

EIR - (202400399229) [REDACTED]

This file contains documents relating to the above. The following documents are enclosed:

- Document 1 – E-mail chain dated 9 April 2018**
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- Document 13 – E-mail chain dated 7 August 2023**
- Document 14 – E-mail and briefing for meeting 12 September 2023**
- Document 15 - Note of meeting 12 September 2023**
- Document 16 - Letter to Ruth Maguire following meeting on 12 September 2023**

Document 1 E-mail chain dated 9 April 2018

From: REDACTED@gov.scot

Sent: 09 April 2018 10:43

To: REDACTED@gov.scot <>; REDACTED@gov.scot

Cc: REDACTED@gov.scot REDACTED@gov.scot REDACTED@gov.scot

Subject: FW: Stage 2 amendments - SDO revocation - compensation provisions - draft policy instruction

REDACTED

Please see REDACTED's e-mail and attachment below.

I have not amended REDACTED's policy instruction.

We discussed other actions in relation to this matter:

i) You were going to see if the law library can trace any other SDOs and if so what they say, to hopefully bolster our argument that this situation is unique;

ii) the need for more information from the Council on what is happening on the ground at Ardeer (e.g. existing activities, ongoing development), and what they might be anticipating in terms of applications – i.e. explain the impacts of any amendment/ revocation/ direction regarding the SDO. (REDACTED – I was not sure if we were going to ask for that or explain to the Council the need to include such information it in any bid they make for any amendment via a local MSP).

iii) Checking for any representations in relation to the Bill regarding compensation in Planning.

Regards

REDACTED



From: REDACTED@gov.scot

Sent: 06 April 2018 18:14

To: REDACTED@gov.scot

Cc: REDACTED@gov.scot REDACTED@gov.scot

Subject: Stage 2 amendments - SDO revocation - compensation provisions - draft policy instruction

REDACTED, REDACTED

Based on our discussion with REDACTED yesterday, I've had a first cut at a policy instruction. Would you mind having a read over – please feel free to amend or not - and then forward to REDACTED.

Thanks once again

REDACTED

Document 2 Attachment to E-mail chain (Document 1)

PLANNING BILL: POLICY INSTRUCTIONS – STAGE 2 AMENDMENTS

Strategic Development Orders – compensation provisions where revoked

Policy aim	Seek powers to enable Ministers, through secondary legislation, to amend the compensation provisions which apply where an SDO is revoked.
Policy source(s)	North Ayrshire Council has asked about the possible removal of the right to compensation where such an order is revoked and have indicated that they will seek to submit an amendment to the Bill to achieve this.
Policy intention	<ol style="list-style-type: none">1. The possible removal of the right to compensation if the SDO is repealed would require a change to Section 77 of the Act.2. Rather than seek to disapply the compensation provisions, we propose to provide for a different set of provisions – so that compensation is payable only for abortive work undertaken (not for future losses)3. This would allow Scottish Ministers to address what appears to be an anomalous situation at Ardeer peninsula to make it consistent with the rest of Scotland
Background / context	<ol style="list-style-type: none">1. A Special Development Order (SDO) for Ardeer has been in force since 1953. At the time the Order was made Ardeer was a major industrial complex operated by a single user, Imperial Chemical Industries Limited (ICI). Subject to certain specific exceptions, the 1953 Order makes any development at Ardeer, Stevenston into permitted development. This allowed the company to carry out any development considered necessary without the requirement for permissions; including development in the vicinity of sites involving the manufacture of devices and products used in the explosives industry.2. The explanatory note attached to the Order states that it applies to 'the factory site of a large industrial concern at Ardeer' and 'grants planning permission for any development on that site required for the normal purposes of the factory'. Legal opinion sought by North Ayrshire Council in 2017 indicates that the explanatory note carries no weight.3. 2. The 1953 Order is still in place however circumstances at Ardeer have changed significantly over the years. The area covered is now in three separate ownerships and there is no

	<p>longer the large industrial factory at Ardeer referred to in the explanatory note to the Order. The vast majority of the area covered by the 1953 Order was sold by ICI to NPL Estates Limited for purposes unrelated to explosives.</p> <ol style="list-style-type: none"> 4. The subject of revocation has been raised by North Ayrshire Council (NAC) on several occasions since 2006. NAC consider that removal of the SDO is necessary to allow for the proper planning of the area and that as things stand it is unclear how Environmental Assessment regulations apply. They have also noted that the SDO is incompatible with intentions of the Ayrshire Growth Deal. 5. In recent years REDACTED, Secretary of Friends of Ardeer, has contacted both NAC and Scottish Ministers seeking the revocation of the Order, because of issues related to the extraction of sand and gravel at Garnock West, Stevenson. We understand that this extraction was originally to facilitate the construction and function of the ICI chemical plant, but has continued, scaled down, and is now commercially sold to outlets outwith the Ardeer area. 6. It is arguable that where an error may have been made in the consenting process, or where circumstances have significantly changed, there should be a practicable route to resolving the situation, and that the current compensation requirements inhibit this. 7. We are not aware of any other existing SDOs apart from Ardeer and we are not aware of revocation having taken place in relation to any other SDOs. The proposed change would be dealing with one particular example. We note that it would be necessary to ensure that any amendment is compatible with ECHR legislation. 8. Ministers are not in a position to set out arrangements in detail/to make these changes at this stage in the Bill's passage. The approach proposed would allow an opportunity to consult with landowners before making the legislative change through regulations.
Policy lead	REDACTED, REDACTED

REDACTED@gov.scot,

Document 3 – E-mail dated 15 June 2018

From: REDACTED@gov.scot,
Sent: Friday, June 15, 2018 3:47 PM
To: REDACTED@gov.scot, REDACTED@gov.scot, REDACTED@gov.scot,
Cc: REDACTED@gov.scot, REDACTED@gov.scot, REDACTED@gov.scot,
REDACTED@gov.scot, REDACTED@gov.scot, REDACTED@gov.scot,
Subject: planning2017 - stage 2 amendment - PCO - SDO compensation

REDACTED

I attach a set of instructions relating to a possible handout amendment (no MSP yet identified) on compensation levels for revocation of planning permission granted by development orders.

REDACTED

Document 4 – E-mail dated 27 June 2018

From: REDACTED@gov.scot,
Sent: Wednesday, June 27, 2018 10:31 AM
To: REDACTED@gov.scot, REDACTED@gov.scot, REDACTED@gov.scot,
REDACTED@gov.scot,
Cc: REDACTED@gov.scot, REDACTED@gov.scot, REDACTED@gov.scot,
REDACTED@gov.scot, REDACTED@gov.scot, REDACTED@gov.scot,
Subject: planning2017 - stage 2 amendment - PCO - land compensation

REDACTED

Here is the set of instructions relating to land compensation.

Happy to discuss

REDACTED

Document 5 – E-mail chain dated 22 August 2018

From: REDACTED@gov.scot,
Sent: Wednesday, August 22, 2018 4:35 PM
To: REDACTED@gov.scot,
Cc: REDACTED@gov.scot, REDACTED@gov.scot, REDACTED@gov.scot,
Subject: RE: Ardeer

From: REDACTED@gov.scot,
Sent: 21 August 2018 09:28
To: REDACTED@gov.scot,
Cc: REDACTED@gov.scot, REDACTED@gov.scot, REDACTED@gov.scot,
Subject: RE: Ardeer

Hello REDACTED

Apologies for delay in getting back to you with more information about what is proposed in terms of an amendment to the planning bill relating to the introduction of powers to make specific provision in regulations for compensation payable on the revocation of a development order.

Below is an outline of what is proposed, and PCO have now drafted the amendment.

Thanks

REDACTED

Background

In terms of section 30(2)(b) planning permission can be granted by a special development order (“SDO”) in relation to land specified in the order. This power is now rarely if indeed ever used but there exist various old special development orders made under previous legislation.

North Ayrshire Council have raised issues with the need to revoke a SDO made in 1953 under section 11 of the Town and Country Planning (Scotland) Act 1947 – the Town and Country Planning (County of Ayr No.1 Special Development) Order 1953 which affects Ardeer and remains in force. (We have identified various other SDOs dating from 1968 and 1975 but we are not aware of any made more recently.)

Despite the lack of use of the power to make a SDO there is no intention that the power to do so should be removed. The issue relates to the revocation of existing SDOs and in particular to the compensation that may be payable on revocation of a SDO.

The 1997 Act currently sets out provisions for the payment of compensation if planning permission granted by a development order is withdrawn. This includes the circumstances where a SDO is revoked (section 77(1)(a)). If a SDO is revoked then compensation is payable if planning permission is refused (or granted subject to different conditions) following an application made for planning permission for development previously permitted by the SDO if that application is made within 12 months of the date of revocation.

REDACTED

While the particular issue raised relates to a SDO it is considered that the power to make regulations should apply to revocation of development orders whether they are general or special development orders. It is considered that the best way forward would be to enable the compensation regime relating to the withdrawal of planning permission as a result of the revocation of a development order to be set out in regulations made by the Scottish Ministers (subject to the negative procedure). The intention is that the regulations could:

- (a) set out the circumstances in which compensation may be payable;
- (b) require a claim for such compensation to be made within a certain period and specify how such a claim should be made and the information which should be included;
- (c) set out what the compensation is to cover – ie under what heads of loss compensation could be claimed;
- (d) set out the manner in which the level of compensation is to be calculated;
- (e) apply any of the provisions of Part 4 of the 1997 Act with or without modifications.

Document 6 – Purpose and Effect Note

Planning (Scotland) Bill

Purpose and effect note

Subject	[Subject]
Proposer(s)	Ruth Maguire

1. Text of amendment(s)

Ruth Maguire

314 After section 20, insert—

<Development orders

Withdrawal of planning permission granted by development order

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) After section 77 insert—

“77A Compensation for withdrawal of planning permission granted by development order

- (1) The Scottish Ministers may by regulations make provision about the payment of compensation by a planning authority in cases where—
 - (a) planning permission granted by a development order is withdrawn (whether by the revocation or amendment of the order or by the issue of directions under powers conferred by the order), and
 - (b) on an application made under Part III or section 242A, planning permission for development formerly permitted by that order is refused or is granted subject to conditions other than those imposed by that order.
- (2) Regulations under subsection (1) may, in particular, make provision—
 - (a) about the circumstances in which compensation is payable,
 - (b) about what compensation is payable in respect of,
 - (c) about how the amount of compensation is to be calculated,
 - (d) about how a claim for compensation must be made in order to be valid (including the form and content of a claim, and the period within which it must be made),
 - (e) applying, or disapplying, any of the provisions of this Part, with or without modifications.”.
- (3) Section 77 (compensation for refusal or conditional grant of planning permission formerly granted by development order) is repealed.>

Ruth Maguire

315 In schedule 2, page 55, line 34, at end insert—

<Development Orders

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 78 (apportionment of compensation for depreciation), in subsection (2)(b), the words “or, in a case falling within section 77, the relevant planning decision,” are repealed.
- (3) In section 214 (meaning of “statutory undertakers”)—
 - (a) in subsection (4), and
 - (b) in subsection (7)(a),the words “77(3),” are repealed.
- (4) In section 215 (meaning of “operational land”), in subsection (3), the words “77(3),” are repealed.
- (5) In schedule 18, in Part 1, for “77” substitute “77A”.>

2. Purpose & effect

3. Section 30(2) of the 1997 Act enables planning permission to be granted by a development order in relation to land specified in the order. This power is now rarely if indeed ever used but there exist various old special development orders made under previous legislation.

4. Section 77 of the Act currently sets out provisions for the payment of compensation if planning permission granted by a development order is withdrawn or modified. This includes the circumstances where a development order is revoked (section 77(1)(a)). If a development order is revoked, and an application is made within 12 months for planning permission for development previously permitted by the SDO, then compensation is payable by the planning authority if that planning permission is refused (or granted subject to different conditions than those included in the SDO).

5. [Where a planning permission (not granted by a development order) is revoked or modified, and a claim made within a prescribed time frame shows that a person interested in the land has incurred abortive expenditure or otherwise sustained loss or damage directly attributable to the revocation or modification, the planning authority is liable to pay them compensation.]

6. This amendment repeals section 77 and introduces instead a power for the Scottish Ministers to make regulations concerning the compensation that may be payable on revocation of an order.

7. The effect of this amendment is to enable Scottish Ministers to use regulations to :

- (f) set out the circumstances in which compensation may be payable;
- (g) set out what the compensation is to cover;
- (h) set out the manner in which the level of compensation is to be calculated
- (i) require a claim for such compensation to be made within a certain period and specify how such a claim should be made and the information which should be included;
- (j) apply or disapply any of the provisions of Part IV of the 1997 Act with or without modifications.

It also repeals various references to section 77 elsewhere in the 1997 Act.

8. Consultation

None.

9. Background

10. Over a period of years, North Ayrshire Council has raised issues with the need to revoke a SDO made in 1953 under section 11 of the Town and Country Planning (Scotland) Act 1947 – the Town and Country Planning (County of Ayr No.1 Special Development) Order 1953 which affects Ardeer and remains in force.

11. While a particular issue has been raised in relation to a SDO the amendment proposes that the power to make regulations should apply to revocation of all development

Document 7 – extract from supplementary Delegated Powers Memorandum

Section 20B – Withdrawal of planning permission granted by development order

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative (tbc)
Revised or new power: new power

Provision

1. The provision repeals existing section 77 of the 1997 Act and adds a new section 77A, giving Scottish Ministers the power to regulate to make provision about the payment of compensation by a planning authority where planning permission granted by a development order is withdrawn and then, on an application made under Part III or section 242A planning permission for development formerly permitted by that development order is refused or granted subject to different conditions.

2. The provision allows for such regulations to make provision about the circumstances in which compensation is payable; what compensation is payable in respect of; how the amount of compensation is to be calculated; how a claim for compensation must be made in order to be valid (including the form and content of a

claim, and the period within which it must be made); and also allows flexibility to apply or disapply any of the provisions of this Part of the Act, either with or without modifications.

Reason for taking power

3. Section 30(2) of the 1997 Act enables planning permission to be granted by a development order in relation to land specified in the order. This power is now rarely if indeed ever used but there exist various old special development orders made under previous legislation.

4. Section 77 of the Act currently sets out provisions for the payment of compensation if planning permission granted by a development order is withdrawn or modified. This includes the circumstances where a development order is revoked (section 77(1)(a)). If a development order is revoked, and an application is made within 12 months for planning permission for development previously permitted by the SDO, then compensation is payable by the planning authority if that planning permission is refused (or granted subject to different conditions than those included in the SDO). Because of the broad nature of the permission usually granted by a development order, the possible compensation for loss or damage is likely to be higher in those cases than where an ordinary planning permission is revoked or modified.

5. The provision repeals section 77 and introduces instead a power for the Scottish Ministers to make regulations concerning the compensation that may be payable on revocation or modification of an order. The purpose is to ensure that where a planning authority revokes or modifies a development order, any compensation for which the authority becomes liable is appropriate and proportionate.

Choice of procedure

6. The regulations would provide the ability to use regulations to set parameters on a number of specific matters relating to the compensation payable where an order is revoked or modified. It is considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Document 8 – Meeting template for 20 November 2018, Planning Minister

Date and Time of Engagement	Tuesday 20 th November 2018 – 13:00-13:30
Where	T4.44
Key Message	Ruth Maguire MSP's amendment has been agreed; SG will consult on taking forward regulations following passage of the bill.
Who	Ruth Maguire MSP
Why	To discuss Ardeer Peninsula Special Development Order (SDO) and planning bill provisions relating to compensation
Official Support Required	REDACTED
Briefing contents	Annex A – Agenda / Summary Page Annex B – Briefing / Background

Annex A

Agenda / Summary Page

Agenda

1. Ardeer Peninsula Special Development Order
2. Planning Bill provisions on compensation where SDO revoked or modified

Key issues

- Welcome the fact that amendment has been agreed.
- Following passage of the bill, SG will prepare regulations

Lines to Take

- Provisions for compensation are important to ensure fairness if it becomes necessary later to revoke or modify a planning permission after it has been granted
- There are circumstances where it can be appropriate to revoke or modify a planning permission, removing the right to develop.
- Ardeer is a clear example of circumstances where revocation of the SDO could be justified – the land use policy context has changed significantly.

- However it may not be appropriate to pay the amount of compensation that might have been envisaged when the SDO was made.
- Provisions of the Planning Bill following Stage 2 now give scope to address this issue.
- Next steps, following passage of the Bill, will be for SG to engage with all relevant stakeholders before making regulations.
- It is vital to engage fully with planning authorities and others who may be affected before making any regulations under this power, and give full consideration to the ECHR issues relating to compensation for the loss of property rights.

Briefing

Background

Over a period of years, North Ayrshire Council has raised issues with the need to revoke a SDO made in 1953 under section 11 of the Town and Country Planning (Scotland) Act 1947 – the Town and Country Planning (County of Ayr No.1 Special Development) Order 1953 which affects Ardeer and remains in force.

Ruth Maguire MSP asked an oral PQ relating to the Special Development Order at Ardeer earlier this year (19 April). In answering, you offered to meet with Ruth to discuss the issue further. She later (30 July) wrote to the Minister regarding Ardeer, asking about progress, noting she has had representations from several constituents, and suggesting taking up the minister's offer of a meeting.

Ruth Maguire lodged a handout amendment (314) plus consequential (315), giving Scottish Ministers the power to make regulations concerning the compensation regime which applies where planning permission is withdrawn as a result of the revocation of a development order. The amendments have been agreed by the Committee as part of Stage 2 of the Bill.

The plan led system should create reasonable certainty for all parties, as should an approval of planning permission. Provisions for compensation where consent that has been granted is revoked or modified are included in the system to ensure fairness and we consider these are necessary. Blanket removal of these provisions (as had been proposed in an amendment) is likely to put the planning system in conflict with ECHR legislation.

Planning Bill and Purpose and Effect of amendments 314 and 315, agreed at Stage 2

Section 30(2) of the 1997 Act enables planning permission to be granted by a development order in relation to land specified in the order. This power is now rarely if indeed ever used but there exist various old special development orders made under previous legislation.

Section 77 of the Act currently sets out provisions for the payment of compensation if planning permission granted by a development order is withdrawn or modified. This includes the circumstances where a development order is revoked (section 77(1)(a)). If a development order is revoked, and an application is made within 12 months for planning permission for development previously permitted by the SDO, then compensation is payable by the planning authority if that planning permission is refused (or granted subject to different conditions than those included in the SDO).

This mirrors the provision that where a planning permission (not granted by a development order) is revoked or modified the planning authority is liable to pay them compensation. The compensation is limited to where a claim made within a prescribed time frame shows that a person interested in the land has incurred abortive expenditure or otherwise sustained loss or damage directly attributable to the revocation or modification. However, because of the broad nature of the permission usually granted by a development order, the possible compensation for loss or damage is likely to be higher in those cases.

Amendment 314 repeals section 77 and introduces instead a power for the Scottish Ministers to make regulations concerning the compensation that may be payable on revocation of an order.

The effect of this amendment is to enable Scottish Ministers to use regulations to :

- set out the circumstances in which compensation may be payable;
- set out what the compensation is to cover;
- set out the manner in which the level of compensation is to be calculated
- require a claim for such compensation to be made within a certain period and specify how such a claim should be made and the information which should be included;
- apply or disapply any of the provisions of Part IV of the 1997 Act with or without modifications.

Amendment 315 repeals various references to section 77 elsewhere in the 1997 Act.

Document 9 – E-mail chain dated 31 December 2020

From: REDACTED@gov.scot
Sent: 31 December 2020 12:31
To: REDACTED@yahoo.com
Cc: REDACTED@gov.scot REDACTED@gov.scot
Subject: RE: Enquiry re. timetable for creation of compensation regulations pertaining to Special Development Orders

Dear REDACTED

Thank you for your inquiry.

You are correct that Section 39 of the 2019 Act has not yet been implemented. Due to the need to divert resource to manage the implications of the pandemic we have had to pause some aspects of our previously published programme of work to implement the Planning Act. This included putting on hold our proposed work to develop regulations about the payment of compensation where planning permission granted by a development order is withdrawn. We are currently reviewing our Planning Reform Implementation Programme and will make an announcement on a revised timetable for this piece of work in due course.

Kind regards

REDACTED

Planning & Architecture | Scottish Government



From: REDACTED@gov.scot
Sent: 13 December 2020 11:45
To: REDACTED@yahoo.com
Subject: Enquiry re. timetable for creation of compensation regulations pertaining to Special Development Orders

Dear Sir/Madam,

Like any piece of secondary legislation, an Special Development Order (SDO) can be revoked or amended by Ministers, often with the need for parliamentary approval. One of the issues surrounding revocation of SDOs is that doing so could lead to large compensation claims. Section 77 of the Town and Country Planning (Scotland)

Act 1997 provides that “*where planning permission granted by development order is withdrawn*” by revocation of the order, compensation is payable to any “*person interested in the land [who] (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation ..., or (b) has otherwise sustained loss or damage which is directly attributable to the revocation ...*”.

During consideration of the Planning (Scotland) Bill in 2018, Ruth Maguire, MSP for Cunninghame South, tabled an amendment to the Bill, making specific reference to the SDO and the risk that, given the terms of section 77 of the 1997 Act, the cost of compensation for its revocation could be high. Her amendment sought to repeal section 77 and add a new section 77A, giving Ministers the power to make regulations governing awards of compensation when planning permission is withdrawn by the revocation of a development order, thus potentially reducing the amount of compensation that can be awarded in that event. The Scottish Government accepted the amendment, and it duly passed as section 39 of the Planning (Scotland) Act 2019.

However, as I understand it, section 39 has not come into effect yet. Any provision of new primary legislation such as the 2019 Act only takes effect on the date it is formally commenced, either by a commencement provision in the same act or by a separate commencement order made at a later date, giving Ministers time to draw up any necessary regulations.

As stated, the new section 77A added to the 1997 Act by section 39 of the 2019 Act provides for Ministers to make regulations establishing a new system for awarding compensation to persons adversely affected by the revocation of a development order, so section 39 will be commenced in two stages, firstly just to allow Ministers to make those regulations, and then, once they have made the regulations, completely. Section 77 of the 1997 Act will therefore remain in force until regulations under the new section 77A have been made and section 39 of the 2019 Act is brought fully into force by a second commencement order.

I would be grateful if you would provide me with information on what the timetable is for making the new compensation regulations under section 77A of the 1997 Act.

Sincerely,

REDACTED

Document 10 – E-mail chain dated 9 June 2021

From: REDACTED@gov.scot
Sent: Wednesday, June 9, 2021 2:43 PM
To: REDACTED@gov.scot
Subject: RE: Ardeer peninsula

Hi REDACTED

Sent you the response I issued.

From: REDACTED@gov.scot
Sent: 09 June 2021 14:09
To: REDACTED@gov.scot
Subject: FW: Ardeer peninsula

Hi REDACTED

I have picked up a piece of correspondence on the above. REDACTED indicated below that you had dealt with correspondence on this around turn of the year – I don't see any likely correspondence under your name in Micase or on erdm. Do you still have the exchange? I assume you haven't dealt with anything more recently on this?

Regards

REDACTED

Planning & Architecture|Scottish Government
 gov.scot    eDevelopment.scot

From: REDACTED@gov.scot
Sent: 08 June 2021 16:29
To: REDACTED@gov.scot REDACTED@gov.scot REDACTED@gov.scot
REDACTED@gov.scot
Cc: REDACTED@gov.scot REDACTED@gov.scot

Planning colleagues,

I received the letter below in MiCase today but from the linked Facebook page it appears to be a planning legislation issue, more specifically, calls for a Special Development Order at the site to be revoked? I did a quick search in eRDM and found a few pieces of correspondence you had been involved in back in 2019, relating to efforts by REDACTED to have the SDO revoked.

Grateful if you could advise if I could reallocate this to somebody in your teams?

Thanks,
REDACTED

REDACTED
Policy Officer

Natural Resources Division | Directorate for Environment and Forestry

The Scottish Government | 3G South, Victoria Quay | Edinburgh EH6 6QQ |

From: REDACTED@hotmail.co.uk

Sent: 01 June 2021 14:20

To: REDACTED@gov.scot

Subject: Ardeer peninsula

AO – REDACTED

Good afternoon,

I live in the 3 towns and want to draw your attention to this. It's now reached a massive scale and needs something to protect the area otherwise it will be lost forever and it is such a special place. Culturally and environmentally this is a big deal, because when the sand removal reaches a certain level the whole of the Irvine Bay will be at risk and that's when the impact will be catastrophic. Could I ask you to view this video and help the local community in some way to stop this and save a hugely important resource? The local community needs your help as nothing is being done about this! Every day tonnes of sand which provide habitat and protection to the whole of Irvine Bay are being removed!!

https://m.facebook.com/story.php?story_fbid=193368676023172&id=107062071320500&sfnsn=scwspmo

REDACTED

Document 11 – E-mail chain dated 23 June 2021

From: REDACTED@gov.scot

Sent: Wednesday, June 23, 2021 2:53 PM

To: REDACTED@gov.scot REDACTED@gov.scot REDACTED@gov.scot

Subject: RE: Request for comment on draft reply - Micase Correspondence - Ardeer SDO

Thanks both. I have made the suggested amendments (the compensation reg making provisions are indeed about the when it applies, what for, how to calculate it and how to claim it etc.)

Regards

REDACTED

Planning & Architecture|Scottish Government



From: REDACTED@gov.scot

Sent: 23 June 2021 14:02

To: REDACTED@gov.scot REDACTED@gov.scot REDACTED@gov.scot

Subject: RE: Request for comment on draft reply - Micase Correspondence - Ardeer SDO

Hi REDACTED

Thanks for this. Looks good to me. Just one minor comment in the doc at the link below.

Cheers

REDACTED

Document 12 - E-mail chain dated 6 August 2021

From: REDACTED@gov.scot
Sent: Friday, August 6, 2021 5:14 PM
To: REDACTED@gov.scot
Subject: RE: Ardeer peninsula

The e-mail at the foot of the exchange looks like the same text in my micase – I got mine via REDACTED, not sure where the one below/others have ended up

Regards
REDACTED



From: REDACTED@gov.scot
Sent: 05 August 2021 13:06
To: REDACTED@gov.scot REDACTED@gov.scot REDACTED@gov.scot
Cc: REDACTED@gov.scot REDACTED@gov.scot REDACTED@gov.scot
REDACTED@gov.scot REDACTED@gov.scot
Subject: RE: Ardeer peninsula

Thanks REDACTED

Taking forward our commitment to prepare regulations on the compensation payable where a development order is revoked is one of the workstrands of implementation where there is an element of urgency –REDACTED, REDACTED and I have been touching on this in context of wider discussions on the work programme. If we had the resources to move this forward this year, we would have wanted to do so, and I think it should be one of the first things we turn to once past the current pressure on NPF4.

Up to now though we haven't confirmed a revised timescale for that work, and as discussed in team leaders' catch up this morning, there's a preference to see the PfG agreed before making further commitments on implementation programme, so at this moment I think we probably have to stick with previous lines, but can perhaps include a bit of narrative. Note today we've received a request from SPICe re an MSP query (extract below) which I'll be drafting a reply to

1. Has the Order been repealed?
2. If not, is the Scottish Government working on its repeal and, if so, what might the timescales for this be?
3. If the Scottish Government is not considering the repeal of the Order, can they explain why?

Just to add, REDACTED at NAC is understanding of the need for us to prioritise resourcing towards NPF at the moment, but we've agreed to have a regular catch up to update on the situation at Ardeer and when we can progress this element of Act implementation.

REDACTED



From: REDACTED@gov.scot **On Behalf Of** REDACTED@gov.scot
Sent: 05 August 2021 11:52
To: REDACTED@gov.scot
Cc: REDACTED@gov.scot >
Subject: FW: Ardeer peninsula

For MiCase please

From: REDACTED@yahoo.com
Sent: 05 August 2021 11:49
To: REDACTED@gov.scot
Subject: Ardeer peninsula

'The site of the former Nobel Explosives / ICI factory on the Ardeer peninsula in Stevenston, North Ayrshire, remains under the jurisdiction of a 1953 Special Development Order (SDO) granted to its former custodians which exempts the land's current owners from the obligation to seek Planning Permission for any change of use on the land. The result of this is unstoppable sand-extraction on an Industrial scale – a practice which not only is resulting in a devastation of the wildlife on the peninsula, some of it very rare, but risking serious threat to the whole country's coastal erosion and flood defences as our climate continues to warm: ecologically, the Ardeer peninsula is one giant, ancient sand dune and, as such, a natural, highly effective and self-repairing barrier to storm damage.

A motion to cancel the SDO came before the Scottish Parliament in 2019 but we are still waiting for this to go through: until it does, the wanton destruction of an important wildlife habitat and globally vital dunes will continue unabated. With Scotland hosting the UN Climate Change Conference (COP26) this year, PLEASE do what you can to ensure this SDO is revoked quickly– before it's too late. Thank you.'

From: REDACTED@gov.scot
Sent: 06 August 2021 16:55
To: REDACTED@gov.scot REDACTED@gov.scot
Subject: RE: Ardeer SDO

Thanks REDACTED

I'm not sure exactly what is referred to with the motion to cancel the SDO coming before parliament in 2019 – had a check on the parliament website but can't see anything under MSPs. I thought this might have been conflating Ruth Maguire's amendment on the Bill with a motion to revoke the SDO though that would have been 2018.

In any case, I think this text is still appropriate.

REDACTED

From: REDACTED
Sent: 06 August 2021 16:42
To: REDACTED
Subject: Ardeer SDO

Sent: 03 August 2021 08:54
To: REDACTED@gov.scot
Subject: Ardeer peninsula

The site of the former Nobel Explosives / ICI factory on the Ardeer peninsula in Stevenston, North Ayrshire, remains under the jurisdiction of a 1953 Special Development Order (SDO) granted to its former custodians which exempts the land's current owners from the obligation to seek Planning Permission for any change of use on the land. The result of this is unstoppable sand-extraction on an Industrial scale – a practice which not only is resulting in a devastation of the wildlife on the peninsula, some of it very rare, but risking serious threat to the whole country's coastal erosion and flood defences as our climate continues to warm: ecologically, the Ardeer peninsula is one giant, ancient sand dune and, as such, a natural, highly effective and self-repairing barrier to storm damage.

A motion to cancel the SDO came before the Scottish Parliament in 2019 but we are still waiting for this to go through: until it does, the wanton destruction of an important wildlife habitat and globally vital dunes will continue unabated. With Scotland hosting the UN Climate Change Conference (COP26) this year, PLEASE do what you can to ensure this SDO is revoked quickly– before it's too late. Thank you.

Reply:

Thank you for your e-mail of 3 August, addressed to REDACTED, about a Special Development Order (SDO) in place at Ardeer and your concerns about related environmental impacts. In view of the content of your e-mail, it has been passed to this Division for reply.

Where there are concerns about the impact of an SDO, the planning permission it grants can be withdrawn. North Ayrshire Council has raised the issue of revoking the SDO with the Scottish Government and we are working together to establish the best course of action.

There are related compensation provisions which can apply for those who experience losses from such withdrawal of planning permission. Currently the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) specifies the basis for calculating compensation where permission granted by development orders (including an SDO) is withdrawn. The Planning (Scotland) Act 2019 contains changes to those 1997 Act compensation provisions. The amendments will allow regulations to be made to specify the parameters regarding compensation, replacing the existing compensation specification in the 1997 Act.

Due to the need to divert resource to manage the implications of the pandemic we have had to pause some aspects of our previously published programme of work to implement the Planning (Scotland) Act 2019. This included putting on hold our proposed work to develop regulations about the payment of compensation where a development order is withdrawn. We are currently reviewing our Planning Reform Implementation Programme and will make an announcement on a revised timetable for this piece of work in due course.

I hope this information is helpful.

Document 13 – E-mail chain dated 7 August 2023

From: REDACTED@gov.scot
Sent: Monday, August 7, 2023 8:51 AM
To: REDACTED@gov.scot REDACTED@gov.scot
Cc: REDACTED@gov.scot REDACTED@gov.scot REDACTED@gov.scot
Subject: RE: Ardeer and Garnock Estuary

Thanks REDACTED and REDACTED

Apologies for delay getting back to you. Discussions regarding the SDO have been on a very slow burn - while there hasn't been a formal request to revoke the SDO, our erdm records show that at least as far back as 2006/2007 North Ayrshire Council were looking to SG and HSE for advice/help with resolving the situation. Previous lines around the time of the Planning Act (not for use here, but for awareness) have been along the lines of:

- Scottish Ministers have acknowledged the unusual circumstances created by the SDO at Ardeer which dates from the post war period.
- North Ayrshire Council has raised the issue of revoking the SDO with the Scottish Government
- Powers exist to revoke an SDO and we are working with North Ayrshire Council to establish the best course of action at Ardeer.

Ministers are working with North Ayrshire Council to find an appropriate solution to the planning situation at Ardeer

- We are aware of the Special Development Order in Ardeer that has been in force since 1953.
- Existing powers could be utilised to revoke the SDO.
- The local authority – or indeed Scottish Ministers – do have revocation powers.
- Kevin Stewart, as Planning Minister, answered a question about Ardeer in the chamber in April 2018 and acknowledged the unusual circumstances of the SDO.
- Kevin Stewart offered to meet with local MSPs and representatives to discuss options going forward.

Ardeer is a clear example of circumstances where revocation of the SDO could be justified

- the land use policy context has changed significantly since the order first came into in 1953 .
- However it may not be appropriate to pay the amount of compensation that might have been envisaged when the SDO was made.
- We welcome the fact that Ruth Maguire's amendment to the Planning Bill during Stage 2 was agreed.
- Provisions of the Planning Bill following Stage 2 now give scope to address the issue of compensation where an order is revoked.
- Following passage of the bill, Scottish Government will prepare regulations

From: REDACTED@gov.scot >
Sent: Tuesday, August 1, 2023 12:37 PM
To: REDACTED@gov.scot REDACTED@gov.scot REDACTED@gov.scot
Cc: REDACTED@gov.scot
Subject: RE: Ardeer and Garnock Estuary

Thank you REDACTED. Can I please check in with regards to who is best placed to work with REDACTED on a response? I can get back to REDACTED to let him know. I have looked this one up on micase and it is now late so I assume REDACTED will be looking for comments from PARD fairly promptly.

Many thanks,
REDACTED

From: REDACTED@yahoo.com
Sent: Tuesday, June 27, 2023 4:50 PM
To: REDACTED@gov.scot
Subject: Ardeer and Garnock Estuary

Dear Minister

As a local member of the Scottish Wildlife Trust I am writing to you to draw your attention to the lack of protection for the Ardeer peninsula and the adjacent Garnock estuary area between Irvine and Stevenston. Currently, the Bogside Flats (mainly the estuary itself and the adjacent former Bogside Racecourse) is a SSSI. The rest of the area has no local, national or international designation to protect it from damaging developments. To make matters worse, most of the peninsula is subject to a Special Development Order (SDO) granted by the UK government in 1953 which allows almost any development to take place without further planning permission.

For many years local naturalists have been collecting information on the biodiversity and wildlife habitats of the area, particularly the Ardeer peninsula. This has shown that Ardeer retains the most complete succession of dune habitats, from fore-dunes to dune heath, in Ayrshire. The site is particularly remarkable for its invertebrate populations. Notable amongst these are 120+ species of bees and wasps, which experts in Buglife believe make it the most important site in Scotland for this group; and over 350 species of beetle. The total of resident and migratory birds recorded in the area is 184 species. These include 68 that have bred; including 9 Red-listed and 25 Amber-listed in the latest Birds of Conservation Concern (BoCC5). When North Ayrshire Council had all their Local Nature Conservation Sites re-surveyed in 2015 the Ardeer peninsula was also assessed and received a higher points score than any existing site. The revised list of LNCSs has still not been adopted.

In July last year the Ardeer Action Group, sent a detailed rationale to NatureScot for the designation of the Garnock Estuary as a SSSI. The area proposed would include the Ardeer Peninsula and encompass the existing Bogside Flats SSSI. Despite agreeing at the end of last year that some habitats merited designation, and missing two of their own proposed decision dates, NatureScot has still taken no action.

In the meantime valuable sand dune habitats are being reduced every working day by sand extraction operations for which no specific planning permission has been required as a result of the 1953 SDO. The site was also recently short-listed for a new nuclear fusion power station which would have occupied most of the Ardeer peninsula; and is currently being considered for three very large wind turbines which would be sited at the north part of the peninsula.

We are concerned that a very damaging development will be proposed for the area before it has any protective designation. Could you please encourage NatureScot to expedite their considerations and designate the Garnock Estuary as a SSSI before it is too late to save the remarkable wildlife of North Ayrshire's foremost biodiversity site.

Yours sincerely

REDACTED

On behalf of Scottish Wildlife Trust, Ayrshire Group.

Document 14 E-mail and briefing for meeting 12 September 2023

From: REDACTED@gov.scot

Sent: Monday, September 11, 2023 3:44 PM

To: REDACTED@gov.scot

Cc: > REDACTED@gov.scot REDACTED@gov.scot REDACTED@gov.scot REDACTED@gov.scot
REDACTED@gov.scot

Subject: Planning - development management - ministerial meeting - Ruth Maguire MSP - 12 September 2023 - engagement briefing - draft

Dear REDACTED

As discussed, please find attached short briefing for the Minister's meeting tomorrow with Ruth Maguire. Thank you for the additional time to provide this.

REDACTED and I will join the Teams meeting to provide support. We would be very happy to meet with the minister beforehand if a pre-meeting chat would be helpful. Please just let us know.

Kind regards

REDACTED

What	Ruth Maguire MSP has requested a meeting with the planning minister
Where	MS Teams Click here to join the meeting
When	Tuesday 12 September 2023 10:00 to 10:45 (45 minutes)
Key message(s)	<ul style="list-style-type: none">• We remain committed to implementing the Planning Act provisions in full, including those on the compensation provisions where a development order is revoked.• We recognise the specific circumstances at Ardeer and the implications for the planning of the area resulting from the Special Development Order in force there.
Who	Ruth Maguire MSP
Why	Ruth Maguire MSP has requested the meeting to discuss implementation of the 2019 Act provisions and in particular an update on the provisions relating to compensation where development orders are withdrawn.

Supporting official	REDACTED REDACTED
Briefing contents	<p>Annex A: Event programme (please highlight the Minister's agreed time slot)</p> <p>Annex B: Guest List/Attendees (inc any bios for key attendees the Minister may not have met before)</p> <p>Annex C: Summary Page / Top Brief (This should cover key issues, and any issues to avoid and ideally 2 pages max)</p>
Media handling	None
Social media	None
Greeting party and specific meeting point on arrival (if event is at a non SG building)	n/a

Annex A – Agenda

Ruth Maguire MSP has requested the meeting to discuss implementation of the 2019 Act provisions and in particular an update on the provisions relating to compensation where development orders are withdrawn.

Annex B – Attendees

REDACTED

Annex C – Summary page / Top brief

1. Ruth Maguire MSP has a particular interest in provisions she introduced into the Planning (Scotland) Act 2019 in respect of compensation payable where a development order is revoked. The provisions will, when commenced, allow Scottish Ministers to make regulations regarding the payment of compensation in certain circumstances where development permitted by a development order (such as the General Permitted Development Order or a Special Development Order) is revoked or amended. Once in force, these regulations would replace the current provisions for compensation set out in the Town and Country Planning (Scotland) Act 1997.
2. The Ardeer Peninsula in North Ayrshire is currently subject to a Special Development Order (SDO) created in 1953 which grants planning permission for certain activities and development, allowing them to be undertaken without a planning application. An SDO can be thought of as granting site-specific permitted development rights. The activities permitted by the Ardeer SDO include sand extraction, which is prompting concern that environmental damage is being caused and wildlife habitats eroded.
3. At the time the SDO was made, Ardeer was a major industrial complex operated by a single user, Imperial Chemical Industries Limited, and the SDO was intended to allow the company to carry out any development considered necessary for their manufacturing without the requirement for normal permissions.
4. Ardeer is an example of circumstances where revocation of the SDO could potentially be justified as the land use policy context has changed significantly since the order first came into in 1953. Where an order is revoked and planning permission is subsequently refused for development that was previously authorised by the order, the liability to pay compensation falls to the relevant planning authority. North Ayrshire Council have indicated that under the current provisions, the compensation liability associated with revoking the Ardeer SDO could be very substantial.
5. Any decision to revoke or amend the SDO would be taken by the Scottish Ministers. A formal request to do so has not yet been received. It is vital to note that if and when such a decision is taken, it would need to be on the basis of relevant land use planning matters.

6. There is no guarantee that the compensation provisions could be amended in a way that makes a meaningful difference to the financial liability associated with the Ardeer SDO. For these reasons, it is important not to conflate decisions about:
 - How and when to take forward the compensation provisions in the 2019 Act.
 - Whether the Ardeer SDO should be amended or revoked.
7. Ms Maguire wrote to the then Minister for Public Finance, Planning and Community Wealth in January 2022 requesting an update on work on the NPF4 and timings for action (Mibase ref 202200374810). The response noted that, due to recent circumstances, work to commence the provisions of the 2019 Act has unavoidably been postponed.
8. The intention at that time, as set out in the Planning Reform Implementation Programme was that work would be taken forward to develop draft regulations to implement the provisions with a view to laying these regulations and commencing the relevant section of the Act later in 2022. While we remain committed to progressing the work on compensation regulations, this is having to be balanced alongside other commitments in the programme for government. We intend to progress this work later at the earliest opportunity, however due to the need to balance other priorities, in particular PfG commitments, we expect this will not be before 2024.

Compensation provisions

- Now that we have adopted NPF4 and the wider reform of local development plans, we are continuing our programme of work to implement the 2019 Planning.
- We remain committed to implementing the Planning Act provisions in full, including those on the compensation provisions where a development order is revoked withdrawal of planning permission granted by development order.
- I am aware of the specific circumstances at Ardeer and the implications for the planning of the area resulting from the Special Development Order in force there.
- We intend to progress this work at the earliest opportunity. Unfortunately, due to the need to balance competing priorities, in particular PfG commitments, within the resources available, we expect this will not be before 2024.

Reform

- This is a critical time for Scotland's future development, and so we are making significant whole-system reforms.
- NPF4 has been a particular turning point for planning. Its new statutory status as part of the development plan means that the system will be much more consistent and predictable across the country. It is now for LDPs to come forward and set out the spatial implications of NPF4 policies for their areas.

- Our own team in the **Planning, Architecture and Regeneration Division** is **now turning its attention** from policy development to policy implementation. The team will have a more external facing role, supporting planning authorities and other delivery partners with the implementation of NPF4 and preparation of LDPs.
- We are providing extensive guidance and changing the way we engage with councils to support their preparation of their local development plans.
- The new **Planning, Infrastructure and Place Advisory Group** will support NPF4 delivery, for example of National Developments and alignment of planning with infrastructure delivery and place-based investment.

Document 15 – Note of meeting 12 September 2023

Minister for Local Government Empowerment and Planning – meeting with Ruth Maguire MSP, Tuesday 12 September 2023

Summary note of meeting

Attendees

Joe FitzPatrick Minister for Local Government Empowerment and Planning

Ruth Maguire

Official support

REDACTED

REDACTED

Aim of meeting

Ruth Maguire requested the meeting to discuss implementation of the 2019 Act provisions and in particular an update on the provisions relating to compensation where development orders are withdrawn.

Summary note

Ruth Maguire provided a very brief update on Ardeer and her constituents' expectations:

- She first brought situation at Ardeer and need for revocation of the existing Special Development Order (SDO) - to protect the environment – to Ministers' attention in 2016
- Successful amendment to planning bill 2018 (this amendment introduced provisions into the Planning (Scotland) Act 2019 in respect of compensation payable where a development order is revoked or modified)
- Sand extraction has continued in the intervening period; understood to have been used for a golf course on east coast.
- Ruth Maguire considered that the Act had been presented as a solution [to the problem of the legacy SDO at Ardeer] but it has not been.
- In answer to the question whether steps to facilitate revocation of the SDO are still necessary, Ruth Maguire confirmed that there is still a strong expectation locally to see the SDO revoked.

The Minister underlined that SG has been acting in good faith as regards Ardeer.

There have been delays in implementing the provisions relating to compensation due to impacts of Covid pandemic and resource capacity within the small team of officials.

Officials sought to provide some clarification

- The powers to revoke the SDO at Ardeer already exist.
- The provisions in the Planning Act allow Ministers, through regulations, to set parameters on the matters which could be covered by compensation where a

development order is revoked. This is expected to assist in providing more certainty on financial liability as and when a development order / SDO is revoked.

- They do not in and of themselves revoke planning permission granted by the development order; nor do they remove the right to compensation.
- There will still be the possibility of claim for compensation, where a planning application is submitted within 12 months of revocation and permission is then refused for development that would otherwise have been granted through the development order.
- It remains our intention to fully implement the compensation provisions but staff resource is limited and in light of priority commitments of PfG, not currently able to progress this in short term.
- Any changes to compensation entitlements will interfere with private property rights, hence compatibility with the ECHR will require very careful consideration.
- Given the link with permitted development (the compensation provisions apply to all development orders, including SDOs and the General Permitted Development Order), we think a viable option would be to consult on draft provisions as part of Phase 4 of the PDR review.
- Timescale for Phase 4 is subject to other more immediate pressures including taking forward PfG commitments.

Action

- Consider programming with the Chief Planner and options for progressing this work;
- Minister to write to update Ruth Maguire

Document 16 – Letter to Ruth Maguire following meeting on 12 September 2023

Dear Ruth

Thank you for our recent meeting where we discussed implementation of the 2019 Act provisions and in particular an update on the provisions relating to compensation where development orders are withdrawn.

We discussed the fact that the powers to revoke development orders exist, and that the provisions in the Planning Act allow Scottish Ministers, through regulations, to set parameters on the matters which may be covered by compensation where a development order is revoked. Laying and bringing into force such regulations is expected to provide more certainty on financial liability as and when any development order is revoked. The regulations would not in and of themselves revoke any planning permission granted by a development order.

As we acknowledged, there have been delays in implementing the provisions due to the impacts of the Covid pandemic and the need to prioritise preparation of the National Planning Framework and local development plan guidance before turning to other commitments. I undertook to consider programming of this work in light of wider commitments and available resources and to write to you.

As discussed, we are committed to implementing the provisions of the Planning (Scotland) Act 2019, including the provisions relating to compensation where development orders are withdrawn, and doing so as soon as practicable within resources available. One option would be to consult on this matter as part of Phase 4 of the review of permitted development rights. I have asked the Chief Planner to explore how implementation of the provisions relating to compensation where development orders can best be programmed. Planning, Architecture and Regeneration Division are now considering practical options to allow this workstream to progress alongside other priority tasks which must be progressed in the short to medium term.

I will write to you again in the near future to update you on our proposed programming of the work.

Yours

Joe Fitzpatrick

