

REPORT OF THE CORPORATE DIRECTOR – COMMUNITIES

BCBC LPA RESPONSE TO WG CONSULTATION ON PROPOSED CHANGES TO HOW ENVIRONMENTAL IMPACT ASSESSMENT APPLIES TO TOWN AND COUNTRY PLANNING

1. Purpose of Report

- 1.1 To advise Development Control Committee Members of the Council's draft response to the Welsh Government's (WG) consultation on proposed changes to how Environmental Impact Assessment applies to Town and Country Planning (Appendix 1).
- 1.2 The WG consultation paper sets out the Welsh Government's proposals for transposing the provisions of the 2014 EIA Directive and making other changes to national legislation. The consultation sets out their proposals on the following areas:
 - Third party screening requests;
 - Screening and scoping timeframes;
 - Co-ordination;
 - Consultation and participation in the decision making process;
 - Monitoring of significant effects;
 - Penalties and enforcement;
 - Competent experts;
 - Purchase notices under Section 141 of the Town and Country Planning Act 1990.

2. Connection to Corporate Improvement Plan / Other Corporate Priorities

- 2.1 The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 ("the EIA Regulations") transpose Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment ("the EIA Directive") in relation to development under the Town and Country Planning Act 1990.
- 2.2 Environmental Impact Assessment (EIA) is a process by which information is collected and consulted upon, in a systematic way, to inform an assessment of the likely significant environmental effects arising from a proposed development.
- 2.3 EIA ensures that LPAs responsible for making planning decisions consider the likely significant environmental effects of development and that the public have the opportunity to comment on them before an authority makes its decision. In particular the EIA Directive aims to prevent, reduce or offset the significant adverse environmental effects of development proposals and enhance positive ones
- 2.4 The delivery of the County Borough's statutory planning function has links to the Council's corporate priorities in particular number 1 – supporting a successful economy.

3. Background

- 3.1 The WG are proposing measures for the transposition of the provisions of the 2014 EIA Directive and they also propose other changes to national legislation.
- 3.2 The outcome of the referendum held on 23 June 2016 was that the UK should leave the European Union. The UK continues to participate in EU activities, the EU institutions and abides by EU law. Therefore until the completion of the negotiations to leave the EU, the Welsh Ministers are obliged to make legislation to transpose the requirements of the Directive.

3.3 The WG consultation documents can be accessed by Members using this hyperlink:

<https://consultations.gov.wales/consultations/changes-how-environmental-impact-assessment-applies-town-and-country-planning>

4. Next Steps

4.1 The LPA's formal response to the Welsh Government's (WG) consultation on proposed changes to how Environmental Impact Assessment applies to Town and Country Planning was submitted to the WG before the deadline of 11th November, 2016 (3rd November, 2016) under delegated powers.

4.2 The WG intends to publish a summary of the responses to this document.

5. Effect upon Policy Framework & Procedure Rules

5.1 The intention of the 2014 EIA Directive is to:

- Clarify and strengthen the screening process, in particular by specifying the content of the screening decision;

- Strengthen the quality of the Environmental Statement (ES) related elements of the EIA Directive by:

- Requiring it to be based on the scoping decision where there is one;
- Expanding the required content;
- Requiring it to include information on new environmental challenges (such as climate change);
- Enhance policy coherence and synergies with other EU/international law and simplify procedures by:
- Co-ordinating certain environmental assessments;
- Specifying timeframes for the various stages of the EIA process.

6. Equality Impact Assessment.

6.1 An Equality Impact Assessment Screening has been undertaken and the proposed recommendations are unlikely to have an impact on equality issues.

7. Financial Implications

7.1 None.

8. Recommendation

(1) That Members note the content of this report and the LPA's response to the WG consultation (Appendix 1).

Mark Shephard
Corporate Director Communities

Contact Officer

Mr. Rhodri Davies

Development and Building Control Manager

Telephone Number: 01656 643152 e-mail: rhodri.davies@bridgend.gov.uk

Background documents

Appendix 1: BCBCs Consultation Response to the WG

APPENDIX 1

Consultation Response Form
Proposed changes to Environmental Impact Assessment

Consultation reference: WG29324

Consultation Response Form

Proposed changes to how Environmental Impact Assessment applies to Town and Country Planning

We would like your views on our proposals to make changes to the Environmental Impact Assessment.

Please submit your comments by 11/11/2016.

If you have any queries on this consultation, please email: planconsultations-e@wales.gsi.gov.uk or telephone Owen Struthers on 029 2082 6430.

Data Protection

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response or tick the box at the end of this form. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Consultation reference: WG29324

Proposed changes to the Environmental Impact Assessment		
Name	Rhodri Davies	
Organisation	Bridgend County Borough Council	
Address	Civic Offices Angel Street Bridgend CF31 4WB	
E-mail address	rhodri.davies@bridgend.gov.uk	
Type <i>(please select one from the following)</i>	Businesses/ Consultants	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you agree with our proposals for third party screening? If not, what proposals would you recommend to ensure third party screening requests are made early in the application process.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:
The proposal to limit the time period for third parties to request a screening direction from the Welsh Ministers after the LPAs screening opinion is supported in order to remove the scope to deliberately delay the determination of applications.

However, it is not clear when exactly the scenario would occur where a screening direction may be sought by a third party when no screening opinion has been sought, or issued, by the LPA as all applications will be positively or negatively screened at the application stage under the new regulations. If it is the case that this caveat is to cover any missed screening opinions then it makes sense. Alternatively, if it will effectively allow Third Parties to request a screening direction at the pre-application consultation stage then there is a risk that requests for screening directions will become more prevalent.

Consultation reference: WG29324

Q2	Do you think the time period associated with scoping should be revised? If yes, what timeframe do you consider appropriate and why?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments: It is considered that it is not feasible to produce a fully comprehensive scoping opinion within 5 weeks due to the lack of resources within LPAs and the need to seek advice from internal and external statutory consultees.</p> <p>Whilst LPAs can feasibly request an extension of time it is recommended that the timeframe should be extended to 8 weeks akin to the universally accepted and understood timeframe for processing applications. This should give LPAs a better chance of providing a comprehensive but proportionate response.</p>				

Q3	Do you agree with proposals to provide for a coordinated rather than joint procedure?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p>				

Q4	What coordinating measures would be most useful, and what benefits would they generate?
<p>Comments:</p>	

Consultation reference: WG29324

Q5	Do you agree with our proposals for making information available electronically?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: It is expected that the ES will not need to be translated as part of the Welsh Language Standards as it is not a document that will be produced by the LPA. A standard translation of the relevant planning web page for the ES advertisement and publicity should form part of the guidance to be prepared by WG.				

Q6	Do you agree our approach provides the most flexible approach to the 2014 EIA Directives requirements?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q7	Do you agree with our proposals for conflict of interest and functional separation?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q8	Do you agree that the provisions for false or misleading information within the EIA process?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Consultation reference: WG29324

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Q9	Do you agree that our proposed approach to enforcement will ensure the effective compliance with the requirements of the EIA Regulations in a proportionate way and in a way which dissuades bodies which are part of the process from failing to comply?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q10	Do you agree our competent expert proposals provide the most flexible approach to the Directive's requirements?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments:				
LPAs (the competent authority) should be provided with guidance on how to determine whether the party who has prepared the ES has sufficient expertise to do so. Also, the legislation must make it clear that the LPAs decision is final and cannot be challenged.				

Q11	Do you have any comments on the application of procedures to secure that Welsh Ministers have access to an ES which is consulted upon and considered before granting consent under Section 141 for EIA development?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

Consultation reference: WG29324

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Q12	Do you have any related comments on issues which we have not specifically addressed?	Yes	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:			

Q13	Do you have any comments to make about the draft partial Regulatory Impact Assessment?	Yes	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:			

I do not want my name/or address published with my response (please tick) <input type="checkbox"/>
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Consultation reference: WG29324

How to Respond

Please submit your comments in any of the following ways:

Email
Please complete the consultation response form and send it to: planconsultations-e@wales.gsi.gov.uk
Post
Please complete the consultation form and send it to: Development Management Branch Planning Directorate Welsh Government Cathays Park Cardiff CF10 3NQ
Additional information
If you have any queries on this consultation, please Email: planconsultations-e@wales.gsi.gov.uk Telephone: Owen Struthers on 029 2082 6430