



RTPI

mediation of space · making of place

Royal Town Planning Institute
41 Botolph Lane
London EC3R 8DL
Tel +44(0)20 7929 9494
Fax +44(0)20 7929 9490

Email online@rtpi.org.uk
Website: www.rtpi.org.uk

Registered Charity Numbers
England 262865
Scotland SC 037841

Patron HRH The Prince of Wales KG KT PC GCB

22 October 2010

Kim Chowns
Natural Environment and Environmental Assessment
Communities and Local Government
Zone 1/J6, Eland House, Bressenden Place
London
SW1E 5DU

Email response sent to: kim.chowns@communities.gsi.gov.uk

Dear Mr Chowns,

RESPONSE TO: The Town and Country Planning (Environmental Impact Assessment) Regulations 2010 - Consultation on draft regulations

Thank you for the opportunity to respond to the above consultation. The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing over 22,000 spatial planners. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.


We welcome the opportunity to comment on the draft amendments to Environment Impact Assessment (EIA) regulations. This response has been formed drawing on the expertise of the Environmental Assessment Interest Group of the RTPI's Environmental Planning and Protection Network.

The RTPI believes that EIA's are vital tools within spatial planning for ensuring that environmental implications are considered and mitigated within individual projects. Although the RTPI is generally receptive to the proposed amendments to EIA regulations, we believe further consideration is required in some instances. Our responses to the specific questions raised by the consultation document are detailed below.

The RTPI Environmental Assessment Interest Group would be happy to discuss this submission or further assist with drafting amendments to EIA regulations. If you require further assistance, or

have any queries relating to the enclosed or require clarification of any points made, please contact the Planning Policy and Practice Team on 020 7929 9466 or email england.policy@rtpi.org.uk.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Matt Thomson', with a long horizontal flourish extending to the right.

Matt Thomson
Head of Policy and Practice
Enc.

Q1. Do you agree that applying the existing Schedule 2.13(a)(ii) thresholds to Schedule 1 development as changed or extended will always trigger the threshold and hence require screening?

We would agree that it seems likely that applying the existing thresholds to the whole development as changed or extended will also trigger the thresholds for EIA on new applications. However, where new guidance is to be issued in the light of the proposed changes, this should not lose sight of the fact that the regulatory requirement for EIA arises from whether or not the proposed development would have significant effects on the environment, regardless of whether it meets the thresholds set out in Schedule 1, or indeed those set out in Schedule 2. This is the purpose of Regulation 4(9), which gives the Secretary of State the power to direct that EIA is required even if the thresholds in Schedule 2 are not triggered.

Q2. Do you agree that, in light of the Baker judgment, all changes or extensions to Schedule 1 development should be screened for any likely significant effects on the environment?

We do not agree that all changes or extensions to Schedule 1 development necessarily should be screened for EIA. Should the competent authority believe that EIA is required for such an application, they can always request that this be undertaken before determining the application under existing powers.

However, we believe that it is more likely that in any screening direction the whole of the development will be requested to be included in the consideration of whether the proposal is EIA development or otherwise. This will lead to developments that have been built (potentially for a number of years) being assessed within the subsequent EIA. Whilst this may add additional costs and delay to any 'simple' development it raises the issue and complexity of what form any mitigation may be required for impacts identified from the original development. Furthermore this is complicated further where the baseline, which at the time of the original development would have resulted in no impact, has subsequently moved on to a point where impacts are now recorded. Air quality and noise are examples where baseline conditions may have deteriorated through cumulative impacts. In this case retrospective mitigation measures may be requested which would be an unfair burden, and in some cases no mitigation would be possible, which may indicate the impacts are significant and could influence the planning officer to reject the change or extension.

Q3. Do you have any comments on what information the guidance should provide for planning authorities and third parties?

The information and guidance to planning authorities, developers and third parties needs to be clearer than at present about the conditions under which EIA is required, and when a screening opinion should be sought. Experience indicates that in some instances, local planning authority officers may be reluctant to request additional information from developers, bearing in mind the need to avoid placing an undue burden on them in this respect. However, at times this discretion does not serve the best interests of third parties, particularly where cases are marginal or there is some ambiguity over the application of the EIA regulations. This is particularly important as there is no third party right of appeal against planning decisions being made without all the relevant environmental information having been taken into account.

Also, the way in which the proposed changes may require developments that have been built (potentially for a number of years) being assessed within the subsequent EIA (as noted above) should be specifically indicated. As no changes are being proposed to Schedules 3 and 4, it needs to be made clear that environmental effects associated with existing development need only be assessed to the extent that they form part of baseline environmental conditions and/or may contribute to cumulative effects of the changed or extended development. Further and more detailed guidance on the consideration of cumulative effects may therefore be required.

Q4. Do you agree that disapplying “new” will help to clarify the Regulations as they apply to changes or extensions?

This would appear to remove any possible ambiguity that may arise from determining whether an application to a changed or extended building would be subject to the regulations.

Q5. Do you agree that no changes are needed to Schedules 3 and 4 of the 1999 EIA Regulations?

We would agree that no specific changes to Schedules 3 and 4 are particularly required. However, as noted above, further and more detailed guidance on the consideration of cumulative effects may be required.

Q6. Do you have any comments on the requirement in draft regulation 4(5) and (7) for reasons to be given for all screening opinions/directions, as set out in Annex B?

This is a welcomed change and is necessary to ensure that complete transparency exists around the rationale for determining whether an EIA or not is required.

In addition, we would also welcome:

- Removal of the unintentional requirement for consultation on a Environmental Statement accompanying an application for full permission, when that produced at the outline permission stage satisfies the EIA Regulations at the later stage.
- Removal of the criminal offense relating to the requirement to publicise the ES.
- Addition of new categories for the geological storage of carbon dioxide.

Q7. Do you have any comments on the proposed rewording of the criteria in Schedule 2.3(i), and the proposal to increase the threshold from 15 to 18 metres?

The proposed wording of the criteria makes it clear that the turbine blade is to be included in the calculation of the height of any structure, which is welcomed. However, there is no justification provided as to why the criteria should be changed from 15 to 18 metres, and this may lead to some proposed developments that may have significant environmental effects not being identified as EIA development when a screening opinion is sought.

The proposed change also excludes the words “or height of any other structure”, and no justification is provided for the removal of these words. We believe that they should be retained, again to ensure that EIA development may be properly identified through the screening process.

Q8 Do you have any comments on the draft impact assessment contained at Annex E of this paper. In particular:

(a) Are the key assumptions used in the analysis in the impact assessment realistic? If not, what do you think would be more appropriate and do you have any evidence to support your view?

(b) Have any significant costs and benefits been omitted?

If so, please give details, including any groups in society affected and your view on the extent of the impact.

(c) Have any significant risks or unintended consequences not been identified? If so please describe.

(d) Do you think there are any groups disproportionately affected?

The draft impact assessment appears to be based on reasonable assumptions and the effects described seem fair and proportionate.