

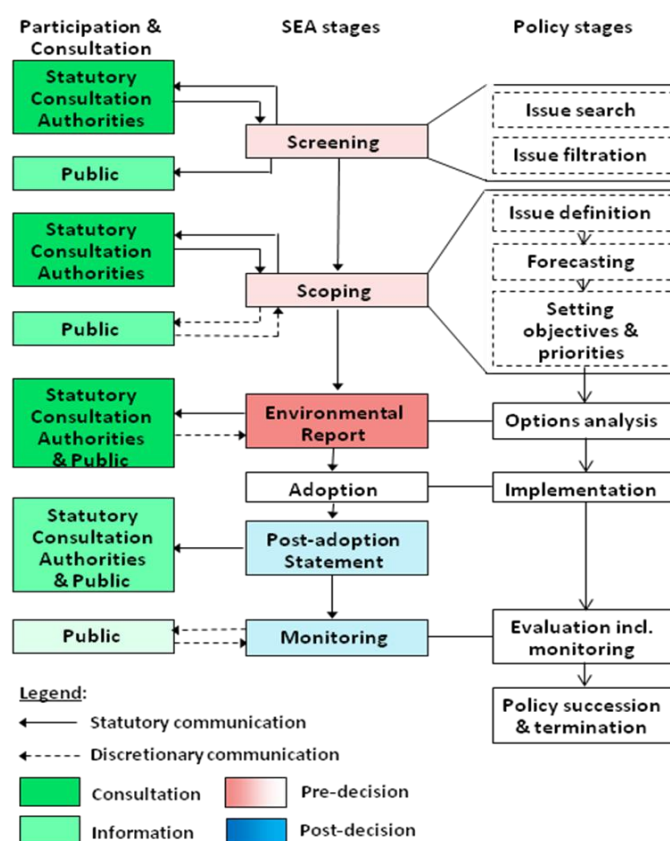
## Opportunity and resistance in Scottish SEA

### 1. Introduction

For the Organisation for Economic Cooperation and Development (OECD) (2006: 46), 'SEA supports *good governance* by: encouraging stakeholder participation ... [and] increasing transparency and accountability'. In accordance with this aspiration, the Scottish Executive hoped that SEA would present the public with 'an early and effective opportunity' to engage with decision-making processes (2006: para. 5.2.4). However, in 2009 the Government Minister for Housing and Communities criticised the reality of much of the public consultation in Scotland. He described the 'charade' and 'facade' of consultation that takes place when decisions have already been made. Against this background, this paper will first discuss the opportunities for participation and consultation in Scottish SEA. It will then discuss two Scottish local authority SEA case studies carried out during 2007-2009. The first considers an inclusive approach to sustainable development through SEA in a Community Planning process. The second examines the SEA process for a more 'top-down' masterplanning exercise which led to the formation of a local action group seeking to challenge what they saw as a lack of effective public consultation. The cases will highlight that the stages of SEA present 'windows of resistance' as well as 'windows of opportunity' (ANSEA Team, 2002).

### 2. Public participation and statutory consultation in Scottish SEA

Assumptions of 'rational' decision on which the European SEA Directive is based are reflected in the guidance in Scotland. The steps outlined in the Scottish SEA 'Tool Kit' closely match those outlined in stagist approach which forms the basis of the Directive (see Figure 1).



**Figure 1.** Participation/consultation in SEA in Scotland related to stages of SEA and policy processes (adapted from Scott (2008: 10), orig. sources Hogwood & Gunn, 1984; Scottish Executive, 2006).



Three statutory consultation authorities (CAs) are actively involved in the early stages of the SEA process in Scotland. They are the Scottish Environmental Protection Agency, Scottish Natural Heritage and Historic Scotland. These CAs are consulted with regard to screening and must respond to Scoping Reports although responses to Environmental Reports are discretionary.

As illustrated in Figure 1, the minimum for public participation in SEA in Scotland consists of the publication of screening determinations and the opportunity for comment by members of the public on the Environmental Report. This conforms to the SEA Directive in which 'early and effective' public input refers to the opportunity to respond to the Environmental Report (EC, 2001, Art. 6.2). A broad consensus can, however, be identified in the literature around the possibility of participatory input *throughout* the SEA process (e.g. Doelle and Sinclair, 2006; Heiland, 2005). Accordingly, the Scottish Executive SEA guidance recommends that the views of the public as well as the statutory consultees are sought 'at various points in the process' (2006, para. 2.2.5).

The following sections will outline opportunities for participation in two local planning processes. They will also highlight points of resistance to participation in plans, programmes and strategies (PPSs) of a 'public character'.

### **3. Case 1 – Community Planning Framework**

This section outlines the public involvement at the stages of an SEA of a Community Planning Framework within a local authority area. While highlighting the inclusiveness and effectiveness of participation, it also reveals the reality that while SEAs of public sector PPSs may contribute to sustainable development, the perception of a loophole means similar actions that are deemed to be 'business-led' will evade SEA despite potentially producing similar impacts.

#### **3.1. Screened in**

The framework was screened in by the Council, with agreement from the CAs, on the grounds that it would have significant (positive) impacts on the environment. Two of the framework's core elements were town centre improvements and sustainable transport. The content of the framework had been generated at an inclusive deliberative workshop. Those who took part included Council officers, CAs, health and police services, business, the voluntary sector and a community councillor as well as representatives from a multi-sectoral (countryside) Access Forum and the local Heritage Trust. The many suggestions made at the workshop were then assessed firstly against SEA criteria and secondly against Community Planning criteria. This reduced the number of possible actions from 47 to 12. These 12 were then scoped into the formal SEA.

The Environmental Report was then prepared by consultants who conducted a further environmental assessment of the 12. All SEA issue areas were included. The feedback received as a result of the six-week consultation period on the PPS and Environmental Report documents was reported to the Community Planning team by the Council SEA lead. It included comments from Council services, a government agency and the consultant who had been hired to facilitate the Community Planning process (including the workshop and focus group). Supportive comments were received from one Community Council concerning the Framework document itself but feedback on the Environmental Report was confined to comments from one of the CAs. The local authority reported that it intended to incorporate that feedback into the Environmental Report.

#### **3.2. Screened out**

At the same time as the Framework/SEA process, there was a Business Improvement District (BID) proposal being developed. While town centre regeneration and transport initiatives were



screened in when considered within the Community Planning Framework, the BID proposal was not. This raises the issue of SEA being applied to the actions of the public *sector* in Scotland, rather than those of a public *character* as prescribed in the guidance: the BID proposal was also a strategy for town centre improvement and also involved the local authority but was screened out because it was 'business-led'. While it too is a strategy to provide functions of a public character, in this case there is no requirement for public participation. The aim of the BID is to boost the economic performance of the town centre through environmental improvement and other measures including increased local and national marketing of the town centre. If successful, there would be transport impacts such as increased road traffic and use of public transport which would have to be addressed.

The recognition of BIDs as performing functions of a public character is important when considering their proliferation and their potential environmental impacts both positive in terms of environmental improvement and where measures to improve local economies and any subsequent success of the programmes incur negative environmental impacts. There are currently 15 BIDs either established or in development encompassing the public realm of town and city centres in Scotland.

#### **4. Case 2 – Corridor Masterplan**

It is crucial for sustainable development that all elements of strategic-level PPSs which have potentially significant environmental impacts are included in the SEA. The following considers public participation in elements that were scoped into an SEA of the development masterplan proposed by a Scottish local authority. It then examines one element of the same masterplan that was scoped out of the SEA.

##### *4.1. Scoped in*

The screening process was undocumented and the Scoping Report, while it does exist, has not been made publicly available. The scope of the SEA covered the brief given to the consultants; two major development areas and a Green Framework. All three CAs responded that they were unhappy that their comments at the scoping stage had not been adequately considered in the Environmental Report. The public and other non-statutory groups were no more successful: the post-adoption statement reveals that none of the 22 comments and objections submitted by individuals that refer to the SEA resulted in changes to the proposals. This despite a list of benefits of SEA in the Scoping Report which appreciated that SEA 'provides the opportunity to integrate the results of public consultation'.

##### *4.2. Scoped out*

A proposal for a new town for 10,000 people, to be built on a greenfield site, was not included in the SEA. This point is noted in the consultation response from one of the CAs. The new town has, according to the Council's Director of Planning 'been an integral part of the masterplan work'. It has equal status to the two development areas that *were* covered by the SEA within the 'delivery' section of the masterplan. The new town was not part of the brief presented to the consultants who conducted the SEA and was therefore scoped out: according to the Environmental Report it is a 'private development' which will undergo a detailed assessment later. Again the issue of liability for SEA being seen as confined to purely public sector actions is relevant. While the proposed new town is deemed to be a private development, it is to contain public sector housing, public roads, public facilities and services. The split in public and private funding for the new town is roughly equal to that for the two development areas that are considered within the SEA.

The subsequent EIA Environmental Statement for the new town states that '[f]ollowing the receipt of consultee responses as part of the strategic environmental assessment (SEA)



process, the [masterplan] was published...'. It does not state that the new town was not included in the SEA. Although the Environmental Report contains a chapter on SEA and consultation, the consultation events listed did not include discussion of SEA. Furthermore, a publicity leaflet produced by the Responsible Authority states that the masterplan 'is accompanied by a Strategic Environmental Assessment (SEA) which the Council is now lodging for consideration by the statutory Consultation Authorities via the SEA Gateway'. None of the terms are defined and no advice is given as to how the public can respond. No effort was made in that instance to address the concern of the Council's own Sustainability Officer that 'the whole SEA process is so bureaucratic and inaccessible that it puts the public off contributing'.

A local action group was formed as a reaction to perceptions of inadequate consultation. The conclusion of the group was that: 'Community engagement was not meaningful enough at the earliest stage to effectively influence the shape of the master plan proposal'. The group felt, for example, that the official version misrepresents the timing and degree of involvement of the Community Council. The group contacted elected representatives on the local and national levels to voice the dissatisfaction of its members. Members have also written to individual Council officers, the Press and the Scottish Council for Development and Industry. The group complained to the Ombudsman who is the arbiter in contentious situations where complainants believe due process has not been followed. The complaint was not upheld.

## 5. Conclusion

While the Scottish guidance and the SEA literature recommend public consultation throughout the SEA process, the cases presented in this paper show contemporary Scottish examples of how Responsible Authority actions at the screening and scoping stages thwart opportunities for public participation. Indeed, in each case there is resistance to SEA through the perceived loophole where 'public character' is being construed as public sector. The first case emphasizes that while a Responsible Authority may implement SEA in accordance with good governance principles, the environmental benefits of SEA will be limited as long as other actions of a 'public character' are not assessed. The second case demonstrates the prioritization of development over both environmental and democratic considerations. The cases therefore do little to dispel the concerns of the Minister for Housing and Communities. Rather, they suggest that Schattschneider's observation (cited in Parsons, 1995: 126) that '[s]ome issues are organised into politics while others are organised out' is relevant to 21<sup>st</sup> century Scottish SEA practice.

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