

8th November 2016

Development Management Branch
Planning Directorate
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Dear Sir/Madam

PROPOSED CHANGES TO HOW ENVIRONMENTAL IMPACT ASSESSMENT APPLIES TO TOWN AND COUNTRY PLANNING (NUMBER: WG29324)

Introduction

The MPA is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries. With the recent addition of British Precast and the British Association of Reinforcement (BAR), it has a growing membership of over 480 companies and is the sectoral voice for mineral products. MPA membership is made up of the vast majority of independent SME quarrying companies throughout the UK, as well as the 9 major international and global companies. It covers 100% of GB cement production, 90% of aggregates production, 95% of asphalt and over 70% of ready-mixed concrete and precast concrete production. Each year the industry supplies £21 billion worth of materials and services to the Economy and is the largest supplier to the construction industry, which has annual output valued at £135 billion. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors.

The MPA has consulted its members over the current Welsh Government Consultation, *Proposed Changes to how Environmental Impact Assessment Applies to Town and Country Planning*, and has the following comments to make in response to the consultation.

1. Third party screening requests

Q1	Do you agree with our proposals for third party screening? If not, what proposals would you recommend to ensure third party screening requests are made early in the application process.
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- 1.1 No, we do not agree with proposals for third party screening.
- 1.2 Third party screening has the potential to significantly delay the planning process and would conflict with the Welsh Government (WG) aims to speed up the process. Further it undermines the aspirations outlined in Section 9 of the consultation which seeks to strengthen the competency of participants. Third party screening would derogate the standing of local authority officers, whose judgement should be based upon technical considerations, introducing scope to “frustrate and delay planning decisions”.
- 1.2 If WG is to implement third party screening, then the timetable outlined (35 days after the LPA places its screening opinion on the planning register) must be

rigorously adhered to. WG. Welsh Ministers should have the ability to decline to determine a third-party screening request if falls outside the stated timetable.

- 1.4 Further, in the case of applications where no screening opinion has been sought or issued, a limit on the time at which a screening direction may be sought by a third party must be imposed, contrary to the approach outlined in the consultation document. This timetable should be limited to 30 days, i.e. the period required by the EIA Directive for consultation, from when the applicant undertakes its mandatory pre-application community consultation in accordance with the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016. This will ensure third party screening requests are made early in the application process.

2. Timeframe to provide a scoping request

Q2	Do you think the timeframe associated with scoping should be revised? If yes, what timeframe do you consider appropriate and why?
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- 2.1 No, we do not think the timeframe associated with scoping should be revised.
- 2.2 We are encouraged that the WG has undertaken training on EIA scoping to help deliver a consistent and proportionate approach to the scoping process. However, we do not believe that there is any justification to increase the timeframe associated with scoping as this again will further delay the planning process. Failure of consultees to engage in the process in a timely manner is not a burden which should be borne by the applicant. It may be more aligned with the consultees not giving due regard to the primacy of the planning process. Recent proposals to share best practice across regulatory services should focus on a more efficient delivery of the existing service rather than modifying it to accommodate inherent inadequacies. The five-week timeframe should be adhered to.

3. Coordination

Q3	Do you agree with proposals to provide for a coordinated rather than joint procedure?
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- 3.1 Yes, we feel there would be significant benefits in providing a coordinated service, but would also welcome the exploration of opportunities to provide joint procedures.

Q4	What coordinating measures would be most useful, and what benefits would they generate?
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- 3.2 The major areas of coordination would occur between the planning process and the waste management, water and air quality permitting, protected species licensing and cultural heritage matters. The primacy of the planning permission is paramount and if consent is to be granted, the development is clearly considered to be sustainable in the democratic process whilst the EIA process ensures the development properly addresses the technical issues in the provision of mitigation and compensation. Accordingly, the need for reasoned statements, additional water data, etc. is superfluous.
- 3.3 Areas where a joint procedure could be adopted would be in the case of the diversion of public rights of way. A separate consenting process is wholly

unnecessary and if the diversion, stopping-up, is agreed in the planning process, a separate process to secure a formal temporary or permanent diversion or stopping up is repetitious and unnecessary, adding delays to the consenting process. This would safeguard against unnecessary conflict.

4. Consultation and participation in the decision-making process

Q5	Do you agree with our proposals for making information available electronically?
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4.1 Yes, we agree with the proposals for making information available electronically. However, all local authorities should be required to have appropriate IT systems and websites that allow members of the public to view information online and make appropriate representation, within a specified timescale following the implementation of these proposed changes. In addition, the submission of applications electronically must be accommodated and it is not appropriate to require applicants to submit applications in 5mb pieces.

Period of public consultation

4.2 Paragraph 5.8 states that “*The period of public consultation is currently 21 days and it is proposed that this be extended to the minimum period of 30 days as required by the Directive.*” It is recognised that this requirement is specific in the directive, however, the consultation period should be specified as an absolute, after which time, representations will not be taken in to account, unless of course further information is submitted in accordance with the EIA regulations and statutory procedures. This will again ensure that measures which on occasion may be used to “frustrate and delay planning decisions” are not employed.

5. Monitoring of significant effects

Q6	Do you agree our approach provides the most flexible approach to the 2014 EIA Directives requirements?
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5.1 An effective system of formal monitoring is already in place of minerals developments. This does not need modification. The proposal to monitor other EIA developments, is welcomed, and we agree the current planning system can facilitate this.

6. Conflict of interest and functional separation

Q7	Do you agree with our proposals for conflict of interest and functional separation?
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6.1 Yes, we agree with proposals for conflict of interest and functional separation.

7. Penalties and enforcement

Q8	Do you agree with the proposed approach to false or misleading information within the EIA process?
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7.1 No comment. There is insufficient information provided within the consultation upon which to base a considered opinion.

8. Planning enforcement system

Q9	Do you agree that our proposed approach to enforcement will ensure the effective compliance with the requirements of the EIA Regulations in a proportionate way and in a way which dissuades bodies which are part of the process from failing to comply?
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8.1 Yes, we agree with the proposed approach to enforcement.

9. **Competent Experts**

Q10	Do you agree our competent expert proposals provide the most flexible approach to the Directive's requirements?
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9.1 We have serious concerns over this proposal. In the first instance, the term "*competent expert*" must be clearly defined. It is not sufficient to define this as "*persons who by virtue of their qualifications or experience have in the opinion of the competent authority sufficient expertise to ensure the completeness and quality of the ES*". Firstly, who at the "competent authority" is sufficiently competent to make the judgement. What assessment criteria would be used to ensure competency? What rights of appeal would exist against a decision made by a "*competent authority*", that a person does not meet the competency tests?

9.2 Further, a dichotomy exists between the ability of the person preparing the ES and those who will ultimately determine the application. The consultation document states that "*It is considered that most decision makers have sufficient expertise within their planning and wider teams to examine the ES*". As elected members are the decision makers, this assumption must be questioned. The council's officers make a recommendation and the elected members make the decision. Few elected members will be considered to have sufficient expertise to ensure the completeness and quality of the ES. In addition, the assumption that most decision makers have sufficient expertise within their planning and wider teams to examine the ES is misguided, particularly where development may require specialist consideration such as minerals proposals. To ensure parity, it is imperative that the specified criteria of competency being applied to a developer must be applied equally to the determining authority.

10. **Purchase notices under Section of the TCPA**

Q11	Do you have any comments on the application of procedures to secure that Welsh Ministers have access to an ES which is consulted upon and considered before granting consent under Section 141 for EIA development?
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10.1 We support the proposal outlined.

11. **General Questions**

Q12	Do you have any related comments on issues which we have not specifically addressed?
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11.1 No Comment

Q13	Do you have any comments to make about the draft partial Regulatory Impact Assessment?
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11.2 No comment

I trust the above comments will be given due consideration and would be happy to discuss these matters further.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Nick Horsley', is written over a light grey rectangular background.

Nick Horsley

Director of Planning, Industrial Minerals and MPA Wales