate;

- Streamline licensing of offshore renewable energy installations replacing the current Electricity Act and FEPA processes with a single licence administered by the MMO;
- Reduce overlaps in legislation applying to harbours and ports;
- Repeal some redundant provisions relating to laying cables;
- Give powers to the new Marine Management Organisation (MMO) to deliver the reformed licensing regime, regulation of harbour developments, offshore renewables up to a certain size and aspects of the regulation of CCS in England and Northern Ireland;
- Enable ministers to establish timescales for processes set up by the reformed licensing regime;
- Enable ministers to exempt activities from the need for licensing, either fully or partially, where they pose no significant risk to the marine environment, heritage or other legitimate users of the seas, to ensure proportionate regulation; and
- Enable ministers to issue licences for extended programmes of linked activities, to save developers having to make multiple applications.

## **7. Marine nature conservation**

- 7.1 In addition to the existing networks of European designated sites, the Government proposes to introduce a new system of Marine Conservation Zones (MCZ's). These would provide protection for species and habitats considered of national value that cannot be protected under European law. Unlike European designated sites, the Government proposes that impact on socio-economic factors should be able to be taken into account when considering designation. Responsibility for designation would lie with the Secretary of State, with Natural England and the Joint Nature Conservation Committee putting sites forward for consideration with the MMO advising on the socio-economic context for their designation and being responsible for enforcement.
- 7.2 The Government proposes that nature conservation objectives will be set for each site to help clarify the level of constraints on marine activities. The Government proposes a duty on public bodies to undertake their functions in a way that will contribute to the delivery of site objectives. This will apply to all site-based conservation designations in the marine area, including SACs and SPAs. In considering whether to grant a licence for marine activities, the Government propose that a full assessment of the possible impacts on MCZs of proposed activities is carried out. In relation to European sites, the Government proposes to consolidate the existing regulations that apply the Wild Birds and Habitats Directives in the UK. This will be separate from the Marine Bill and will result in an integrated set of regulations applying to all marine and terrestrial areas.

## **8. Managing marine fisheries**

- 8.1 In relation to marine fisheries, the Government proposes that the Marine Bill will modernise inshore fisheries management arrangements and enable a more active approach to managing recreational sea angling. It will strengthen fisheries

enforcement powers and provide for recovery of the costs of fishing vessel licence administration. Specifically it will:

- Modernise inshore fisheries and environmental management arrangements by establishing a clear purpose and duties for Sea Fisheries Committees (SFCs) in England. It is also proposed to improve their evidence-based decision-making; update their by-law making and enforcement powers and enhance their funding arrangements;
- Strengthen the operation of Several and Regulating Orders used to establish and maintain local shellfisheries by removing some of the disincentives to applying for Orders and by making practical improvements to the way they operate;
- Enable a more active approach to managing recreational and unregulated fishing activities through new powers to introduce a chargeable rod licence as well as measures to set catch limits and to regulate fishing undertaken from the shore; and
- Update and strengthen enforcement powers including improved powers to tackle illegal, unreported and unregulated fishing, implement a system of administrative penalties for minor offending in the commercial sector; and ensure that the Government can use its existing vessel licence charging powers to recover the costs of licence administration more flexibly than is currently possible.

## **9. DIRECTORS COMMENTS**

9.1 The Marine Bill is a long (176 pages) and complex document and the above is only a brief summary of the main “headlines”. The following comments focus in on issues likely to be of most interest to Wirral as a local authority and considers the extent to which issues raised in response to the 2006 consultation have been addressed in the White Paper.

### *Marine Spatial Planning*

9.2 The main elements of the Marine Bill are as proposed in the consultation document last year. The comments on the 2006 consultation welcomed the suggested introduction of a Marine Spatial Planning system and the proposed two-tier system of plan preparation. However, it remains unclear in the White Paper as to the level of detail to be included in the UK marine policy statement and wide ranging consultation will be essential, along with transparency of decision-making.

9.3 In Wirral’s response to the 2006 consultation, it was suggested that the Government should consider extending the remit of the land use planning system out into coastal waters, beyond the current mean low water mark. As highlighted above, the system proposed by the Government does not extend land based planning jurisdiction but proposes an overlap covering the terrestrial and marine planning systems between high and low water marks (the intertidal zone). Whilst this is probably a reasonable compromise in theory, the key issue is how this overlap will operate in practice and what procedures will be put in place to address conflicts between local concerns and national objectives. The White

paper outlines principles, but does not address matters of detail. They suggest that the overlap would compel organisations to work together to ensure sensible harmonisation of plans over time and recognize that this would not be achieved immediately. Working to ensure how plans can be integrated may reveal areas of duplication between plans and, the Government “would explore ways this duplication could be removed or addressed”. Given the potentially large number of overlapping plans in the intertidal zone, this is a key issue which requires further thought by the Government.

- 9.4 There is no suggestion that local authorities will lose their development control powers under the Marine Spatial Planning system. It is clear however that the new UK marine policy statement and marine plans will have to be treated as significant material planning considerations on the occasions that planning applications are submitted which take in the intertidal zone. Land use planning policy guidance (especially PPG20 on coastal planning) will have to be re-written to take into account the new system.
- 9.5 In terms of coverage of Marine Plans, the White Paper is very much focused on geographical and administrative boundaries. Ideally however planning activity should take place based on the functionality of a marine area rather than its administrative boundaries; locally, this is likely to be at the “regional sea level (i.e. Irish sea) a conclusion supported by recent research projects in the Irish Sea. Although the White Paper states that it will be important for the MMO to build sound working relationships with regional assemblies, to ensure that it can consider objectives on land and particularly to ensure a joined up approach to major coastal issues and developments such as ports, it is unclear what role Regional land use Planning, especially the Regional Spatial Strategy (RSS) would play in the new Marine Spatial Planning System. The relationship with the Welsh Assembly and Scottish Parliament is particularly important and the Government should consider carefully how to ensure that cross-border co-ordination is developed and maintained.

*The reform of Marine Licensing, Fisheries, Marine Nature Conservation and the Marine Management Organisation.*

- 9.6 In relation to Marine Licensing, the comments on the 2006 consultation indicated that reform of licensing was welcome in principle, but expressed concern that the democratic deficit and lack of transparency on decision-making by central government departments needed to be addressed. The issue of transparency and accountability of decision-making was an issue raised by many other consultees and the White Paper has sought to address this. The Government sees the fact that decisions will have to be made in the context of marine plans (which will be subject to extensive consultation) as in itself ensuring greater consistency and openness in decision-making. The White paper also suggests that in some cases, there where it would be appropriate for the consideration of the application, and the ensuing decision, to be made in public, with criteria agreed to set out the circumstances where this would take place. This is welcome, but any criteria produced by the Government should make clear that

consideration in public should be the rule rather than the exception, for licence applications of more than local importance

- 9.7 To further their objectives on transparency, the Government intends to require licensing bodies to publicise applications, and make details available to anyone who wishes to see them, including electronically. It will also be important that decisions and the reasons and basis for arriving at them are also publicised and justified. Other commitments which are made include the suggested requirement that licensing authorities consult bodies with a particular interest in an application, proposals to regulate more clearly licence application procedures and submission requirements and set out timescales for the application and decision-making processes. These are to be welcomed, although it should be confirmed that local authorities are formally consulted on appropriate licence applications.
- 9.8 In relation to sectors of particular interest to Wirral, the changes to the licensing of offshore renewable projects are intended to consolidate existing procedures (which require several applications) and introduce a single licensing system. Taken together with the procedural changes above, this should improve the consultation and decision-making process. The White Paper does not in itself set out future policy for offshore renewables. Similarly with port activities the proposals are intended to simplify the existing system. One key change would be that where Harbour Revision and Empowerment Orders (which enable port expansion) specifies work in sufficient detail to enable environmental assessments to be carried out, the work will be exempt from marine licensing. Such orders will also be able to take in operations outside harbour areas where they are part of port infrastructure or operations. This will mean that harbour order applications will require close scrutiny in future.
- 9.9 The proposal to consolidate most planning, licensing and regulatory functions within a single Marine Management Organisation is welcome in principle. In responding to the 2006 consultation it was noted that it would be important that the MMO is allowed to function as an independent body that sits outside of government. However the White Paper indicates that while the MMO should be independent from DEFRA, it will not be independent from Government, with ministers remaining ultimately responsible for most decisions. It is not clear as to the extent to which Government Departments will allow the MMO to influence the direction of future national policy on issues such as ports or offshore renewables or whether they will see it as a simply a vehicle for delivering established policies more quickly and efficiently. This could undermine the widely held aspiration for a neutral MMO to deliver marine planning and licencing.
- 9.10 The proposed introduction of Marine Conservation Zones is welcome in principle, although clarification and clear guidelines will be required as to the respective roles of the Secretary of State, nature conservation agencies and MMO in the site selection and designation processes. In addition, the weight to be applied to economic arguments against environmental issues should be transparent.

- 9.11 In relation to the proposed modernisation of sea fisheries, a number of changes are proposed to the system of Sea Fisheries Committees (SFCs), including reducing their maximum size to 15 members with proportion of local authority membership reduced from one half to one third (i.e. 5 seats) with seats being allocated according to the length of coastline and funding contribution. In relation to funding it is proposed that all local authorities with a sea or estuary coastline shall be constituent members of the SFC, with a levy for all reasonable expenses decided by the local authority members who have exclusive voting rights on such matters with all constituent local authorities then being required to fund the agreed levy even if they are not on the committee.
- 9.12 Wirral is a member of the North West and North Wales Sea Fisheries Committee and may be one of the permitted five representatives from local authorities under the proposals depending upon how they are ultimately constituted. However, officers are of the view that DEFRA should be advised that any local authority that is required to contribute financially to the SFC should have representation on the reformed Committee. Members should note that the management of shellfisheries in the Dee Estuary is currently the responsibility of the Environment Agency, although the White Paper suggests that the Government will consider arguments for transferring management responsibilities from the EA to the adjacent sea fisheries committees.
- 9.13 The future role of existing coastal partnerships and Integrated Coastal Zone Management (ICZM) is a key issue. The White Paper suggests that the means of engagement with coastal partnerships and other initiatives will be the proposed Marine Planning Steering Groups. It is far from clear how these groups will interface in practice with existing coastal partnerships which generally have a far wider role. In general the limited references to ICZM in the White Paper is disappointing. The comments on the 2006 consultation highlighted that it is essential that the Marine Bill delivers more support for local government's role in ICZM. Reliance on the voluntary approach and inadequate long term funding has struggled to deliver a sustainable system of management for the country's coastal regions, evident locally in the difficulties in sustaining the management initiatives for both the Dee and Mersey. I am very concerned that the White paper is a missed opportunity for government to commit to funding the wider coastal management remit of local authorities in the same way that they have provided the resources for coastal defence.

#### *Cross boundary issues*

- 9.14 A key issue for Wirral is how the new system will operate across the boundary with Wales in the Dee Estuary. Much of what is proposed in the White Paper will apply to England only as many marine functions are devolved to the Welsh Assembly Government. The White Paper indicates that the Welsh Assembly Government is not prepared to give the MMO functions that have been devolved in relation to Wales or set up an MMO for Wales with equivalent powers or responsibilities to the MMO proposed for England. In Wales, Welsh ministers will

be responsible for preparing marine plans and Welsh ministers will also have responsibility for the establishment of Marine Conservation Zones (MCZs) and for delivering and enforcing other nature conservation measures outlined in the White Paper in Welsh waters. Welsh ministers will also retain responsibility for devolved licensing functions.

- 9.15 The White Paper indicates that the UK Government and Welsh Assembly Government intend to create a close working relationship between the MMO and Welsh ministers to ensure coordination and consistency across the England-Wales border. Clearly devolution has to be respected, but this is a potential area of difficulty for the aspirations for the new Marine Spatial Planning System (particularly within the Irish Sea) and an integrated and consistent approach to marine licensing.

## **10. Conclusions**

- 10.1 The proposed Marine Bill is the most important piece of legislation for the coast and marine environment for many years and its introduction can be supported in principle, along with the proposals for marine spatial planning, simplifying the marine licensing system, improvements to marine nature conservation and creation of a new marine management organisation. There are many matters of detail that will have to be addressed before workable legislation emerges, and some of the issues that need to be considered are highlighted above. It will be important that the Government retains a commitment to consultation and developing legislation and guidance in partnership with all stakeholders as the process goes forward.

## **11.0 Financial & Staffing implications**

- 11.1 There are no financial and staffing implications arising directly out of this report.

## **12. Equal Opportunities implications**

- 12.1 There are no equal opportunities implications arising directly out of this report

## **13. Human Rights implications**

- 13.1 There are no human rights implications arising directly out of this report

## **14. Local Agenda 21 Implications**

- 14.1 The proposed Marine Bill is intended to have the principles of sustainable development at its core and help implement the UK Government's Strategy for sustainable development.

## **15. Local Member Support implications**

- 15.1 This report has no ward Member implications.

## **16. Background Papers**

- 16.1 A Sea Change – A Marine Bill White Paper Department for Environment, Food and Rural Affairs (DEFRA) March 2007

<http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/index.htm>

- 16.2 A Marine Bill - A consultation document of the Department for Environment, Food and Rural Affairs: March 2006

<http://www.defra.gov.uk/corporate/consult/marinebill/index.htm>

## **17. Planning implications**

- 17.1 There are no planning implications arising directly out of this report, although it does highlight issues relating to the coastal boundary of the land use planning system, and the interface with the proposed Marine Spatial Planning system will have implications for land use plans at the land/sea boundary.

## **18. Community Safety implications**

- 18.1 There are no community safety implications arising out of this report.

## **19. Recommendation**

- 19.1 That the comments set out in section 9 form the basis of the Council's response to the Department for Environment Food and Rural Affairs.

### **J. WILKIE**

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