

# PLANNING ENVIRONMENTAL GOVERNANCE WORK PROGRAMME

(Revised as at 23<sup>rd</sup> December 2021)

## Introduction

Environmental compliance – the adherence to a wide range of environmental laws, regulations and standards – is a fundamental tenet on which the planning system is based. Planning authorities are required to make good, environmentally-sound planning decisions while ensuring compliance with important obligations and responsibilities originating from European Environmental Directives which have been transposed into domestic planning legislation. While these obligations have always been an important consideration in the planning decision-making process, in recent years planning authorities' environmental compliance has come under increased scrutiny and challenge as interest in environmental matters has increased – with a particular focus on environmental impact assessment (EIA).

The Department and councils face administrative, financial and staffing demands in terms of meeting environmental compliance obligations and managing the various complaints and challenges associated with this area of work. The risk of non-compliance is both reputational and financial – important considerations for planning authorities. But more important is the risk of significant environmental harm, badly planned development or significant delay or derailment of vital projects because of non-compliance and/or legal challenges on environmental grounds.

The Department is committed to continuing to respond effectively to these various challenges in a pro-active, strategic and co-ordinated manner, bearing in mind the role and responsibility of local government under the two-tier planning system. It recognises the opportunities that exist to enhance good practice and has seen good progress in the first two years of the implementation of the EGWP. The revisions to the work programme reflect the Department's ongoing vision, objectives and actions to continue to increase environmental compliance across the planning system. Together these will help to further support the delivery of sustainable development, ensure local planning authorities continue to understand and meet environmental obligations and ultimately promote and increase good, environmentally-sound decision-making.

This revised work programme remains a living document which will continue to evolve and develop in light of developments including, for example, emerging findings, new challenges and opportunities, case law and resources etc.

## **Vision/Overarching Objective**

Build a confident and coherent approach across public sector planning in Northern Ireland to foster a supportive EIA community recognised for the quality of its approach to environmental governance.

## **Challenges**

- The need to secure delivery of environmentally sustainable infrastructure and development has become increasingly complex in recent years in light of emerging case law and changing environmental conditions and priorities.
- Co-ordination of effective environmental compliance in the context of the 2-tier planning system and central government reorganisation.
- Achieving consistency in quality decisions and application of key environmental regulations and fundamental principles.
- Planning applications with increased complexity / controversy e.g. the extractive industries.
- Effective long-term engagement with environmental organisations and other international bodies e.g. EC, UK Government, ROI.
- Management of legal and other complaints, challenges, requests, etc.

## **Strategic Response**

Three key strands were originally identified under the initial EGWP:-

- Programme of EIA capacity building, engagement and support.
- Programme of targeted and prioritised monitoring and review of council operational activity (with initial focus on unauthorised EIA development and enforcement).
- Programme of engagement with EU, UK and ROI.

It is considered that a focus on these three strands remains appropriate with some amendment:-

- Continued programme of EIA capacity building, engagement and support.

- Continued proportionate and appropriate engagement with councils in relation to good practice and operational activity (maintaining a focus on unauthorised EIA development and enforcement).
  
- Engagement with EU, UK bodies and ROI.

## **Objectives**

1. Review and ongoing implementation of Planning Group environmental governance capacity building framework.
  
2. Ensure Departmental and council staff are advised/made aware of fundamental environmental governance principles to strengthen depth and breadth of knowledge in key regulatory areas.
  
3. Facilitate ongoing improvement by establishing an active and unified EIA/Environmental Governance Community in NI, which identifies and shares effective local case studies, engages with UK and International good practice and enables planning authorities to take collaborative ownership of environmental governance performance.
  
4. Maintain targeted engagement with councils in support of good practice and systemic compliance with environmental obligations.
  
5. Engage meaningfully with EU, UK and ROI on environmental governance matters and respond effectively to complaints and challenges at international level.
  
6. Over longer term deliver a cultural shift across NI's public sector planning community to collaboratively support excellence in all aspects of environmental governance.

| <b>Strand 1: EIA Capacity building, engagement and support</b>   |                    |  |                   |                         |
|--|--------------------|--|-------------------|-------------------------|
| <b>Objective 1: Review and ongoing implementation of Planning Group environmental governance capacity building framework</b> |                    |  |                   |                         |
| <b>ACTION</b>  | <b>TARGET DATE</b> | <b>POSITION AT 23 DECEMBER 2021</b>  | <b>% COMPLETE</b> | <b>TARGET COMPLETED</b> |
| Conduct a review of resource and capacity in Planning Group to take the work programme forward                               | By Q3 of 2021/22   | Composition of cross-disciplinary 'Environmental Governance' team to be reviewed.                                | --                | Ongoing                 |
| Secure the continued posting of an embedded / out-posted solicitor to Dfl to cover environmental compliance issues.          | Q1 of 2021/22      | Continued support for an embedded solicitor.   | 100               | Q1 of 2021/22           |
| Re-contract with external EIA expert to support Planning Group in delivering the revised work programme                      | Q2 2021/22         | Direct award contract (DAC) for further 2 year period developed and endorsed by Central Procurement Directorate. | 40%               |                         |
| Complete follow-up review of DFI / LPA capacity and confidence   | Q1 of 2021/22      | Post project report submitted by external EIA expert and reviewed by EGWP Senior Owner and Project Leader.       | 100%              | May 2021                |

| <b>Strand 1: EIA Capacity building, engagement and support</b>   |                         |   |                   |                         |
|--|-------------------------|---|-------------------|-------------------------|
| <b>Objective 2: Ensure Departmental and council staff are advised/made aware of fundamental environmental governance principles to strengthen depth and breadth of knowledge in key regulatory areas</b> |                         |   |                   |                         |
| <b>ACTION</b>  | <b>TARGET DATE</b>      | <b>POSITION AT 23 DECEMBER 2021</b>   | <b>% COMPLETE</b> | <b>TARGET COMPLETED</b> |
| Engage with Councils re developments in Environmental Governance Work Programme  | Quarterly               | Environmental Governance standing item on quarterly Strategic Planning Group (SPG) agenda.  |                   |                         |
| Publish guidance on identified areas of EIA process/good practice  | Ongoing through 2021/22 | <ul style="list-style-type: none"> <li>Finalise and publish guidance on the management of unauthorised EIA development</li> </ul> | 90                |                         |
|  | Q2 2021/22              |   |                   |                         |
|  | Q4 2021/22              | <ul style="list-style-type: none"> <li>Complete work on EIA screening guidance</li> </ul>   | 50%               |                         |
|  | Q4 2021/22              | <ul style="list-style-type: none"> <li>Undertake initial work on EIA scoping guidance</li> </ul>                                  |                   |                         |
|  | Q4 2021/22              | <ul style="list-style-type: none"> <li>Undertake work on EIA Mitigation &amp; Monitoring guidance</li> </ul>                      |                   |                         |

| <b>Strand 1: EIA Capacity building, engagement and support</b>   |                    |  |                   |                         |
|--|--------------------|--|-------------------|-------------------------|
| <b>Objective 2: Ensure Departmental and council staff are advised/made aware of fundamental environmental governance principles to strengthen depth and breadth of knowledge in key regulatory areas</b> |                    |  |                   |                         |
| <b>ACTION</b>  | <b>TARGET DATE</b> | <b>POSITION AT 23 DECEMBER 2021</b>  | <b>% COMPLETE</b> | <b>TARGET COMPLETED</b> |
| Continue the delivery of tailored EIA training for DfI and Council planning staff  | Ongoing            |  | Ongoing           |                         |
| Provide advice on key CJEU cases and judgments   | Ongoing            | Key EU cases identified through discussions with Senior Counsel and reflected in initial U/A EIA guidance. | 50                |                         |

| <b>Strand 1: EIA Capacity building, engagement and support</b>  |                                |   |                   |                         |
|---|--------------------------------|---|-------------------|-------------------------|
| <b>Objective 3: Facilitate ongoing improvement by establishing an active planning EIA Community in NI, which identifies and shares effective local case studies, engages with UK and International good practice and enables planning authorities to take collaborative ownership of environmental governance performance</b> |                                |   |                   |                         |
| <b>ACTION</b>   | <b>TARGET DATE</b>             | <b>POSITION AT 23 DECEMBER 2021</b>   | <b>% COMPLETE</b> | <b>TARGET COMPLETED</b> |
| Maintain schedule of DfI Environmental Governance Working Group   | Twice yearly or as appropriate | Meetings arranged as appropriate  | Ongoing           | --                      |
| Maintain schedule of DfI/DAERA/SES engagement meetings for communication and mutual support around regional EG issues.  | Ongoing                        | Meetings scheduled on quarterly basis or as appropriate.  | On target ongoing |                         |
| Continue schedule of Planning Environmental Officers' Forum (EOF) meetings and supplement council membership following delivery of further EIA Advanced training by external EIA expert   | Ongoing through 2020/21        |   |                   |                         |
| Facilitate direct engagement between identified stakeholders and external EIA expert to develop where possible tailored EIA training  | By end Q3 2021/22              | Further contract with external EIA expert to be agreed to include stakeholder engagement and development of tailored EIA training as appropriate. | 100%              | N/A                     |

| <b>Strand 2: Targeted engagement with councils in relation to EIA good practice and operational activity</b>                                      |                    |   |                   |                         |
|---|--------------------|---|-------------------|-------------------------|
| <b>Objective 4: Maintain targeted engagement with councils in support of good practice and systemic compliance with environmental obligations</b> |                    |   |                   |                         |
| <b>ACTION</b>   | <b>TARGET DATE</b> | <b>POSITION AT 23 DECEMBER 2021</b>   | <b>% COMPLETE</b> | <b>TARGET COMPLETED</b> |
| Engage with Pilot Councils on enforcement strategies and share with other planning authorities.   | Q3/Q4 2021/22      | Work underway to identify and communicate priorities for a revised approach to councils' enforcement strategies.  | 60                |                         |
| Engage where appropriate with individual councils to discuss operational approach to identified cases.  | Ongoing            | COVID-19 has impacted fortnightly internal review meeting. New applications into the system are identified and prioritised. Engagement with council case officers ongoing where deemed appropriate. | Ongoing           |                         |



| <b>Strand 3: Engagement with EU, UK and ROI</b>   |                           |  |                        |                                      |
|---|---------------------------|--|------------------------|--------------------------------------|
| <b>Objective 5: Engage meaningfully with EU, UK and ROI on environmental governance matters and respond effectively to complaints and challenges at international level</b> |                           |  |                        |                                      |
| <b>ACTION</b>   | <b>TARGET DATE</b>        | <b>POSITION AT 23 DECEMBER 2021</b>  | <b>% COMPLETE</b>      | <b>TARGET COMPLETED</b>              |
| Engage with Whitehall colleagues on future arrangements post-Brexit   | Ongoing                   | Land use planning aspects of Hazardous Substances common framework (Phase 4) approved by Minister. Awaiting publication by MHCLG to commence Phase 5 Implementation Phase. | Ongoing and on target. | N/A                                  |
| EU Pilot  | In line with EC deadlines | Ongoing contact with DEFRA as appropriate.   | Ongoing                | All deadlines to date have been met. |
| Aarhus complaint C/90   | Ongoing                   | ACCC findings VII/8s published in relation to ACCC/C/2013/90 and work underway along with GB planning regimes to consider appropriate response.                            | --                     | All deadlines to date have been met. |
| Determine future relations with ROI on common environmental governance issues   | Ongoing                   | Discussions and engagement ongoing   | 75                     | N/A                                  |

|   |                          |   |    |  |
|---|--------------------------|---|----|--|
| Agreement of EIA transboundary consultation protocol with ROI in line with statutory obligations. | TBC (COVID-19 dependent) | Flowcharts sent to DHPLG which are in line with NI legislative requirements. Awaiting confirmation from DHPLG that protocols align with ROI legislative requirements. | 80 |  |
|---|--------------------------|---|----|--|