

Ards and North Down Borough Council

Report Classification	Unclassified
Council/Committee	Planning Committee
Date of Meeting	18 January 2022
Responsible Director	Director of Regeneration, Development and Planning
Responsible Head of Service	Head of Planning
Date of Report	10 January 2022
File Reference	
Legislation	The Reservoirs Act (Northern Ireland) 2015
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below: Response to Departmental Consultation
Subject	DFI Consultation on secondary legislation to further commence and implement the requirements of the Reservoirs Act (NI) 2015
Attachments	11.1 - Consultation Document 11.2 - Table of Content of Reservoirs Act 11.3 - Proposed Council Consultation Response

Members will be aware of the Consultation issued by DFI as referenced at Item 8.2 of the Council meeting of 22 December 2021 and that delegated authority was issued to Planning Committee to issue a response.

Background

The Reservoirs Act (Northern Ireland) 2015 ('the Act') came into operation in July 2015 and was purported to introduce a 'proportionate regulatory and management framework for reservoir safety in Northern Ireland'. The Act can be accessed here <https://www.legislation.gov.uk/nia/2015/8/contents>.

At that time only limited elements of the Act were commenced which included: the definition of a controlled reservoir, who is the reservoir manager, and powers of entry for the Department.

Statutory responsibility for the Reservoirs Act only transferred to the Department for Infrastructure in June 2021, some almost six years later. It is only now that the Department states it is in a position to consider further commencement of the other elements of the Act and subordinate legislation in the form of Regulations and Orders to provide clarification or the details to effectively implement the Act and enable reservoir managers to comply with the Act.

Planning Policy in relation to reservoirs

Regardless of the lack of subordinate legislation at the time to support the operation of the Reservoirs Act, the then Department of the Environment published a revised Planning Policy Statement 15: Planning and Flood Risk in September 2015 which introduced Policy FLD 5: 'Development in proximity to reservoirs'. The Strategic Planning Policy Statement for NI, published in September 2015, also contains regional policy in this regard.

The Strategic Planning Policy Statement for Northern Ireland (SPPS), paragraphs 6.119 to 6.122, together with the provisions of Policy FLD5 of revised PPS 15 provides that new development will only be permitted within the potential flood inundation area of a controlled reservoir if the applicant can demonstrate that the condition, management and maintenance regime of the reservoir is appropriate to provide sufficient assurance regarding reservoir safety and the developer provides a flood risk assessment (FRA) which includes, amongst other considerations, an assessment of the downstream flood risk, including flood water depth, velocity and flow path issues.

Cognisant of the absence of subordinate legislation and issues facing planning authorities, DfI Rivers issued a Technical Guidance Note in June 2020 setting out the general approach DfI Rivers would follow when providing advice to planning authorities on all relevant applications for development within the flood inundation area of a controlled reservoir. This guidance highlights a risk still remains of inappropriate new development in the potential inundation areas of controlled reservoirs, but provides practical details associated with the implementation of the policy in the short term before the longer term solutions (i.e. the introduction of further legislation) can come into effect.

Members will be aware of the impact that the current planning policy has in relation to specific planning applications, particularly that of Queen's Parade private investor redevelopment scheme in the context of the lack of sufficient assurance regarding reservoir safety of Clondeboy Lake, and in this context the proposed response highlights the lack of an agreed industry methodology for assessing 'Probability' of an uncontrolled release of water from a reservoir, and the impact that the lack of appropriate legislation to date has had on building investment confidence in Northern Ireland as a whole.

The Consultation

The consultation (as outlined in 11.1) invites responses in relation to those sections of the Act that the Department proposes to commence, and the Regulations and Orders that it proposes to make at this time.

A table is attached for Members' information detailing the totality of the sections of the Reservoirs Act and identifying those sections currently in operation, those proposed to come into operation and those not yet consulted upon (11.2).

A draft response is attached (11.3) for discussion and agreement by Members.

Members should also note that the Heads of Planning Group is seeking an extension from DFI's Water and Drainage Policy Division in order to formulate a collective professional officer response as it is clear not all councils were aware of the consultation, as DFI Planning did not highlight to councils in the context of prevailing planning policy which is reliant upon this Act. In this response it is pertinent to highlight that this is not a consultation in relation to current planning policy and as such the Council is unable to amend such regional policy.

RECOMMENDATION

That the Council notes the content of this report and approves the proposed response to the Department's consultation on the Reservoirs Act.