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**Democratic Services Section
Chief Executive's Department
Belfast City Council
City Hall
Belfast
BT1 5GS**

9th February, 2016

**MEETING OF PLANNING COMMITTEE - REPORTS TO FOLLOW - ITEM 7.
ENVIRONMENTAL IMPACT REGULATION CONSULTATION AND ITEM 12.A.
SECTION 76 DEVELOPER CONTRIBUTION**

Dear Alderman/Councillor,

In addition to those matters previously notified to you, the following items will also be considered at the meeting to be held at 5.00 pm on Tuesday, 14th February, 2017.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

AGENDA:

7. **Response to Environmental Impact Regulations Consultation** (Pages 1 - 10)
12. **Miscellaneous Items**
 - (a) Section 76 Developer Contribution - Update (Pages 11 - 42)

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Subject:	Consultation on changes to the Environmental Impact Assessment Regulations
Date:	14 February 2017
Reporting Officer:	Phil Williams, Director of Planning and Place
Contact Officer:	Ed Baker, Development Engagement Manager

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of report or summary of main issues
1.1	The purpose of this report is to establish Belfast City Council’s response to a consultation on proposed changes to the Environmental Impact Assessment Regulations.
2.0	Recommendations
2.1	That the Planning Committee supports the recommended response to the consultation as set out at Appendix 1 .
3.0	Main report
3.1	<p><u>Background</u></p> <p>The Environmental Impact Assessment Regulations were introduced a number of years ago to provide a framework for assessing “significant environmental effects” resulting from certain development proposals. The Environmental Impact Assessment Regulations stem from a European Union Directive and are currently enshrined in the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015.</p> <p>The Environmental Impact Regulations generally apply to schemes whose impacts are more than local in nature. For example, they may apply to regional significant proposals or smaller developments that may raise critical issues that extend beyond the site. “Significant</p>

	<p>environmental effects” may be environmental, economic or social impacts. Both positive and negative significant effects must be considered. Where a proposal is likely to result in “significant environmental effects”, the planning application must be accompanied by an Environmental Statement. The purpose of the Environmental Statement is to set out what the significant environmental effects are and how these are to be managed or mitigated through the development process. Applications requiring an Environmental Statement are subject to additional requirements around the length of determination and consultation.</p> <p>The Environmental Impact Assessment Regulations stipulate two categories of development: Schedule 1 and Schedule 2. Schedule 1 developments include major infrastructure projects such as power stations, harbours and oil refineries. An Environmental Statement is automatically required for any development falling within Schedule 1. Schedule 2 sets out a range of development types with thresholds. If the proposal exceeds the threshold, or if the site is within a sensitive area, the determining authority must decide whether the proposal would likely result in “significant environmental effects”. This process is called “screening”. If the answer is affirmative then the application must be supported by an Environmental Statement. The applicant may request that the determining authority advises them what should be included in the Environmental Statement. This process is called “scoping”.</p>
3.2	<p><u>Purpose of the consultation</u></p> <p>The Department of Infrastructure (DFI) is consulting on changes to the Environmental Impact Regulations, as a consequence of a new European Union Directive on EIA (2014/52/EU). The new Directive is intended to simplify the rules for assessing the potential effects of projects on the environment. If adopted, the new Regulations will be enshrined in the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015.</p> <p>Some of the key changes to the EIA Regulations are:</p> <ul style="list-style-type: none"> • Reducing administrative burdens and processes streamlined through a joint/coordinated procedure when a development also requires an assessment under the Habitats/Wild Birds Directive; • The environmental factors to be considered in the assessment have been refined and broadened to reflect emerging challenges that are important to the EU; • Strengthening of the screening procedure through new information requirements

	<p>and a revision of the selection criteria;</p> <ul style="list-style-type: none"> • The information to be contained in an Environmental Statement has been revised and clarified to improve their quality and content; • Environmental Statement are to be prepared by competent experts and Councils are to have access to sufficient expertise to examine and assess the statements • The grounds for planning permission decisions must be clear and reasons for determinations and decisions must be provided and shared with the public. Councils must demonstrate their objectivity to avoid conflicts of interest; • Proportionate monitoring will be required for developments which appear to have significant negative effects on the environment. Existing monitoring arrangements may be used to avoid duplication of monitoring and unnecessary costs; • Penalties may be introduced for breaches of the requirements of the Directive.
3.3	The consultation sets out 14 questions around the proposed changes to the EIA Regulations. It is recommended that Belfast City Council responds to these questions as set out at Appendix 1 .
3.13	<p><u>Financial & Resource Implications</u></p> <p>The proposed requirements for the Council to have access to expert advice to inform the EIA process and to ensure monitoring of developments that are likely to have significant effects, may have financial resources for the Council.</p>
3.14	<p><u>Equality or Good Relations Implications</u></p> <p>None identified.</p>
4.0	References
4.1	<p>The consultation can be viewed in full at the following web link:</p> <p>https://www.infrastructure-ni.gov.uk/consultations/consultation-planning-environmental-impact-assessment-regulations-northern-ireland-2017</p>
5.0	Appendices – Documents Attached
5.1	Appendix 1 – recommended response to the EIA consultation

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Appendix 1 – Recommended Response to Consultation on EIA Regulations

Question 1. Do you agree with proposals to provide for a coordinated rather than joint procedure?

Summary:

There is a new requirement that where a proposal needs to be assessed under both the EIA Regulations and Habitats Directive, this is undertaken in a coordinated manner. If other types of assessment may be necessary, including the Water Framework Directive, Emissions Directive, SEA Directive and Waste Framework Directive, these may also be coordinated, although unlike in combination with the Habitats Directive, this is not mandatory.

Response:

Belfast City Council (BCC) would prefer the “coordinated” approach to assessments rather than a joint procedure requiring a single assessment. This will provide greater flexibility and is consistent with the approach taken by other UK jurisdictions.

Question 2. Do you have any comments in relation to the possible practical issues arising from the proposed approach to co-ordination?

Response:

A coordinated assessment pursuant to the EIA and Habitats Directives will require a significant degree of coordination between the Council and various statutory agencies, including central government. The Council will be reliant on the capacity of other agencies and Government Departments to feed into the assessment process, both in terms of the availability of expertise and timing of their advice. The Department should be satisfied that these external organisations have sufficient resources to provide a timely and informed coordinated response to the Councils. This should be monitored by the Department.

BCC is pleased that a coordinated assessment with other Directives, including the Water Framework Directive, Emissions Directive, SEA Directive and Waste Framework Directive, is not mandatory and only advisory.

Question 3. Do you consider that our approach to the transposition of Article 1 and 2 as set out in the draft Regulations appropriately implements the requirements of the Directive?

Response:

BCC is satisfied on this point.

Question 4. Do you consider that our approach to transposition of information to be assessed appropriately implements the requirements of the Directive?

Summary:

The new Regulations provide a definition of environmental factors:

- Population and human health;
- Biodiversity, with particular attention to species and habits protected under other Directives;
- Land, soil, water, air and climate;
- Material assets, cultural heritage and the landscape; and
- The interaction between the factors listed above.

There is also a requirement to consider the vulnerability of the project to risks of major accidents and/or disasters.

Response:

BCC is satisfied on this point.

Question 5. Are you content that the current timescale of 4 weeks for a screening determination is maintained subject to a maximum extension of 90 days?

Summary:

The information required from a developer in making a screening request is now prescribed. The developer may now also set out features or mitigation to avoid or prevent what otherwise be significant environmental effects. This might negate the need for an Environmental Statement and may reduce the number of EIA developments.

All screening decisions must now be made available to the public along with reasons justifying any decision.

There is now a maximum time period for the Council to make a screening decision of 90 days from the date on which all the necessary information is provided. There is discretion on this maximum time limit in exception circumstances.

Response:

BCC is concerned that a 4-week period is a limited amount of time to undertake a screening decision, particularly where the screening process requires the input of outside agencies and Government departments. Response times from external consultees can be extremely inconsistent and there is concern that advice won't be readily available within the prescribed period. A longer period, such as at least six weeks, is recommended.

The new Regulations must make it clear that the determination period commences from the date when the last of the necessary information is submitted, not from the date of the application. This would more accurately reflect the Directive.

Question 6. Do you consider that our approach to transposition of screening appropriately implements the requirements of the Directive?

Response:

No further comments on this point.

Question 7. Do you consider that our approach to transposition of requirements concerning the content of the Environmental Statement appropriately implements the Directive?

Summary:

The information required to be include in an Environmental Statement has been refined and clarified. There is a new requirement that where a scoping opinion has been provided by the Council, the Environmental Statement must be “based” on that opinion.

Response:

BCC is satisfied on this point.

Question 8. Do you consider that our approach to transposition of scoping appropriately implements the requirements of the Directive?

Summary:

The factors to be taken into account by the Council when issuing a scoping opinion have been amended by the Directive. This will impact on the information required from a developer when they make a request for a scoping opinion.

Response:

Belfast City Council is satisfied on this point.

Question 9. Do you consider that our approach to transposition of assessment quality and expertise appropriately implements the requirements of the Directive?

Summary:

The Directive requires that experts involved in putting together an Environmental Statement should be qualified and competent. The Council should also have access to sufficient expertise to examine the Environmental Statement.

Response:

BCC is concerned about the requirement for the competent authority to have access to sufficient expertise to examine the Environmental Statement. External support may be required which might be costly to procure. The planning application fees for applications requiring an Environmental Statement should therefore be reviewed and should reflect the additional costs that councils may incur. Consideration should also be given to the requirement for a fee for providing screening and scoping opinions.

Question 10. Do you consider the new timeframes appropriately implement the requirements of Directive?

Summary:

The Directive sets a new minimum time frame for public consultations on the Environmental Statement, which should be no shorter than 30 days. The current existing timescale of 4 weeks for public consultation will be updated to 30 days

Response:

BCC is satisfied on this point.

Question 11. Do you consider that our approach to transposition for decisions appropriately implements the requirements of the Directive?

Summary:

The EIA process includes the requirement for the Council to make a reasoned conclusion on the significant effects of the development on the environment. This reasoned conclusion is already an integral part of the planning permission process but the Directive now clarifies that this conclusion must be still “up-to-date” when the final decision whether to grant planning permission is made.

Response:

BCC is satisfied on this point.

Question 12. Do you consider that our approach to transposition of monitoring appropriately implements the requirements of the Directive?

Summary:

The Directive requires that the decision to grant planning permission should include, where appropriate, conditions and/or measures envisaged to avoid, prevent or reduce and if possible offset significant adverse effects on the environment as well as, where appropriate monitoring measures.

Monitoring should not be used as a general means of gathering environmental information and should not duplicate any monitoring required for other reasons. Existing monitoring arrangements can be used if appropriate.

Response:

Belfast City Council is concerned that additional monitoring requirements around the regulation of significant environmental effects could have serious resource implications for the Council. The competent authority should have the ability to charge a fee for the monitoring of conditions so as to recover the full costs in doing so.

Question 13. Do you consider that our approach to transposition of conflict of interest appropriately implements the requirements of the Directive?

Summary:

The Directive introduces a new article dealing with a conflict of interest and stipulates that in cases where an organisation is both the developer and the competent authority, there must be an appropriate separation between functions.

Response:

Belfast City Council is satisfied on this point.

Question 14. Do you consider that our approach to transposition of penalties appropriately implements the requirements of the Directive?

Summary:

The Directive now expressly requires effective, proportionate and dissuasive penalties to be introduced for breaches of the requirements of the Directive. The new Regulations do not introduce any new penalties but rely on the existing planning enforcement powers to provide an appropriate penalty system for unlawful development. However, an explicit duty is placed on planning authorities to consider if the requirements and objectives of the EIA Directive have been met when considering enforcement action as set out in regulation 32 of the new Regulations.

Response:

Regulation 32, in requiring compliance with the Directive, is too wide and ranging and ambiguous and needs clarification.

ADDITIONAL POINTS:

The introduction of the new Regulations will have training implications for Department and Council staff involving in the EIA process. Belfast City Council would welcome DFI commissioning specific on-going professional training and support for council staff on administering the new Regulations and changes to the EIA process.

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