Planning Reform Team
Communities and Local Government
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17th August 2007

Response to *Planning for a Sustainable Future*

Planning Reform Team,

The Institute of Environmental Management and Assessment (IEMA) have come together with the Ireland and UK Branch of the International Association for Impact Assessment (IAIA) to provide a joint response to *Planning for a Sustainable Future* (the White Paper). This response identifies a number of concerns and opportunities that relate to environmental assessment practice and the White Paper. It builds on our key issues response, dated 20th July 2007. Our response has benefited from a meeting with key officials from Communities and Local Government (CLG) and Department for Business, Enterprise and Regulatory Reform (DBERR) on 2nd August 2007.

We believe the environmental assessment profession, and the IEMA and the IAIA Branch in particular, can play a key role in enhancing the development of new Regulation and guidance related to the proposed improvements to the planning of Major Infrastructure Projects. We also see a key role for our members during the operation of the new system, both in the development of major infrastructure applications and either within or associated with the proposed Infrastructure Planning Commission (IPC). Further discussion on how our organisations and/or membership can help ensure the IPC is appropriately skilled and experienced to achieve its desired role in Environmental Impact Assessment (EIA), would be beneficial in developing an effective system that can be implemented in a timely manner.

We urge the Government to further consider the benefits brought to the planning system by environmental assessment in helping ensure a sustainable environment is maintained through the provision of necessary safeguards. The attached consultation response sets out the concerns of IEMA and the Ireland and UK Branch of the IAIA. The paper indicates opportunities where we consider both organisations, and their membership, can provide an effective contribution in taking forward the White Paper's proposals into Regulations, guidance and operation.

We trust that this response to the White Paper will be given due consideration during the development of the Planning Reform Bill. Should the Department like to discuss any of the comments made further, we would be happy to do so.

Yours sincerely,

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Consultation Response

Planning for a Sustainable Future – White Paper

The Institute of Environmental Management and Assessment (IEMA) and the Ireland & UK Branch of the International Association for Impact Assessment (IAIA) welcome the opportunity to comment on the Government's proposals to improve the planning system set out in *Planning for a Sustainable Future* (the White Paper). The planning system plays an important role in delivering the sustainable development agenda within the UK. Experience across the decades has demonstrated that the planning system can be an agent of environmental, social and economic good, but also harm. Changes to the land use planning system that promote efficiency are supported by the IEMA and IAIA Ireland and UK Branch, but with the exception of those proposals that we consider to be high risk with regard to the delivery of sustainable development.

We have identified a number of opportunities and concerns, related to both the effective safeguarding of the environment and environmental assessment practice, within the White Paper. This response builds on the content of our key issues response, dated 20 July 2007, that has already been submitted to Communities and Local Government (CLG) for consideration. Our response has benefited from a meeting with key officials from the CLG and Department for Business, Enterprise and Regulatory Reform (DBERR) on 2 August 2007, and we are keen to continue this working relationship in the future.

The IEMA is a not-for-profit membership organisation established to promote best practice standards in environmental management, auditing and assessment. The Institute offers ongoing support to environmental professionals and aims to promote sustainability through improved environmental practice and performance. With over 11,500 individual and corporate members, the IEMA is now a leading international

membership-based organisation, dedicated to the promotion of sustainable development and to the professional development of individuals involved in the environmental profession across many industrial sectors. For more information on the IEMA, its events, services, products, membership, training and publications, please visit www.iema.net.

The IAIA is the leading global networking organisation on impact assessment for sustainable decision-making, providing an international forum for communicating information on best practice and innovation. It is truly a multi-disciplinary organisation covering the many aspects of impact assessment, and has 1500 members in more than 120 countries, including private and public sector planners and managers, consultants and policy analysts, university and college lecturers, researchers and students. In 2005, a regional Branch for Ireland and the United Kingdom was created, which aims to promote interaction between impact assessment researchers at leading Irish and UK universities with professionals in the field. For more information on IAIA and the UK and Ireland Branch please see www.iaia.org and follow > Affiliates and Branches > Ireland-UK Branch.

This response to the White Paper is prepared jointly on behalf of the IEMA and the Ireland-UK Branch of the IAIA (IAIA Branch).

Our response to the White Paper is provided in two sections:

- The first part addresses the consultation questions posed within the White Paper. Contributions are made only on content that the IEMA and IAIA Branch has the competence to comment on, where it feels it can offer a valuable alternative perspective, or where it feels that considerations have been omitted. Silence on a particular topic or proposal should not be regarded as support or opposition to it.
- The second part considers specific content within the White Paper that is not addressed within the consultation questions.

We trust that this response to the White Paper will be taken into account. Should the Department like to discuss any of the comments made further, we would be happy to do so.

Part 1: Consultation Question Responses

Question 3: Content of National Policy Statements

3 a) Do you agree that National Policy Statement should cover the core issues set out above?

We agree that the development of National Policy Statements (NPSs) should cover the core issues set out in the White Paper. We are particularly encouraged to see continued commitment to planning based on the integrated consideration of economic, environmental and social issues to promote sustainable development. However, we believe legislation taking forward the White Paper's proposals should include a stronger commitment to the application of Strategic Environmental Assessment (SEA) for NPSs, particularly in view of the wide benefits that SEA can bring to the planning process.

The White Paper proposes that NPSs 'should be the primary consideration for the commission in determining applications for development consent, i.e. that they should have more weight than any other statement of national, regional or local policy.' (Paragraph 3.12). As such we consider that all NPSs will clearly set the framework for future development consent. Further, NPSs will be required by the legislation as a result of turning the White Paper's proposals into statute, and be produced by an authority at the national level, i.e. the sponsoring Government Department. Despite the 'policy' title of NPSs, the European Commission's SEA guidance is clear that "*documents having the characteristics of a plan or programme, as defined by the Directive may be found under a variety of names*".[1] As a result it is our considered view that all NPSs will fall within the scope of the SEA Directive (2001/42/EC) and associated Regulations (SI 1633, 2004).

The current proposals in the White Paper indicate that NPS would undergo SEA '*as appropriate*'. To clarify our understanding of this proposal we consider that:

- The initial development of all NPSs (either entirely new or the conversion of existing policy to a NPS) should be required to undergo an assessment fully compliant with the SEA Directive.

[1] See http://ec.europa.eu/environment/eia/pdf/030923_sea_guidance.pdf section 3.3

- Where the proposed 5 yearly review of NPSs indicates a full review is required a fully compliant SEA should also be required.
- Where minor modifications to a NPS are identified either as a result of the 5 yearly review cycle, or due to other drivers, the NPS should be subject to a Regulation 9 Screening Determination (SI 1633, 2004). As such the potential for the minor modification of a NPS to generate significant environmental effects should be considered by the sponsoring department in consultation with the Consultation Bodies (or Authorities should the NPS have the scope to influence development in Scotland).

We would also like to raise a potential propriety issue where screening determinations are made by Government Departments. The SEA Regulations require the responsible authority to make a screening determination, as appropriate, indicating whether SEA is required for the plan being produced, in this case a NPS. However, Regulation 10 (SI 1633, 2004) allows the Secretary of State (SoS) to over-rule a responsible authority's determination of no significant environmental effects and direct the responsible authority to undertake SEA. The development of NPSs could lead to a situation where the SoS had responsibility for both the Regulation 9 determination as well as being the overview authority under Regulation 10. We are unclear as to whether such a dual role could lead to propriety issues, but believe the issue should be given further consideration during development of legislation bringing forward proposals for NPSs.

3 b) Are there any other criteria that should be included?

The consideration of reasonable alternatives should be included as a core element of the development of all NPSs rather than a requirement inferred through consideration of interaction with other Government policy and SEA compliance. This will help ensure that interested parties view the development of NPSs as a robust and transparent process.

Further Information:

During the 2nd August meeting with representatives of CLG and DBERR (formerly the Cabinet Office) the IEMA and IAIA Branch were asked to provide examples of

non-site specific national SEA. We have identified the following national / wider examples:

- ER accompanying the draft Rural Development Programme England (Defra, 2007)
- ER accompanying the consultation draft of PPS10 (Planning for Sustainable Waste Management) (produced by former ODPM, 2004)
- Scottish Marine Renewables SEA carried out by the Scottish Executive

Question 4: Status of National Policy Statements:

4 a) Do you agree, in principle, that National Policy Statements should be the primary consideration for the Infrastructure Planning Commission in determining individual applications?

The IEMA and IAIA Branch have concerns that, by proposing that NPSs be the primary consideration for the Infrastructure Planning Commission (IPC), as currently worded in the White Paper, significant environmental issues that do not have statutory protection will not be considerations in the Commission's decision-making on nationally significant infrastructure projects. We consider that this approach will potentially be in breach of the Environmental Impact Assessment (EIA) Directive 85/337/EEC (as amended), which requires an environmental statement (and the results of consultations on it) to be taken into account by decision makers. We are concerned that this approach would appear to unreasonably override the Government's existing national environmental and sustainable development commitments and policies.

4 b) If not, what alternative status would you propose?

We would recommend as an alternative that NPSs are given the status equivalent to Development Plans in section 38 of the Planning and Compulsory Purchase Act 2004 (and before this the Town and Country Planning Act 1990) which is a tried and tested model, i.e. that 'determination must be made in accordance with the NPS unless material considerations indicate otherwise'.

This would still retain the NPS as the most important consideration for the Commission's decision-making, which is appropriate. However it would also ensure that the Commission's decision-making was in compliance with the EIA Directive and the Government's sustainable development principles, as it would not preclude other significant environmental, social and economic effects, benefits and costs, from being important considerations in the Commission's decision.

Please also refer to our response to Question 29 on the related issue of the definition of 'adverse local consequences' for Commission decision-making.

Questions 5 and 12: Consultation on National Policy Statements, Consultation by Promoters

5 a) Do you agree, in principle, that these proposals would ensure effective public engagement in the production of National Policy Statements, including with local communities that might be affected?

5 b) Are there any additional measures that would improve public and community engagement in their production?

12 a) Do you agree, in principle, that promoters should be required to consult the public before submitting an application to the Infrastructure Planning Commission?

12 b) Do you think this consultation should take a particular form?

We would like to highlight an issue concerning the terminology used in the White Paper. This issue is directly relevant to the above questions, but is also indirectly relevant to many additional aspects of the White Paper.

The importance of effective consultation with the public and other stakeholders is repeatedly mentioned in the White Paper. However, as a signatory to the Aarhus Convention (United Nations Economic Commission for Europe, 1998), the Government has a legal responsibility to provide for early and effective public participation in decision-making where significant environmental effects may occur[2]. Consultation is not analogous to participation; it is a more restricted form of

[2] See Articles 2(2) and 3(4) of Directive 2003/35/EC (European Commission, 2003).

stakeholder involvement (Burgess and Chilvers, 2006; Institute of Environmental Management and Assessment, 2002; Petts, 1999).

As organisations with considerable experience in stakeholder involvement, we also strongly recommend that an ethos of participatory decision-making is embedded in all aspects of the White Paper's proposals, not just those covered by the Aarhus Convention.

Experience shows that effective public engagement in strategic decision making is difficult to achieve and considerable attention needs to be given to this aspect if accusations of removing local community voices from these decision making processes are to be avoided.

In relation to question 12a, we therefore agree in principle that promoters should be required to consult the public before submitting applications, so long as the process promotes early and effective participation, and ensures that developers are required to address and respond to the significant issues raised prior to submission.

We would be prepared to work further with the Government and/or the IPC to offer advice on how early and effective participation can be realised in practice.

Question 6: Parliamentary scrutiny:

6 a) Do you agree with the intention to have Parliamentary scrutiny for proposed National Policy Statements?

6 b) What mechanisms might ensure appropriate Parliamentary scrutiny?

Whilst we have strong reservations about the role of an appointed and unelected Commission in taking decisions on individual applications instead of (most likely) democratically elected MPs (Ministers), we agree that Parliamentary scrutiny should be required for NPSs. The Select Committee model would appear most appropriate, but with representation drawn from a range of department committees rather than only the department preparing the NPS.

Question 7: Timescale of National Policy Statements

7 a) Do you agree, in principle, that 10-25 years is the right forward horizon for National Policy Statements?

This timeframe seems appropriate, provided that the NPS will not cause an adverse effect on a Natura 2000 site. If an appropriate assessment under the Habitats Directive is necessary for a NPS, and this fails to rule out an adverse effect on a Natura 2000 site, justification in terms of Imperative Reasons of Overriding Public Interest (IROPI) may be necessary. In this situation, a time horizon much greater than 10 years should be used. This is because the European Commission's guidance[3] on Article 6 of the Habitats Directive is clear that "*public interest can only be overriding if it is* ***a long-term interest****; short term economic interests or other interests which would only yield short-term benefits for society would not appear to be sufficient to outweigh the long-term conservation interests protected by the directive".*

7 b) If not, what timeframe do you consider to be appropriate?

N/A.

Question 8: Review of National Policy Statements

8 a) Do you agree that five years is an appropriate period for the Government to consider whether National Policy Statements remain up to date or require review?

Yes, five years is appropriate but it should be the maximum period before the Government considers review. It should also be possible to review NPSs more frequently should evidence or circumstances change significantly.

8 b) What sort of evidence or circumstances do you think might otherwise justify and trigger a review of National Policy Statements?

Significant changes in Government policy should justify a review. For example, a change in the Government's sustainable development policy or climate change commitments should trigger a review of statements to ensure their continued

[3] European Communities 2000*Managing Natura 2000 sites – the provisions of Article 6 of the 'Habitats' Directive 92/43/EEC.* Available from http://ec.europa.eu/environment/nature/nature_conservation/eu_nature_legislation/specific_articles/art6/pdf/art6_en.pdf

compatibility with other policies. Changes in the state, condition and/or quality of the environment, society and economy, and lessons learned from the use of NPSs in decisions, might also be good reasons to trigger a review.

Question 10: Transitional arrangements

10 a) Do you agree, in principle, that subject to meeting the core elements and standards for National Policy Statements set out in this White Paper, policy statements in existence on commencement of the new regime should be capable of acquiring the status of National Policy Statements for the purposes of decision-making by the Commission?

No. There is a strong possibility that some existing statements would fail to meet tests of environmental sustainability, which is a serious concern given their proposed status as the '*primary consideration*' for the Commission's decision. It is extremely concerning that the Air Transport White Paper is continuously referred to throughout Chapter 3 as an example of how NPSs might work (eg 3.29, 3.31). The Air Transport White Paper promoted massive growth in new airport capacity, thereby failing to acknowledge environmental limits or the climate change consequences of such growth. As such, it should not be considered a model for the planning of new development compatible with the Government's sustainable development commitments.

In any case we would consider that it is most unlikely that existing statements of policy would meet the core requirements for NPSs. Most policy statements already in existence were not subject to SEA as they were prepared, nor were they drawn up in discussion with the communities that are likely to be directly affected. SEA and public participation are essential safeguards in helping to ensure that NPSs are environmentally sustainable and democratic. They also support joined-up government, preventing conflict between policies prepared in different areas.

The IEMA and IAIA Branch believe it is very difficult to carry out effective SEA after a policy or plan has already been prepared or even adopted. SEA is most effective when it starts early in the preparation of a policy statement or plan, when a range of alternatives can be properly investigated and the proposals can be improved in light of knowledge about the likely environmental implications. As we wish to see all NPSs

subject to rigorous and evidence-based SEA, we do not feel that existing policy statements should acquire this status or be used by the Commission in decision-making.

10 b) If not, what alternative arrangements do you propose?

Policy documents should only be considered by the Commission as NPSs if they have been drawn up specifically for the purposes of decision-making on major projects. The process for drawing up such documents must integrate high quality SEA and public participation, particularly involving affected communities.

Question 11: The preparation of applications

11 a) Do you agree, in principle, that promoters should have to prepare applications to a defined standard before the Infrastructure Planning Commission agrees to consider them?

The IEMA and IAIA Branch support the proposal for applications to be prepared to a defined standard before they are considered by the IPC. The potential for an application to not be considered should provide a sufficient incentive for promoters to ensure that the preparation of their applications comply with good practice.

Paragraph 4.2 of the White Paper sets out the typical stages in the development of a proposal. The standard should not only ensure that each of these elements has been undertaken as part of the application preparation, but should assess how robust the elements of the application are. Thus, for example, the standard should:

- not only confirm that an EIA has been undertaken, but should assess the quality of the Environmental Statement (see our response to Question **17a** on the EIA skills available to the commission and the potential to develop an EIA Review Service with IEMA) and ensure that the scope of the EIA is consistent with scoping advice and guidance issued by the Commission.
- ensure that the options considered are sufficient to have identified the Best Practicable Environmental Option (BPEO).
- examine stakeholder involvement practices (particularly relating to public

participation) to ensure that stakeholders have been provided with sufficient and fair opportunities identify issues or concerns and to identify and assist in the selection of options. The standard should also ensure that the reporting of consultation is sufficiently transparent.

Given the above proposals, it is likely that the defined standard would take the form of criteria that define good practice for the preparation of an application rather than a checklist of elements to be included. These should be published and would be clear as to what the minimum requirements and best practice standards for the preparation of applications and consultation will be. This must include guidance on the scope and standards expected of EIA and the procedures for scoping and Environmental Statement review (see our responses to Questions **16** and **17**).

For environmental information there are a number of EIA review criteria that would provide a good starting point, including those published by the IEMA. We would emphasise that the IPC should incorporate or should contract appropriate expertise to undertake the evaluation of applications.

Due to the need to clarify information, the potential for new issues to arise (and inadequacies in submitted information to be revealed) during the consideration of an application, we consider that the commission must retain the powers (including during the preliminary stage in advance of examination) to

(i) in the evidence it calls for, request 'further' environmental information to 'complete' the Environmental Statement (currently found within regulation 19 of the Town & Country Planning (EIA) (England and Wales) Regulations 1999 (as amended); and

(ii) refuse applications where the required further information is not provided.

Question 12: Consultation by Promoters

12 a) Do you agree, in principle, that promoters should be required to consult the public before submitting an application to the infrastructure planning commission?

See question 5 above.

12 b) Do you think this consultation should take a particular form?

See question 5 above.

Question 13: Consulting Local Authorities

13 a) Do you agree, in principle, that relevant Local Authorities should have special status in any consultation?

Yes - the IEMA and IAIA Branch consider that the UK Town and Country Planning regime's focus on the Local Authority (LA) has served the interest of local democracy well. Conversely, the other UK Planning regimes (e.g. Highways Act Orders, Transport and Works Act Orders, Electricity Act Orders, etc.) have not been perceived to be so democratic, transparent or accountable. As such, we consider that LAs should retain their special status in consultations on applications under the proposed new arrangements because the public rightly demand that the locally elected and democratic authority has a significantly influence on the application. This accords with the long established principles of representative democracy in the UK and would serve to allay some of the fears of the public and non-statutory agencies over possible exclusion from the decision making process. It should also be clear that LAs also include Parish and Town Councils (in England) and Community Councils (in Wales) as well as District, Unitary and County Councils.

13 b) Do you think the Local Authority role should take a particular form?

Yes - the IEMA and IAIA Branch consider that the promoter should engage with the relevant LAs at the earliest opportunity in scheme development rather than excluding them to the late stages of the decision making process. The LAs will have detailed, and often expert, information on local site characteristics in any mooted area and will be invaluable in guiding the proposed development to the most suitable location.

Question 14: Consulting other Authorities

14 a) Do you agree, in principle, that this list of statutory consultees is appropriate at the project development stage?

Yes - whilst it may seem a long list, all of these bodies should be consulted, including on the issue of formal EIA Screening and Scoping Reports issued by the promoter.

14 b) Are there any bodies not included who should be?

Water Authorities and all other statutory undertakers should be included, as should devolved equivalents e.g. CCW, CADW, Design Commission for Wales etc.

Consultation should also not be limited to the statutory list, but should include other official bodies and Non-Governmental Organisations (NGOs) who register an interest in being consulted with the Commission, equivalent to the recent amendments to EIA regulations made by the Public Participation Directive.

Question 15: Statutory Consultees Responsibilities

15 a) Do you agree, in principle, that the government should set out, in legislation, an upper limit on the time that statutory consultees have to respond to a promoter's consultation?

Yes.

15 b) If so, what time limit would be appropriate?

4 weeks. However, as the current 21 day consultation period is rarely met by all consultees, additional resources may be needed for some in order to meet the deadlines. Additional time would also be needed if 'further information' is required from the applicant.

Question 16: The Infrastructure Planning Commission's guidance role

16 a) Do you agree in principle that the Commission should issue guidance for developers on the application process, preparing applications and consultation?

We agree that the commission should have the ability to issue guidance for developers on the application process, the preparation of applications and general expectations related to stakeholder participation. However, we have concerns as to whether the Commission will have sufficient expertise to produce such guidance initially, as such we support the proposal in Paragraph 4.19 of the White Paper that initial guidance may be prepared by Government.

Further, where the Commission intends to issue guidance on more specific issues related to the application process, such as the application of EIA, we believe the Commission should have sufficient skills to adequately provide this function (see response to Question **17a**). We believe the IEMA, as one of the UK's largest professional bodies related to environmental assessment, with published Guidelines for EIA (2004), and the IAIA Branch should be consulted if guidance is developed relating to the EIA process for Major Infrastructure Projects. This will ensure the guidance focuses on an efficient and effective process based on international principles of best practice experience.

16 b) Are there any other issues on which it might be appropriate for the Commission to issue guidance?

As indicated above we believe general guidance on the application of EIA and expectations related to EIA good practice should be set out in a guidance document available to promoters of Major Infrastructure Projects. This guidance could be used to generate efficiencies indicating how the commission expects the EIA process to integrate with the environmental findings set out in the SEA of relevant NPSs as well as regional SEA, such as those undertaken for Regional Spatial Strategies / River Basin Management Plans. Finally any EIA guidance should explain the role the Commission will play in advising on the EIA requirements of individual project applications (see response to Question **17**, below).

Question 17: The Infrastructure Planning Commission's advisory role

17 a) Do you agree in principle that the Commission should advise promoters and other parties on whether the proposed project falls within its remit to determine, the application process, procedural requirements, and consultation?

We agree, in principle, that the Commission should provide advice related to whether individual projects fall within its scope as well as on procedural requirements, including the application process and consultation. We believe this will be an essential role for the Commission in assuring an effective application and decision making process.

In promoting an advisory role for the Commission we would anticipate its secretariat be sufficiently skilled to provide effective advice in all areas related to the application process. We note that in paragraph 4.24 of the White Paper, the Commission could provide advice on data requirements for EIA, where one is required. However, in paragraph 5.62 (Composition of the Secretariat) the White Paper notes:

'The secretariat to the commission would employ individuals with the necessary technical expertise across the infrastructure sectors that the commission would consider'.

The White Paper goes on to note that specialist technical advice could be drawn upon from external sources to assist in particular cases. Given the likelihood that a large proportion of applications to the Commission will require EIA it would appear prudent to ensure the secretariat employ individuals with technical EIA expertise, in order to provide effective EIA advice throughout the process. We would recommend that individuals are employed who have IEMA's Registered and Principal EIA Practitioner status, as these provide a recognised measure of professional standards for EIA Professionals.

Finally we would like to note the existence of the IEMA's Quality Assurance Services for Environmental Assessment. These review services can be used at either the Scoping or Environmental Statement stage of an EIA to check and/or improve the quality and focus of the assessment process and associated documentation. The IEMA would be interested in working with the Government and/or Commission to

develop a specific review service related to major infrastructure applications, which require EIA.

17 b) Are there any other advisory roles which the Commission could perform?

Whilst noting the White Paper's (Para 4.24) indication that the commission could play a role in identifying data requirements for EIA we believe this role should be expanded. In our view it would be appropriate to introduce a mandatory requirement on the developer of Major Infrastructure Projects that require EIA to seek scoping advice from the Commission. This scoping advisory service should go beyond the current Local Planning Authority (LPA) scoping opinion process to form an agreement between developer and Commission (after consultation) on the minimum standard of methods used in the assessment and adequacy of the Environmental Statement. Flexibility will be required to manage changes to the scope during project definition and design and the results of EIA studies.

Although we recognise that provision of such an EIA scoping advisory service would be likely to generate additional cost in setting up the Commission's secretariat we believe there is strong evidence to indicate this will be more than offset in increased efficiencies. Efficiencies would occur via:

- more effective scoping (both in and out) of environmental issues to ensure that developers avoid inefficiencies generated by gathering inappropriate information and assessing irrelevant environmental issues; and
- improving the quality of Environmental Statements thus avoiding delays to the application process. Such delays often relate to the need to gather supplementary environmental information, which in turn generates additional delays and costs to the developer. A proportion of these additional delays and costs can be avoided where appropriate environmental information is collected during the original assessment, rather than during a later supplementary stage.

The '*Evidence Review of Scoping in Environmental Impact Assessment*' (CLG, 2006) indicates that the majority of LPAs '*held the view that scoping yielded beneficial effects on the quality of the Environmental Statement subsequently submitted*'. These benefits

included more focussed documents which were better planned and led to more effective consultation, as well as reducing the need to request further information. Given the scale of Major Infrastructure Projects, and level of interest likely to be generated by the application process, it would be advisable to ensure the Commission has the capacity to provide effective EIA advice in order to avoid delays and improve communication of relevant environmental effects.

Question 19: The Commission's role at the point of application

19 a) Do you agree, in principle, that the Commission should have the powers described above?

Yes – The IEMA and IAIA Branch consider that it is essential that the Commission has the power to refuse to consider applications that it considers have not been properly prepared or subject to appropriate consultation (see related issues in our responses to Questions **11, 16 and 17**).

19 b) Are there any other issues the Commission should address before or at the point of application?

A key part of the commission's consideration of whether applications have been properly prepared, will be whether the applicant's Environmental Statement has been prepared to the required standard (see response to Question **11**).

It is not clear from paragraphs 5.29-5.33 of the White Paper whether the consultation and publicity requirements of the recently amended EIA Regulations (which implement the Public Participation Directive, and relate to 'further information' and 'any other' substantive environmental information submitted by the applicants) would be taken on by the Commission and applicants, these matters should be subject to more detailed consideration in the Planning Reform Bill.

In addition it appears that there may be some duplication in the task of consulting and publicising the application and Environmental Statement by the developer (in 4.29) and the Commission (in 4.31), and we request that these arrangements be clarified in order to avoid confusion.

Question 24: Rationalisation of consent regimes

24 a) Do you agree in principle that the Commission should be authorised to grant consents, confer powers including powers to compulsorily purchase land and amend legislation necessary to implement nationally significant infrastructure projects?

24 b) Are there any authorisations listed that would not be appropriate to deal with separately, and if so which body should approve them, or that are not included and should be?

While we recognise the need to draw together different consent regimes into a single decision making framework, we note that the consultation document makes no reference to other consent regimes, such as permits required under the Pollution Prevention and Control Regulations. Given that there is no proposal to integrate the pollution control permitting process into the Commission's framework, there will remain the situation that changes to development design and technology might subsequently be required in order to secure operating permits – these amendments would then need to be reviewed by the IPC to determine whether a re-assessment of the environmental impacts (and a revised development consent) will be required. Clear guidance will need to be made available to enforcement and permitting authorities to ensure that the EIA Directive requirements are met in cases where changes are required to the Commission's decisions. This might also require additional resources within the Commission to meet additional workloads.

We do not agree that the Commission should be able to amend legislation, as this is the responsibility of an elected Government.

Question 29: Decision

29 a) Do you agree that the Commission should decide applications in line with the framework set out above?

No. We believe that the framework proposed for the IPC decision-making on applications might result in breaches of the EIA Directive 85/337/EEC as amended (see also our response to Question 4). The framework put forward in the White Paper proposes that approval will be granted if development is in line with relevant

NPSs, unless adverse local consequences outweigh the benefits. However, adverse local consequences are defined in the White Paper as those incompatible with relevant EC or domestic law, i.e. national or international statutory protections. The EIA Directive requires information in an Environmental Statement (and the results of consultations on it) to be taken into account in the decision making process, and this information can identify significant environmental impacts that do not involve legal breaches as such. Also, the law rarely dictates the outcome of a planning application. The way that the White Paper is worded, the information in the Environmental Statement (and consultations on it) relating to significant environmental effects, would not be a consideration in decision making if it did not relate to legal breaches, and as such could lead to legal challenge for non-compliance with the EIA Directive. There would be a particular concern that Environmental Statements would simply become 'compliance assessment' documents. The current wording would therefore appear to undermine the value of EIA in aiding sound decision-making, in informing and involving communities, and in helping developers improve the coordination, quality, environmental impacts and acceptability of their proposals.

We also have strong reservations about the role of the appointed and unelected Commission in taking decisions on individual applications instead of (most likely) democratically elected MPs (Ministers).

29 b) If not, what changes should be made or what alternative considerations should it use?

In line with our response to Question 4, we recommend that the term 'adverse local consequences' is dropped for the above reasons, and that instead that applications should be determined 'in accordance with the NPS unless material considerations indicate otherwise'. This would retain NPSs as the most important consideration for the decision, but would also ensure compliance with the EIA Directive and the Government's sustainable development principles, as it would not preclude other significant environmental, social and economic issues from being important considerations.

We consider that Ministers, accountable to the electorate, should still have the final say on such major decisions, but that more certainty could be provided by ensuring

that they would normally follow the Commission's recommendations unless there were exceptional circumstances.

Question 30: Conditions

30 a) Do you agree, in principle, that the Commission should be able to specify conditions as set out in paragraphs 5.49-5.51, subject to the limitations identified, and for Local Authorities to then enforce them?

Yes – although the conditions do seem somewhat limiting. It appears from the White Paper that environmental enhancements, such as new green space, where proposed for the community directly affected by the development, cannot be secured by condition.

It is important to note that the degree to which conditions are enforced will be limited by the resource availability in the LPAs. LPAs are likely to require additional resources to properly enforce conditions particularly for complex projects such as power stations. LPAs should not be expected to take on a high level of monitoring and enforcement where the planning conditions were set by the IPC. In any case, where LPAs are expected to carry out monitoring, they should be consulted on the conditions. The resources required for monitoring and enforcement by public authorities can be managed more effectively by requiring the developer to monitor, report and manage the impacts of their development through a site-based Environmental Management Plan (EMP) and Environmental Management System (EMS). This is recommended in Circular 2/99 and the draft EIA Guide to Good Practice. The expected post-decision practices and follow-up arrangements for a nationally significant infrastructure project should be included in the guidance from the IPC.

In addition, it will be important for conditions to recognise the potential for future changes to the project made necessary by permits to operate, for example under the Planning and Pollution Control regulations. Conditions will need to be designed so that these changes can be identified and addressed to ensure that the correct conditions are being enforced.

30 b) If not what alternative approach would you propose?

N/A.

Question 37: Sustainability Appraisal and Supplementary Planning Documents

37 a) Do you agree in principle that there should not be a blanket requirement for Supplementary Planning Documents to have a Sustainability Appraisal, unless there are impacts that have not been covered in the appraisal of the parent DPD or an assessment is required by the SEA directive?

The removal of the requirement for Sustainability Appraisal (SA) of Supplementary Planning Documents is acceptable. SA can help ensure that significant sustainability effects are mitigated; if no significant sustainability effects are anticipated then its usefulness is limited. It is important that screening is carried out effectively to exclude only those proposals having minor effects.

However, we consider that where significant environmental effects are predicted (not social or economic effects); the appropriate tool to predict and evaluate those effects is SEA as envisaged by the SEA Directive. We suggest that an SEA approach (rather than SA) is taken in these cases.

In terms of consultation, chapter 8 describes plans for the accelerated production of Development Plan Documents (DPD). The present system provides an adequate opportunity for public consultation on the SA report at the statutory preferred options stage. Under the new proposals, the statutory consultation periods which currently exist at several stages will be removed and authorities will instead be required to carry out 'appropriate and proportionate' consultation.

It is vital that in implementing these changes, the Government ensures that LAs are fully aware of their obligations under the SEA Directive to provide the public with *an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and accompanying environmental report* (Article 6(2)). The implications for SEA / SA of removing the statutory consultation periods need to be given further consideration.

Part 2 – Additional Comment Relevant to Proposals contained within the White Paper

Paragraph 9.32 Review of EIA screening thresholds

It is stated in paragraph 9.32 that the potential to raise the thresholds used in screening will be examined.[4] We are of the opinion that it would be unwise to alter the thresholds for two principal reasons.

Firstly, altering the thresholds would raise questions about legal compliance with the EU EIA Directive. This legislation imposes a requirement on the Government to "ensure that, before consent is given, projects likely to have significant effects on the environment" undertake an EIA (Article 2(1)). If the thresholds were changed, there would need to be a robust justification that the alterations will not prejudice compliance with this requirement. It seems highly probable, given the number of legal cases concerning screening decisions (Tromans and Fuller, 2003), that any such justification would be tested in the law courts, with unpredictable results. Changes in the thresholds might also raise additional legal issues: for example, it is likely to re-open the question of under what circumstances the Secretary of State should invoke the powers given to them under Regulation 4(8) of the EIA legislation.[5]

Secondly, the rationale for raising the thresholds put forward in the White Paper is that it might save time and money. It is our opinion, however, that the effort involved in screening is proportionate to the environmental risks, and potential time savings are restricted. This legislation applies only to a minute proportion of developments; EIA's are undertaken for approximately 0.1% of all planning applications (Weston, 2002). Additionally, the thresholds apply only to developments listed in Schedule 2 which are to be located outside 'sensitive areas'. As such, screening opinions for such developments are issued relatively infrequently.[6]

[4] It is not entirely clear from the White Paper or the Barker Review what thresholds are being referred to. However, we assume (from the nature of the comments made) that the comments apply to the 'applicable' thresholds and criteria listed in Schedule 2 of the Town and Country Planning (EIA) (England and Wales) Regulations, rather than the 'indicative' thresholds listed in Circular 02/99 (Department of Environment Transport and the Regions, 1999).

[5] This is an issue that was deliberated upon in *Berkeley v Secretary of State for the Environment, Transport and the Regions and the London Borough of Richmond upon Thames and Berkeley Homes (West London) Ltd*.

[6] Research has shown that of 107 LPAs who responded to a questionnaire survey, 9% (n=10) had not issued a single screening opinion between March 1999 and August 2002 (Wood and Becker, 2003). Of the remaining respondents, more than 50% (n=49) indicated that they had produced between one and five screening opinions during this period.

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