

**REPORT TO: EXECUTIVE**

**Date of Meeting: 9 April 2019**

**Report of: City Development Manager**

**Title: Local Development Order for Local Energy Networks.**

**Is this a Key Decision?**

No.

**Is this an Executive or Council Function?**

Executive.

**1. What is the report about?**

- 1.1 To seek approval for a Local Development Order that would grant permitted development rights to specified Local Energy Network infrastructure.
- 1.2 The revised Draft Local Development Order is attached as appendix 1. This set outs the development proposed to be permitted by the Order, the restrictive terms which limit its scope and the conditions which any permitted development must adhere to.
- 1.3 The purpose of the order is to grant permitted development rights for underground pipes and cables, and some minor above ground works similar to the permitted development rights enjoyed by the statutory undertakers who provide gas, electricity, sewerage, and clean water services.
- 1.4 Planning Member Working Group on 22 January 2019 supported and recommended to Executive that the Order be adopted.

**2. Recommendations:**

- 2.1 That Executive approve the Local Development Order.

**3. Reason for the recommendation:**

- 3.1 Local Development Order will improve the speed of decision making and reduce bureaucracy, make a more level playing field for local energy networks and statutory undertakers, improve certainty for local energy network developers and reduce delay and cost in delivering sustainable development. The creation of such an order will also advertise the opportunity and the support of the Local Authorities for Local Energy Networks.

**4. What are the resource implications including non-financial resources:**

- 4.1 There will be some postal, printing and publishing costs which will be met from the existing City Development budget.
- 4.2 The Local Development Order would avoid the need for planning applications to be considered for this type of development. Typically the planning application fees do not cover the full cost of advertising and determining minor planning applications and hence there is potentially to be a small ongoing cost saving in City Development if the LDO is adopted.

**5. Section 151 Officer comments:**

5.1 There are no financial implications for Council to consider contained in the report.

**6. What are the legal aspects?**

6.1 Town and Country Planning Act 1990 introduced powers for Local Planning Authorities to make Local Development Orders granting planning permission for development in their area. The Town and Country Planning (Development Procedure Order) 2015 streamlined provisions for the preparation of LDOs including removing the need to obtain the Secretary of States approval for an Order prior to adoption. A LDO can be revoked at any time by the Local Planning Authority.

**7. Monitoring Officer's comments:**

7.1 This report raises no issues for the Monitoring Officer.

**8. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?**

8.1 Exempting the development of underground pipes and cables and some specified minor above ground works for Local Energy Networks from the requirement to obtain planning permission is not considered to give rise to an equalities impact.

**9. REPORT DETAILS**

**Background**

9.1 Town and Country Planning Act 1990 grants powers for Local Planning Authorities to make Local Development Orders granting planning permission for specified development following a statutory process of consultation.

9.2 Gas, Electrical or Water utilities (statutory undertakers) benefit from nationally prescribed permitted development rights which allow them to install and maintain apparatus necessary for the operation of those utilities without the requirement to obtain express planning permission. Local Energy network operators do not benefit from such right. The proposal is therefore to create similar rights through a Local Development Order.

9.3 Objective of the Local Development Order. The principle aim of the order is to support the roll-out of decentralised energy networks in Exeter in the interests of decarbonising energy supply in the city. Decentralised Energy networks are required by Core Strategy Policy CP13 where viable and feasible.

**Details of the consultation**

9.4 The consultation ran for 28 days ending on 30<sup>th</sup> November 2018. It was advertised by press notice, public notice, and direct correspondence with statutory bodies and interested local parties using the consultation database. Industry bodies were consulted in parallel with the local consultation.

- 9.5 The consultation details, Draft Order, Statement of Reasons, and EIA Screening Opinion were presented on the City Council website and in the Civic Centre reception. Enquiries about the consultation were received by phone and responses by email.
- 9.6 Written consultation responses were received from Natural England, The Environment Agency, Wales and West Utilities, and South West Water. The draft Order has been amended as detailed below in response to specific issues raised by The Environment Agency and Natural England.

### **Details of the Order**

- 9.7 The Local Development Order would extend permitted development rights for the laying of underground pipes and cables, and some above ground equipment.
- 9.8 The geographic scope of the Order has been reduced to be centred on those areas which already have a network (Monkerton) or where feasibility studies have shown networks are likely to be feasible and viable. At Monkerton a 2.5km zone is included to allow for expansion of that network and in other areas a zone of 250m is proposed around potential networks identified infeasibility studies. The geographic scope has been reduced in response to a comments from Natural England.
- 9.9 Further to the concerns raised by Councillors at Planning Member Working Group when the draft Order was presented on 25 September 2018, rights for above ground enclosures have been reduced to be up to 1.5 metres in height and up to 2.5 cubic metres in volume, with anything larger therefore requiring planning permission.
- 9.10 Further to the consultation response of the Environment Agency the Order has been redrafted to exclude any development within 8 metres of any flood defence assets or the top of bank of a main river.
- 9.11 The Order excludes any development within the curtilage of any Listed or Locally Listed Building, affecting a Scheduled Ancient monument or within the Exe Estuary Special Protection Area. It would also exclude above ground development in any Conservation Area.
- 9.12 Local Development Orders for Local Energy Networks and District Heating undertakings have been enacted by a number of Local Planning Authorities including Swindon Borough Council, London Borough of Newham and Leeds City Council.
- 9.13 The Order would grant permitted development rights for Local Energy Networks regardless of who may be operating them. It grants permitted development rights which are similar to those enjoyed by Statutory Undertakers operating gas and electricity networks. As such the effect of the Order is considered to be positive in terms of the objectives of the Localism Act.
- 9.14 The restrictive terms proposed to be attached to the Order would mean it excluded generating plant and as such would not include development falling within Schedule 1 or Schedule 2 of the Town and Country Planning

(Environmental Impact Assessment) Regulations 2017. EIA development is in any case specifically excluded by the restrictive terms of the Order.

- 9.15 The restrictive terms of the Order mean that landscaped areas affected are reinstated following works to their previous condition or an agreed specification.
- 9.16 The Exe Estuary SPA/SSSI, Bonhay Road Cutting SSSI, and Stoke Hill Woods SSSI are outside the area of the Order and at its closest point the area of the Order encroaches no closer than 200m from those designated areas. The developments that would be permitted by the Order are considered unlikely to have any significant effect on the protected habitat or the achievement of its conservation objectives. As such it is not considered that Appropriate Assessment is required under the Habitats Regulations.
- 9.17 The Order does not give Local Energy Networks operators statutory undertaker status and it does not convey any rights other than planning permission to install apparatus. For example a Streetworks Licence under Section 50 of the New Road and Streetworks Act 1991 or agreement under Section 171 of the Highways Act 1980 would need to be obtained from the DCC as Highway Authority, and landowners consent, including from ECC where we are landowner, would still be required.
- 9.18 Planning Member Working Group meeting on 22 January 2019 supported and recommended to Executive that the revised draft Order, included as appendix 1, be adopted.

## **10 How does the decision contribute to the Council's Corporate Plan?**

- 10.1 This Local Development Order will help deliver Local Energy Networks in the City which are included in the Corporate Plan.

## **11 What are the risks and how can they be reduced?**

- 11.1 In the event that the Order gives rise to any unforeseen consequences the Order can be revoked by the Council.

## **12 Are there any other options?**

- 12.1 If the Order was not made the developments that it permits would require express planning permission.

### **City Development Manager**

### **Local Government (Access to Information) Act 1972 (as amended)**

#### **Background papers used in compiling this report:-**

- National Planning Policy Framework
- Town and Country Planning Act 1990
- Town and Country Planning (Development Procedure Order) 2015
- Town and Country Planning (Environmental Impact Assessment) Regulations 2011
- The Conservation of Habitats and Species Regulations 2017
- New Road and Streetworks Act 1991
- Highways Act 1980
- Exeter Core Strategy 2012
- HM Government Clean Growth Strategy 2017