

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 10 MARCH 2004

A CONSULTATION BY SCOTTISH EXECUTIVE ON PROPOSED LEGISLATIVE MEASURES TO INTRODUCE STRATEGIC ENVIRONMENTAL ASSESSMENT IN SCOTLAND

Report by Director of Development Services

1. PURPOSE OF REPORT

- 1.1 To seek the views of the Committee on a consultation paper entitled 'Strategic Environmental Assessment: A Consultation on proposed Legislative Measures to Introduce Strategic Environmental Assessment in Scotland' as it relates to land use planning under the Town and Country Planning (Scotland) Act 1997 and the functions carried out by the Department of Development Services.

2. BACKGROUND INFORMATION

- 2.1 European Directive 2001/42/EC (commonly known as the 'SEA Directive' and which must be transposed into Scottish law by July 2004) requires Strategic Environmental Assessment (SEA) to be undertaken of plans and programmes which are required by legislative, regulatory or administrative means. These require to be 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 annex I and II of the Environmental Impact Assessment Directive (85/337/EEC) **or** require an assessment under article 6 or 7 of the Habitats Directive (94/43/EEC) as amended by Directive 97/62/EC.
- 2.2 Other plans and programmes that fall out with the specific sectors identified above but which set a framework for future development consent may also be subject to SEA if they are determined, by a screening process, as being likely to have significant environmental effects, either positive or negative.
- 2.3 In essence Strategic Environmental Assessment (SEA) is a technical process that assists in the early identification and assessment of the likely environmental effects, positive and negative, of plans and programmes. It allows for alternatives to be assessed against each other before decisions are taken to formally proceed to adopt the plan or programme.

- 2.4** Interim planning advice was issued by the Scottish Executive in August 2003 pursuant to the Directive and provides invaluable guidance on how to undertake an SEA assessment for structure and local plans that meets the requirements of the Directive. The guidance identified 14 key stages that each plan should go through and indicated that the assessment works best as an iterative process and when it is built into the wider plan preparation process rather than being 'bolted on' at the end. It indicated that an environmental report summarising the outcomes from the SEA requires to be deposited with the finalised plan and that it along with the plan itself would be subject to public consultation. It also indicated that strict environmental monitoring procedures would require to be met.
- 2.5** The consultation paper sets down draft regulations to give legislative effect to the Directive in Scotland and provides the regulatory context for the interim planning guidance. The replacement Ayrshire Structure Plan, all future local or subject plans and any supplementary policy or action plan that may have a significant environmental effect will be subject to the new SEA regulations.
- 2.6** However under the coalition Partnership Agreement, 'A Partnership for a Better Scotland', a commitment was made to introduce SEA across the range of all new strategies, plans and programmes developed by the public sector in Scotland regardless of whether they are required by legislative, regulatory or administrative means or whether they set a framework for future development consents. A Bill will be introduced to give effect to extending SEA requirements and the consultation paper requests comments on the principles that the Bill should be based upon. The Bill will extend the scope of application of the SEA Directive but should not materially affect the SEA process. There is no timetable for introducing the Bill contained within the consultation paper.
- 2.7** The comments provided below concentrate on the process as outlined in the consultation paper as it relates to the activities of the Development Services Department which, by and large, all fall within the scope of the new regulations that come into force in July 2004. However in most instances they will eventually be applicable in principle to any strategy or plan prepared by the Council.

3 GENERAL COMMENT

- 3.1** The regulations are generally straight forward but it is difficult to relate them to the detail of current planning procedures. This may be because the regulations are applicable to many legislative procedures that have an impact on the environment other than planning. The interim planning guidance attempts to fill this void but assumes that all planning authorities will be adopting the full local plan preparation procedures. However PAN 49 Local Planning paragraph 19 indicates that the expedited procedures introduced by s40 of the Local Government (Scotland) Act 1982 "...should be the normal procedure, unless significant and wide ranging issues are involved..." Further guidance is

necessary to match the new SEA regulations with current planning procedures in order to clarify what the requirements are at each stage that planning authorities need to fulfil. It is considered that the SEA process, if required, should begin when the Notice of Intention to Prepare a Local Plan is published.

- 3.2** The consultation paper explicitly excludes from the SEA socio-economic factors although it indicates that such factors could be considered as part of a more extensive study (now commonly known as a Sustainability Analysis) and that these factors should be considered before finalising any strategy, plan or programme. It is considered that decisions on the location of development sites within local plans, for example, cannot be made purely on environmental grounds alone. The adoption of the Environmental Assessment Regulations without corresponding advice relating to how socio-economic factors can be given weight along with environmental factors is disappointing and should be remedied timeously.
- 3.3** The SEA Directive acknowledges that SEA can be carried out at different levels and to avoid duplication a higher level assessment can be relied upon at a lower level. The difficulty is not so much in the principle of the proposal but in the lack of guidance on how these provisions should apply. For example, following recently issued guidance the replacement Ayrshire Structure Plan will identify general locations for potential housing development and before so doing should evaluate the environmental impact of various options to meet the SEA regulations. The local plan to conform to the structure plan will need to specifically identify site boundaries for housing sites within the general area and may wish to exclude parts of the area for various reasons. What is not clear is whether a further SEA at the local level is required to evaluate in detail all the housing site options within the structure plan defined area or not. Clarification is urgently required.
- 3.4** It is considered that SEA completed as part of a structure or local plan process should be valid for the lifetime of the plan (i.e. a maximum of 5 years).
- 3.5** In regard to the screening process to determine whether SEA is required it is considered that disputes should be referred to the Scottish Ministers for resolution. It is preferred that the consultation authorities should be listed in the regulations and that a minimum of 28 days to allow for public consultation of the environmental report should be given. It is also considered that given the potential complexities of the SEA process and the specialisms involved it may be that special units are required in the consultation authorities.
- 3.6** It is however considered naïve to suggest that the screening process and any SEA need not introduce delay into the preparation of plans and programmes. On the basis of the interim guidance issued to date and the requirements that will need to be fulfilled to meet the regulations there is little doubt that the local plan preparation process will take substantially longer and will generate large amounts

of new data that must be properly evaluated and monitored. For example the interim guidance recommends that the following impacts require to be considered for each policy and proposal that is likely to have a significant environmental effect: secondary, cumulative, synergistic, short, medium and long term, permanent, temporary, positive and negative. Clearly unless resources (often specialised) are made available to enable the process to be carried out in parallel with all other work requirements the inescapable conclusion is that the local plan process will take longer. This is not in the interests of the proper planning of the Council's area.

3.7 With regard to the situation where plans or programmes are required to be prepared by groups of authorities that these authorities should decide amongst themselves who should be identified as the 'responsible authority' it is suggested that, at least for structure planning, further consideration must be given to this issue. One authority cannot be held responsible for the content of an SEA as it relates to sites or policies out with its area. It is not considered that in such circumstances that the Scottish Ministers should be asked to make a definitive ruling. It is considered that the status of future structure plan authorities must be carefully examined.

3.8 Finally, whilst the proposed Bill clearly relates to Planning, it also suggests that the whole system be extended to "strategies" e.g. School Estate Strategy, Care in the Community Strategy, Housing Strategy, Waste Management Strategy, Local Transport Strategy.

A number of fundamental points need to be clarified and the subject of further consultation before consideration is given to drafting the proposed Bill. The fundamental issues that require to be clarified are:

- The lack of an adequate definition of 'strategies'. It would appear that these will include any 'coherent collection of policies operating in conjunction with each other and presented as such.' But this is not clear: the definition set out in the consultation document defines the range of 'strategies' to be subject to SEAs but does not define term 'strategies.'
- There is significant potential for conflict with the planning system. SEAs undertaken for strategies which are not development plans must not prejudice SEAs or EIAs undertaken in the context of the planning system. This could be illegal. It would also prejudice the rights of the public to independent examination in public of features of a strategy that should properly be incorporated into development plans.
- Without an adequate definition of 'strategies' local authorities will be open to legitimate complaints or judicial review on a wide range of operational decisions on the grounds that they are taken in the context of 'strategies' that should have been the subject of an SEA but were not.

- The introduction of SEAs beyond the development planning system will require the disciplines of environmental assessment to be applied by officers and organisation to whom the concepts and analytical processes are entirely unfamiliar. This will have significant resource implications for capacity building within organisations and management arrangements beyond the direct cost of undertaking SEAs.

There are clearly major reservations about extending SEAs beyond the planning system and major reservations about the practicalities of such proposals.

4 FINANCIAL/PERSONNEL IMPLICATIONS

- 4.1** It is considered that the introduction of the SEA regulations and the proposed Bill will have significant financial implications for the Council. It is considered imperative that sufficient funds are made available from the Scottish Executive to allow the additional work within the Planning and Building Control Division to be carried out. Any subsequent proposal to include other strategies and plans within the SEA regulations would have major resource implications due to the specialisms involved.

5 LEGAL IMPLICATIONS

- 5.1** The Council will be subject to a new set of regulations and could be subject to judicial review if they are not fully fulfilled. This will undoubtedly place additional burdens on the Council's legal section.

6 RECOMMENDATION

- 6.1** It is recommended that the Committee agrees
- (a) to approve the contents of this report; and
 - (b) to authorise the Director of Development Services to submit a copy of this report to the Scottish Executive as representing the Council's views on the consultation.

Stephen Chorley
Director of Development Services
26 February 2004 (KD/SA)
FV/AN

LIST OF BACKGROUND PAPERS

1. Scottish Executive consultation paper, Strategic Environmental Assessment: A Consultation on Proposed Legislative Measures to Introduce Strategic Environmental Assessment in Scotland.

Anyone wishing to inspect the above background paper please contact Karl Doroszenko on (01563) 576751.

Implementation Officer: Alan Neish