

REPORT TO: PLANNING AND TRANSPORTATION COMMITTEE
15 NOVEMBER 2004

REPORT ON: SCOTTISH EXECUTIVE CONSULTATION ON PROPOSED
ENVIRONMENTAL ASSESSMENT (SCOTLAND) BILL

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

REPORT NO: 725-2004

1 PURPOSE OF REPORT

- 1.1 This report outlines the proposals from the Scottish Executive on the introduction of the Environmental Assessment (Scotland) Bill and sets out the draft response submitted by Dundee City Council to meet the October consultation deadline.

2 RECOMMENDATIONS

- 2.1 It is recommended that the Committee:
- a endorses the draft response to the consultation paper as set out in Appendix 1; and
 - b remits the Assistant Chief Executive (Community Planning) to submit the approved response to the Scottish Executive on behalf of Dundee City Council.

3 FINANCIAL IMPLICATIONS

- 3.1 There are no direct financial implications to the Council arising from the recommendations of this report. However, implementing the Strategic Environmental Assessment (Scotland) Bill is likely to have a significant impact on the Council in terms of staff time to administer the new requirements and costs associated with environmental reporting for relevant Council strategies, plans and programmes. A future Committee Report will recommend an implementation framework that minimises financial costs to the Council as far as possible, particularly in respect of environmental reporting.

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 Strategic Environmental Assessment (SEA) seeks to provide for a high level of protection of the environment and integrate environmental considerations into the preparation and adoption of plans and programmes to promote sustainable development. It will achieve better policy making by ensuring that environmental effects are fully considered at an early stage in policy formulation and the environmental effects of different options are assessed. SEA will therefore make a significant impact on the consideration of sustainability issues across all Local Agenda 21 themes.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 SEA will contribute to more open government. The public and interested organisations will be able to comment on environmental reports and public bodies will be obliged to explain how they have taken such comments into account.

6 BACKGROUND

- 6.1 Joint Report No 181-2004 by the Assistant Chief Executive (Community Planning) and the Director of Planning and Transportation outlined the proposals from the Scottish Executive on introducing Strategic Environmental Assessment (SEA) and set out a proposed response from Dundee City Council, which Environmental Services and Sustainability Committee endorsed on the 15 March 2004. The Environmental Assessment of Plans and Programmes

(Scotland) Regulations 2004 “the Regulations”, have since come into force on 20 July 2004 and implement the SEA Directive.

- 6.2 As detailed in the above report and outlined in Report No 660-2004 by the Director of Planning and Transportation, the SEA Regulations are expressly applied to certain plans and programmes required by legislative, regulatory or administrative means that are prepared and/or adopted by a responsible authority or through a legislative procedure. These include plans and programmes prepared for forestry, energy, industry, transport, waste management, tourism, town and country planning or land use, and which set a framework for future development consents. A responsible authority is any person exercising functions of a public character and includes for example, the Scottish Executive, local authorities, Scottish Natural Heritage, the Scottish Environment Protection Agency, National Health Service in Scotland, Scottish Water and privatised utility companies.
- 6.3 Other plans and programmes outwith these sectors which set a framework for future development consents may require SEA if they are determined, by a screening process, as being likely to have significant environmental effects, positive or negative.
- 6.4 The Regulations apply to new plans and programmes started on or after 21 July 2004, as well as those started prior to 21 July 2004 where they are unlikely to be adopted by 22 July 2006.

7 PROPOSED SEA (SCOTLAND) BILL

- 7.1 The Scottish Executive is now consulting on the proposed Environmental Assessment (Scotland) Bill that will go beyond the requirements of the Directive to implement the Executive's Partnership Agreement on Strategic Environmental Assessment. This new Bill will apply to a wider range of public sector strategies, plans and programmes, irrespective of whether they are required by legislative means or set a framework for future development consents. The Executive envisages that the Bill will be progressed this Parliamentary session.

Features of the Bill

- 7.2 The main features of the Bill remain as outlined in the previous consultation, modified to some degree by comments received:
- a it will be free standing and not seek to introduce requirements on SEA into existing legislation;
 - b the SEA administrative process for the wider range of cases covered by the Bill will largely be the same as under the current Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (The Regulations). This will allow a smooth transition from one regime to the other. Efficiency and quality enhancements to the administrative process will be under constant development to ensure the process is as streamlined as possible;
 - c it will incorporate and extend the provisions of the Regulations made to implement the Directive which will then be revoked;
 - d it will cover strategies, plans and programmes, including removing the qualification in the Regulations that plans and programmes are to be subject to SEA only if they are required by legislative or other means and only if they set a framework for future development consent of projects;
 - e bodies preparing plans etc (responsible authorities) will be able to carry out self determination or pre-screening in certain cases where it is clear that environmental effects do not exist or are minimal. It will be clear if any qualifying public plans are not

being submitted to the SEA process and Scottish Ministers will have powers to ensure that all those plans are brought into the assessment process;

- f Scottish Ministers will have the power to exempt certain categories of authority or certain plans, programmes or strategies from the SEA requirement. It is intended that individual schools be exempted and the power to exempt other bodies may be used later if appropriate; and
- g information required for the wider range of environmental reports will be the same as under the Regulations. There will be a provision allowing the Scottish Ministers to add to the information required if this becomes appropriate.

8 DUNDEE CITY COUNCIL'S RESPONSE TO THE CONSULTATION

- 8.1 Appendix 1 to this Report sets out the Council's draft response to the consultation paper and draft Bill, including general comments and detailed responses to the 10 specific questions.
- 8.2 Due to the limited consultation period set by the Executive, it was not possible to seek the Committee's approval of this draft response prior to the consultation deadline of 29 October 2004. This Report therefore seeks endorsement of Appendix 1 and recommends that the Assistant Chief Executive (Community Planning) submits these comments to the Executive as the Council's formal response.
- 8.3 A joint report by the Assistant Chief Executive (Community Planning) and the Director of Planning and Transportation will be submitted to the Chief Executive's Management Team outlining the Council's strategies, plans and programmes likely to require SEA. This also recommended an implementation structure for the day to day administration of SEA and Environmental Reporting.

9 CONSULTATIONS

- 9.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Assistant Chief Executive (Community Planning) and Head of Environmental Health and Trading Standards have been consulted and are in agreement with the contents of this report.

10 BACKGROUND PAPERS

Report No 181-2004 – Scottish Executive consultation on proposed legislative measures to introduce Strategic Environmental Assessment in Scotland.

Report No 660-2004 – SEDD Circular 2/2004 Strategic Environmental Assessment for Development Planning.

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Assistant Chief Executive
(Community Planning)

Mike Galloway
Director of Planning & Transportation

APPENDIX 1**DUNDEE CITY COUNCIL'S RESPONSE TO ENVIRONMENTAL ASSESSMENT (SCOTLAND) BILL - A CONSULTATION****OCTOBER 2004****1 GENERAL COMMENTS**

- 1.1 Whilst supporting the implementation of SEA legislation in Scotland, it is clear that with the introduction of the SEA (Scotland) Bill the impact on service delivery for most, if not all, Responsible Authorities will be significant. Both Responsible Authorities and Consultation Authorities will have to find ways of incorporating these new duties into their existing management frameworks with no additional resources to train Officers in the administrative and environmental reporting processes for SEA.
- 1.2 Having undertaken a scoping exercise to determine the number and type of strategies, plans and programmes Dundee City Council has that are likely to be subject to the Directive and forthcoming Bill, a total of 55 were identified, 31 of these from the Council's Planning and Transportation Department alone. We therefore still have particular concerns that without additional funding for Responsible Authorities to deal with the legislation, the Bill could prove too onerous in terms of resources and the time it will take to complete assessments for individual strategies, plans and programmes, in addition to the actual plan making process. The Executive also states in this document that most bodies will have to raise their game to be able to implement SEA which "will inevitably raise costs" (P1, paragraph 5). If the Executive want to adopt an approach to SEA that minimises bureaucracy and develop a streamlined system as outlined in the consultation document, then financial assistance to Responsible Authorities will be required as they will be placed at the heart of SEA and seen as the key element to ensuring that the SEA process in Scotland is run effectively and efficiently.
- 1.3 Other key issues include:
 - a There is no mention of the term 'Strategy' in the wording of the Bill itself. This needs to be included and explicitly defined as the key aim of implementing the SEA Bill is to extend the scope of the Directive to include strategies. Clear examples should also be given to enable Responsible Authorities to work to the same meaning of the statement and ensure uniformity in the screening process across the country.
 - b In the Scottish Executive's previous consultation for the SEA Directive (paragraph 4.69) it was estimated that the annual impact on the Scottish Executive could be in the order of £2.6M-£5.5M (depending on whether Environmental Reporting is carried out in-house or contracted out). The Executive estimated that the cost to the rest of the public sector could be at least double that. It was stated that a full Regulatory Impact Assessment would be produced by the Scottish Executive to help estimate in monetary terms the impact of the Directive and the Bill. There is no mention of this Assessment in the SEA Bill document, yet it is vital that Responsible Authorities are made aware of its results and outcomes. Has the Regulatory Impact Assessment been carried out and if so what were its findings? If it has not been undertaken, why not and when is the Executive likely to carry this work out?
 - c It would also be useful to know the timetable for taking the SEA (Scotland) Bill through the Scottish Parliament and an estimated date of when it is likely to come into force.
 - d It is agreed that the Executive should look to other countries outside the EU who have similar systems for environmental assessment (e.g. the Canadian model) if it is perceived to bring good examples and best practice that will enable Scotland to develop its environmental assessment and become a world leader in SEA.

2 ADDRESSING THE TEN QUESTIONS

Q1: Should We Have Pre-Screening?

Response: Agree – pre-screening should be a key element. The pre-screening process should be included to act as an “environmental checklist” to assist in reducing the burden for responsible authorities and consultation authorities by removing from the process those plans and programmes that are likely to have no or minimal environmental significance. It would also serve a dual purpose of raising awareness of wider environmental issues across the responsible authority.

Q2: How Should We Administer Screening And Other Elements Of The SEA System?

Response: It is agreed that a central administrative gateway should be located in the Scottish Executive. However it is our opinion that Option 5 (to house a specialist team comprising members of the consultation authorities together as a single gateway) would provide the most efficient system for Responsible Authorities. The small advisory and administrative unit described under Option 1 would seem to create an additional tier between the responsible authorities and the consultation authorities. The option 5 team could perform the same range of duties described in option 1 (eg receive plans, collect statistics, chase up missed deadlines etc), but also be able to provide the specialist advice required by Responsible Authorities without the same degree of bureaucracy.

Q3: What plans etc should be subject to screening?

Response: This should be subject to a case-by-case approach. However it will require an efficient screening process to highlight all types of document that may be applicable. The inclusion of an easy to follow flowchart and draft list of strategies, plans and programmes in further guidance would assist in the process. Furthermore, the Bill should define what constitutes “significant environmental effects”. Responsible Authorities need to have benchmarks against which the significance of the effects on the environment can be consistently assessed in accordance with Schedule 2.

Q4: Should there be a timescale for screening?

Response: The suggested timescale of up to 28 days for the consultation authorities to respond to a screening request is reasonable. It is also recommended that the Bill should establish a time period for when the screening process must start after the commencement of the plan preparation date. This would ensure screening takes place as early as possible in the development of any strategies, plans or programmes.

Q5: Should Scottish Ministers determine in cases of dispute?

Response: Yes - but this must not cause delays in the plan preparation process and the determination must be fully transparent.

Q6: What should be in environmental reports?

Response: The Environmental Report should include the same information as listed in Section 13 of the Directive (that of Schedule 3 of the proposed SEA Bill).

More thought must be given to using indicators as a monitoring tool. How relevant are the national indicators at a local level? The “Indicators of Sustainable Development for Scotland” go beyond purely environmental issues and report on wider sustainability issues. It is important that the focus of the SEA Bill is not lost in a broader Sustainability Appraisal.

Q7: Should environmental reports also include social and economic information?

Response: This should be at the discretion of each Responsible Authority. It may be the case that although significant environmental impacts are identified, economic and social impacts are also identified that are even greater and therefore will have to be reported on. Sustainability Appraisals could be used in this instance.

Q8: What should be the arrangements for monitoring?

Response: Monitoring will be a key element to the SEA process - both for the Scottish Executive and for the Responsible/Consultation Authorities. For Responsible Authorities, methods to be used should be identified and specified during the development stage of any strategy, plan or programme along with how these methods fit into the overall operating framework for SEA that the Responsible Authority has chosen to adopt within their own organisation.

Q9: Should we have additional exemptions?

Response: Only small bodies such as individual schools should be exempt.

Q10: How can we improve the administration and operation of sea?

Response: As previously stated in the general comments above (also see Summary Table 1 below). In particular, the provision of funding for Responsible Authorities to help set up their own systems and training for internal staff would help develop a SEA system for Scotland that can be run effectively and efficiently without individual Local Authority Departments and Officers being overstretched to take on board this additional important and time consuming duty, and without generating unreasonable delays in the plan making process.

In addition, the Executive is asked to give consideration to providing Responsible Authorities with standard forms of notices for press adverts, in a similar fashion to the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983. Similarly, the production of a standard form for responses/comments for Consultation Authorities to send back to Responsible Authorities would help provide uniformity.

Table 1: Summary of Dundee City Council's recommended measures to improve administration and operation of SEA

1	Ensure SEA is suitably financed. Provide Responsible Authorities and the SEA Gateway with sufficient funding to ensure efficient implementation of the new Bill.
2	Establish the proposed timescales for enactment of the Bill so that Responsible Authorities and Consultation Authorities have a clear understanding of likely implementation dates.
3	Provide further guidance on pre-screening, screening and monitoring, including benchmarks for measuring significant environmental effects, to ensure consistency of approach throughout Scotland.
4	Minimise bureaucracy with the SEA Gateway by adopting a streamlined administration structure with representatives from Consultation Authorities who can reply directly to Responsible Authorities.
5	Minimise delays to the plan making process by establishing a time period for commencing pre-screening and screening as soon after plan preparation begins. Establish a reasonable time period for determination procedures by Scottish Ministers.
6	Standardise formats for press notices to facilitate publicity and consultation across Scotland.