

## DEVELOPMENT MANAGEMENT

## RESPONSE OF THE SCOTTISH ENVIRONMENTAL SERVICES ASSOCIATION

The Scottish Environmental Services Association ("SESA") is the sectoral trade association representing Scotland's managers of waste and secondary resources. SESA's Members seek to align economic and environmental sustainability through delivering compliance with relevant waste and environmental law.

An effective planning system is a crucial driver for Scotland to develop a resource efficient economy. To process and treat waste in different ways, major investment is required by our sector and this investment is dependent on the Scottish Government delivering a clear and enabling planning framework.

**Q1: Do you agree with the proposed categories of development to which the requirements for pre-application consultation apply?**

SESA agrees that the requirements for pre-application consultation should apply to the largest of developments, such as national development or development which falls within the EIA regulations.

However, there would be significant resource implications for both developers and planning authorities if a developer was required to engage in pre-application consultation for all major development.

As the Scottish Government's proposals currently stand, major waste management development would range from an installation for the incineration of hazardous waste to a 25 000 tonne waste transfer station– the latter of which could not be considered as having greater than local significance. Given this range of development it is hard to envisage that local planning authorities could adequately apportion resources to reflect the scale and complexities of major development.

SESA is concerned that the proposed threshold is too low, thereby effectively defining the vast majority of waste management planning applications as major development. The determination of such development would be subject to the proposed extension from two to four months – with a potential period of eight months before an applicant could appeal against deemed refusal (if determination was extended by agreement).

The consultation's proposals are clearly at odds with the Scottish Government's commitment to promptly deliver a network of waste management facilities to secure Scotland's compliance with EU Directives on waste.

Given the Scottish Government's proposed thresholds for major development, SESA suggests the requirement for pre-application consultation should be limited to developments which fall within the scope of the EIA regulations or those defined as national development.

However, we see no merit in proposals whereby EIA planning applications, or development contrary to a development plan would be subject to pre-determination hearing and with final decision taken by the full council. SESA supports the status quo as members of planning committees have received specialist training and possess more experience to determine such applications.

**Q2: Do you have any comments on the thresholds in Schedule 1 of the DMR on pre-application consultation?**

In keeping with the Scottish Government's drive to ensure development plans are kept up-to-date, reference to the need for pre-application consultation for development contrary to development plans should be clearly limited to development plans which are 'current'.

**Q3: Is the information required in a pre-application screening notice sufficient?**

No comment.

**Q4: Is 21 days a reasonable period for authorities to respond to a pre-application screening notice in all circumstances?**

Whilst the 21 day response period appears appropriate, SESA is concerned by the proposal which allows planning authorities to request further information, thereby postponing the response deadline. The information requirements of the proposed notice of pre-application consultation should be sufficient to enable planning authorities' to reach a decision.

Requests for further information could be minimised by the issue of robust guidance by the Scottish Government to advise developers on the level of information required to fulfil the criteria of the notices.

**Q5: Do you agree with the proposed content of the proposal of application notice?**

No comment.

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[www.esauk.org](http://www.esauk.org)

Scottish Environmental Services Association  
2<sup>nd</sup> Floor, Excel House, 30 Seemple Street, Edinburgh EH3 8BL  
Tel: 0131 229 1000 email: [info@esauk.org](mailto:info@esauk.org)

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**Q6: Are the requirements to notify community councils and neighbours of the proposal of application notice sufficient or should others be notified at this stage as a statutory minimum?**

As a statutory minimum, SESA suggests notice need only be served on community councils and we would welcome further guidance from the Scottish Government to assist developers to engage with community councils on this matter.

**Q7: Do you agree with the minimum statutory requirements for pre-application?**

SESA is concerned by proposals to allow local authorities discretion to give direction of further consultation requirements. To provide developers with confidence and to ensure consistency, SESA suggests that a developer's pre-application consultation requirements should be limited to those specified in the regulations. This regulation could be supplemented by a list of bodies planning authorities wish to be consulted.

We propose an amendment to regulation 8(2)(a) and suggest an applicant should be required to convene an exhibition rather than a public meeting. Exhibitions are often more informative and can be held over the course of an entire day providing opportunities for greater involvement with local communities.

**Q8: Do you agree with the requirements on the content of pre-application reports?**

SESA Members often exceed their statutory obligations to consult both before and during the planning process, for instance through site liaison committees or establishing partnership projects with local groups.

However, failure to submit a report with the application, or modify proposals following pre-application consultation should not be grounds for refusing an application. 'Consultees' for the purpose of pre-application consultation – rather than statutory consultees, could refuse to engage in the consultation process simply as a means of delaying submission of the planning application.

The regulations must provide clarification on how the pre-application consultation report, once submitted, would be used by planners in the decision making process and what weight would be accorded to its content.

**Q9: Do you support the classes of development which will be subject to predetermination hearings?**

SESA recognises that people and communities need to feel part of the decision making process and a pre-determination hearing could provide an opportunity for views to be expressed.

However, the Scottish Government's proposals for enhanced scrutiny must not pose a further barrier to delivery of essential waste management capacity through the planning system.

A requirement for pre-determination hearings for applications "significantly contrary to development plans" could cause confusion and we suggest that the wording of regulation 37 is changed to simply state that development contrary to a development plan will require a pre-determination hearing.

However, this implies that development plans are both current and have made adequate provision towards planning for waste management infrastructure and SESA notes recent research has shown that this is not the case.

A 2005 report prepared for the Scottish Executive noted that only 21% of planning authorities had fully promoted the waste management objectives of the Area Waste Plans through the development plan process. This report was updated in June 2007 and whilst some progress was noted there is still a need to achieve a better fit between national waste management objectives and development plans

As the proposals stand, waste management planning applications are likely to be delayed through the system under proposals for enhanced scrutiny of applications contrary to development plans. This may not be due to the inherent complexities of an application but for the sole reason that development plans have failed to make adequate provision towards planning for waste management.

Our response to question 1 noted concern by proposals in which EIA planning applications, or development contrary to a development plan would be subject to pre-determination hearing and with final decision taken by the full council. SESA supports the status quo as members of Planning Committees have received specialist training and possess more experience to determine such applications.

**Q10: Should the opportunity to be heard at a pre-determination hearing be extended to other parties beyond those who made representations?**

**To facilitate the management of the process and to ensure the hearing focuses on the main matters raised through representations, participation at pre-determination hearings should be limited to the applicant and**

[www.esauk.org](http://www.esauk.org)

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2<sup>nd</sup> Floor, Excel House, 30 Sempole Street, Edinburgh EH3 8BL  
Tel: 0131 229 1000 email: [info@esauk.org](mailto:info@esauk.org)

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those parties who made representation.

**Q11: What arrangements would need to be made to convene full Councils to make these decisions?**

The Scottish Government must foster a culture of more accountable decision making at the local authority level which provides local authorities with the political will to determine planning applications.

SESA is therefore greatly concerned by proposals for applications which have been subject to a pre-determination hearing to be referred to full council for final decision. Members of a Planning Committee are likely to be better trained with more experience to determine such applications than those on the full Council.

As an alternative to this proposal, SESA suggests developers should be required to engage with Members of the full council during pre-application consultation. By informing the full council of proposals and providing an opportunity to engage, Members are more likely to have confidence in planning committees' determine process.

**Q12: Do you support the view that processing agreements should be in place before submission of the application?**

SESA welcomes the Scottish Government's intention to improve the management of the development control process and we see merit in the introduction of Processing Agreements.

The principles of Processing Agreements – better project management in which local authorities work towards "milestones" and adhere to a structured approach to consultation and meetings - should apply to the processing of all planning applications.

Nevertheless, SESA agrees such agreements should ideally be in place prior to the submission of an application, or at the very latest, 28 days after validation.

**Q13: Do you agree that where there is to be a processing agreement that it should be entered into not later than 28 days after validation?**

Please refer to our response to question 12.

**Q14: Do you agree with the suggested components of a processing agreement?**

SESA is satisfied with the core elements of a Processing Agreement (provided Agreements incorporate our comment to question 15), however, we have the following comments to make in reference to timescales.

Our Members note that statutory planning performance indicators are a strong driver of the development management process and therefore applications accompanied by a Processing Agreements should not be removed from the statutory planning performance indicators system. A planning authority may be inclined to target resources on those applications which remain within the statutory determination period, thereby neglecting those applications accompanied by a voluntary Processing Agreement.

Processing Agreements would therefore be a more effective tool if they provided the means to project manage an application within, at the very least, the statutory determination period.

**Q15: Do you agree that the sole parties signing the processing agreement should be the planning authority and the applicant, or do you think there is scope for statutory consultees to also sign the agreement?**

In 2006 an ATLAS pilot project identified engagement with statutory consultees as a failing of the proposed English Planning Performance Agreements and we suggest this should be addressed as a priority.

Therefore a review of statutory consultees' internal procedures when responding to local authority consultations is required to better enable structured engagement with statutory consultees which delivers Processing Agreements within the agreed timescale.

SESA therefore sees considerable merit in statutory consultees signing a Processing Agreement.

**Q16: Do you support the proposed approach to Planning Permission in Principle and approval of matters specified in conditions?**

No comment.

**Q17: Do respondents consider the approach to the content of planning applications to be appropriate or are any of the other options in paragraph 5.3 preferable?**

No comment.

**Q18: What other measures could help to ensure that applications are supported by adequate information at the start of the planning process whilst still encouraging efficiency in the development management system?**

SESA Members recognise the need to supply high quality supporting information and already invest significant resources in the submission of robust applications to planning authorities, regardless of the current rules relating to validation.

The Scottish Government correctly notes the requirement to provide additional information to local authority specifications, beyond that required by the GDPO, neither simplifies nor adds consistency in the approach towards the validation of planning applications.

SESA would therefore emphasise that importance of pre-application consultation with local authorities and suggests additional information requirements are clearly defined and agreed at this stage.

Application "scoping" has traditionally been achieved through constructive dialogue with local planning authorities and consultees, within the framework of the EIA Regulations, where applicable.

This should eliminate the need for local authorities to request further information during the determination of an application and allow for an informed decision making process within the statutory timeframes.

**Q19: Do respondents consider that the draft regulations on the content of applications for Planning Permission in Principle are pitched at an appropriate level of information?**

No comment.

**Q20: Do respondents consider that the requirements on content of applications are sufficiently clear to allow validation to be a relatively straightforward administrative check?**

SESA agrees that validation should be restricted to the information requirements of the GDPO, however, for the same reasons as our response to question 8, we are concerned that submission of a pre-application consultation report should form the basis of application validation.

**Q21: Do you have a view on the two options on the range of applications to be accompanied by a design and/or access statement?**

No comment.

**Q22: In addition to those considered in the options, in what circumstances might statements consider only one element – design or access?**

No comment.

**Q23: How can access panels be used most effectively in considering design and access?**

No comment.

**Q24: Do you consider that there is sufficient clarity in the regulations to allow for effective and timeous validation of applications where design and/or access statements are required?**

No comment.

**Q25: What role can local authority access officers play in assessing the access element of statements?**

No comment.

**Q26: What information do planning authorities and communities need to ensure a thorough and robust assessment of the design and access statement?**

No comment.

**Q27: Do you consider the proposals on service of notice to neighbours to be appropriate?**

SESA has no objection in principle to local authorities carrying out neighbour notification but regulation 22 must incorporate measures which assures developers that this process has been carried out satisfactorily.

**Q28: Do you agree that, in order to minimise costs and potential delay, a single notice sent to the address of the neighbouring land is sufficient for these purposes?**

No comment.



**Q29: Is the proposed approach to keeping people informed of PPP and approval of matters specified in conditions appropriate?**

No comment.

**Q30: Do you support the proposed definition of neighbouring land?**

No comment.

**Q31: Do you consider the proposals concerning the use of site notices and of local advertisements to be appropriate?**

No comment.

**Q32: Do respondents support the proposed requirements on notifying owners and agricultural tenants and the placing of local advertisements in this regard?**

No comment.

**Q33: Are you content with the Scottish Government's proposals for the public availability of the list?**

No comment.

**Q34: Is the advertisement of the availability of the list in a local newspaper on a monthly basis appropriate?**

No comment.

**Q35: Do respondents have any views on the list of statutory consultees and the criteria for consultation?**

No comment.

**Q36: Do respondents consider it appropriate to extend the statutory period for determining an application for national and major development to 4 months?**

No: whilst the determination of such development would be subject to the proposed extension from two to four months there is potential for a period of eight months to lapse before an applicant could appeal against deemed refusal (if an extension to determination had been agreed).

The Scottish Government should also be aware that its statutory performance targets measure the performance of local authorities in determining applications across all sectors. Waste management applications are, and will remain, a relatively small proportion of the total applications submitted and SESA is concerned our Members' planning applications could be subject to lengthy delays whilst local authorities could achieve statutory performance targets without demonstrating any significant improvement in performance in the determination of waste management applications.

**Q37: Is the level of information to be provided in the decision notice appropriate?**

SESA objects to the proposal in which planning permission would lapse after three years of no development. The current threshold is five years and the Scottish Government has not provided any justification for reducing this time period.

**Q38: How should planning authorities best manage the potential burden of ensuring those who made representations are advised of the decision?**

Greater provision should be made of e-mails and the internet in notifying parties who made representation.

**Q39: Is the information to be contained in the report of handling appropriate in order to provide a robust summary of how the application has been dealt with and the reasons behind the planning authority's decision?**

No comment.

**Q40: Can existing Committee reports, where available, be easily adapted to incorporate the proposed statutory requirements in paragraph 4 of Schedule 4?**

No comment.

**Q41: What might be an appropriate alternative name for "bad neighbour development"?**

No comment.

**Q42: Do you support the proposed additions and deletions to the list of "bad neighbour developments" and do you have other suggestions?**

SESA is concerned by the proposal to include waste transfer stations and recycling points to the list of 'bad neighbour development'. Such facilities will be associated with negative connotations, which is clearly at odds with the Scottish Government's commitment to promptly deliver a network of waste management facilities to secure Scotland's compliance with EU Directives on waste.

SESA seeks clarification of the Scottish Government's proposals to define transfer stations and recycling points as bad neighbour development. While reference is made to this development in the consultation paper, neither are included within Schedule 7 of the DMR.

**Q43: Are there any other uses which you consider should also be subject to controls on increases in gross floorspace?**

No comment.

**Q44: Do you support our proposal to have different approaches depending on whether other increases in the internal floorspace have taken place?**

No comment.

**Q45: Do you consider that 200 square metres is an appropriate level to help achieve the objectives of helping protect town centres?**

No comment.

**Q46: For the purpose of controlling internal Floorspace, do you support the decision to use amounts in square metres rather than a percentage?**

No comment

**Q47: Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations or the order?**

No comment.

**Q48: Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or the order?**

No comment.

**Q49: Do you have any other comments to make on the draft development management regulations or the mezzanine floors order?**

No comment.