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# Enhancing Environmental Governance in NI

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INTRODUCTION

September 2022



# General Background

- Challenges in the new “two-tier” planning system
- 11 different council planning authorities in a region of less than 2 million people
- Fragmented / immature system versus coordinated / knowledgeable environmental lobby
- Increased level of challenge – EU Pilot, Aarhus Convention complaint

# DfI response and influence of Scottish EIA community

- Need to manage risk of financial and reputational harm
- Allegation of ‘systemic failure’ to protect the environment through incorrect application of EIA
- Strategic and proactive response required to support planning system
- Scottish EIA community helped frame approach

# Environmental Governance Work Programme



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- EGWP overarching objective to:

*“build a confident and coherent approach across public sector planning in NI to foster a supportive community recognised for the quality of its approach to environmental governance.”*

- Three key strands:- Capacity Building, Enforcement and development of an EIA Community



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## Key Work Areas

External EIA expert:-

Three key strands to capacity building (informed by a baseline survey of staff competence):

- Two levels of training tailored to staffing needs
- Operational EIA guidance
- Chair a new 'Environmental Officer's Forum'





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## Programme delivery so far..

- As at September 2022:-
  - Core EIA training – 132 staff
  - Advanced EIA training – 53 staff
  - Areas covered in the training.....
  - Courses accredited by IEMA
    - Confidence in decision-making
    - Confidence in the planning system
    - CPD



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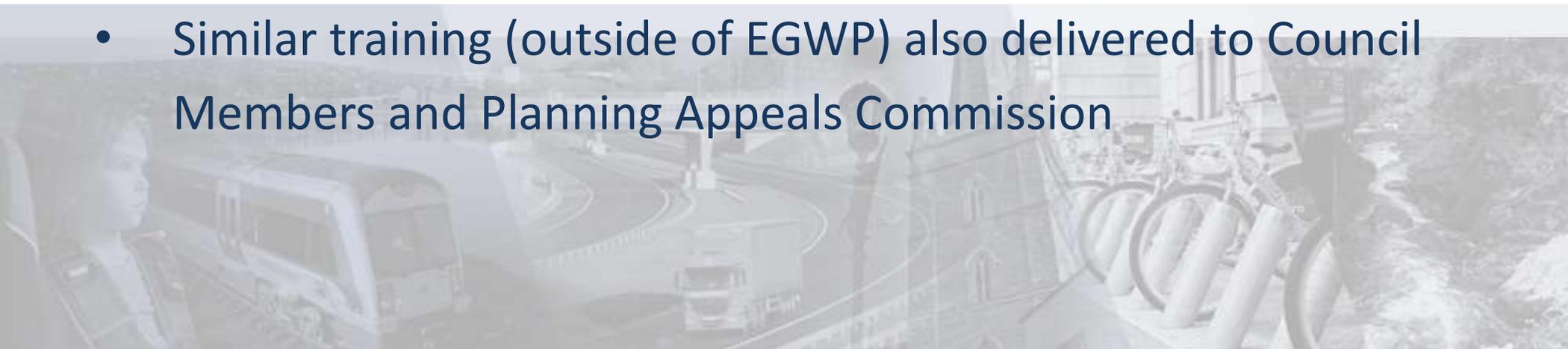
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## Programme delivery so far..

- EIA training for statutory consultees – 89 participants from across the statutory consultee bodies
- Published practice guidance on '*Managing Unauthorised EIA development*' with further guidance on '*EIA Screening*', '*EIA Scoping*' and '*Mitigation and Monitoring*' to follow
- 8 meetings of the EOF to date

### **And a bonus:-**

- Similar training (outside of EGWP) also delivered to Council Members and Planning Appeals Commission



# Unauthorised EIA and Enforcement

- Failure to take timely enforcement action against unauthorised EIA development was focus of 'EU Pilot'
- Complaints relate to unauthorised minerals developments and high % of retrospective planning applications for unconsented developments
- Incorporated into training programme
- DMPN 9A - First practice guidance to be produced on this issue

# The 'Principles' governing retrospective applications/consents for unauthorised EIA developments



DMPN 9A sets out only circumstances where a planning authority has power to lawfully grant retrospective permission for unauthorised EIA development:-

- a. There are demonstrable exceptional circumstances that justify the grant of retrospective consent;
- b. It is clear the developer has neither gained, nor stands to gain, any unfair advantage from their breach of planning control;
- c. The public, and other stakeholders, are provided equal opportunity to express their views on the application and its Environmental Statement as would be required of any EIA development; and
- d. The Environmental Statement and the EIA is rigorously scoped to ensure its assessment is based on a reasonable estimation of the baseline environment that is likely to have existed on the site prior to the unauthorised EIA development having taking place.

# DMPN 9A - UK Response to Aarhus Compliance Committee

This guidance has already proved useful from a wider UK perspective, as the same legal principles apply across the jurisdictions, and it has also been cited as part of the UK response to the ACCC.

ACCC found against the UK in a number of respects and its findings included that:

**“Decisions to permit activities subject to Article 6 of the Convention cannot be taken after the activity has already commenced or has been constructed, *save in highly exceptional cases and subject to strict and defined criteria.*”**

In responding to this recommendation the UK was able to demonstrate that it had already produced practice guidance for the planning system which can be adopted in all the jurisdictions.



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## Way Ahead....?

Conference theme: “What can Scottish practice learn from the direction it partly inspired in Northern Ireland?”

- No EOF equivalent – how are consistency and challenges shared?
- No ‘unauthorised EIA’ guidance (beyond the Regulations) – could Scotland adopt a similar approach?
- More opportunities for NI and Scottish Councils, consultants etc. to have more discussions on EIA between the two jurisdictions?