

ANGUS COUNCIL
ANGUS COUNCIL
PLANNING AND TRANSPORT POLICY COMMITTEE 22 NOVEMBER 2001
SUBJECT: FIRTH OF TAY AND EDEN ESTUARY
PROPOSED SPECIAL AREA OF CONSERVATION
REPORT BY DIRECTOR OF PLANNING AND TRANSPORT

Abstract: This report outlines proposals by Scottish Natural Heritage to promote the Firth of Tay and Eden Estuary as a Special Area of Conservation as the first step in a designation to cover the wider Tay river system.

Recommendation

It is recommended that the Committee:-

note the terms of Scottish Natural Heritage's proposal that the Firth of Tay and Eden Estuary be classified as a Special Area of Conservation because of its importance for common seals and estuarine habitats;
agree to advise Scottish Natural Heritage that Angus Council supports in principle the scientific case for the proposed designation of the Firth of Tay as a Special Area of Conservation, and request Scottish Natural Heritage to provide continuing advice and guidance on:-

a schedule of operations or developments likely to affect the proposed Special Area of Conservation and the area over which they apply;
the likely implications of proposed developments within or likely to affect the proposed Special Area of Conservation.

agree, where appropriate, to take account of the proposed designation, together with views from Scottish Natural Heritage, in discharging various relevant land use planning and other responsibilities of the Council, including Development Plan and Development Control responsibilities;
note that the current proposal is part of a phased consultation programme proposing the designation of the entire River Tay and main tributaries as a Special Area of Conservation which has potential implications for development activity in the wider catchment of the river system; and
express concern to Scottish Natural Heritage, that the phasing and timing of possible future consultation, covering various parts of the wider Tay river system, may raise possible confusion and result in difficulties in taking full account of issues which may arise in the later phases which include some areas of Angus.

Introduction

Scottish Natural Heritage, on behalf of the Scottish Executive, are formally consulting on proposals that the Firth of Tay and Eden Estuary, as identified on Map 1 attached to this report, be classified as a Special Area of Conservation (SAC). In addition to the current formal consultation, SNH will be undertaking a further future series of consultations to extend the proposed SAC to cover all of the main stem of the River Tay together with the main tributaries which comprise the very wide area of the river system. This future consultation will include the Dean Water and River Isla within Angus (see Map 2 attached to this report).

The reasons for proposing the SAC designation vary among different parts of the Tay river system. SNH will, in due course, be conducting four phases of consultation relating to specific parts of this extensive river system. Phase 1 consultation covers the Firth of Tay and Eden Estuary. This includes Monifieth Bay SSSI and extends offshore towards Carnoustie. Formal consultation on the Firth of Tay and Eden Estuary proposed SAC commenced in early October 2001, with a timescale for comments upto 19 December 2001, and is the main subject of this Report;

Phase 2 extends upstream from the Inner Tay Estuary to include the main stem of the Tay in Perth & Kinross and up the tributary of the Dochart. Formal consultation on this phase is expected to start in late 2001. This does not directly affect Angus;

Phase 3 will likely comprise the western tributaries of the Almond, Tummel, Garry, Tilt, Lyon and Lochay. Formal consultation on this phase is scheduled to commence in April 2002. Again this does not directly affect Angus;

Phase 4 will include the Dean Water, the Ericht and Isla with consultation commencing in June 2002. This directly affects parts of Angus.

The Firth of Tay and Eden Estuary (Phase 1 consultation) is proposed for designation because the site is considered important for common seals and estuarine habitats. Appendix 1 to this report provides further details on the reasons for recommending this site as a possible Special Area of Conservation. At present the other parts of the Tay river system (Phases 2, 3, 4 consultations) are proposed for designation because of the important populations of Atlantic Salmon and Otter which the river system supports.

BACKGROUND

As a Special Area of Conservation (SAC), the Tay would form part of the Natura 2000 series. This is a network of sites throughout the European Union designated to conserve habitats and species of plants and animals which are rare, endangered or vulnerable in the European Community. The designation is designed to provide these species and habitats with legal protection.

The proposed designation obliges all public bodies to undertake their duties in a manner that conserves the high water and river habitat quality of the Tay. While the proposed designation carries a number of obligations, it is firstly an accolade. It also offers a number of opportunities that could benefit a wide range of land uses.

The importance of Special Areas of Conservation is recognised and reflected in the adopted Angus Local Plan. Appendix 2 to this report contains an extract from the Local Plan (Policy ENV13) indicating the broad land use planning approach to development proposals affecting SAC's. This policy would potentially apply to the Firth of Tay and subsequently to relevant parts of the wider catchment area within Angus where development proposals might have a significant adverse effect on the conservation interests of common seals, estuarine habitats, Atlantic Salmon or Otters.

DISCUSSION

General Comments

SNH have indicated that the decision to phase consultations was taken because of the unweildly task of consulting on the entire possible Special Area of Conservation. While this may have some merits, including distinguishing between saltwater and freshwater conservation interests, it also potentially raises some concerns on the links between different phases of consultation. In practice responses to the earlier phases of consultation and any actions subsequently taken may significantly affect the later phases of the consultation programme. Indeed it is possible that initial conclusions will already have been reached on Phases 1 and 2 before consultation on Phases 3 and 4 is considered.

This is further complicated by the steps involved in the designation process itself. For example, at present the Scottish Executive believes there is a case for designation of the Firth of Tay and Eden Estuary which is why the current (Phase 1) formal consultation is taking place. If, after this consultation, the Scottish Executive is of the opinion that the Firth of Tay and Eden Estuary should be considered for designation as an SAC, then the site will be put forward as a candidate SAC to the European Community. The EC will then carry out a further process of consultation before approving

sites for designation.

Firth of Tay and Eden Estuary Proposed SAC

At present the Firth of Tay and Eden Estuary is the only part of the Tay River System which is the subject of the current formal consultation (see Map 1 attached). In addition to the Inner Tay Estuary and Monifieth Bay SSSI the proposed SAC extends offshore from Barry Links.

The proposed SAC designation overlaps with the existing Special Protection Area for birds which already covers this area (report No. 1039/99 to the Planning & Transport Policy Committee, 14 October 1999 refers). In practice the increased protection afforded by the proposed SAC designation reinforces and supplements current policies for conserving important habitats and species in this area rather than replacing existing designations. It will, however, make it a duty for all competent authorities to assess development proposals and ensure that those developments that might have an adverse affect on the SAC area are allowed to go ahead only in exceptional circumstances.

Members may recall proposals earlier this year to designate the River South Esk as a possible Special Area of Conservation (report No. 103/01 to the Planning & Transport Policy Committee, 25 January 2001 refers). The proposed designation of the Firth of Tay as an SAC raises some similar planning issues, including the likely implications of various types of proposed development which might be relevant to the proposed SAC.

The proposed SAC area comprises key components of the Firth of Tay and Eden Estuary, including subtidal sandbanks and intertidal mudflats and sandflats. However, development in a much wider onshore area of the Angus coastal corridor could potentially have some effect on the area proposed for designation.

Operational procedures are already in place to enable examination of, and facilitate comment by SNH on, development proposals of potential nature conservation significance throughout Angus. In addition to statutory land use planning requirements, this includes input to partnership arrangements in which both Angus Council and SNH are represented and which extend into adjoining local authority areas. Of particular relevance to the proposed SAC designation are:-

the Tay Estuary Forum;

the Tayside Local Biodiversity Partnership.

A key part of the current consultation exercise being undertaken by SNH is to confirm the strength of the scientific case for the proposed designation of the Firth of Tay and Eden Estuary as an SAC. Angus Council alone is not in a position to offer scientific evidence in relation to the proposed designation. However, as discussed above, the Council's land use planning and other policies are directly relevant to the implementation of any future designation.

As proposed in the Angus Local Plan the Council is currently preparing a Shoreline Management Plan for the Angus coastline (report No. 489/01 to Planning & Transport Policy Committee, 26 April 2001 refers). This non-statutory plan will identify preferred management options along the coastline taking into account natural coastal processes, the need for coastal defence, environmental considerations, planning issues and the current and future use of the land. The proposed Tay Estuary SAC reinforces the environmental considerations to be taken into account.

The current commissioning of the Tay Waste Water System involving Arbroath, Carnoustie, Monifieth and the City of Dundee is a major development which will bring significant benefits to the nature conservation interests in the Tay Estuary. This is in accordance with key environmental targets identified in the Angus Community Plan which require a major improvement to the quality of coastal waters by 2002.

financial implications

There are no financial implications arising from this report.

HUMAN RIGHTS IMPLICATIONS

There are no human rights issues arising from this report.

consultation

The Chief Executive, Director of Finance, Director of Law & Administration and Acting Director of Roads have been consulted in the preparation of this report.

Conclusion

The proposal to designate the Firth of Tay and Eden Estuary as a Special Area of Conservation should be viewed in the context of the wider Tay River System which is also likely to be proposed for SAC designation in due course.

The proposed designation has potential implications for the discharge of planning and other functions of the Council not only in the immediate vicinity of the site but extending over a wider catchment area.

The Firth of Tay and Eden Estuary is one of three Scottish estuaries being considered for SAC designation, the others being the Dornoch Firth and Solway Firth.

NOTE

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

AA/CGR/KW

12 November 2001

Alex Anderson

Director of Planning and Transport

APPENDIX 2

Extract from Adopted Angus Local Plan (Adopted November 2000)

"Policy ENV 13: Natura 2000 and RAMSAR Sites

Development likely to have a significant effect on a site designated or proposed under the Habitats or Birds Directives (Special Areas of Conservation and Special Protection Areas), or RAMSAR site and not directly connected with or necessary to the conservation management of that site, must undergo an appropriate assessment as required by Regulation 48 of the Conservation (Natural Habitats etc.) Regulations 1994. The development will only be permitted exceptionally and where the appropriate assessment indicates that:-

it will not adversely affect the integrity of the site;

there are no alternative solutions; and

there are imperative reasons of overriding public interest, including, for sites hosting non-priority habitat types or species, social or economic considerations. For sites hosting priority habitat types or species, the only overriding considerations are human health, public safety, primary environmental benefit or other reason subject to an opinion from the European Commission (requested by the Secretary of State under Regulation 49)."