

DUNDEE CITY COUNCIL

CITY DEVELOPMENT DEPARTMENT

Town and Country Planning (Scotland) Act 1997 Section 35(A) and (B) as inserted by the Planning Etc (Scotland) Act 2006

PRE-APPLICATION CONSULTATION

(IN RESPECT OF "NATIONAL" AND "MAJOR" CLASSES OF DEVELOPMENT)

GUIDANCE NOTES

1 GENERAL

- 1.1 These notes should be read carefully in conjunction with the provisions of the above legislation and in particular The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008¹ (Regulations 4-7).
- 1.2 The Scottish Government has introduced new statutory requirements which apply to planning applications, in respect of "national"² and "major"³ classes of development² only, submitted **on or after 3 August 2009**. In doing so the Scottish Government seeks to encourage improved trust and more open, positive working relationships between applicants, developers, local planning authorities and, in particular, local communities.
- 1.3 Pre-application consultation with the community and with the Council's officers are intended to add value at the start of the planning process and well before an application is submitted. This will also ensure that all parties are clear about the process to be followed leading to the decision by the Council.
- 1.4 Dundee City Council officers have always welcomed the opportunity to engage with an applicant and their advisers before an application is submitted, and this has applied to all categories of application, large or small. This policy continues to apply this policy side by side with these new requirements which only apply to large scale proposals.
- 1.5 The new legislation outlines a sequential approach to pre-application consultation as follows.

2 PRE-APPLICATION SCREENING

- 2.1 These requirements only apply to "national" and "major" applications which are defined elsewhere in planning legislation. If a potential applicant is not sure if their proposal falls into one of these classes they **MAY** serve a **PRE-APPLICATION SCREENING NOTICE** on the Council requiring it to make a determination. This notice is made in writing (no form) but must set out:

¹ These Regulations may be found at www.opsi.gov.uk/legislation/scotland/ssi2008

² As prescribed by the Scottish Parliament in the National Planning Framework 2 document laid before the Scottish Parliament on 12 December 2008 (see www.scotland.gov.uk/Publications/2008

³ As defined in the Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2008 at www.opsi.gov.uk/legislation/scotland/ssi2009

- a a description in general terms of the development to be carried out;
 - b if the site at which the development is to be carried out has a postal address, that address;
 - c a plan showing the outline of the site at which the development is to be carried out and sufficient to identify the site;
 - d details as to how the prospective applicant may be contacted and corresponded with;
 - e a statement as to whether a screening opinion or screening direction has previously been issued on the need for EIA in respect of the development.
- 2.2 In preparing the notice, a prospective applicant should include enough detail within the general description of the proposal to enable the Council to determine the class of development within the new Hierarchy. The plan showing the site should be to an Ordnance Survey base.
- 2.3 Although this information should be sufficient to make a decision, the Council can request **within 21 days** further information. The Council has **21 days** from the submission of the necessary information to respond to the notice.
- 2.4 A benefit of obtaining this view from the Council is that if the proposal is not considered to be in a category for which pre-application consultation is required, and the proposal does not then alter significantly prior to submission of a planning application within 12 months, the Council may not alter its initial view.
- 2.5 In general, any planning application for "national" development or "major" development will need to demonstrate compliance with pre-application consultation requirements. Where an application for planning permission follows on previously sought by or granted to the same applicant and pre-application consultation was previously undertaken there may be uncertainty about whether pre-application consultation requires to be undertaken afresh. While this is a matter for the Council, the screening process will enable a decision to be taken in the circumstances of the case.

3 PROPOSAL OF APPLICATION NOTICE

- 3.1 When it has been determined that formal pre-application consultation is required, the prospective applicant must, provide to the Council a **Proposal of Application Notice** at least **12 weeks prior to the submission of an application** for planning permission. That notice must be made on the form issued by the Council and include the information set out below:
- a a description in general terms of the development to be carried out;
 - b if the site at which the development is to be carried out has a postal address, that address;
 - c a plan showing the outline of the site at which the development is to be carried out and sufficient to identify the site;
 - d detail as to how the prospective applicant may be contacted and corresponded with; and

- e an account of what consultation the prospective applicant proposes to undertake, when such consultation is to take place, with whom and what form it will take.
- 3.2 The last element is important in that it will assist the Council in responding to the Proposal of Application Notice with any additional notification and consultation requirements.
- The "description in general terms" should provide an outline of the proposal's characteristics, and the identification of its class (eg "major" development).
- 3.3 The submission of the Proposal of Application Notice starts the pre-application consultation processing clock. After a minimum of 12 weeks, having carried out the statutory requirements, and any additional requirements specified by the Council, an applicant can submit an application for a "major" development or a "national" development along with a required written report (see later).
- 3.4 The prospective applicant is required to indicate in the Notice what consultation, if any, they will undertake **in addition to the statutory minimum**. The Council must respond within **21 days** that they wish to see that consultation undertaken, or specify any **additional notification and consultation**, in order to make it binding on the prospective applicant.
- 3.5 Within 21 days of receiving the Notice, the Council **may** notify the prospective applicant or any other persons they consider must also receive a copy of the Notice and of any other **reasonable** consultation that must be undertaken, including its form. In doing so, the Council will consider the nature, extent and location of the proposed development and the likely effects of the development at and in the vicinity of that location.
- 3.6 Further advice on the planning of community engagement activity can be found in Planning Advice Note 81: *Community Engagement - Planning With People*.
- 3.7 To assist prospective applicants the Council will have available lists of local bodies and interests with whom prospective applicants should consult in particular cases. These lists will be made available to prospective applicants.
- 3.8 Prospective applicants should have a meaningful, proportionate engagement with those who can represent affected communities' views. The purpose of pre-application consultation is to improve the quality of applications, mitigate negative impacts where possible, address misunderstandings, and air and deal with any community issues that can be tackled. The proposals, if adjusted, should benefit from that engagement and assist the efficient consideration of applications once submitted.
- 3.9 If there is no response to the Notice by the Council within **21 days**, only the statutory minimum consultation activities will be required although prospective applicants should fulfil any activities proposed in the proposal of application notice.

4 MINIMUM CONSULTATION ACTIVITY

Consultation with Community Councils

- 4.1 The prospective applicant **must** consult every Community Council any part of whose area is within or adjoins the land where the proposed development is situated. In

doing so, the prospective applicant **must** also serve on the relevant Community Councils the Proposal of Application Notice. The Notice will also be placed by the Council on its Weekly List.

- 4.2 Details of the Chairs and Secretaries of Community Councils may be obtained from the Planning and Transportation Department.
- 4.3 Although not formally designated as Community Councils, the City Council has afforded Neighbourhood Representative Structures a similar status for the purposes of planning consultation. Again details are available from the Planning and Transportation Department.

The Public Event and Its Publicity

- 4.4 The Regulations require that **at least one public event** for members of the public is held where they can make comments to the prospective applicant on their proposals. This "public event" must be **advertised at least seven days in advance** in a newspaper circulating in the locality of the proposed development, eg Dundee Courier or Evening Telegraph.
- 4.5 This event should enable members of Community Councils and other members of the public to arrange to attend the event.
- 4.6 This advertisement **must** include:
- a description of, and the location of, the proposed development;
 - details as to where further information may be obtained concerning the proposed development;
 - the date and place of the public event;
 - a statement explaining how, and by when, persons wishing to make comments to the prospective applicant relating to the proposal may do so; and
 - a statement that comments made to the prospective applicant are not *representations* to the Council. If the prospective applicant submits an application there will be an opportunity to make *representations* on that application to the Council.
- 4.7 Prospective applicants should ensure that processes are put in place that will allow members of the community to participate meaningfully in any public event. It is not the intention that the Council will routinely have a direct role in pre-application consultation. The Council will not routinely have a direct role in pre application consultation activities beyond their statutory roles in screening, responding to Proposal of Application Notices and considering pre-application consultation reports when validating applications.
- 4.8 The public event should be reasonably accessible to the public at large, including disabled people. It may be appropriate for the public event to take place over a number of dates, times and places. Prospective applicants should ensure that individuals and community groups can submit written comments in response to the newspaper advertisement.

- 4.9 There is a need to emphasise to local communities that the plans presented to them for a proposed planning application may alter in some way before the final proposal is submitted as a planning application to the planning authority. Even after pre-application consultation, communities should ensure that any representations they wish to make are submitted as part of the process of considering the planning application.

5 PRE-APPLICATION CONSULTATION REPORTS

- 5.1 The applicant **must prepare a report** as to what has been done during the pre-application phase to comply with the requirements of the legislation and any requirements set out in the Council's response to the Proposal of Application Notice. The report (known as a **Pre-Application Consultation Report**) should:
- specify who has been consulted; and
 - set out what steps were taken to comply with the statutory requirements and additional requirements of the Council.
- 5.2 The report must be in writing and may be submitted electronically. There is no prescribed format for the report and no form needs to be completed.
- 5.3 The report should also set out how the applicant has responded to the comments made by the general public and consultees and including whether, and the extent to which, the proposals have changed as a result of pre-application consultation.
- 5.4 The report should also provide evidence that the various prescribed steps have been undertaken - eg copies of advertisements of the public events and reference to material made available to such events. It is also important to demonstrate that steps were taken to explain the contact to which the consultation exercise was undertaken, ie that it did not replace the application process whereby representations could in due course be made to the Council when an application was submitted.
- 5.5 The report must accompany the planning application when submitted and the Council will be required to include it on the Planning Register along with the application, plans and drawings.
- 5.6 **If a relevant application is submitted to the Council without the mandatory report the entire application will be returned to the applicant as not valid.**
- 5.7 The Council would find it helpful if the report were to be as detailed as possible in terms of the issues raised by consulted groups and the general public throughout the consultation period together with notes of the changes to the proposals made in response. Equally, prospective applicants may feel unable to make changes in response to public comment. An outline of their reasoning would be helpful. The inclusion of notes of meetings would be helpful.
- 5.8 It should be noted that if elected members of the Council or officers attend public events during the pre-application consultation period, they will not be in a position to comment on any proposals or indicate their support or otherwise.
- 5.9 The purpose of the report is to confirm that pre-application consultation has taken place in line with statutory minimum requirements and in line with any further requirements set by the Council.

- 5.10 In terms of considering any subsequent application, the report is not likely to have a significant role, unless it identifies issues or contains information which could be considered a material consideration to which the Council should give weight in determining the application.

6 TRANSITIONAL ARRANGEMENTS

- 6.1 All applications for "national" or "major" development submitted on or after 3 August 2009 **MUST** comply with the Regulations summarised above. Consequently if an applicant wishes to submit a valid application on the 3 August 2009, to comply with the Regulations ,a Proposal of Application Notice must be submitted **no later than 11 May 2009**.
- 6.2 Applicants and agents are therefore **STRONGLY** advised to familiarise themselves as soon as possible with the Regulations if they are contemplating the submission of major proposals on or soon after 3 August 2009.
- 6.3 Although applications submitted before the 3 August need not comply with the Regulations, applicants are **STRONGLY** advised to avoid submitting applications for major development immediately prior to 3 August 2009 which turn out to be invalid for other reasons. In these circumstances they may be faced with a returned application with a need to undertake pre application consultation before a valid resubmission can be made.

7 CONTACTS AND FURTHER INFORMATION

- 7.1 Should you have any queries concerning this Guidance Note or any aspect of the new legislation, please do not hesitate to contact the Council.

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Please note that these Guidance Notes are not a complete or definitive interpretation of the law and you are advised to seek independent advice in this regard.