

**MIDLOTHIAN RISK AND AUDIT SERVICES**

**INTERNAL AUDIT REPORT**



**Subject:** Strategic Environmental Assessments (SEA)

**Issued to:** John Blair, Director, Corporate Resources  
Ian Johnson, Head of Planning and Development  
Janice Long, Planning Policy and Environment Manager  
Brian Forsyth, Senior Planning Policy and Sustainability Officer  
Jim Clifford, Legal and Secretariat Manager

**Copied to:** Kenneth Lawrie, Chief Executive  
Other Members of CMT  
Members of the Audit Committee  
Grant Thornton, External Auditors

**Date:** 23rd November 2012

**Authors:** Amber Ahmed, Trainee Auditor ext: 3280  
Gerald Tait, Risk and Audit Manager ext: 3284

## EXECUTIVE SUMMARY

### Objective of the Audit

The objective of the audit was to form an opinion on the adequacy of the control environment established by management across the Council to ensure compliance with the Environmental Assessment (Scotland) Act 2005.

### Remit and Scope

The audit was aimed at providing assurance that strategic actions (policies, strategies, plans and programmes (PSPP)) for which the Council is responsible are being subjected to environmental assessment under the Act (Strategic Environmental Assessment - "SEA"); or that processes prescribed in the Act are being followed by which it may be concluded that SEA is not required.

On this occasion the following areas were included in the scope of the review:

- overall governance of SEA compliance and management of risk;
- awareness across the Council of SEA legislative requirements;
- policy and processes being complied with; and
- a sample of relevant reports that have gone to Cabinet to demonstrate whether the requirements of the Act have been followed.

The audit focused on how Midlothian Council officials follow the control environment already implemented and how effective the current controls are.

### Excluded from Scope

There were no aspects excluded from the audit.

### Background

The European Directive known as the 'Strategic Environmental Assessment' or 'SEA Directive' came into force in 2004. The aim of this was to provide for high level protection of the environment and to contribute to the taking into account of environmental considerations in preparing public PSPPs with a view to promoting sustainable development; doing so by ensuring environmental assessment is carried out on certain PSPP likely to have significant effects on the environment. This was transposed into UK and Scottish Regulations.

In line with the commitment to the Partnership Agreement "A Partnership for a Better Scotland", the then Scottish Ministers introduced a Bill to further widen the scope of SEA and this became the Environmental Assessment (Scotland) Act 2005 which came into force on 20 February 2006.

The 2005 Act ensures with only a few exceptions that Scottish public sector plans that are likely to have a significant effect on the environment should be accompanied by an Environmental Report.

The Scottish Government SEA Gateway team can provide helpful SEA advice based on the 2005 Act. They are responsible for co-ordinating all SEA correspondence which simplifies the administration of SEA.

#### **Main stages of SEA are:**

1. ***Pre-screening:*** - eliminate plans that fall under Section 5(4) of 2005 Act and have no or minimal environmental effects.
2. ***Screening:*** - to establish if the strategic action is likely to have a significant effect on the environment such that SEA is required. This is the stage to gather the Consultation Authorities' (CA) expert opinions.

3. **Screening Determination:** - conclusion made by Council or its partnerships about whether significant effects are likely such that SEA would be required.
4. **Scoping:** - details of the areas that are likely to significantly impact the environment. Some strategic actions caught by Section 5(3) can skip the screening stage and go straight to scoping. This stage requires a formal consultation with the “Consultation Authorities” to identify the scope and level of detail to be reflected in an “Environmental Report”.
5. **Environmental Assessment:** - publish the consultation on draft strategic actions and Environmental Report then analyse response.
6. **Post Adoption:** - Publish and advertise statement explaining how the SEA has helped to influence the content of the strategic action and how consultees’ comments on the Environmental Report have been taken into account.
7. **Monitoring:** - for environmental effects to ensure SEA becomes an ongoing process following the adoption of the plan.

The Council should be transparent and accountable. An SEA must be carried out as part of the preparation of a strategic action before it is adopted. A failure to undertake SEA where this is required, or follow the correct procedures, could lead to the strategic action being quashed by a Court. Such cases are very expensive to defend against as the Council would need to appoint professionals from within the legal profession to fight their case. This could result in delays to the strategic actions’ implementation and a potential loss of credibility. There are no provisions set but additional costs could occur for paying out compensation or fines (depending on case and consultation).

### **Audit Conclusion**

During our audit we identified strengths and weaknesses which are further explained in the Management Action Plan. The main strengths were:-

- Planning and Development are available to provide advice to services on pre-screening and screening stages only, as agreed by Corporate Management Team;
- MC internal SEA documented guidance is up-to-date, easy to follow and understand;
- where appropriate, and to a certain extent, risk registers have raised awareness of statutory SEA requirements;
- MC has had several requests from neighbouring local authorities (SESplan partners) to see MC SEA Scoping Report for the Midlothian Local Development Plan as such work is recognised as exemplary.
- review of Local Development Plan (2011) and Strategic Development Plan (SDP) indicated good quality assessment of the environmental effects of implementing a plan taking account of Consultation Authorities’ comments (even though SDP main responsibility for SEA was with the Scottish Borders but MC suggested improvements and raised concerns where they thought it might be challenged).
- Planning and Development had success in convincing the Consultation Authorities that certain strategic actions are unlikely to have significant environmental effects e.g. Core Paths Plan and Open Space Strategy, which has avoided substantial expenditure in consultancy costs as incurred by other local authorities.
- Planning and Development are in the process of introducing new internal controls to ensure SEA is better valued and governed (which will address some of the issues mentioned below).

Aspects for improvement found included:-

- lack of understanding and general awareness in other services, therefore it is not taken as a priority nor considered at the early stages of the strategic action;
- SEA internal guidance has not been distributed to everyone nor is it available on the intranet;
- no SEA training courses;

- corporate template report guidelines with regards to SEA not being followed. The responsibility lies initially with the author of the report who may often work from previous reports rather than the template;
- external resource required for carrying out environmental assessment to work with ‘Consultation Authorities’ may lead to unplanned expenditure or resources not utilised sufficiently.
- strategic actions could be challenged if the SEA process has not been followed. For example, a recent report that has gone to CMT is “Scotland’s Schools for the Future Phase 3”. The author hasn’t clarified if this is a strategic action and whether it was pre-screened or screened. This could be something that falls within, or outwith the SEA legislation which then means it doesn’t require Environmental Assessment but there is no indication in the CMT report to explain the SEA process.

In better ensuring SEA compliance, implementation of the recommendations in this Internal Audit report should help ensure the lawfulness of the Council’s strategic actions, avoid unplanned expenditure, and minimise the risk of financial claims against the Council.

In summary, during the audit we have found that for the major projects sampled, management had adequately progressed the SEA obligations. The recommendations are aimed at further increasing the corporate awareness and reducing any risk and on this occasion we have used the grid below in rating our opinion as **Green**. The aspects for improvement are detailed in the attached.

Full Assurance	<b>BLUE</b> 	There is a <u>sound system of internal control</u> designed to achieve the system objectives and the controls are being consistently applied. Risk is managed to a high standard.
Reduced Assurance	<b>GREEN</b> 	Whilst there is <u>basically a sound system of internal control</u> there are some areas where it is viewed improvements can be made and risk controlled further.
Limited Assurance	<b>AMBER</b> 	There are <u>weaknesses in the system of internal control</u> which should be addressed within a reasonable timescale. Improvements are required in the way risks are managed.
No Assurance	<b>RED</b> 	There are <u>significant weaknesses</u> in the system of internal control which must be addressed as a matter of urgency. Unnecessary risks are being carried and the Council remains exposed.

## MANAGEMENT ACTION PLAN

### 1. Not following the guidelines on the Corporate Report Template and weak quality checking

The Corporate Communications and Marketing Standards and Corporate Report Template are available on MC's intranet. There are two versions of the report template available: with guidance and one without guidance. However, the template without guidance should only be used if the author is familiar with the corporate report requirements. These report templates are submitted to the Council Secretariat who advised Internal Audit the author is the main person responsible for ensuring the requirements in the guidance are being met. At the back of the report, the guidelines highlight to authors that all finance and legal implications must be addressed and reviewed before submitting the report to the Council Secretariat.

Corporate Communication Standard Group sent a report to CMT on 02/04/12 recommending how MC can improve written communication in the Council. The recommendations included:

- a. the current committee report template to be updated; and
- b. sustainability guidelines to be updated

(Other suggestions were made i.e. font size, existing letter templates etc).

A formal discussion was to be held between Directors and Heads of Service to consider the recommendations. This has not happened yet and the old corporate template guidelines are still on the intranet. The Administration Manager from the Corporate Communication Standard Group, who has generated the report, has been off work therefore this action has not been followed up. The Council Secretariat will question this matter and will suggest to the Corporate Director that perhaps the report can be discussed in the next "Strategic Leadership" meeting.

Under Sustainability, there are guidelines to lead officials down the route of SEA. The control right now is that there is a section of the report that must be completed for SEA. But it was pointed out by the Senior Planning Policy and Sustainability Officer that this control is ineffective because cabinet reports are getting approved without proper consideration of the SEA position. Even if a strategic action does not require SEA, the report should explain why it is not needed.

The current guidance notes accompanying the corporate report template have already been updated by Planning and Development to ask authors to clarify the SEA position where the report relates to a strategic action. The service has reviewed the sustainability guidelines again and has sought to make this more user friendly by supplementing or amending it to include examples of the most common types of wording that staff are likely to use. This was reflected in the report to CMT on 02/04/12.

Internal Audit have reviewed the sustainability guidelines proposed to CMT on 02/04/2012 and believe SEA may continue to be over-looked. Currently, authors are not following the corporate template guidelines and no-one is checking if guidelines are being met (apart from doing procedural checks). One of the authors reported, they don't follow the guidelines as the reports have to be concise and doesn't believe SEA is required to be mentioned in every report.

Additional controls are required to ensure the SEA is carried out during the decision-making process. There is nothing in the Environmental Assessment (Scotland) Act 2005 to define what a strategic action is which makes it more difficult to determine whether a SEA should be conducted. It is best to decide as soon as possible whether the SEA is required and pre-screen or screen the strategic action. If SEA is not considered at the beginning there is a risk of services incurring unplanned costs to the budget, uncertainty of resource required and

potentially delays to the strategic action. If necessary, services are expected to get external expertise and advice. Consultation costs may be incurred due to carrying out environmental assessment.

The responsibility for ensuring SEA compliance cannot rest solely with Planning and Development. The service has previously updated the corporate report template guidelines (under Sustainability) to develop a better corporate approach to SEA. If corporate template guidelines are not followed, there is the risk of SEA not being considered in other services during the decision-making process. A degree of vigilance is required of all services bringing forward strategic actions, including embedding controls and costs in their section.

A recent report presented to CMT is “Scotland’s Schools for the Future Phase 3”. The author hasn’t clarified if this is a strategic action and whether it was pre-screened or screened. This could be something that falls within, or outwith the SEA legislation which then means it doesn’t require Environmental Assessment but there is no indication in the CMT report to explain the SEA process

### Recommendations

Finding/ Rec. No.	Recommendations	Priority	Manager	Target Date
1.	The updated corporate report template to be endorsed (which should include guidelines updated by Planning and Development) and the Senior Planning Policy and Sustainability Officer contact details to be included.	High	Director, Corporate Resources/ Legal and Secretariat Manager	31/01/13
2.	Authors must ensure they are properly completing each section of the Corporate Report Template and if unsure ask the relevant service for further clarification. Declaration box for originating authors to sign to confirm they have followed the Corporate Template Guidelines.  <i>(Heads of Service likely to be faced with SEA obligations have been reminded and will engage their staff in training)</i>	Medium	All Heads of Service	31/01/13

### **2. Training and Guidance not established throughout the Council**

Internal Audit testing confirmed some sections did not value or take SEA as a priority. Other sections did consider SEA when it was appropriate.

In 2006, the Senior Planning Policy and Sustainability Officer distributed documented guidelines to raise awareness in the Council. Planning and Development have a role in awareness raising and assisting other services to screen their strategic actions. If a strategic action does not require an SEA then this should be disclosed in the relevant reports to elected members/management (as already mentioned above in Section 1).

Not everyone will have a copy of the documented guidelines and the SEA guidelines on the Corporate Template Reports are overlooked, in part due to lack of awareness of risks of not complying with SEA.

Planning and Development are planning to introduce guidelines on the intranet, training (MILO) and raising more awareness in the Council. Introduction of a new MILO Sustainability/SEA course was included as an action in the Council's Sustainability Action Plan 2011/12 but it has not been progressed for operational reasons. This has been pulled forward to 31<sup>st</sup> March 2013 in the Sustainability Action Plan 2012/13.

Planning and Development have raised their concerns on the current issues with the Risk and Audit Manager who has set up two registered risks to address compliance with statutory SEA requirements. In respect of PD01-32, Planning and Development will look to introduce new internal controls and agree target dates with Internal Audit.

### Recommendations

Finding/ Rec. No.	Recommendations	Priority	Manager	Target Date
3.	Planning and Development to have SEA guidelines available on the intranet for everyone to view and raise additional awareness.	High	Planning Policy and Environment Manager	31/03/13
4.	Planning and Development to introduce a training course in the Council which will include the need for retention of records	High	Planning Policy and Environment Manager	31/03/13

### 3. Other Findings in respect of strategic actions

#### 3.1. Local Development Plan

Local Development Plans are prepared by local authorities and they are required to conduct a SEA in developing them. The Local Development Plan requires to be updated on a regular basis (approximately every 4 years).

The latest plan that MC is preparing is the Midlothian Local Development Plan. Under the Environmental Assessment (Scotland) Act 2005 some plans caught by Section 5(3) can skip the screening stage and go straight to scoping. This saves time and money. Therefore, this plan has gone straight into scoping stage. First scoping report was received by the Scottish Government's SEA Gateway on 22/03/2011 which it forwarded to Consultation Authorities.

In the scoping report, the introduction explains the purpose which is to set out sufficient information on the Midlothian Local Development Plan to enable the Consultation Authorities to form a view on the consultation period and scope/level of detail that will be appropriate for the Environmental Report. Hence, the scoping stage requires an outline of what will be contained within the Environmental Report which allows the Consultation Authorities to offer their expert opinions and views.

The Consultation Authorities' (Historic Scotland, Scottish Environment Protection Agency (SEPA) and Scottish Natural Heritage) have provided comments on the Local Development Plan. Planning and Development have taken them into account and explained how they will deal with them.

However, the next stage of SEA needs to commence. Planning and Development indicated they have an agreed timetable with the Scottish Government.

In the next follow up audit review, Internal Audit will be assessing and checking for relevant evidence of the next SEA stages being complied with (i.e. Environmental Assessment and Post Adoption as done for the previous local plan).

### **3.2. Strategic Development Plan (SDP) – review and determine MC governance process**

South East Scotland Strategic Development Planning Authority (SESplan) is preparing a Strategic Development Plan (SDP) to cover six council areas in the south east region of Scotland including East Lothian Council, City of Edinburgh Council, Fife Council, Midlothian Council, Scottish Borders Council and West Lothian Council.

Internal audit reviewed MC involvement during the process to ensure governance and the Council is protected from exposure of risks.

As this is known to be subject to SEA, the SDP was not screened and went straight into the scoping stage.

Scottish Borders Council (SBC) volunteered to take on the role of 'responsible authority' for SEA purposes as they had a member of staff who was training in this field and was keen to expand their role to take on the SDP Environmental Report; this was SBC's contribution to the 'virtual' team comprising officers from each partner authority who supplemented the work of the SESplan core team across the whole of the SDP project e.g. Midlothian has recently had 2 officers working on the evidence for the SDP examination. These are 'contributions in kind' to supplement the core funding that each Council inputs to SESplan every year on an equal and agreed basis.

Internal Audit reviewed the audit trail and comments raised by the Planning and Development service which were reviewed and taken into account by officials from SESplan and other member councils. This shows good governance to protect the Council from risks.

### **3.3. Zero Waste Project**

This was reviewed over five years ago. This is a joint project with City of Edinburgh Council. At the early stages, thought was given to SEA. The Councils went through a lengthy period of discussion with advisers SEPA (one of the Consultation Authorities') and with legal advice determined that SEA was not required because the project was implementing parts of other plans already subject to SEA (Area Waste Plan and Scotland's Zero Waste Plan).

The waste planning officer (at that time) was unable to find a document that concluded the SEA discussions/screening but has provided other documents to Internal Audit for review. Difficulties were encountered when they moved to their Edinburgh offices and a lot of electronic files were not transferred successfully. The waste planning officer (at that time) reported that paper copies are not retained for longer than 5 years.

Internal Audit have reviewed the documents which determine SEA was considered during the early stages but there is no clear evidence if this is a strategic action and if it falls within or outwith the SEA legislation. Internal Audit consulted with the SEA Gateway who reported they have nothing corresponding to Zero Waste Project. Internal Audit is not satisfied with not being able to view screening documents and/or evidence to explain why this project is not subject to SEA.

### **3.4. Tourism Action Plan 2011 -12**

Tourism is one of the key economic sectors identified within the Midlothian Economic Development Framework (MEDF). A plan was initially prepared and approved covering the period 2008 – 2010.

The Midlothian Tourism Action Plan (MTAP) 2011 – 2012 has been prepared in partnership with the private sector represented by the Midlothian Tourism Forum (MTF). Visit Scotland and all other agencies working in the tourism sector have been consulted in the determination of the actions to be carried out during 2011/12. The plan builds on the priority actions highlighted in the MTAP 2008/10. It aids the implementation of the tourism element of the Midlothian Economic Development Framework.

It was reported by the Economic Development Officer that a final progress report will be started in December 2012 and should be available by Feb/March 2013. A new Tourism Action Plan will be produced this year and will cover the period 2013 to 2015. This will be a completely new plan based on the recently launched Scottish Government Tourism Strategy and it will be subject to any requirement of the Environment Assessment (Scotland) Act 2005.

Internal Audit were concerned about the MTAP 2011-2012 not following the SEA stages. It was confirmed by the Economic Development Officer and Planning and Development that MTAP 2011-12 only rolled forward the actions from MTAP 2008-10 and not the Strategy itself (which had been subject to SEA); SEA was not required for the refresh of the Action Plan. However, the strategic context will be undergoing a review soon and the revised Tourism Strategy should be subject to SEA or screened out.

A follow up audit will review and check to ensure that the new Tourism Strategy has been pre-screened or screened out and is complying with the SEA legislation.