

**REPORT TO: ENVIRONMENTAL SERVICES & SUSTAINABILITY COMMITTEE –
15 MARCH 2004**

**REPORT ON: SCOTTISH EXECUTIVE CONSULTATION ON PROPOSED
LEGISLATIVE MEASURES TO INTRODUCE STRATEGIC
ENVIRONMENT ASSESSMENT IN SCOTLAND**

**REPORT BY: ASSISTANT CHIEF EXECUTIVE (COMMUNITY PLANNING) AND
DIRECTOR OF PLANNING AND TRANSPORTATION**

REPORT NO: 181-2004

1 PURPOSE OF REPORT

- 1.1 This report outlines the proposals from the Scottish Executive on the introduction of Strategic Environmental Assessment and sets out a proposed response from Dundee City Council.

2 RECOMMENDATIONS

It is recommended that:

- 2.1 Committee endorses the response to the consultation paper as set out in Appendix One.

3 FINANCIAL IMPLICATIONS

- 3.1 There are no direct financial implications to the Council arising from the recommendations of this report. However, the introduction of Strategic Environmental Assessments will have a bearing on the time and cost of producing major Council plans and strategies

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 Strategic Environmental Assessment will make a significant impact on the consideration of sustainability in the Council's work across all Local Agenda 21 themes.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 None.

6 BACKGROUND

- 6.1 As part of its efforts to improve public services and deliver better environmental outcomes to the benefit of Scotland as a whole, the Scottish Executive proposes to legislate to introduce Strategic Environmental Assessment (SEA). Strategic Environmental Assessment provides a systematic method of considering the likely effects on the environment of strategies, plans and programmes that set a broad-based context for future development activity.

- 6.2 Strategic Environmental Assessments will consider all parts of the environment impacts on water, land, air, biodiversity and human health as well as on the built and archaeological heritage of Scotland.

- 6.3 The consultation paper sets out a two-stage approach to SEA legislation:

- a) Regulations to give effect to Directive 2001/42/EC on the Assessment of the Effects of Certain Plans and Programmes on the Environment by 21 July 2004 followed by;
 - b) a Bill to be introduced into the Scottish Parliament in early course to go beyond the requirements of the Directive in order to give effect to the environmental commitment made in A Partnership for a Better Scotland.
- 6.4 SEA as defined in the context of the Directive is a process for the early identification and assessment of the likely significant environmental effects, positive and negative, of certain programmes and plans developed by the public sector. In line with EC guidance on the Directive, and ECJ case law, the public sector includes private companies which undertake functions of a public nature under the control or direction of Government. In the context of the Partnership Agreement commitment, SEA has the same meaning but also applies to public sector strategies. As the term implies, SEA applies at a broad level rather than to individual projects/developments that might arise under any particular strategy, programme or plan. It complements and does not replace environmental impact assessments on individual projects. It allows the cumulative effects of potential developments to be taken into account at an early stage and for alternative approaches to be considered before any decisions are taken at a broad level.
- 6.5 The Directive requires SEA (involving the preparation report) of certain plans and programmes (which are subject to preparation and/or adoption by an authority at national, regional or local level, or through a legislative procedure by Parliament or Government) which are required by legislative, regulatory or administrative means and which:
- a) are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set a framework for future development consent of projects listed in Annexes I and II of the Environmental Impact Assessment Directive (85/337/EEC) as amended by Directive 97/11/EC; or
 - b) require an assessment under Article 6 or 7 of the Habitats Directive (92/43/EEC) as amended by Directive 97/62/EC.
- 6.6 Other plans and programmes which also set a framework for future development consent may be subject to environmental assessment if they are determined, by a screening process, as being likely to have significant environmental effects, either positive or negative.
- 6.7 The Partnership Agreement goes beyond those basic provisions in two key respects:
- it envisages that public sector "strategies" should also be subject to environmental assessment; and
- it applies SEA to all public sector strategies, programmes and plans likely to have significant environmental effects, regardless of whether they are required by legislative, regulatory or administrative means or of whether they set a framework for future development consents.

7 IMPLICATIONS FOR DUNDEE CITY COUNCIL

7.1 The introduction of SEA's as defined in the consultation paper in the context of the Directive will have a number of implications for Dundee City Council :

- a) Plans and programmes adopted by the Council or required by legislation and which establish a framework for future development consents that require Environmental Impact Assessment and which were started before 21 July 2004 and submitted for adoption prior to 21 July 2006 will not require SEA.
- b) Plans and programmes adopted by the Council or required by legislation and which establish a framework for future development consents that require Environmental Impact Assessment and which were started before 21 July 2004 but submitted for adoption after 21 July 2006 will require SEA.
- c) Plans and programmes adopted by the Council or required by legislation and which establish a framework for future development consents that require Environmental Impact Assessment and which were started after 21 July 2004 will required SEA.
- d) Other plans and programmes that establish a framework for future development consents that require EIA that were either started after 21 July 2004 or not submitted for adoption before 21 July 2006 may also require SEA if they are likely to have significant environmental effects. The Council will apply a screening mechanism to determine whether a plan or programme will have significant environmental effects.
- e) Types of plans and programmes prepared by the Council that will automatically require SEA (subject to compliance with above dates) are likely to include:
 - Local Plan
 - Structure Plan or Strategic Development Plan (City Region Plan)
 - Area Waste Plan
- f) Other plans and programmes that might require SEA due to likely significant environmental effects include:
 - Alteration to Local Plan
 - Alteration to Structure Plan
 - Area Based Masterplans
 - Council Plan (insofar as it sets a framework for future development consents affected by EIA Regulations)
 - Coastal Management Plan e.g. coastal protection works

7.2 The Assistant Chief Executive (Community Planning) in consultation with the Director of Planning and Transportation will undertake a detailed analysis of those plans, programmes and strategies which will require SEA once the final regulations are published.

8 CONSULTATION

8.1 All Chief Officers have been consulted in the preparation of this report.

9 **BACKGROUND PAPERS**

None

Chris Ward
Assistant Chief Executive (Community Planning)..... 17/03/04

Mike Galloway
Director of Planning and Transportation17/03/04

Appendix 1

Proposed Dundee City Council Response to Scottish Executive Consultation on Proposed Legislative Measures to Introduce Strategic Environmental Assessment in Scotland

a) The Proposed Regulations

Scope

Q1 To what extent do private companies, carrying out public functions under the control or direction of the Government, develop plans or programmes as defined in the Directive (i.e. required by legislative, regulatory or administrative means and setting a framework for future development consents)?

Answer No comment.

Definition of Plans and Programmes

Q2 Are you content with our proposed definition of plan or programme and our view that it is sufficiently robust to close a potential loophole in the Regulations, that might otherwise allow authorities to bypass SEA for certain activities they do not regard as either a plan or a programme even if that activity is required by legislative, regulatory or administrative means and sets a framework for future development consents?

Answer The definition is sufficiently robust to meet the objectives set out in the regulations. However, in a practical sense the likely environmental effects of a higher level 'strategic' Plan cannot be fully assessed until the latter stages in the plan making hierarchy. For example, the environmental effects of a Structure Plan policy may be difficult to assess until Local Plan stage when policy provisions become more detailed. This raises the importance of 'proportionate to the nature of the plan' approach.

Q3 Is the definition clear enough to ensure the screening process is not overwhelmed with submissions from responsible authorities anxious to ensure that they do not fall foul of the Regulations?

Answer To ensure that the screening process is not overwhelmed it would be useful if the Executive could issue a clearer schedule which defines those plans or programmes which would be automatically subject to SEA and a list of those which might be, together with a measurable threshold such as is set out Schedules 1 and 2 of Planning Advice Note 58 on Environmental Impact Assessment. This would allow for less ambiguity and reduce the opportunity to contrive to fall outside the scope of the regulations.

Handling plans and programmes prepared by groups of authorities

Q4 What are your views on the assumption that the likely number of groupings of responsible authorities which would be developing plans or programmes within the scope of the Directive is small?

Answer **Groupings of authorities are unlikely to consist of more than 5 members, based on current experience.**

Q5 What views do you have on the proposed mechanism for identifying a lead authority in such cases and what proposals do you have for alternative mechanisms?

Answer **The proposed mechanism appears the most pragmatic option.**

The screening process

Q6 What are your views on the proposed screening process described in paragraphs 4.11 to 4.13 above?

Answer **In principle, the screening process is agreeable. Consideration should be given to the potential for external disagreement with the conclusion reached by the authority and consulting authorities on the need for a SEA.**

Q7 What are your views on the alternative approaches described in paragraph 4.14 above?

Answer **The alternative approaches described in paragraph 4.14 are less appropriate than the preferred approach set out in paragraph 4.11 to 4.13 insofar as option 1 is likely to create unnecessary delays in the plan making process, option 2 does not allow sufficient delegated responsibility and option 3 is unlikely to be resource efficient.**

Q8 What other alternatives do you suggest for a screening process?

Answer **None.**

Q9 Will each consultation authority need to establish a specialised unit to respond to SEA demands?

Answer **The need to establish a specialised unit to respond to SEA demands would be determined by the final interpretation of the screening process and further guidance on those plans and programmes which will be subject to SEA.**

Q10 Does the case-by-case approach to screening offer the most practical method of screening or would listing the types of plans and programmes to be screened be more effective?

Answer **See answer to Q3 above. The screening process needs to be more transparent.**

Q11 What is the likely impact of the case-by-case approach to screening on the responsible authorities and on the consultation authorities?

Answer **It is our view that this approach will inevitably add time and cost to the plan making process and, in the absence of further guidance, could result in possible inconsistencies across the country.**

Q12 What are your views on the approach described in paragraphs 4.18 and 4.19 above for the responsible authorities to engage with the screening process?

Answer The guidance which is requested in Q3 above would simplify this process.

Q13 Is 28 days a suitable time period for the consultation authorities to process an SEA screening report?

Answer 28 days is considered a suitable time period.

Q14 Should the responsible authority have to resubmit to screening if it does not pursue a plan within a certain time period and/or if external factors affecting the plan change significantly?

Answer Authorities should be given the discretion to determine on a case-by-case basis whether there is a need to re-submit SEA screening proposals if delays within the time period or external factors would change any plan or programme significantly.

The role of Scottish Ministers

Q15 Are the processes described sufficient to allow Scottish Ministers to deal with disagreements about the need for SEA in respect of plans or programmes prepared by the Scottish Executive or its agencies on behalf of the Scottish Ministers themselves?

Answer In principle, this process is agreeable, however, further detail would be required about the process and timescale to be followed.

Environmental Assessment

Q16 Is any additional guidance necessary on any aspect of Annex I to the Directive?

Answer Additional guidance would be valuable in relation to:

- e) where a list of the environmental protection objectives could be provided,
- f) where examples of significant effects could be defined together with impact and measures which would determine whether SEAs were necessary, and
- h) a list of standard methodologies for assessment would be valuable together with a range of alternatives

Q17 Are the measures described in paragraph 4.27 sufficient to ensure the quality of environmental reports?

Answer The measures described would be sufficient to ensure the quality of environmental reports, however, consultation authorities should be reasonable in recommending SEAs "in proportion".

Q18 What remedial measures should be taken if an environmental report is considered not to be of sufficient quality?

Answer Responsible authorities should be given an opportunity to amend the environmental report before any referral to the Scottish Ministers.

This should only take place if consultation authorities and responsible authorities cannot reach agreement.

The point by which assessment should be carried out

Q19 Is it necessary to define "adoption" and/or "submission to the legislative procedure" in the draft Regulations: If so, how those terms might best be defined?

Answer No comment.

Q20 Should the Regulations specify that the consideration of plans and programmes, and the opinions expressed on them, during the legislative process are not subject to Article 8 of the Directive?

Answer No comment.

Avoiding duplication of assessment

Q21 To what degree might a less detailed SEA be carried out on a plan or programme because the same subject matter is already subject to SEA at another level?

Answer The degree to which a less detailed SEA might be carried out on a plan or programme because the same subject matter is already subject to a SEA at another level would depend on the original SEA e.g. Planning Authorities should not be expected to repeat the SEA process in respect of a Local Plan development strategy that conforms to an approved Structure Plan which has already been subject to SEA or sustainability appraisal.

Q22 Should any time limit be set for the use of information procured as part of an earlier SEA?

Answer A time limit may be appropriate, however, the responsible authority should have discretion to apply it depending upon the degree of change from the original SEA.

Q23 Should provisions be introduced to provide a check on the value of information procured as part of an earlier SEA, or do the consultation mechanisms in place already provide a sufficient control mechanism?

Answer The assessment of the value of information procured as part of an earlier SEA should be undertaken by the responsible authority.

The list of consultation authorities

Q24 Who should the consultation authorities be for the purposes of the draft Regulations?

Answer The proposed list of consultation authorities in the draft regulations is agreed.

Q25 Should the Regulations specifically list the consultation authorities or simply provide that the Scottish Ministers determine the relevant consultation authorities on a case-by-case basis?

Answer A list of consultation authorities would be useful.

Q26 Should all those on any list be involved in every case, or should the Regulations provide for relevant consultation authorities to be consulted - if the latter, how should relevant consultation authorities be selected; should there be a requirement to consult the Scottish Ministers and SEPA in all cases?

Answer For consistency all relevant environmental authorities should be consulted on all cases.

The definition of the "public"

Q27 What views do you have on the proposal to define "public" in the Regulations in broad terms?

Answer The definition of "public" in the regulations appears appropriate.

Q28 What mechanisms do you suggest for making plans and programmes and environmental reports available to the public?

Answer In Dundee electronic copies of plans are usually made available through the Council's website together with paper copies in the Council's public offices including libraries where appropriate.

Q29 Should any mechanisms for making plans and programmes available to the public be specified in the Regulations; should the Regulations leave this to the responsible authorities; or should the Regulations include a menu from which the responsible authorities must select the most appropriate mechanism?

Answer A menu from which responsible authorities must select the most appropriate option would be preferable.

Timescale for consultation

Q30 What are your views on the proposal for a period of a minimum of 28 days and of sufficient length to allow consultees to express their opinions?

Answer The 28 day consultation period would be appropriate, however, this may be extended to 6 weeks if consultation is taking place over a holiday period.

Monitoring

Q31 Do the proposals for monitoring fully meet the Directive's requirements?

Answer Yes.

Q32 Should the Regulations provide for the Scottish Ministers to determine the monitoring methods to be used in specific cases, if they do not consider the measures proposed by the responsible authority to be sufficiently robust?

Answer Clear guidance on monitoring methods is more likely to ensure compliance and consistency.

Implementation and entry into force

Q33 Is it necessary to define "first formal preparatory act"?

Answer Given the need to formally apply the regulations based on the first formal preparatory act it would be useful to have a definition.

b) The Proposed Bill

The definition of strategies

Q34 What is your view of the proposed definition?

Answer Fine, but examples would be useful to assist interpretation.

Q35 What will be the likely extent of the Bill if that definition of strategies were to stand (e.g. how many voluntary strategies, plans and programmes might fall within its scope?)

Answer It is impossible at this time to estimate the number of voluntary strategies plans and programmes which might fall within its scope. Rigorous screening criteria for strategies would be required to ensure that SEAs were not required for small matters which in any case would overwhelm the consultation authorities with applications.

Q36 Are any modifications required to the criteria in Annex II to the Directive?

Answer More tightly defined screening criteria would be of assistance.

The application of the screening process

Q37 Do you agree that the screening process described in paragraphs 4.11 to 4.13 above is generally applicable to strategies, plans and programmes outwith the scope of the Directive?

Answer Self screening by responsible authorities is the most appropriate mechanism. This process could be supported through the issuing of guidance which would promote accountability.

Q38 What are your views on whether a pre-screening process as described in paragraphs 4.59 and 4.60 above is desirable?

Answer The pre-screening process as described is desirable in principle.

Q39 What are the potential implications of separate regimes for plans and programmes within the scope of the Directive and wider strategies, plans and programmes within the context of the Partnership Agreement?

Answer It is not envisaged that the separate regimes within the scope of the Directive and the Bill would cause any difficulty.

The impact on private companies carrying out public functions

Q40 Should such companies be subject to the provisions of the Bill?

Answer Yes.

Q41 What is the likely number of strategies, plans and programmes to which the Bill might apply if its provisions extent to such companies?

Answer **No comment.**

Whether to modify Annex I and II to the Directive

Q42 What are your views on whether modifications are necessary, and on the proposal to create an enabling provision in the Bill for future modifications?

Answer **An enabling provision in the Bill for future modifications would offer a sensible means of moving forward.**

Whether socio-economic factors should be taken into account in the preparation of environmental reports

Q43 Do you agree with the approach set out in paragraph 4.66 that notwithstanding the importance of socio-economic factors in reaching final implementation decisions, the SEA report should only contain environmental factors?

Answer **It is agreed that the SEA report should only contain environmental factors as long as the broader socio-economic factors are given due consideration in reaching decisions.**

Possible additional exemptions

Q44 Should the Bill enable the Scottish Ministers to make additional exemptions?

Answer **No comment.**

Q45 Should the Bill go further than enabling provisions and list those organisations whose strategies, plans and programmes are exempt from the wider SEA requirement (but not from the requirements of the Directive)?

Answer **No comment.**

Q46 Which organisations might sensibly be exempted from the wider provisions of the Bill?

Answer **Any organisations which are exempted from the wider provisions of the Bill should be clearly published in advance of the Bill and Regulations.**

Likely numbers of strategies, plans and programmes to be subject to SEA and the likely costs

Q47 What are your views on the Scottish Executive's estimate of resource impact based on the likely annual numbers of plans and programmes within the scope of the Directive that might require SEA, and the associated costs to the responsible authorities (including private companies carrying out public functions) of preparing such SEAs?

Answer **It is impossible to estimate the resource impact of plans and programmes within the scope of the Directive at this stage until further guidance is made available. However, it is anticipated that SEA will add considerably to the timescales for plan preparation, and will have significant resource implications for local authorities in**

terms of increased workloads, possible specialist posts and additional training requirements.

Q48 What are the likely additional annual numbers of strategies, plans and programmes within the scope of the Bill that might require SEA, and the associated costs to the responsible authorities (including private companies carrying out public functions) of preparing such SEAs?

Answer See Q47.

Q49 What are the likely costs, for each consultation authority, of the screening and other consultation processes under the provisions of the Directive and the Bill?

Answer See Q47.

Q50 What are the likely costs, for each non-governmental organisation with a particular interest in environmental protection, of the public consultation process under the provisions of the Directive and the Bill?

Answer See Q47.