

**REPORT TO:** CITY DEVELOPMENT COMMITTEE - 23 AUGUST 2010

**REPORT ON:** CONSULTATION ON THE ENVIRONMENTAL IMPACT ASSESSMENT (SCOTLAND) REGULATIONS 2010

**REPORT BY:** DIRECTOR OF CITY DEVELOPMENT

**REPORT NO:** 344-2010

## **1 PURPOSE OF REPORT**

- 1.1 The report seeks to confirm the views of the Council in response to the Consultation Paper issued by the Directorate for the Built Environment, Scottish Government entitled The Environmental Impact Assessment (Scotland) Regulations 2010. The Consultation Paper was issued on 21 May 2010 and responses are invited by 27 August 2010.

## **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee:
- a endorses Appendix A to this report as the Council's formal response to the Consultation Paper; and
  - b authorises the Director of City Development to issue the formal response to the Scottish Government by 27 August 2010.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications arising from this report.

## **4 BACKGROUND**

- 4.1 This consultation paper sets out the Scottish Government's proposals for consolidating and updating Part II of The Environmental Impact Assessment (Scotland) Regulations 1999 ("the 1999 EIA Regulations"), the Regulations which apply the EIA Directive to the Scottish planning system.
- 4.2 The full text of the Consultation Paper including a draft consolidated version of the Regulations may be found on the Scottish Government's website at
- <http://www.scotland.gov.uk/Publications/2010/05/20153045/0>
- 4.3 The European ("EIA Directive") requires an assessment of the effects of certain public and private projects on the environment before development consent is granted. The main aim of the Directive is to ensure that the authority giving the primary consent for a project makes its decision in the full knowledge of any likely significant effects on the environment. The Directive sets out a procedure that must be followed for certain types of project before this consent can be given. This procedure - known as Environmental Impact Assessment ("EIA") - is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. It helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the relevant competent authority before it makes its decision.

- 4.4 The Environmental Impact Assessment (Scotland) Regulations 1999 apply the EIA Directive to development under the Town and Country Planning (Scotland) Act 1997, as amended.
- 4.5 It is ten years since the 1999 EIA Regulations came into force and they have been amended substantially, both to take account of case law, and more recently changes to the planning system itself. It is now the Scottish Government's intention to consolidate these Regulations to make them more accessible. In consolidating the Regulations they are also proposing to take the opportunity to make a limited number of additional changes to take account of the latest case law and to generally bring them up to date.
- 4.6 It is not the Scottish Government's intention to undertake a wholesale review of the Regulations at this time. Neither is it their intention to make any fundamental changes to the operation of the EIA regime, over and above those changes set out in the paper. The European Commission has recently undertaken its own review of the application and effectiveness of the Directive and this, in due course, may lead to further amendments in years to come.
- 4.7 Key changes set out in the Consultation Paper include:
- a **Changes or extensions to existing development:** New provision is proposed in Schedule 2 such that any applicable Schedule 2 threshold applies to the development as a whole once modified, and not just to the change or extension. It is proposed to require that all changes or extensions to Schedule 1 projects, where these are not Schedule 1 developments in their own right, must be screened as to the need for EIA;
  - b **Reasons for negative screening decisions:** It is proposed that where Scottish Ministers or a planning authority issue a negative screening decision, they shall make available on request the reasons for that conclusion;
  - c **Multi-stage consents:** Following amendments in 2007 applying EIA to reserved matters applications (now applications for approval of conditions to a planning permission in principle) it is proposed to extend these provisions to also include other types of multi-stage consents under the Town and Country Planning (Scotland) Act 1997, as amended. In particular, these include references to "energy planning permissions" deemed to be granted by Scottish Ministers under Section 36 of the Electricity Act and further applications which may flow from conditions applied to them.
  - d **Miscellaneous amendments:** It is proposed to make a small number of further, miscellaneous changes, to generally update the Regulations or to address issues raised previously which concern the day to day operation of the planning EIA regime. In consolidating the Regulations the opportunity is being taken to address any minor drafting issues arising.

## 5 POLICY IMPLICATIONS

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

- 5.2 In accordance with the Council's policy an Equality Impact Assessment of the consultation paper was undertaken using the Rapid Impact Assessment Tool to determine whether the proposals implementation by Scottish Government is likely to lead to prejudice in terms of race, ethnic background, disability, sexual orientation, gender, religion or belief and age.
- 5.3 No evidence of likely prejudice in any of the 6 strands listed above was detected.
- 5.4 The Equality Impact Assessment will be made available on the Council's website at <http://www.dundee.gov.uk/equanddiv/equimpact>.

## **6 CONSULTATIONS**

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

## **7 BACKGROUND PAPERS**

- 7.1 The Environmental Impact Assessment (Scotland) Regulations 2010: Consultation Paper.
- 7.2 The Environmental Impact Assessment (Scotland) Regulations 1999, as amended.
- 7.3 Equality Impact Assessment.

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## APPENDIX A: SUGGESTED COUNCIL RESPONSES

Question	Summary of Suggested Provisions	Suggested Response
Q1 Do you agree that applying the existing Schedule 2(13)(a)(ii) thresholds to Schedule 1 development <i>as changed or extended</i> will always trigger the threshold and hence require screening?	It is proposed that the criteria listed for Schedule 2 developments should apply as the trigger level for the screening of Schedule 1 developments which require to be changed or extended.	It is considered that this is a reasonable approach and is supported.
Q2 Do you agree that, in light of the Baker judgement, all changes or extensions to Schedule 1 development should be screened for any likely significant effects on the environment?	It is proposed that any change or extension to a Schedule 1 development must always be screened for the application of the EIA Regulations.	This provision is supported pending any revision of Schedule 2 criteria which may emerge from the European Commission.
Q3 Do you agree that deleting references to "proposed development", "area of any new building" and "new floorspace" from the thresholds in Schedule 2 will help to clarify the Regulations as they apply to changes or extensions? Do you foresee any circumstances where it would <u>not</u> be appropriate to remove these references?	The Directorate envisage difficulties in interpretation if these deletions are not incorporated into the amended Regulations.	Whilst the reason for the change is understood no detail is given as to which specific phrases are to be deleted and what they are to be replaced with. The Draft Consolidated Regulations periodically continues to refer to "new floorspace".
Q4 Do you have any comments on paragraphs 18-21 of the Consultation Paper?	These paragraphs provide guidance on the preparation and consideration of applications relating to a changed or extended development which may lead to significant environmental or cumulative effects.	No comments
Q5 Do you have any comments on draft Regulations 4(6A) and 4(6B) contained at Annex B of the Consultation Paper?	At present reasons are given where Screening Opinions/Directions are issued where an EIA is required. It is proposed to require statements of reasons also where the opinion is that <u>no</u> EIA is required.	These revised Regulations are supported.
Q6 Do you agree that the following types of planning application can be considered part of a "multi-stage consent" within the	Since 2007 planning authorities must consider the need for EIA even after outline permission (or planning permission in	Although the proposals are supported, conditions applying to a <u>full permission</u> are not necessarily discharged through the

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<p>meaning of the above European Court of Justice ruling?</p> <ul style="list-style-type: none"> <li>• Applications for approval of conditions to planning permission in full;</li> <li>• Applications for review of mineral permissions;</li> <li>• Applications for approval of conditions to a grant of deemed planning permission under S57(2) or 57(2A) of the Planning Act;</li> <li>• Applications for a determination as to whether prior approval of the authority will be required, and applications for prior approval;</li> <li>• Applications for approval, consent or agreement required by a condition specified in a planning zone scheme;</li> <li>• Applications for approval, consent or agreement required by a condition specified in an enterprise zone scheme.</li> </ul>	<p>principle) has been granted viz. at the reserved matters stage. This is because significant environmental effects might only be identified when further details emerge. There are many categories of multi-stage consents which are possible and it is Scottish Government's view that the EIA Regulations should apply to them all consistently.</p>	<p>submission of a formal application unless specifically called for or required viz. because the requirements of the consultation would constitute development in its own right. It is unclear therefore if and how EIA screening would be undertaken in these circumstances.</p>
<p>Q7 Where a multi-stage application is submitted for approval of conditions to a planning permission in full, which, if any, of the following additional provisions in the development management regulations should apply in relation to the application itself?</p> <ul style="list-style-type: none"> <li>• Neighbour notification (under Regulation 18 of the DMR)?</li> <li>• Registers of application (Regulation 16 and Schedule 2 of the DMR)?</li> <li>• Provision of information to community</li> </ul>	<p>This question deals with the issue of whether certain requirements of the Development Management Regulations should apply to a multi-stage application.</p>	<p>This follows on from the above. This is a significant issue which requires the fullest consideration <u>outwith</u> the scope of this EIA related Consultation Paper. It raises the issue of the potential necessity for a formal application for the approval of all conditions (apart from the statutory time limit condition) generated by a planning permission. The Council has found that most conditions are routine and are most expeditiously discharged <u>without</u> the need for a formal application.</p>

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<p>councils and within public libraries (Regulation 23 of the DMR)?</p> <ul style="list-style-type: none"> <li>Any other provisions of the DMR?</li> </ul>		
<p>Q8 For an Energy Multi-Stage Consent do you agree that the definition of "Schedule 1" and "Schedule 2" development should refer to Schedules 1 and 2 to the Electricity Works EIA Regulations, rather than the 1999 EIA Regulations?</p>	<p>The proposed amendments extend the definition of Multi-Stage Consents to the need for applications resulting from a deemed planning permission granted by Ministers following a Section 36 Consent under the Electricity Act.</p>	<p>The amending Regulations imply that the EIA provisions only apply where a formal application is submitted. Absolute clarification is required that further applications will not be formally required in all cases necessarily and that only where they are will these provisions apply.</p>
<p>Q9 Do you have any comments on the draft provisions contained at Annex C as they apply to Energy Multi-Stage Consents?</p>	<p>Annex C of the Consultation Paper outlines in detail the proposed wording of the amending Regulations.</p>	<p>The Council has no specific comments in relation to the wording of the amending Regulations. However, see answer to Q3 above.</p>
<p>Q10 For a Transport Multi-Stage Consent do you agree that the definition of "Schedule 1" and "Schedule 2" development should refer to Annexes I and II to the Directive (as per rule 5 of the Application and Objection Procedure Rules 2007), rather than the 1999 EIA Regulations?</p>	<p>The requirement for a Transport Multi-Stage Consent may emerge from an Order made under the Transport and Works (Scotland) Act 2007 where Scottish Ministers deem that planning permission is granted subject to conditions requiring further approvals.</p>	<p>These provisions would appear to be consistent with the amending Regulations which will apply to other types of multi-stage consents.</p>
<p>Q11 Do you have any comments on the draft provisions contained at Annex C as they apply to Transport multi-stage consents?</p>	<p>As for Q9</p>	<p>As for Q9</p>
<p>Q12 Do you have any comments on the draft provisions contained at Annex D to the Consultation Paper?</p>	<p>Annex D confirms that permitted development rights in respect of Schedule 1 and 2 developments are removed where the need for an EIA is confirmed by screening. Also applications for determination as to whether prior approval is required shall have the EIA Regulations applied to them if the development proposed is defined in Schedules 1 or 2 of the Regulations.</p>	<p>The Council has no specific comments in relation to the wording of the amending Regulations.</p>

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Q13 Do you have any comments on the draft provisions contained at Annex C as they apply to reviews of mineral permissions?	Annex C confirms amendments to the Regulations in respect of the statutory review of old minerals permissions and introduces amending provisions in respect of multi-stage consents following the grant of planning permission for mineral workings.	The Council has no specific comments in relation to the wording of the amending Regulations.
Q14 Do you have any other comments on the draft provisions of Annex C as they apply to Multi-Stage Consents generally?	Annex C incorporates various miscellaneous changes relating to information for local inquiries, the Geological Storage Directions and statutory consultation, including the confirmation of HSE as a statutory consultee in respect of EIA applications.	No comment
Q15 Do you have any comments to make in relation to the draft Regulatory Impact Assessment contained at Annex E of this paper?	The Business and Regulatory Impact Statement advises that it is anticipated that the majority of proposed changes will have little or no regulatory impact or added cost to businesses. This is because, in the majority of cases, where an EIA is required in respect of a Multi-Stage Consent, an EIA will already have been prepared for the primary consent needing only to be adopted and amended in respect of additional matters. Any financial Impacts which do occur are likely to fall on large scale developers or utility companies.	The Council agrees with the conclusions of the Business and Regulatory Impact Statement.
Q16 Do you have any comments to make in relation to the draft Partial Equalities Impact Assessment at Annex F of the Consultation Paper?	This Annex outlines that the burden of some procedural requirements will fall on planning authorities although there will be a role for Scottish Ministers and agencies. There is no evidence that the six equality strands of race, gender, age, disability, LGBT or faith are factors in requiring an EIA.	The Council has no comments.