

Review of SG LSD9: Hazardous Development

1. Introduction

- 1.1 This paper will review the Aberdeenshire Local Development Plan SG LSD9: Hazardous Development and assess whether any changes are required in light of amendments to national policy and changes in the local context. It will also assess whether the guidance forms a sound basis for making planning decisions on hazardous developments in Aberdeenshire.
- 1.2 SG LSD9: Hazardous Development aims to protect the public and environment from pollution, nuisance or hazard arising from new or existing developments such as pipelines, dams, waste disposal/treatment facilities, waste water treatment plants and heavy industrial uses.

2. Background

2.1 National Context

- 2.1 Article 12 of the Seveso II EU Directive (1996) forms the basis for LSD9, requiring member states to take account of the need to limit the impacts of major accidents in their land-use and other relevant policies. This broad requirement is implemented through controls on new developments around existing major hazard establishments/pipelines, and the siting of new major hazard establishments. Seveso II was transposed into planning legislation through amendments to the Town and Country Planning (General Development Procedure) Order 1995, the Planning (Hazardous Substances) Regulations 1992, and the introduction of the Planning (Control of Major Accident Hazards) Regulations 1999 (2000 in Scotland). Compliance with planning legislation is achieved through the preparation of development plans and consideration of planning applications.
- 2.2 The Planning etc. (Scotland) Act 2006 introduced a broad requirement that the preparation of development plans must be exercised with the objective of contributing to sustainable development.
- 2.2 In line with the above, Scottish Planning Policy (SPP 2010) requires planning to contribute towards sustainable development through its influence on the location, layout and design of new development. SPP supports the need for LDP policy/guidance on the environmental impacts of development (LSD9) when it states that “*decision making in the planning system should take into account the implications of development for water, air and soil quality*”. SPP also provides a basis for specific guidance on hazardous developments by identifying surface coal mining, renewable energy and mineral extraction developments and the need for planning authorities to “*consider disturbance and disruption from noise, blasting and vibration, and potential pollution of land, air and water, along with any effects on communities*”.
- 2.3 PAN51 (2006) details the respective roles and interaction between the planning system and the environmental regulation regime, with regard to impacts on water, air and soil quality, human health and noise nuisance. It broadly supports the need for LDP guidance on the environmental impacts of development (LSD9) when it states that “*there are... cases where the planning system may be the most appropriate mechanism to provide environmental protection or improvement*”. While LSD9 may consider impacts already covered by the

environmental regulation regime, i.e. Hazardous Substances Consent, this approach aligns with PAN51, which states that *“the planning authority should have regard to the impact of a proposal on air or water quality although the regulation of emissions or discharges will fall to be dealt with under other legislation.”*

2.3 Strategic/Regional context

2.4 One of the key aims of the Proposed Aberdeen City and Shire Strategic Development Plan (SDP) is the promotion of sustainable development. With regard to regulating the impacts of development on the environment, it states that *“local development plans (and supplementary guidance) will make sure the North East’s Natural Environment continue(s) to be protected and improved”*.

3. Current Approach

3.1 The current policy will refuse development if:

- it would cause pollution, precipitate flooding, create a significant nuisance or present an unacceptable hazard to the public or the environment: or
- the proposed site is in close proximity to existing hazardous development facilities or infrastructure that could cause significant pollution, precipitate flooding, create a nuisance or present a hazard to the public.

3.2 LSD9 links directly to the Seveso II Directive requirement to *“control...new developments around existing major hazard establishments and pipelines, and on the siting of new major hazard establishments”*. It also aligns with SPP and PAN51’s transposition of the relevant national planning legislation.

3.3 Criterion 1 incorporates the SPP and proposed LDP requirements outlined above, in terms of regulating the environmental impacts and associated health risks of hazardous developments.

3.3 The broad approach of criterion 1 overlaps with other SG’s which address some environmental impacts directly, i.e. SG Safeguarding1: Protection and Conservation of the Water Environment and SG LSD8: Flooding and Erosion. However, this approach is necessary to allow all the ‘potential’ impacts of hazardous developments to be considered.

3.3 Criterion 2 is concerned with protecting new developments from the negative impacts of existing hazardous development and can be applied to any new development, including housing.

3.4 The justification text sets out who the Council is required to consult and when. For example, the Health and Safety Executive is a statutory consultee and must be consulted on all planning applications within a set distance (consultation zone) of major hazardous sites.

3.4 While LSD9 does not directly address cumulative impacts, these will, where necessary, be considered during the consultation process; primarily through Environmental Impact Assessment.

3.3 While SG LSD9 does not provide any criteria for assessing where hazardous development should be located, this is considered under SG Safeguarding4,5,6,7,8.

4. Drivers of Change

- 4.1 The National/Regional and legislative and policy context for hazardous developments has not changed significantly since LSD9 was written and therefore no amendments are required to align it with the wider context.
- 4.2 Under criterion 1, a development can only be refused if it 'would' cause pollution etc. This does not allow for situations where potentially significant impacts of a development are in doubt. While statutory consultees such as SEPA can place a holding objection on a planning application if there is insufficient information or clarity on the impacts, there should be scope within the guidance to refuse a development when the impacts are unclear or unknown.
- 4.3 In criterion 1, the term 'pollution' should be further defined, as low levels of pollution may be acceptable in some cases.

5. Recommendations

- Criterion 1 should be replaced with the following: "*There is either a demonstrable or likely risk that it could cause significant pollution, precipitate flooding, create a significant nuisance or present an unacceptable hazard to the public or the environment*". Additional text should be added to the reasoned justification to clarify that development may be refused if the impacts are unclear or unknown.
- For consistency with criterion 1, change criterion 2 to read "The proposed site is in close proximity to existing hazardous development facilities or infrastructure that could cause significant pollution, precipitate flooding, create a significant nuisance or present an unacceptable hazard to the public"

6. Summary of main points

- 6.1 Current national legislation and planning policy/advice supports the need for SG LSD9. LSD9 forms a sound basis for assessing new potentially hazardous developments or new developments located in close proximity to existing hazardous developments. While the legislative and policy context on hazardous developments has not changed significantly since LSD9 was written and no significant updates are required, this paper recommends that LSD9 is amended to enable refusal of a development if the impacts are unclear or unknown. In addition, the term 'pollution' should be further defined.

References

- Aberdeen City and Shire *Proposed Strategic Development Plan* (2013)
- Aberdeenshire Council (2012) *Aberdeenshire Local Development Plan 2012*
- Scottish Government (2010) *Scottish Planning Policy*
- Scottish Government (2009) *National Planning Framework for Scotland 2*
- Planning Advice Note PAN51: *Planning, Environmental Protection and Regulation* (2006)
- Health and Safety Executive <http://www.hse.gov.uk/landuseplanning/index.htm>