



Department of the
Environment
www.doeni.gov.uk

DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Stella McArdle
Clerk to the Agriculture and Rural Development
Committee
Northern Ireland Assembly
Room 244
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Telephone: 028 9025 6022

Email: privateoffice.assemblyunit@doeni.gov.uk

Your reference:

Our reference:

CQ/37/14

Date: 14 March 2014

Dear Stella,

I refer to the ARD Committee memo dated 12th February 2014 concerning the Reservoirs Bill seeking views on the Reservoirs Bill and / or its policy implications.

In reviewing the Assembly Research and Information Service Bill Paper (the Bill Paper) which accompanied the ARD Committee memo, the Department of Environment (DOE) considers that the main implications of the Reservoirs Bill from the Planning perspective fall within the following section of the Paper:

- Section 4.1.2 – Downstream development- impacts on reservoir designation and associated costs / PPS 15 implications;

In consideration of this section, DOE offers the following comments.

DOE officials have worked closely with DARD Rivers Agency officials in the Review of PPS 15 leading to the publication of Revised Draft PPS 15 on 10th October 2013 for public consultation over a 12 week period. This includes a new policy (FLD 5) which provides planning policy to address the newly identified source of flood risk associated with reservoirs.

Policy FLD 5 of Revised Draft PPS 15 is designed to manage development in proximity to reservoirs so as to reduce flood risk to new and replacement development and elsewhere as a result of such development.

In the course of engagement with Rivers Agency, officials have discussed the emerging Reservoirs legislation and the implications for planning and development. These considerations have also been taken into account in the drafting of policy FLD 5.

A key element of FLD 5 relates to the requirement for a developer to provide assurance regarding reservoir safety, so as to enable the development to proceed. This is regarded as a necessary requirement in order to mitigate against the downstream flood risk in the event of a controlled release of water or an uncontrolled release of water due to reservoir failure. Where such assurance is not forthcoming planning permission will be refused.

Significant issues arising out of this requirement relate to costs for any improvements to the reservoir and ongoing maintenance works which are deemed necessary in order to facilitate development within the potential flood inundation zone. Section 4.1.2 of the Bill Paper points out that such costs are likely to be influenced by the risk based approach for the management of controlled reservoirs being brought forward in the legislation. Thus, reservoirs designated as 'high' risk will be subject to more rigorous standards of control and ongoing maintenance than those included in 'medium' or 'low' risk categories. The Bill Paper also notes that the allocated risk designation of a reservoir is likely to change as a result of downstream development, particularly where there is no existing development. In these circumstances, development that triggers a change from 'low' risk to 'medium' or 'high' risk is likely to result in increased costs to secure and maintain the higher standards in order to comply with the legislation. The outworking of the relevant legislative provisions is a matter for DARD.

Policy FLD 5 does not prescribe responsibility for such costs but advises that "*the funding of such costs is a private matter between the developer and the reservoir manager*". Clearly it would be improper for the policy to require the reservoir owner / manager to bear the financial burden of works made necessary by a new development proposal from which he / she may derive little benefit.

Given this context, Section 4.1.2 of the Bill Paper identifies a number of issues pertaining to the Reservoirs Bill that may raise questions or require further clarification. These are set out below accompanied by DOE comment:

- How does such an arrangement (i.e. the onus on the developer and reservoir owner / manager to reach agreement as to sharing of costs) sit within the wider framework of the Reservoirs Bill in terms of assessment of required works and with regards to the ability to access potential grant support?

DOE Comment: Costs and the ability of the developer and / or reservoir owner / manager to access potential grant support is not considered to be a matter for the planning system.

- The lack of detailed information in the Bill pertaining to the assessment of risk designation criteria.

DOE Comment: Discussions with Rivers Agency officials in regard to the Reservoirs Bill and PPS 15 have indicated a risk designation classification the same as that

referred to in the Bill Paper based on the Reservoir Bill Stakeholder Minutes of 23rd September 2011 are set out as follows:

High Impact / Risk – where a reservoir breach could endanger 1 or more lives and / or could result in extensive or lasting impact on the environment, culture, heritage or economy;

Medium Impact / Risk – where a reservoir breach would have no risk to life but would have significant but not extensive or lasting impact on the environment, culture, heritage or economy;

Low Impact / Risk – where no loss of life could be reasonably foreseen and limited impact on the environment, culture, heritage or economy.

The Department acknowledges that clause 17(2) of the Reservoir Bill refers to the different risk categories and that clause 22 refers to the potential adverse consequences that will be taken into account by DARD in assigning a risk designation to particular reservoirs. It is also understood that Rivers Agency will share the risk designation for any of the controlled reservoirs with DOE Planning, on request.

Notwithstanding all these considerations; given the significant inter-relationship between development and risk designation, DOE considers that it would be helpful for all involved in the development process if either the Bill, or any regulations or guidance brought forward to underpin its delivery, were to refer to the more detailed classification referred to in the Bill Paper.

- It is unclear as to whether downstream development would trigger an immediate reassessment of the reservoir risk designation or whether this would not be looked at until up to 10 years after the initial designation.

DOE Comment: Clause 18 (3) (a) of the Reservoirs Bill provides that DARD must reassess a reservoir risk designation at any time when it considers that the designation may have ceased to be appropriate. Having consulted with Rivers Agency on this issue, DOE understands that a planning application for development within a reservoir inundation zone would trigger such a re-assessment and that the result of this would come into effect once the development is completed and occupied.

Further to this it is important to note that Revised Draft PPS 15 requires the developer to provide sufficient assurance regarding reservoir safety **before** planning permission is granted. This in turn is likely to require a negative condition attached to the permission or a planning agreement to prevent occupation of buildings approved until the reassessment has been completed by Rivers Agency and the appropriate works have been carried out. Officials intend to engage with operational colleagues and Rivers Agency officials on this issue prior to publishing PPS 15 in final form.

DOE considers that it would be important for DARD to clearly explain and make public the implications of the Reservoirs Bill to those likely to be affected, such as reservoir owners /

managers, landowners and developers. DOE would be happy to assist in this process, as appropriate.

As regards other departmental inputs to the Reservoirs Bill, the Committee should note that NIEA staff from the Environmental Protection Directorate and Natural Heritage Directorate gave oral evidence to the ARD Committee on 18th February, specifically, but not exclusively, around the operational issues of discontinuing or abandoning reservoirs and the impact on the environment. NIEA fully supports the safety aims and objectives of the Reservoirs legislation.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO
[by e-mail]