REPORT TO: **DEVELOPMENT QUALITY COMMITTEE - 21 APRIL 2008**

REPORT ON: **PERMITTED DEVELOPMENT RIGHTS FOR DOMESTIC MICROGENERATION EQUIPMENT**

REPORT BY: **DIRECTOR OF PLANNING & TRANSPORTATION**

REPORT NO: **198-2008**

1 PURPOSE OF REPORT

1.1 The report seeks to confirm the views of the Council in response to the Consultation Paper "Permitted Development Rights for Domestic Microgeneration Equipment" and to authorise the Director of Planning and Transportation to issue a response to Scottish Government by 12 May 2008.

2 RECOMMENDATION

2.1 It is recommended that the Committee:

a endorses Annex A to this report as the Council's formal response to the Consultation Paper;

b authorises the Director of Planning and Transportation to issue the formal response to the Scottish Government by 12 May 2008.

3 FINANCIAL IMPLICATIONS

3.1 As outlined in the proposed response, it is unlikely that the proposals for the broadening of permitted development rights with the safeguards which they include will result in any significant decrease in income from fees. In fact the need for planning permission may lead to an increase in fees generated from this source.

3.2 Any increase in the levels of applications made to the Council is, however, likely to impose additional workloads on case officers and consultees, particularly in the Environmental Health and Trading Standards Department in relation to issues of noise and air quality where additional information from applicants is sought and evaluated and advice to planning officers given.

3.3 The unpredictability of likely additional levels of application numbers makes accurate assessment of net budget costs difficult.

4 BACKGROUND

4.1 The Scottish Ministers are committed to promoting a greater uptake of microgeneration, recognising its potential to provide a sustainable source of low carbon energy and in reducing carbon dioxide emissions from buildings. It forms part of a coherent approach to energy policy, recognising that promoting reduced energy consumption and promoting low carbon technologies are key to achieving sustainable economic growth.

4.2 In order to encourage the installation of more microgeneration equipment on domestic buildings, this Consultation Paper is seeking views on the extent to which planning control can be reduced for domestic buildings by making microgeneration

equipment 'permitted development' and thus removing the need to apply for planning permission. The draft proposals seek to strike a balance between the control of adverse impacts on neighbours, amenity generally, the wider environmental benefits of CO_2 emission reductions and the encouragement of the wider use of domestic microgeneration techniques which freeing up the planning system would bring.

4.3 The types of micro renewable equipment are:-

- solar water heating,
- solar electricity (photo-voltaics),
- small wind turbines,
- biomass boilers,
- heat pumps (ground, water and air source),
- combined heat and power systems, and
- hydro-electric generators.

4.4 At the moment the installation of microgeneration equipment such as solar panels, heat pumps or wind turbines almost always requires householders to apply for planning permission and for this to be specifically granted by the planning authority. The cost and time required are a disincentive. If, however, the equipment were to be defined as 'permitted development' by amending secondary legislation, permission would be granted as a right, provided it met strict criteria.

4.5 However, PD rights have to cover general situations and hence are set at a precautionary level, but the consideration of the specific circumstances of a case by a planning authority can take account of local circumstances. Part of that consideration will involve giving those most likely to be affected by the proposal an opportunity to have their views taken into account before the planning authority determines the application. It also gives the planning authority the opportunity to impose specific conditions to control adverse effects, without which they would have to refuse the application.

4.6 Even when small scale developments are permitted development the legislation often build in qualifications which when satisfied give the required environment protection to communities and neighbours. Examples of this are the siting of permitted works so that they would not materially affect the external appearance of a building or more clear cut exceptions, for example the requirement for planning permission for all developments in a conservation area or the requirement for listed building consent for the most minor proposal when applied to a listed building.

4.7 The Consultation Paper contains a Draft Amendment Order which when applied would vary and supplement the existing Permitted Development Order which applies to a comprehensive range of other small scale domestic projects.

4.8 The Consultation Paper poses a series of 25 questions and these together with suggested Council responses are set out in Annex A to this report.

4.9 The full text of the Consultation Paper is set out in the Scottish Government's website at

www.scotland.gov.uk/Publications/2008/03/04090052/0

Copies of the document have been deposited in the Members Lounges.

5 POLICY IMPLICATIONS

5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6 CONSULTATIONS

6.1 The Chief Executive, Depute Chief Executive (Support Services) and Depute Chief Executive (Finance) have been consulted and are in agreement with the contents of this report.

7 BACKGROUND PAPERS

7.1 Permitted Development for Domestic Microgeneration Equipment - Consultation Paper (Scottish Government - March 2008).

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Annex A: Permitted Development Rights for Domestic Microgeneration Equipment - Consultation Paper

Questions and Council Response

A General

Q1 - Are there sufficient grounds to further constrain the PD proposals for domestic microgeneration equipment, especially wind turbines, in areas designated for their landscape quality? Please provide justification or evidence for your answer.

Response - The Council considers that the proposals summarised in Paras 23 and 24 of the Consultation Paper offer an appropriate balance between the encouragement of microgeneration and the protection of areas of landscape importance.

Q2 - Are there sufficient grounds to further constrain the PD proposals for domestic microgeneration equipment in areas designated for the protection of flora and fauna? Please provide justification or evidence for your answer.

Response - As for Q 1.

B Natural and Built Heritage

Proposal: Special controls are proposed for areas such as Sites of Special Scientific Interest, Conservation Areas, National Parks, National Scenic Areas, Areas of Great Landscape Value, regional and country parks and green belts.

Q3 - Should PD rights for microgeneration equipment, except wind turbines, be granted in areas designated for the built heritage value providing that the principle elevation fronting a highway is unaffected?

Response - The Council supports the balance which this strikes between the protection of the built heritage and the promotion of microgeneration.

Proposal: Listed Building Consent would be required for the installation of microgeneration equipment. No permitted development rights would exist for proposals within the curtilage of a listed building.

Q4 - Are the separate controls for listed buildings sufficient to control the installation of microgeneration equipment? If not, what specific provisions are necessary?

Response - The Council considers that it is important that no permitted development rights should apply to listed buildings given that the most modest of development can adversely impact on their appearance.

Q5 - Will the setting of listed buildings be adequately protected by not granting PD rights to wind turbines and solar arrays within their curtilage?

Response - The Council supports this proposal. The setting of a listed building can be adversely affected by inappropriately located and designed development and can devalue the controls which apply to the listed buildings themselves. However, proposals for microgeneration other than turbines and solar arrays are unlikely to have an adverse impact.

C General Conditions

Proposal: It is not proposed to use general conditions within the Order which rely on the interpretation of the applicant and which might lead to the seeking of interpretations from the planning authority.

Q6 - Do you think that general conditions on amenity and other impacts should be applied to the PD rights for microgeneration equipment?

Response - The Council argues that it is inappropriate for general conditions to be specified within the Order. These are open to misinterpretation as they involve judgement. The Order should be clear and unambiguous leaving the applicant and the planning authority in no doubt as to the need for planning permission.

D Solar Water Heating and Photo-Voltaics

Proposal: Solar heating panels use the sun's rays to heat water, photo voltaic panels use the sun's rays to generate electricity. Panels for both are similar and typically measure 2 x 1 x .12 metres and can be mounted on roofs, walls or as free standing arrays. The proposed permitted development limits are as set out in Qs 7-11 below.

Q7 - Do you agree that the same PD rights should apply to solar water heating and photo-voltaic panels? If not, please say why?

Response - The Council considers that the same PD rights should apply as the environmental impact of each category is likely to be similar. However, this should be on the understanding that no noise is emitted from any motor involved in moving the panels.

Q8 - Do you consider that the proposed PD limits for solar panels on domestic buildings of 150mm above the plane of a pitched roof or a wall, not higher than the highest point of a pitched roof and covering up to 60% of the roof or wall area are appropriate? If not, what should the limits be and why?

Response - The Council considers that the Scottish Government is right to restrict the coverage of the panels on any roof area to the % specified as to cover the entire roof would

raise design issues. However, there appears to be no similar restriction to be applied in respect of wall coverage. A restriction should be imposed in the interests of amenity and to protect the character and design of the original building.

Q9 - Do you agree that there should be no PD for solar panels on the walls of buildings containing flats?

Response - The Council supports this proposal as unrestricted PD rights could lead to an unco-ordinated patchwork appearance contrary to the amenity of an area or the preservation of the appearance or character of the existing building.

Q10 - For flat roofs do you agree or do you have alternatives to the suggestion that PD rights for panels should be set so that they are no closer than 1m to the edge of the roof, with the highest point of the panel not more than 1m above the plane of the roof and covering up to 60% of its area? If not, please suggest alternative provisions.

Response - The Council agrees that these criteria are appropriate.

Q11 - For free-standing arrays, should PD rights be set at less than 4m in height, at least 5m from the property boundary and with a maximum area of 9m^2?

Response - Apart from establishing size criteria the Consultation Paper indicates that it is prepared to relax the existing PD Order to allow the free standing array to be located between a road and the property concerned. This is in order that the most efficient location is used. However, given the potential size and appearance of these structures, the Council considers that such a relaxation could result in amenity issues and be seen to be inconsistent with other kinds of development restrictions in such areas.

E <u>Wind Turbines</u>

Proposal: It is proposed that because of potential noise, vibration and light flicker issues, PD rights for both wall/roof mounted and freestanding domestic turbines should be strictly limited as set out in Qs 13-15.

Q12 - Do you agree with the principle of applying a distance criteria for wind turbines to deal with the potentially adverse impacts?

Response - The Council is disappointed that the Scottish Government has adopted this approach although the reasons for it doing so are appreciated. The application of a distance criteria will largely eliminate permitted development rights for domestic wind turbines from most urban areas in Scotland. Consequently the objective of freeing up the planning system in these areas is compromised and may dissuade householders from following up on the microgeneration option because of the potential cost in making an application, the preparation of supporting information on noise and other environmental issues and the

potential delay whilst the planning system assesses and resolves these issues.

It is agreed that the issue of noise attenuation is one where suppression or control is necessary in the interests of local amenity. Given the scale of individual units, shadow flicker and vibration are considered to be less of a problem. As indicated in Para 37 of the Consultation Paper a longer term alternative of an accreditation scheme is suggested. It is disappointing that this more appropriate approach was not followed up sooner and the results incorporated in the Draft Order.

Dundee City Council fully supports the promotion of alternative types of energy generation and is actively responding to the challenge which climate change brings. However, so far it has been frustrated in supporting these policies by not being in a position to determine the limited number of domestic wind turbine proposals which have been submitted. This is frustrating for both the applicant and officers who have been active in trying to find a workable solution.

The requirement for planning permission leaves planning authorities in a difficult position. So far it has not been possible for appropriate noise attenuation standards to be devised for applications as enforceable planning conditions and this is the sole issue which is holding up the determination of domestic wind turbine planning applications in Dundee. Approaches for information/advice from manufacturers and Scottish Government have not been fruitful. The draft proposals do not contain advice which would help and therefore the dilemma remains. However, suitably accredited equipment meeting noise output and vibration criteria and supplied by accredited manufacturers and installers could free the way for the introduction of less restricted permitted development rules.

If this suggestion is not supported by Scottish Government then it is essential that technical advice relating to noise and vibration is urgently issued to planning authorities, following consultation with environmental health officers, in order that competent and enforceable conditions can be drafted and applied.

Q13 - If you agree with question 12 do you think it should be set at 100m to the nearest domestic building or can you suggest and give evidence for another figure?

Response - See answer to Q12 above.

Q14 - Do you agree with the following limits on the scale of building mounted wind turbines? (each turbine blade up to 1.1m in length, up to 3m above the highest part of the roof and one per building).

Response - The paper contains no justification for such dimensions. However, it is recognised that in order to take most advantage of prevailing winds and to ensure clearance

of the structure by the blades, criteria such as this are necessary. It therefore has to be accepted that in certain locations these structures will become new, and often prominent, features in the urban landscape.

Q15 - Do you agree with the following limits on the scale of free-standing turbines? (each blade up to 1.1m in length and a maximum height including tower of 11.1m to the tip of the turbine blade, located at least 12m from the boundary of the property and one per curtilage).

Response - In a dense urban area such as Dundee and under the 100m rule (See Q13) these criteria will be largely academic as planning permission is likely to be required in most cases. Therefore issues relating to noise, vibration, shadow flicker and visual amenity will fall to be considered by the Council in determining a planning application. (See comments relating to noise in the response to Q12).

Q16 - Should the visual impact of freestanding turbine masts be controlled by a condition on the PD rights such as 'provided the colour of the mast minimises its visual impact' or can you suggest an alternative formula?

Response - As indicated in the response to Q6, the Council considers it unhelpful to include conditions within the Order which are open to interpretation.

F <u>Biomass</u>

Proposal: Biomass stoves and boilers burn wood usually in the form of pellets or chips to generate heat. Air quality from emissions has been a concern relating to their use in urban areas. Planning issues concern flues and the storage/delivery of wood. The proposed PD limits are set in Qs 17-18.

Q17 - Do you agree that flues for biomass stoves should be permitted development up to 1m above the highest point of the roof but not on the principal elevation in conservation areas?

Response - The Council agrees that apart from the flue and the stove, this type of development will not require planning permission. However, it is noted that no maximum diameter for the flue is indicated. Scottish Government is requested to consider imposing a maximum diameter criterion. The Council's main concern is that there appears to be lack of clarity as to what legislation will control the quality of emissions from the flue. Scottish Government is asked to investigate this matter further. The absence of such method of quality control could potentially compromise local area quality and the value of Air Quality Management areas in general.

Q18 - Do you agree that wood stores should be treated in the same way as any other residential alterations or ancillary development, so that depending on circumstances

they may be PD?

Response - The Council agrees.

G Heat Pumps

Proposal: Heat pumps collect low level heat from outside a building (from the ground, water or the air) and release it at a higher temperature inside the building. Trenches or boreholes are required. Air source heat pumps raise issues of noise. The scope of proposed permitted development is set out in Qs 19-21.

Q19 - Do you agree with the proposal that ground and water sources heat pumps, including the collectors and associated trenches or boreholes should be permitted development?

Response - The Council has concerns that permitted development would mean there could be limited or no control over the disturbance of ground which is contaminated or potentially contaminated. The potential risk is such that there should be no permitted development rights in this case.

Q20 - Do you agree that air source heat pumps should be permitted development with the proviso that they should not be located within 100m of a separate house or flat?

Response - Similar issues arise to those which will apply to wind turbines in relation to noise. If a suitable accreditation scheme is not possible or is delayed then detailed technical guidance from Scottish Ministers is essential to allow the speedy determination of such applications.

Q21 - If you think the distance criteria should be different, please say what you suggest and give the evidence to justify it.

Response - As for response to Q20.

H Combined Heat and Power

Proposal: A combined heat and power device simultaneously generates electricity and heat for water and space heating. The units are available as replacements for domestic boilers and largely are likely to give rise to planning issues other than those mentioned in respect of domestic biomass proposals.

Q22 - Do you agree that there are no PD issues for domestic combined heat and power devices except for flues, in which case the PD limit should be 1m above the highest point of the roof, and additionally in conservation areas or world heritage sites not on the principal elevation and visible from a road?

Response - As for response to Q17.

I Hydro-electricity

Proposal: Hydro schemes generate electricity by using water to turn a turbine connected to a generator. For the purposes of consultation the Scottish Government has adopted a precautionary approach and are proposing no additional PD rights.

Q23 - Do you agree that there should be no additional PD rights for domestic scale hydro-electric generating schemes? If 'no' please see the next question.

Response - The Council supports this precautionary approach for this type of generation.

Q24 - If you have answered 'no' to the previous question please say in what circumstances and within what criteria you think that domestic scale hydro schemes should be permitted development.

Response - Not applicable.

J Cumulative Effects

Proposal: The PD proposals in the paper have been set on the basis of each individual technology. Scottish Government research has indicated that there should be a limit of 50kW (or 45kW thermal) within the curtilage of a single house.

Q25 - Do you think that an overall limit should be set for the combined microgeneration capacity which is permitted development, and if so what should it be? Please justify your answer.

Response - The reason for setting an overall limit relating to generating output in terms of kW is not entirely understood as no justification for the limit proposed is given. Any such limit should clearly be linked to the cumulative input of environmental effects rather than the crude measure of energy output. It is considered that if the noise issue is competently addressed and the limit of one wind turbine per property/curtilage confirmed there should be no need to impose any output limit from a combination of sources. What is of greater concern is the potential cumulative visual impact on a community of individual turbine proposals but as indicated they may have to be the price to be paid for achieving alternative energy objectives within a reasonable planning control regime.