

IEMA RESPONSE TO ENVIRONMENTAL OUTCOMES REPORT: A NEW APPROACH TO ENVIRONMENTAL ASSESSMENT

EXECUTIVE SUMMARY

IEMA has developed this consultation response after engaging with leading impact assessment practitioners and stakeholders drawn from our network of over 20,000 members. In particular, the consultation response drafting has been led by our Impact Assessment Steering Group, which is comprised of 15 leading experts in impact assessment from across a range of public, private and NGO roles. In addition, our response was greatly strengthened by a series of workshops with leading practitioners from our EIA Quality Mark Scheme,¹ a voluntary scheme that 60 organisations have signed up to, committing to best practice in the application of Environmental Impact Assessment (EIA). Our review of the EOR consultation builds on our previous and ongoing engagement with the planning reforms that has been ongoing since 2020.²

From consulting our members, we developed two key tests;

- 1). Do the proposals seize the opportunity to improve environmental assessment? and*
- 2). Will the proposals introduce new weaknesses within environmental assessment and so lessen environmental protection?*

Examining the consultation against these two tests identified a wide range of concerns and perceived weaknesses in the proposals. **Our conclusion was that it would be far better to modify and improve the existing regime of EIA and SEA than to start again with a new regime.**

Our concerns are listed in more detail in this response, but by way of highlights the key concerns are that the proposals:

- Do not address the lack of skills, capacity and resources in Local Authorities, Regulators and Statutory Consultees.
- Do not address the lack of official guidance, research and central coordination of environmental data and assessment knowledge.
- Do not address deficiencies in access to information, public participation in decision-making and access to justice in environmental matters.
- Do not strengthen the requirement for decision makers to enforce or act on the findings of EOR.

¹ <https://www.iema.net/corporate-programmes/eia-quality-mark>.

² See PREVIOUS IEMA SUBMISSIONS section below.

- Are regressive in the reduction of the scope of assessment on social impacts and impacts on people and communities (including population health) which will reduce protection.
- Are regressive in the reduction in scope of climate change and greenhouse gas emissions (GHGs) (inc. adaptation and resilience).
- Introduce increased risks of delays and greater costs due to uncertainty concerning legal issues, untried new procedures, loss of coherence and lack of continuity.

Taking all of the concerns together, the overall message is clear from our members and discussions with other key stakeholders. Carried out properly, based on evidence review, research and engagement with expert professionals, there is a once-in-a-generation opportunity to improve the environmental assessment regime to increase environmental protection and outcomes for people and nature. However, the current proposals and the process leading up to the proposals lacks evidence-based research, and has not been properly consulted with the professionals, experts and academics that work within the environmental assessment field.

Further detailed research and engagement is required to allow the Government to develop proposals that retain the best aspects of the existing legislative framework and practice, as well as introducing changes to improve these instruments to secure better outcomes for the environment and society. IEMA is committed to aiding policy makers in making evidence-based policy using sound science and professional experience from competent experts. IEMA continues to advocate for advances in the field of impact assessment to support the objective of living within environmental limits and supporting a transition to a sustainable economy. On this basis IEMA calls on the Government to consider the following recommendations:

- Invest in training, skills and capacity to ensure sufficient numbers of competent experts are present within Local Authorities, Regulators and Statutory Consultees engaged with the environmental assessment regime.
- Invest in knowledge management to develop and publish evidence-based research, policy and guidance on good practice in environmental assessment.
- Invest in better long term and coordinated project and plan level monitoring to develop evidence on the effectiveness of assessment predictions, mitigation efficiency and environmental outcomes. Ensure that these lessons are then disseminated and acted upon by feeding back into screening and scoping decisions, to continually improve assessment techniques.
- Maintain the requirement to use competent experts to carry out environmental assessment, as required by the existing EIA regulations.
- Expand and improve provisions that provide access to information, public participation in decision-making and access to justice in environmental matters.
- Adequately fund and increase the use of planning conditions, compliance monitoring, enforcement and remedy of non-compliance.
- Increase and make clear the requirement for decision makers to justify why projects and plans should be approved where the environmental assessment has identified negative outcomes for the environment and affected communities.
- Set up and adequately resource a National Environmental Assessment Unit to coordinate and assist the delivery of the above.

ABOUT IEMA

We are the global professional body for over 20,000 individuals and 300 organisations working, studying or interested in the environment and sustainability.

We are the professional organisation at the centre of the sustainability agenda, connecting business and individuals across industries, sectors and borders.

We also help and support public and private sector organisations, governments and regulators to do the right thing when it comes to environment and sustainability related initiatives, challenges and opportunities. We work to influence public policy on environment and sustainability matters. We do this by drawing on the insights and experience of our members to ensure that what happens in practice influences the development of Government policy, legislation, regulations and standards.

ABOUT THE IEMA IMPACT ASSESSMENT NETWORK

The IEMA Impact Assessment Network is comprised of:

- The Impact Assessment Steering Group – a group of 15 individuals from across a wide range of organisations who are elected by the Group to lead on impact assessment matters on behalf of IEMA;
- The EIA Quality Mark and EIA Practitioner Register – comprising 60 of the leading planning, landscape and environmental consultancies working in impact assessment;
- Over 5000 individual IEMA members with a professional interest in Impact Assessment;
- Multiple Cross-Sector Technical Working Groups in aspects including but not limited to Climate Change, Health Impact, Social Impact, Post Consent, Digital Innovation and Marine.

As part of its role, IEMA actively solicit professional opinion and expertise across many facets of environmental assessment and management and publish quarterly The Impact Assessment Outlook Journal; and more regularly, IEMA Impact Assessment Guidance.

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INTRODUCTION

The Levelling Up and Regeneration Bill (LURB) seeks to introduce changes to an existing environmental assessment regime through the new proposals to introduce Environmental Outcome Reports (EOR) and amend the existing procedures relating to environmental assessment. The stated aims of the current EOR consultation are to seek views on a proposed new system of environmental assessment to replace the current EU-derived environmental assessment processes of Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) resulting in Sustainability Appraisals (SA) and Environmental Statements (ES).

The existing environmental assessment regimes, of EIA for projects, and SEA for plans and programmes, have been developed over more than thirty years, and have evolved to provide robust assessments of plans and projects which have the greatest risk³ of significant adverse and beneficial impacts on communities and the environment. It is critically important that the proposed reforms to the environmental assessment regime seize the opportunity to further improve these vital safeguards and do not unintentionally erode these protections.

TWO KEY TESTS

The underlying rationale for carrying out environmental assessment to inform sustainable decision-making only becomes stronger with each passing year, due to rising population pressure on natural systems, climate change, and continued urban and infrastructure development in a finite geography. Therefore, IEMA views the EOR proposals against two key tests:

1. DO THE PROPOSALS SEIZE THE OPPORTUNITY TO IMPROVE ENVIRONMENTAL ASSESSMENT?

2. WILL THE PROPOSALS INTRODUCE NEW WEAKNESSES WITHIN ENVIRONMENTAL ASSESSMENT AND SO LESSEN ENVIRONMENTAL PROTECTION?

³ IEMA's research indicates EIAs are only required for 0.1% of planning applications, i.e. around an average of 400 projects among 400,000 planning applications each year.

TEST 1: DO THE PROPOSALS SEIZE THE OPPORTUNITY TO IMPROVE ENVIRONMENTAL ASSESSMENT?

A primary concern for IEMA members is that we seize the opportunity to address the existing weaknesses of the current regime. Therefore, a key interest arising during this consultation is to establish to what extent the new EOR regime will address these issues. On this basis, IEMA welcomes the focus presented in the EOR consultation concerning improved environmental outcomes, the use of the mitigation hierarchy, greater emphasis on monitoring, mitigation and enforcement, and embracing digital innovation. However, there is limited evidence presented within the consultation to provide comfort that EOR will fix several other identified weaknesses in the current EIA and SEA regime which are predominantly centred around:

- Lack of skills, capacity and resources in Local Authorities, Regulators and Statutory Consultees.
- Lack of official guidance, research and central coordination of environmental data and assessment knowledge.
- Fear of legal challenge driving a legalistic approach to risk management.
- Existing deficiencies in access to information, public participation in decision-making and access to justice in environmental matters.
- Poor consideration of people and communities (inc. social, human health, wellbeing, quality of life, equity, equality and human rights). The EOR proposals look to reduce the importance of these impacts further, in comparison to the existing EIA and SEA regime.
- No sign of strengthening the requirement for decision makers (Local Planning Authorities (LPAs) or Secretaries of State (SoS)) to enforce or act on the findings of EOR, i.e. it remains fundamentally advisory.

TEST 2: WILL THE PROPOSALS INTRODUCE NEW WEAKNESSES WITHIN ENVIRONMENTAL ASSESSMENT AND SO LESSEN ENVIRONMENTAL PROTECTION?

Following consultation with our members, there are significant concerns that the new EOR regime introduces new weaknesses, amounting to a risk of regression in the overall level of environmental assessment and so ultimately environmental protection. In particular, our members have concerns regarding the following:

- The lack of information on the quality and scope of outcomes means that there is currently no evidence to confirm they will be an effective tool. Experience from 20 years of using outcomes in SEA, and for the Water Framework Directive⁴, have indicated outcome-based targets are routinely missed, are difficult to attribute, monitor and enforce. No evidence has been presented to indicate that they will be a more effective tool than the current regime, and evidence exists to suggest they will provide inferior protection.
- The reduction in the scope of assessment on social impacts and impacts on people and communities (including population health) is a significant reduction in scope and protection.

⁴ https://environment.ec.europa.eu/topics/water/water-framework-directive_en.

- The risk that the removal of climate change and greenhouse gas emissions (GHGs) will reduce both the importance of this element in the assessment process, but also that this reduces the visibility of the topic and misses opportunities for integrating these considerations into design.
- The loss of holistic and integrated assessment (for assessing impacts, identifying cumulative effects, interactions and identifying opportunities) by dividing assessment into multiple standalone and unrelated assessments will reduce the effectiveness of the regime, and reduce the positive benefits that assessment can have in informing design and the consideration of alternatives.
- The loss of confidence, increase in delays, and uncertainty for all users created by replacing a regime that has been practiced for decades with an untested alternative will not speed up the delivery of projects, plans and programmes; our members feel it will have the reverse effect.
- The loss of coherence between regimes and across national boundaries by deviating regimes across England, Northern Ireland, Wales, Scotland, the Republic of Ireland and the European Union will introduce further unnecessary complexity.
- The loss of coherence and increased uncertainty by introducing inconsistency by deviating regimes across sectors and Government departments which, will further add to the complexity and burden across all users.
- The potential loss of continuity and increased legal uncertainty from removal of EIA and SEA case law and precedent that will further increase perceived legal risk and therefore lead to increased costs and risk of delays, rather than speed up the delivery of projects, plans and programmes.
- The loss of international reputation from replacing an EIA and SEA regime and terminology, practiced relatively uniformly across most developed nations internationally, is neither helpful nor desirable for wider international cooperation.

IEMA RESPONSE TO EOR CONSULTATION QUESTIONS

Q1. DO YOU SUPPORT THE PRINCIPLES THAT WILL GUIDE THE DEVELOPMENT OF OUTCOMES? [YES/NO]

No.

Following extensive consultation with IEMA Members, IEMA are inclined to support the *principles* that will guide the development of outcomes, however further consideration and detail is required to ensure comprehensiveness particularly regarding the list of potential matters that could be reflected as outcomes, the relationship to policy, and the granularity, review and monitoring of outcomes and indicators.

The List of Matters

Currently the EOR consultation focuses on the natural environment (biodiversity, air quality, water, geodiversity, soil and sediment), cultural heritage and archaeology, landscape and seascape, noise, vibration and waste matters, and is not comprehensive in terms of all the matters currently addressed under the existing EIA and SEA regime. In addition, the EOR proposals are overemphasising the ability for new developments subject to EOR to 'drive the achievement of statutory environmental targets and the Environment Improvement Plan'. IEMA foresee significant challenges in ensuring that a suitable and effective set of national outcomes is developed that provide adequate and appropriate coverage for the range of plans and projects likely to be covered by EOR, including for example where a plan or project has the potential for transboundary effects.

The flexibility of the existing regimes mean that other matters can be included in an EIA, either directly where the applicant foresees the potential for significant effects and so challenge, or on the advice of consultees. The move to a standardised list of matters (and associated outcomes and indicators) proposed by the Government could therefore preclude the opportunity for other matters (and environmental, social, health and economic impacts) to be considered. This loss of flexibility would be a regression from the current EIA regime. Of note, key matters relating to people and communities (e.g. health and wellbeing considerations, socio-economics and inequalities), building physics, road traffic and other natural processes including coastal dynamics and agricultural land are all omitted from the provisional list of matters. Whilst these are not all set out as 'requirements' under the current EIA regime, the current regime allow flexibility and scoping consultation around the matters to be addressed under EIA.

New development only partially contributes to existing environmental issues. Focusing only on matters (and so outcomes and indicators) from new development will not solve the broader environmental issues facing the UK, such as climate change resilience and adaptation, population

growth, agricultural practices, widening health inequalities⁵, biodiversity decline, water pollution and resource pressures.

IEMA consider that the list of matters should be comprehensive, or permit other matters to be added as necessary on a plan, or project basis to ensure that there is no weakening of the existing requirements. LURB has committed to non-regression of environmental protection. The existing regime is committed to providing a high level of protection of the environment and human health. As human health is contained in the existing environmental assessment regime, to exclude human health would constitute a regression (see below for further detail).

A standard set of national outcomes cannot address the unique set of significant impacts to emerge from the interaction of a project, its environmental setting and the mitigation measures to be adopted. The LURB is clear that it will not be regressive due to the no-regression commitment at s142 which must remain and that is welcomed. IEMA strongly advises that the Government engages with professional bodies, including but not limited to IEMA, CifA, IOA, IAQM, CIEEM, Landscape Institute, CIWEM for defining the list of matters and from this the relevant outcomes and indicators. Public consultation on the draft outcomes and indicators is also required to gain confidence and credibility in accordance with the Aarhus Convention which requires decision making involving the environment to be open to scrutiny, to be democratic and open to legal challenge by members of the public.

Health

Whilst the principles of clearer outcomes is progressive, it is regressive to narrow what is now established practice for the protection of the environment in law with regard to human health. Human Health is a listed factor within the definition of environment within current EIA and SEA legislation, health cannot be relegated to a secondary consideration without triggering the non-regression clause in the LURB. Furthermore, it is established practice that current EIA coverage of Human Health is not a narrow bio-physical interpretation but is a wider determinants of health interpretation. This is recognised though IEMA guidance, which carries great weight in planning and which was developed with close collaboration of public sector stakeholders including the UK Health Security Agency and the Department of Health Office for Health Improvement and Disparities.

IEMA strongly recommend that these organisations are consulted regarding outcomes and indicators. For example the guidance notes how projects affect not only the bio-physical environment, but also the social environment, the economic environment and the institutional environment. A broad definition of health as part of EIA and SEA is also recognised and advocated by the World Health Organization (WHO). The WHO, as well as the scientific community, also recognise that humans and the environment are inextricably linked, it is paradoxical to narrow the EOR definition of the environment in the way currently proposed. Specific recognition of Human Health as an EOR core topic (as part of considering people and communities) and within

⁵ Marmot, February 2020, Health Equity in England: The Marmot Review 10 Years On.

that clarity that health is defined as encompassing the wider determinants of health is required to avoid fundamental incompatibility with the non-regression clause of the LURB.

Removal of a meaningful health assessment as part of EORs would create a gap, not remove duplication. There is neither a national requirement in other legislation for the role played by health impact assessments as part of EIA and SEA, nor consistent policy coverage for standalone health impact assessments.

Relationship to Policy

IEMA Members question the suggested principle about not duplicating matters more effectively addressed through policy; however, policy does not always require a level of assessment that will be needed to adequately assess whether an outcome can be achieved. Whilst there is an overall drive for coordination and avoidance of duplication, there is a disconnect between this and the reality of many environmental assessments.

For example, the Government has indicated that it believes social and health protection of communities is already provided for in planning policy. Our members have indicated that this is not in fact the case as noted above. For example, the requirement to consider population and human health in EIA is the only statutory requirement to consider population and human health impacts of development (e.g., in relation to social outcomes, the existing policy context does not address the need for social baselines, assessing social impacts or developing social management plans). Only a minority of local plans require health assessments (or deliver equivalent protection and improvement through general policies).

The current wording of the LURB on health does not improve efficiency or reduce duplication, There are therefore concerns that where the Government is suggesting to 'not duplicate' matters addressed through policy, some matters are in fact not addressed in policy, and therefore by removing them from EOR there will potentially be a reduction in the comprehensiveness of environmental reporting to support plans and projects subject to EOR. If anything, in respect of health for example, this is likely to result in the opposite, with separate parallel standalone health impact assessments, that are not required to align methodology, terminology or reporting outcomes. Social value is a key priority area for projects now and considerations should be given as to whether social value should be covered by EOR and if not, how it would interact / relate to EOR.

The granularity, review and monitoring of outcomes and indicators

Given the complexity of the natural environment, it is unclear how a set of statutory targets / national outcomes will be sufficiently detailed to allow proper consideration at multiple geographic scales; perhaps this will be addressed through the indicators but this is not clear. The DEFRA 66 indicators which, we understand the Government is intending on using as a starting point are not comprehensive and do not provide the detail needed to ascertain what is to be

assessed and what is to be achieved. Many matters will need to be considered at multiple scales to ensure they are appropriately considered. There must be an opportunity for locally-derived outcomes. Public confidence that national indicators detail the impact on community interests for example shall be required. As with the list of matters, IEMA consider that the EOR should allow flexibility to define and consider detailed project, plan or, programme specific outcomes and indicators. Currently potential impact pathways are identified by the competent expert and reviewed by the statutory consultees. The EOR should allow for outcomes and indicators to be identified and reviewed in the same way. Without such opportunity there is a risk that the process could become a tick box exercise like for example the current BREEAM assessment process.

IEMA consider that developments subject to EOR must be assessed against local outcomes/indicators and not just national scale ones. For example, a development like a DCO may contribute say only 0.00016% towards the national carbon budget so therefore, if the DCO is not considered at a more granular scale, there is a risk that local impacts will be overlooked if the outcomes are too national-focused.

The consultation states that the national Outcomes will be 'regularly' reviewed. Who will be responsible for reviewing the outcomes and indicators and how regularly? While the frequency of review is not stated, the prospect of periodic revision risks negating the ability of a consistent data timeseries to support the appreciation of trends. Further, regular revision risks causing uncertainty in the development control processes around the periods of revision, and could potentially a new outcome / indicator be applied to post consent developments in the monitoring stage?

Multiple responsibilities for monitoring could cause confusion by establishing multiple monitoring data sets at various spatial scales with varied interpretations. Some of the statutory targets or national outcomes could take many years to achieve and these are not likely straight forward and will be subject to scientific investigation and debate. For example, natural environmental fluctuations and the influence of climate change/megatrends, unknown causes/influences, and incomplete monitoring data leading to uncertainties.

Who will monitor and make the decision on whether a national outcome is being achieved? IEMA assume that the OEP will have a considerable role, although IEMA emphasise the importance of the monitoring organisation being independent and thus objective. It appears that the intention is for each EOR to include proposals to monitor delivery of the plan or projects' contribution to national Outcomes. See further comments on challenges of monitoring (Qs 15-18) and of data collection, standards and re-use (Qs 19-21).

Q2. DO YOU SUPPORT THE PRINCIPLES THAT INDICATORS WILL HAVE TO MEET?
[YES/NO]

No.

The consultation document is not clear on whether indicators will all be defined in regulations / guidance, or whether individual EORs could adapt these / create relevant ones to their own circumstances. The principles set out in 4.18 of the consultation will be difficult to work with an ensure that they are usable across the whole of England and the related marine environment. The indicators will need to be evidence based and it should be possible to link these directly to the associated outcomes. The example Outcome/Indicator provided in the consultation does not tick all the boxes as set out in para 4.18.

It is established practice in EIA to use the source > pathway > receptor model to identify impact pathways. Only where there is a viable pathway between the source of an impact and a receptor will an impact pathway be considered possible. It is often necessary as part of EIA for specialists to undertake detailed baseline monitoring, modelling, and assessment of sensitive or important receptors to demonstrate a viable impact pathway. This accounts for relevant legislation, standards and guidance as well as the application of professional judgement to account for project / site-specific issues. EORs would potentially remove the need for a specialist to investigate impact pathways to assess the likely significant effects of a proposed development project. It appears that under the Government's proposals impact pathway would be replaced with a requirement for developers to consider the proposed development against national environmental outcome objectives based on a nationally defined indicator set. While it is apparently the intention that there will be the opportunity to scope in or out the nationally set indicators, much in the same way that potential impacts on factors of the environment may be scoped in or out of EIA under the current system, it appears not to be the intention to allow new project-specific indicators (i.e., additional to the nationally set indicators) to be identified.

In most cases, data that informs environmental assessment needs to be location specific. Although the consultation refers to an aspiration that indicators will be of a scale relative to the geography of an area (e.g. site-based level for specific developments), it is difficult to see how suitable indicators can be developed at the site level, without having detailed location specific data. Robust scoping of indicators will likely be required.

The key issue emerging from discussions with practitioners is that there is a severe shortage of widely available data for environmental assessment. Indeed, this is regarded as an issue of much greater significance than the system of assessment. So, a key priority for EOR must be to ensure that the Government provides data to back up those indicators which are chosen. So, the overriding principle must be "drawn from existing data sets" or there should be a commitment to generating more data sets to underpin this process. Otherwise, it will not be an improvement on the current situation.

If decision makers are supposed to evaluate development proposals against national environmental indicators using data that is consistent across the whole of England, then the

bodies responsible for collecting that data will need to be properly resourced. That data will also need to be readily available to decision makers who themselves will have to be resourced appropriately to ensure they have access to appropriate technical experts in both data handling and interpretation as well as sufficiently resourced GIS support.

Paragraph 4.19 recognises the need, in some cases, for qualitative judgments and professional judgement. This is fundamental to an environmental assessment process as a whole to ensure relevant issues are captured – the application of absolute thresholds or criteria can generate outputs that are not cognisant of the project/site specifics or other contributing factors (e.g. particular existing conditions). For complex developments (e.g., marine developments) where often there is an extensive need for said qualitative assessment, it simply is not realistic to expect that a “succinct written description of findings” will do the issue justice. The reality is that this will also be supported by a detailed report / reports, meaning that the depth of environmental assessment is not streamlined or reduced, it is just moved.

In terms of the principles for defining indicators, the indicators need to be ‘SMART’ [Specific, Measurable, Achievable, Relevant, and Time-Bound] to be meaningful. The indicators will need to be clearly linked to monitoring and review requirements – both of which also have complexities as set out in Q1 in respect of Outcomes.

IEMA query whether it would be better to invest resources in post-consent monitoring of impacts, rather than create a new set of indicators which themselves maybe based on insufficient data sets and require data sets over time to monitor the environmental performance of individual plans, programmes and projects.

In respect of people and communities and specifically in respect to health, the proposed approach is regressive, strips health in its fullest form from assessment, solely focussing on environmental risk prevention. This puts health assessment back to thresholds, and doesn’t address actual impacts. Measuring health is an abstract quality, and the health of communities and populations is affected by many different health determinants. It is the determinants of health that are affected by projects and policies not the health outcomes. An outcomes based approach in the case of human health would need to focus on health determinants, not health outcomes.

In tandem with the NPPF replacing ‘health’ with the notion of ‘beauty’, we are at odds with levelling up, and risk a return to health being a non-regulatory requirement to the regulatory planning process. There is a risk that stand alone Health Impact Assessments (HIA), when produced, are more comprehensive than an EOR, and include potentially conflicting outputs.

Re. paragraph 4.15 ‘Indicators will be expected to be applied consistently for all assessments at the plan and project level’ and paragraph 4.16 ‘Indicators will predominantly be data sets based on underlying technical work and analysis’. There are concerns that the proposed approach, and

emphasis placed on quantitative, data-based indicators, will risk detracting from important issues that are less easily quantified, particularly social and health issues.

Re. paragraph 4.18, we would support the principles listed, subject to the following caveats:

1. That clear guidance is published on the indicators and that flexibility is provided to allow consideration of source > pathway > receptors;
2. That the indicators encompass issues on people and communities, including the wider determinants of health;
3. That qualitative indicators may be used where quantitative data is not available, or where the cost of obtaining such data is prohibitive; and
4. That it is recognised that the availability, or otherwise, of quantitative indicator(s) has no bearing on the importance of an outcome.

Q3. ARE THERE ANY OTHER CRITERIA WE SHOULD CONSIDER?

Yes.

By 'criteria' we assume the Government mean 'principles' in respect of both outcomes and indicators.

The following additional principles should be considered:

Use of Professional Judgement - The use and retention of professional judgment as a key part of environmental assessment is a priority. This should be a decision based on the latest good practice, current data and thinking. The use of professional judgement which is evidenced is key to ensuring that many important factors are considered together. The use of judgement within environmental assessment is therefore fundamental; from determining its requirement, its breadth and scope as to what issues need to be considered as part of a decision-making process.

Professional judgement is a conclusion informed by expert opinion which is justified and clearly communicated. Without reading the professional judgement of experts, supported by clear evidence and rationale, how can a decision-maker understand and interpret the conclusions presented in any report? Indicators, outcomes and targets alone will not be able to fully capture the complex and often context-specific issues of a given topic.

Tier and Sector of Application – criteria for choosing indicators should be based on e.g., the specific tier (policy, plan, programme or project) and the sector (offshore renewables, housing, roads, ports, etc) of application.

Baseline Context and consideration of an Indicator at an appropriate Spatial Scale - Given the "outcomes will reflect national priorities", we have a significant concern that there will be a loss of site-specific detail and consideration of the immediate local context of a site (for example) when the focus is on a national outcome. The consultation states that the indicators (which will measure how a development contributes to the delivery of an outcome) will measure the

expected change resulting from the plan, programme or project against the baseline conditions and in the light of any wider trend data. The focus on measuring developments against national level outcomes risks an assessment conclusion that developments have very minimal impact whereas, at a local or regional level, the impact may, at present, be judged to be significant in EIA terms. This is specifically the case in the context of health/social, where the spatial scale of impact can vary i.e. individuals, project site to neighbouring community, to borough wide, regional, national or other; there needs to be room for contextualising an indicator / outcome and for considering additionality and attribution (i.e. to what extent would the indicator be achieved with the proposed development versus alternative scenarios and the extent to which the change can be attributed to the proposed development.) Conversely, outcomes cannot be set too tightly such that all development becomes unviable. Clarity is needed on how this risk can be managed via EOR regulations to satisfy the non-regression safeguard in the Bill (clause 142(1)).

The critical part of the proposals that is not mentioned anywhere is how the outcomes (and indicators underpinning them) will be developed, by whom and when. Aside from a few areas where targets exist, current EIA practice does not require pre-existing standards to be in place to allow assessment to be undertaken. For example, for ecological assessment, non-designated ecology can be assessed by reference footprint (spatial, population, etc.) without reference to any conservation objective, management objective, etc. This recognises the fundamental reality that, particularly in the marine environment, the composition, trends and location of most biodiversity are unknown. It is difficult to see how to judge 'no net loss' for example if there is no baseline (accurate or otherwise) upon which to base the judgement.

Consultation - The EOR has a strategic focus on national outcomes and indicators and so IEMA consider that consultation with relevant parties on indicators on a plan, programme, project level is required so important specific receptors (particularly at the local scale) can be recognised and addressed appropriately in any assessment. In addition, consultation is critical to establish indicators that reflect consenting e.g., under the marine regime (i.e. MCAA 2009).

Health - Public health should be included in its own right, there are existing public health indicators at the small area level. For example, the Office of Health Improvement and Disparities 'Local Health' indicators (e.g. deaths from causes considered preventable, under 75 years, standardised mortality ratio) and the Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government 'indices of deprivation'. These have ready application to the project level, and can also link though to the strategic level and national outcomes. These are however a subset of indicators currently reported at the local authority level. There are other relevant indicators in the Office of Health Improvement and Disparities 'Public Health Outcomes Framework' and similar Fingertips database indicators sets. The potential for a selection of these to be made publicly available at the smaller geographic level could be investigated to further enhance the options for EOR outcomes and indicators for Human Health. Whilst health outcomes are complex and due to multiple pathways of effect. It is a limitation that neither all the pathways contributing to a health outcome will be related to a particular policy, plan, programme or project, nor will an EOR be able to establish definitive causation. Notwithstanding this health determinants remain useful, indeed vital, as part of EORs

as they provide an overall benchmark against which small area population health can be measured, pressures identified, and improvement sought through the planning system.

IEMA does not support the principles of EOR in their current form. The first principle, to ‘drive achievement of statutory environmental targets and Environmental Improvement Plan’ appears to exclude health. The EIP does not cover health outcomes or the social determinants of health. This is likely to lead to regression in the assessment of health effects of development projects. The second principle places a strong emphasis on setting outcomes that are measurable. This is likely to detract from important outcomes that are less easy to measure, such as social cohesion for example. It is essential to note that the importance of an outcomes is not proportionate to its measurability.

Health Impact Assessment (HIA) is a useful tool that allows policymakers and project developers to predict and control the consequences of their proposals on the health of the affected population. A legislative framework for the institutionalisation of HIA has been proposed in several countries and/or regions (e.g., Italy; Andalusia, in the South of Spain). However, a recent study by the RCPA identified that only approximately 30% of English local planning authorities has a policy in place to require a HIA for a project.

Q4. WOULD YOU WELCOME PROPORTIONATE REPORTING AGAINST ALL OUTCOMES AS THE DEFAULT POSITION? [YES/NO]

No

The move toward a more proportionate reporting system is a highly attractive proposition. Further clarity is needed though in respect of scoping. Will scoping be about agreeing outcomes and indicators as opposed to topics to be considered? If the former this could evolve into a protracted process with trying to provide evidence as to why certain indicators are not needed. Developers won't want to overcommit themselves so will the EOR be short but the scoping very long? IEMA strongly supports proportionate assessment and reporting. However, we are not clear how the approach set out at para 4.23 of the consultation document would resolve the issue raised in respect of this (*“Users told us that the scoping process is driven by fear of legal challenge, and this is preventing all parties from reducing what issues are included in the assessment”*).

If there is a move towards proportionate reporting, this needs to be managed carefully to achieve the best outcomes for the environment, communities, applicants, and decision makers / regulators. There is a risk that proportionality will be interpreted as scoping out as many outcomes/indicators as possible. The EOR must not be a vehicle to reduce the consideration of impacts which warrant justifiable attention; the apparent loss of flexibility within EOR to scope in additional issues and target assessment based on the significant issues would be an apparent regression from the current EIA regime.

Proportionate reporting could either defined in the Plan level EOR (where one exists) or through discussion and agreement with the relevant LPA. Agreement needs to be reached before an EOR is submitted on what ‘proportionate’ means for each Outcome. It is likely though that some Outcomes may not be relevant to a project at all and in which case agreement (between an LPA

and an Applicant) should be reached on those that do not require any consideration. It's essential that scoping is undertaken on a project-specific basis.

EIA Scoping is currently a useful engagement tool and when done well assists in agreeing a proportionate EIA scope. It appears this step will not be included in the EOR regulations. Where a project or plan is screened in, all topics will be scoped in, which would lend itself to the creation of an unproportionate document. The only advantage of this changed approach is that there would be consistency across all EORs (consistent topic headings) and this would provide clarity on the justification for where there are no-effects on outcomes rather than EORs remaining silent on that.

It is assumed that the standardised data sets will assist in the proportionate reporting/ providing a suitable evidence base (that can be cross referenced to, rather than repeating data within the EOR itself) where not needing to consider some outcomes/indicators in detail.

Q5. WOULD PROPORTIONATE REPORTING BE EFFECTIVE IN REDUCING BUREAUCRATIC PROCESS, OR COULD THIS SIMPLY RESULT IN MORE DOCUMENTATION?

It is considered that the EOR proposals have the potential to re structure assessments (i.e. meaning that a concise and succinct "end report" can be prepared but behind this will still be the detailed rationale, by necessity, and this will likely be akin to an ES).

There is an opportunity to help achieve proportionality by improving the scoping process. Scoping should be carried out to help refine an EIA but at present, stakeholders and the regulators have highly risk-averse attitudes.

The main underlying problem with the environmental assessment process that the EOR approach is seeking to address is risk aversion, and the consequences that this has for the outputs of the environmental assessment process (as referenced in paragraph 3.10, namely "Fear of legal challenge has resulted in assessments being repetitive, voluminous and cumbersome"). We do not feel that evidence has been provided that justifies claims of a systemic problem with the current environmental assessment process. For example, lawyers working in planning and EIA indicated that the number of legal cases influencing EIA practice is lower in recent years, demonstrating a recent period of stability. It is estimated that there are only one or two legal cases a year relevant to EIA practice and in nearly all cases, they have been justified, either in holding account to developers who failed to recognise the importance of environmental assessment or establishing an important change in practice.

To effect a real change, any new process needs to allow a shift in mindset of regulatory bodies, their advisors, and other stakeholders. In the context of this specific question, there is a risk that the current scoping process would simply be mirrored under a new regime, with a reluctance to accept what the significant issues are for a particular plan or development.

We foresee that in most cases, all outcomes could be seen as relevant to a plan or development, regardless of regime. This carries a risk of either having to undertake significant work to justify

why an outcome is not relevant in a particular case, or including an outcome which does not represent a credible risk / effect pathway for the plan, programme or development in question. In either case, the result could be the same as currently experienced during EIA scoping, where in many cases the assessment has to consider very low risk or non-credible effects.

We note that paragraph 1.7 states: *“To maximise efficiencies and reduce duplication, the Government will identify opportunities to take a single approach across regimes wherever possible. For all regimes EORs will cover, as a minimum – biodiversity and environmental quality (including visual impacts). While focusing on environmental outcomes, reforms will allow us to consider how best to address the environmental effects of development on communities, covering issues such as the health of local people. However, it will be up to the individual departments (listed in Table 1 below) to bring forward regulations and guidance to implement EORs for their respective regimes”.*

Furthermore, paragraph 4.20 states: *“The indicator model will allow regime owners to produce guidance as to how relevant plans and projects demonstrate they are supporting the delivery of outcomes”* (paragraph 4.20).

We have concern regarding the above statements. It is likely that in some cases more than one regime will be relevant to a plan or project, and there is potential for significant duplication of effort if regulations and guidance differs between regimes as this would potentially result in different assessment requirements for the same outcome. This would work against the desire to minimise inefficiency and avoid duplication.

The lack of inclusion of people and communities, including health and social outcomes (for example) is likely to give rise to requests for separate social and health assessment documentation, which will increase the number of documents put forward for applications.

It is assumed that the standardised data sets will assist in the proportionate reporting/ providing a suitable evidence base (that can be cross referenced to, rather than repeating data within the EOR itself) where not needing to consider some outcomes/indicators in detail. Opportunities associated with the use of digital EOR / impact assessment databases should be explored further. An impact assessment database would utilise digital tools including dashboards and interactive maps. The impact assessment database should be spatially referenced wherever possible to provide clarity on the area of impacts. Reporting findings of the EOR could be summarised in a digital report with the EOR database and interactive map embedded.

The approach will provide consistency across all EORs, which could be beneficial when considering cumulative effects at a Plan (or Project) level.

LPAs will need guidance on how to manage proportionate reporting, to ensure they have sufficient information for determination of a planning application - in acknowledgement that repetition is unnecessary across other planning deliverables and the EOR - hence the need for LPA consultation ahead of preparation of the EOR. There is a risk and concern that the principle

of proportionality creates an opportunity for outcomes to be missed or underestimated because robust assessment was not undertaken.

Q6. GIVEN THE ISSUES SET OUT ABOVE, AND OUR DESIRE TO CONSIDER ISSUES WHERE THEY ARE MOST EFFECTIVELY ADDRESSED, HOW CAN GOVERNMENT ENSURE THE EORS SUPPORT OUR EFFORTS TO ADAPT TO THE EFFECTS OF CLIMATE CHANGE ACROSS ALL REGIMES?

One of the main objectives of the EOR is to ensure that assessments effectively consider climate change (4.26), especially reducing its causes and adjusting to its effects. In respect of climate change there are two important considerations: 1) adaptation and resilience and 2) carbon (and other GHG emissions) contribution and impact on climate change. This question in the consultation appears to only deal with the first consideration. Our response below, deals with both considerations in turn.

Firstly, in respect of adaptation and resilience. It shall be very difficult, if not impossible to express adaptation and resilience through indicators. For climate change mitigation, carbon equivalents can be used, but there is no quantitative method in respect of adaptation and resilience measures. Climate change adaptation and resilience is an inherent part of a design process and so best addressed through definition of future climate scenarios, design for adaptation and resilience and review of (and reporting on) design alternatives to maximise the ability of a project to adapt and be resilient to future climate. This approach would align with the proposed EOR approach to the consideration of reasonable alternatives to be based on the mitigation hierarchy. The approach to addressing climate change adaptation and resilience better lends itself to a design led risk-based assessment approach, to inform alternative designs and construction techniques. Climate change adaptation and resilience measures should not be the subject to value engineering.

Climate change adaptation and resilience as part of an EOR process should focus on design alternatives to ascertain whether individual projects have sufficient adaptation potential to the future effects of climate change rather than being the subject of indicators. The subject matter would benefit from wider awareness for regulators as to what the future climate parameters are, to support on adaptation and resilience design measures and to help better identify where more adaptation capacity is needed.

Without a consideration of social, economic, health and community aspects under EOR, none of the concerns associated with these aspects in respect of climate change would be effectively and thoroughly considered. This is especially relevant with the lack of focus on the disproportionate effect of climate change on vulnerable populations. The EOR will have no means to address or consider how people and communities can adjust to climate change effects, leaving the outcome to infrastructure-oriented adjustments.

The assessment of carbon (and other GHG emissions) under the current EIA Regulations presents a number of challenges including (but not limited to); no agreed thresholds, a definition of

significance open to interpretation, all activities releasing emissions and the receptor being the atmosphere. As such we would advocate carbon being subject to a set of indicators. From a legal perspective the carbon / GHG environmental outcome would be to achieve net zero as this is UK legislated target by 2050.

Project specific outcomes i.e., a carbon outcome for a building, road, airport or waste facility would be required but we believe it would be major undertaking to disaggregate the national carbon targets into sectors and then to specific project or plan based targets, across all use cases to determine an individual plans contribution towards achieving net zero. Who would undertake this work and when would it be done by? This needs further consideration and effective Government policy and regulations based on the approach set for Biodiversity Net Gain for example.

Potentially plan-level EORs are better placed to undertake a holistic assessment of carbon / GHG emissions. The plan-level EORs should then inform region specific indicators/limits for individual developments/project level indicators, but again, questions remain about who would determine these from a carbon perspective to achieve the national outcome? Certainly, robust indicators could promote betterment, further limit carbon and other GHG emissions and support the achievement of national outcomes in respect of carbon and climate change.

Q7. Do you consider there is value in clarifying requirements regarding the consideration of reasonable alternatives? [Yes/No]

Yes.

In theory, plan-level assessment should consider alternatives thoroughly so that it is not needed at project-level. However, this arrangement does often not work in practice. Very often projects arise in the absence of a plan, partly due to severe resource constraints in plan making. We disagree with the statement that *“This will require plan-makers and developers to provide a summary record of their decision-making on alternatives. This is not intended to be a comprehensive assessment of alternatives rather, a high-level summary of the key dates when decisions were taken”*. Firstly, in the case of plan level assessment, it is quite unacceptable that a mere *“summary record of decision making”* is all that is provided. Alternatives must be properly assessed and also considered in the context of cumulative effects of an alternative and another development on the same environmental, social or economic resource, and the results of that assessment shared with the public. Secondly, even at project-level, if there is no plan in place to guide the decision, then alternatives must be properly assessed at this level too. Thirdly, improvement of the current system needs to consider the challenges faced by local planning authorities in doing SEA. At present there can be difficulty in generating genuine alternatives in certain cases of plan making. This can be due to the limitations placed on local discretion by national planning policy. The assessment of alternatives requires higher priority and must be undertaken earlier in the plan/design process.

There is real concern that the attempt to roll SEA and EIA into a single process will result in a solution which is not particularly well adapted to SEA. It is important to have two distinct

processes to maximise both the proper treatment of alternatives and also the advantages of having plan-level assessment.

Current Town and Country Planning EIA Regulations only require the developer to explain the 'main alternatives' considered (if any) and the reasons for the choice. Case law evidence shows that a developer/applicant does not need to choose the least environmentally damaging option or present an assessment of how the environment has been taken into account in the final decision (unless required via another regulatory regime such as the Habitats Regulations⁶). However, recognition is still required as for many projects' the alternatives considered can be limited.

For the Marine environment, the PINS guidance on this is helpful but not as clear as it could be; this therefore leaves the door open for challenge to development which on occasion is valid, but is frequently spurious and only being used because an individual / an organisation is opposed to development irrespective of alternatives.

Alternatives should be agreed at the Scoping stage (or similar), so that realistic alternatives are agreed, and the alternatives should be referenced back to the achievement of the relevant outcomes and indicators and the consideration of these throughout the design process. In current practice, alternatives are often considered and discounted through the process but not always for environmental reasons. Environmental priorities in decision making should be clarified. The assessment must still be proportionate. This would make the EOR/environmental assessment process and the evolution of a scheme design a truly iterative process. Reporting should reference how design decisions/changes have been made to facilitate achievement of the outcomes and indicators, or where necessary (if they impede the achievement), incorporate mitigation within the design or compensation.

There is a need for clear guidance on the staged process that developers should follow; and we would suggest reviewing the exemplary process followed under the National Grid approach to routeing and siting along with PINS guidance and IEMA best-practice guidance.

Q8. HOW CAN THE GOVERNMENT ENSURE THAT THE CONSIDERATION OF ALTERNATIVES IS BUILT INTO THE EARLY DESIGN STAGES OF THE DEVELOPMENT AND DESIGN PROCESS?

There are several ways that the Government could ensure that the consideration of alternatives is built into the early design stages of the development and design process. Including for example:

1. Establish clear guidelines and standards: The Government could establish clear staged guidelines and standards that require developers and designers to consider alternatives during the early stages of the project. These guidelines can include specific criteria and metrics (e.g. including outcomes and indicators) that developers and designers must use

⁶ <https://www.legislation.gov.uk/uksi/2017/1012/contents/made>.

to evaluate alternative options. The EOR Regulations should reference the requirement of the Lead EOR Consultant to guide the design team through the process, with early engagement of key technical specialists and stakeholders to ensure early design/decisions are made that facilitate achievement of the indicators and overarching outcomes.

2. Provide training and education: The UK Government could provide training and education programmes for developers and designers that focus on the importance of considering alternatives and provide them with the necessary tools and techniques to do so effectively.
3. Require early and effective statutory authority consultation: The UK Government could require developers and designers to conduct early statutory authority consultations to gather feedback and input from statutory authorities. This feedback provided by the statutory authorities would need to be constructive and underpinned by more commitment and confidence - at the moment, the advice during the pre-application process can be subject to many caveats (“position may change” / “this is a preliminary view”) etc.
4. Require early public consultation: The UK Government could require developers and designers to conduct early public consultations to gather feedback and input from stakeholders and the community. This feedback can help identify potential alternatives and inform the design process.
5. The UK Government could require an impact assessment database to be developed and established at the earliest possible stage, recording the list of receptors and potential impacts and considering these in the context of outcomes and indicators. This would enable the reasoning for developing alternatives and design changes to be recorded in one location, which is further developed at the subsequent stages of a plan, programme or project. Should the impact assessment database be developed at the strategic plan-stage this would ensure that the reasoning for the assessment and any mitigation required is clearly set out from the start. Then the project level assessment merely needs to update the database to state that assumptions remain valid and mitigation has been designed in (or similar).
6. The UK Government could require an early assessment of alternatives by an Applicant that is submitted to the relevant decision making authority prior to the submission of the application. A timescale could be set for this to require and encourage the consideration to be done at early stages. This could enable EOR consultants and the technical, design, planning and developer teams to be better advocates for the consideration of alternatives and undertake assessment work of options as early as possible in the project lifecycle. The relevant decision making authority could undertake an audit of the consideration of alternatives, in line with Government’s clarification of the requirements (as per the above question), to ensure all the relevant considerations have been made and are reasonable. For example, whether a different location for the project been considered, if the site hasn’t been identified in the local plan for the proposed use, and that measures to avoid environmental effects have been embedded into the design of the development. Should a less environmentally favourable alternative be the development be taken forward, this process would allow transparency and appropriately inform decision makers.

7. Offer incentives: The UK Government could offer incentives to developers and designers who consider alternatives during the early stages of the project. This could include financial incentives for projects that incorporate sustainable or innovative design alternatives.
8. Establish governance mechanisms: The UK Government could establish governance / audit mechanisms to ensure that developers and designers are following the guidelines and standards established for considering alternatives. This can include periodic reviews of project designs and independent evaluations to assess compliance with these guidelines.

By implementing these strategies, the UK Government can encourage developers and designers to consider alternatives during the early stages of the design and development process, which could help to create more sustainable, innovative, and effective projects.

Q9. DO YOU SUPPORT THE PRINCIPLE OF STRENGTHENING THE SCREENING PROCESS TO MINIMISE AMBIGUITY?

Yes, but the detail of this needs to be defined and consulted upon as part of the drafting of the EOR regulations. Screening criteria are important so that not all projects require screening.

Strengthening the EIA screening process to minimize ambiguity can have many benefits. For example:

Improved clarity: Clearer guidelines and standards can help developers and designers to understand the expectations for the EIA screening process and reduce ambiguity in the process.

Enhanced efficiency: A more robust EIA screening process can help identify potential environmental impacts early in the project development process, allowing developers to address these concerns early on and potentially avoid project delays or additional costs later in the process.

Increased stakeholder engagement: A more transparent and clear EIA screening process can encourage greater stakeholder engagement, allowing for more meaningful public consultation and engagement in the decision-making process.

It would be beneficial to more clearly establish and set out the process for screening developments which are under the existing Schedule 2 thresholds, but have potential to cause significant environmental effects. As Applicants are not always forthcoming in requesting Screening Directions for such cases, and case law has quashed negative Screening Directions such as *R (Swire) v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 1298 (Admin). The screening thresholds for Schedule 2, could be more encompassing of different circumstances where likely significant effects have potential to occur, for example a development which is smaller than the thresholds but in close proximity or has an impact pathway to a sensitive area wouldn't meet the criteria for screening. In London, and other cities, were there are applications for major developments on small sites these may not meet the criteria for screening,

especially for non-residential developments, though have the potential to cause significant effects.

Consideration should be given to include floorspace as a threshold.

Consideration of projects within sensitive areas should be maintained, with the definition of sensitive areas potentially expanded. Consideration should also be given to incorporating a criterion relating to a sensitive areas zones of influence as part of the screening process.

Questions remain around projects that are not subject to EOR. Would these non EOR projects needs to address outcomes and indicators, particularly if outcomes and indicators are linked back to national, regional or local planning policy? Would non-EOR projects be subject to the mitigation hierarchy and monitoring requirements? Should the EOR regulations instead set out what is NOT subject to EOR rather than what is subject to (or should be screened for) EOR?

It might be difficult to make this 'watertight' given the amount of screening related case law there is under the current EIA regime. The importance of professional judgement should not be dismissed. Plan level EORs could be helpful, by setting the parameters for when Project level EOR might be required for an area rather than setting nationwide parameters.

Finally, digital advances in environmental assessment could support the screening process in addition to standardised availability of Government / national data; it is recognised however that we are still some way off widespread digital environmental assessment and there are multiple challenges associated with a standardised national environmental dataset.

Q10. DO YOU CONSIDER THAT PROXIMITY OR IMPACT PATHWAY TO A SENSITIVE AREA OR A PROTECTED SPECIES COULD BE A BETTER STARTING POINT FOR DETERMINING WHETHER A PLAN OR PROJECT MIGHT REQUIRE AN ENVIRONMENTAL ASSESSMENT UNDER CATEGORY 2 RATHER THAN SIMPLE SIZE THRESHOLDS? [YES/NO]

No.

Firstly, this question seems to refer to Project Level EOR only. The new Regulations should be clear which types of Plans and amendments to Plans would require Plan Level EOR. Should EOR not be required for all Plans clear criteria should be defined for Plan level screening. It is unlikely that Plans would not require assessment. We envisage that Plan Level EORs could be important in the Category 2 EOR screening process for projects (see response to Q11).

Secondly, the term 'sensitive area' should be defined as is the case in the existing EIA Regulations. Under the current regime 'sensitive areas' are legally defined as national and higher-level designations. Local level environmental designations and sensitive receptors not subject to geographic designation, such as human communities affected by health inequalities, are not captured by the Regulations, although Government guidance (national Planning Practice Guidance on EIA, Paragraph: 032 Reference ID: 4-032-20170728) is clear that such matters should be considered where relevant. A broader definition of the term 'sensitive area' in the new

regulations should be considered to reduce the risk that environmental protection is not diminished under the EOR regime/s.

With reference to “proximity to a protected species”, this could be difficult to implement as it presumes a level of environmental information that is not likely uniformly available across the country. In theory, should proposals to create a digital environmental baseline database come to fruition, that could become easier in time. However, protected species surveys are only valid for 1-2 years and keeping such baseline data current and reliable would be resource intensive. To understand the presence of protected species on a site could require lengthy, seasonal surveys that would delay agreement on screening, and applications/development in general. An alternative approach could be for the screening process to consider habitat types relevant to protected species, informed by preliminary ecological appraisal or the relevant Local Nature Recovery Strategy (when available).

Consideration of both proximity and impact pathway to sensitive areas / protected species or other sensitive receptors (e.g., air quality management areas, groundwater source protection zones, etc.) should form part of the overall consideration as to whether a Category 2 project requires EOR. Proximity to sensitive receptors (e.g., buffer zones) could be useful in cases where developments likely to have significant effects currently avoid assessment because they do not exceed the screening thresholds and are outside a sensitive area. However, such an approach would require consistent data across a given geographic area and should be developed in the first instance at Plan level.

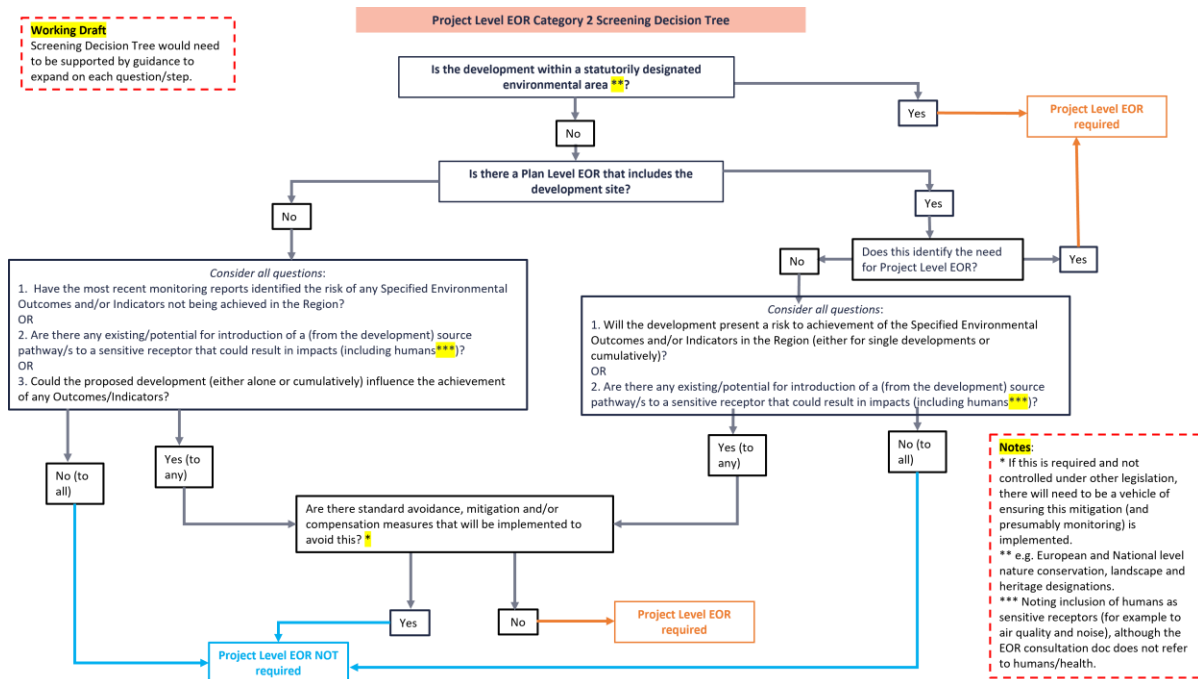
The size thresholds set under the current EIA regime for Schedule 2 projects are a well understood starting point for screening and could feed into the approach to screening Category 2 projects under the EOR regime. There should be greater clarity as to which types and scale of projects do not require screening for EOR (e.g., less than 10 dwellings or a site area of less than 0.1 hectare for urban development or regeneration projects) and how decisions on the need for EOR should be recorded by decision making bodies. The current size thresholds should be reviewed, drawing on experience with the current EIA regime.

The EOR regime’s focus is the contribution a development can make to the attainment of defined environmental outcomes. Over time, as Plan Level EORs and outcomes monitoring reports become more widely available that information could feed into the screening process, providing evidence of the key environmental issues and sensitivities for a given geographic area.

A suggested EOR Category 2 Project Level Decision Tree is provided in response to Q11 below.

Q11. IF YES, HOW COULD THIS WORK IN PRACTICE? WHAT SORT OF INITIAL INFORMATION WOULD BE REQUIRED?

Taking account of the matters discussed in the response to Q10, a hypothetical EOR screening decision tree for Category 2 projects is proposed below. The approach set out below has been designed from an urban development and regeneration perspective. The approach could be adapted to suit the specific needs other sectors, such as infrastructure, minerals, or waste.



Size thresholds have been excluded from the above hypothetical decision tree. Such an approach could be applied to all Category 2 projects with the exception of those that fall under the relevant small-scale thresholds, such as those suggested for urban development or regeneration projects in the response to Q10.

Screening requests would need to be supported by sufficient evidence and draw on professional judgement to demonstrate that EOR is not required. The range of topics covered by that evidence would need to be determined on a case-by-case basis but should reflect relevant local environmental issues and sensitives and baseline conditions for the development site and surrounding area. Should the digital baseline develop over time that could make the process quicker and simpler, for example through the adoption of a digital screening tool based on the questions set out in the decision tree model above. Such a tool could be of assistance to the development industry but would likely be of more limited help to regulators due to their need for transparency and democratic accountability in decision making.

Q12. HOW CAN WE ADDRESS ISSUES OF INEFFECTIVE MITIGATION?

To determine whether mitigation is effective, it is critical that mitigation is linked to monitoring. A key contributor to ineffective mitigation thus far has been insufficient monitoring. There is a failure in the EIA feedback loop at industry level. If EIA authors / developers / local authorities are unaware that mitigation is ineffective, there is the risk that these measures can continue to be proposed / agreed and conditioned without having the anticipated outcomes. Robust monitoring data needs to be collected, collated in a central, accessible, database (by e.g., a regulator), and lessons learnt shared in appropriate forums. This feedback loop also needs to be applied more effectively at a project level, with monitoring of early-stage success, failure, practicality, or appropriateness of mitigation driving an adaptive approach and supporting innovation (see also response to Q13 and Q14).

We have provided further feedback on improving monitoring in our responses to Q15, Q16 and Q17.

We welcome the move to set the mitigation hierarchy in legislation and believe that this will lead to improvement. However, we are disappointed to see that the hierarchy (as shown in 139(4)(b)) has been reduced from five tiers to three tiers. Specifically, the 'Increasing' tier (i.e., gain/betterment/improvements) has been moved to elsewhere in the bill and the 'Remedying' tier has been removed, leaving the hierarchy as 'Avoidance', 'Mitigation' and 'Compensation'. We see this as a step backwards from the current status quo. This will make it more challenging to improve the environment and ensure the opportunities for enhancement and betterment on site are maximised.

We therefore recommend including 'Remedying' in the mitigation hierarchy. It seems in paragraph 7.7 that remedial action is being considered as an unplanned action needing to be undertaken when an impact or progress towards an environmental outcome is unacceptable. Including it back into the mitigation hierarchy will allow for remedial work to be proactive rather than reactive.

To improve the potential for mitigation to be effective, the focus should shift to achieving the outcome of the mitigation, rather than the mechanism for delivering it. This will allow for flexibility in mitigation to reflect, for example, changes to the baseline environment (particularly important given often extended timelines between consent delivery and construction), or design changes (see also response to Q13 and Q14). However, this flexibility should not negate the requirement for the developer to consider their ability to achieve the specified outcome (including financial commitment); this should be evaluated prior to consent being granted or conditions being discharged. Deposit of funds / bonds held until mitigation is proven to have been successful could be considered to ensure mitigation can be adequately resourced and allow adaptation if necessary (also see response to Q17).

Consideration should also be made to potential standardisation of mitigation commitments to make adoption and compliance more likely, driving effectiveness of mitigation proposals. This can come in the form of standardisation of consent conditions, i.e., specifying clear outcomes, defined timescales, and monitoring regime so effectiveness can be measured more easily; or via standardisation of project documentation, e.g., requirement for Environmental Management Plan (EMP). We could also learn from international practice, with international ESIA (and requirements of various Banks, e.g., EBRD, World Bank) requiring an Environmental and Social Action Plan (ESAP) that sets out the required mitigation and monitoring, and reporting process to LPA, allowing for adaptive mitigation.

An Environmental Management Plan (EMP or equivalent) should as a minimum include:

1. All primary mitigation embedded into the plan or project and the mechanisms by which changes to this require further evaluation and assessment.
2. All tertiary mitigation (aspects that will be enforced by other mechanisms) and the specific mechanisms for implementation.
3. All secondary mitigation (aspects where further development is required) including the timing of this and any uncertainties that require resolution.
4. Inclusion of specific requirements for monitoring, the timescales and duration of and who will be responsible (including measures to ensure accountability/auditing).
5. Potential to define how the monitoring will be made available on a national platform for other to use.

To successfully strengthen mitigation, the following principles should be considered:

1. Testing of the mitigation to ensure the principles are viable and implementable.
2. Proactive engagement with Local Authorities, Regulators and Stakeholders so that the reasons for mitigation implementation (and implications if it is not) are understood.
3. The quality of holistic documentation (e.g., EMP) and the distribution and review of this by Local Authorities, Regulators and Stakeholders.
4. Assignment of responsibility for the development of the mitigation or/and implementation at the next stage of the project.
5. The implications or penalties that will be applied if mitigation is not developed/implemented by those responsible for that stage.

6. A clear framework to appraise mitigation when changes are made to the project (effective handover and quality transfer of intent).

7. The specific nature of the mitigation so that it is understandable and practical to those new to the project at a later stage.

We would also welcome further guidance on the definition of 'material extent' in the context of specified environmental outcomes not being met.

The consultation seeks to increase the links between alternatives and mitigation. It needs to be recognised that scheme designs can evolve over years, with the process being one of iterative change rather than explicit alternatives. Guidance will be important in establishing how this link is meant to be delivered (through project documentation, e.g., EMP).

Underpinning all the above is a requirement for greater levels of enforcement by regulators. Without strong consequences for failure to deliver effective mitigation, a responsible and robust approach to project assessment and development cannot be achieved. A useful option to support enforcement may be clearly defining the role of an environmental clerk of works which should be aligned with the position statement on this by the Association of Environmental Clerks of Works.

**Q13. IS AN ADAPTIVE APPROACH A GOOD WAY OF DEALING WITH UNCERTAINTY?
[YES/NO]**

Yes.

IEMA welcome the inclusion of an adaptive approach as we believe this will help address uncertainty.

Implementation of mitigation measures along with management activities, such as monitoring and community participation, is an integral part of an effective environmental assessment system: *"Effective implementation of mitigation measures arise when all proposed mitigation measures are completely and adequately implemented"* - Wood, 1995

Adequate institutional arrangements and good quality of EIA alone cannot guarantee the protection of the environment, this being the aim of EIA.

Mitigation faces two types of implementation problems: 1) non-adaptive implementation; and 2) non-implementation.

By non-adaptive implementation we mean that the mitigation is too rigid and is not flexible. Non-implementation is where mitigation is not delivered for a variety of reasons (novel/unsuitable/unclear/undeliverable, and/or project change, and/or baseline change, and/or

cost). IEMA agree that the principle of an adaptive approach could help address the inflexibility and non-implementation.

Looking at 139(7)(d) and the whole of 141 we believe that a key thrust of the Bill and EOR Regulations is to allow for greater monitoring of the effectiveness of mitigation and to enable this mitigation to be adapted post consent to ensure the assessed level of environmental protection is delivered. This is welcomed as long as it is used in the correct way to address uncertainty post consent and not used to circumvent the need for a reasonable worst-case assessment (based on a set of clearly defined parameters) including the mitigation required, with the limitations/assumptions (uncertainty) clearly explained at the consent application stage.

Therefore, it would be particularly helpful at addressing uncertainty in major projects that are delivered over the long term or multi-stage consents as long as the level of uncertainty was made clear and acceptable at the initial consent decision making. Projects must still assess a reasonable worst case (multi-stage consent) or full scheme (detailed consent stage) and use the mitigation hierarchy to show how the project would avoid and minimise impacts promoting the targeted outcome. A sufficient/reasonable level of information must be provided in an application to inform the decision-making process. Therefore, the adaptive mitigation approach can allow for ineffective mitigation (potentially arising from novel or bespoke types of mitigation), changes to design within assessed envelope, and/or unknowns/new information coming to light, to be addressed post consent.

A final note of caution on the use of adaptive management, is that it should not circumvent the precautionary principle with regard to major and/or irreversible impacts. Furthermore, care must be taken to ensure that adapting mitigation or management activities will address the issue while minimising the risk of unintended consequences. Adaptations post consent should not result in a material change to information that was a material consideration in the determination of the plan or project, or result in a material change to what was consented.

If there is a potential for a proposed adaption in mitigation or management to result in a material change, it is recommended the EOR be reviewed, updated and treated as an amendment to the planning application.

Q14. COULD IT WORK IN PRACTICE? WHAT WOULD BE THE CHALLENGES IN IMPLEMENTATION?

One of the key challenges to taking an adaptive approach could be the need to identify in advance, what measures could be taken to adjust mitigation to ensure its effectiveness. It would be important to identify such measures to avoid a situation where adaptive measures are vague and potentially incapable of being implemented (e.g., for technical or legal reasons) but it is important that flexibility is maintained, particularly in cases where lifetime (i.e., decades long) mitigation is required. In many cases, it may not be possible to have confidence that such measures can be secured and would be effective.

One approach could be to define a set of criteria that adaptive mitigation has to meet, for example:

- Rationale for the mitigation approach.
- Quantitative monitoring where possible.
- Justification for qualitative monitoring.
- What is being measured.
- Data quality.
- Review process.
- Reporting.
- Steps to go through for a change to the approach.
- Rationale for the change in approach.

It will be a challenge to ensure that the correct governance and process is in place to allow an adaptive mitigation approach to work for all types of consent throughout a project's life cycle (from pre-consent to post consent inc. construction and operation and decommissioning). We recommend that there is some form of independent body (with a lead decision maker and range of stakeholders represented) which developers must agree this with (like when applying for an environmental permit or improvement notice). The legal framework and body/bodies responsible for ensuring that adaptive mitigation can be used must be made clear i.e., would this be secured by planning conditions or some other mechanism?

However, over the last decade, the loss of capacity across environmental regulators has been significant. Budget cuts and falling staff numbers have been accompanied by long-term declines in enforcement activity. In the light of this, concerns remain about whether the new Office for Environmental Protection will be given sufficient funding, independence, and powers to carry out its duties and the public authorities who are proposed to have a duty for monitoring and reporting on environmental outcomes.

It is not clear on what is the consequence of failing to meet the outcome, operating unlawfully and the associated costs. If a project is consented based on an assessment of outcomes being achievable, and then much later during operation it is clear it is not meeting an outcome, then we assume some form of improvement notice is issued and action discussed and agreed? The detail of this is vague in the Bill and EOR consultation and should be clarified.

Clarity is required on what occurs if the action required entails excessive project life-long costs which renders the developer or operator bust? It is welcomed that the consultation document suggests funding may be available for projects where the developer has gone bust or similar. However, it would be useful if it was clarified how this would work in practice as it is currently unclear in the EOR consultation. If there is unlimited liability on remediating the failure to achieve an outcome that will have significant effects for the applicant / developer. It is not clear what would happen – would HMG take on the 'operator of last resort'? Or if not how would project decommissioning/restoration costs be covered?

It needs to be recognised that the adaptive approach will introduce costs and risks for developers, as additional monitoring, re-assessment, and re-evaluation of mitigation would be required, potentially over a long time period.

There will also be the need to address the question of causality / attribution. For example, monitoring may identify that air quality levels in the vicinity of a new development are higher than was assessed in the EOR. For enforcement action and/or adaptation of the mitigation to be required from the developer it will need to be clear that the increase in air quality is attributed to the new development. This can be very difficult/impossible to determine in the context of an area experiencing multiple changes in parallel.

Adaptive mitigation brings the potential of a reduced mitigation burden, especially as the detail of a proposal assessed under the Rochdale Envelope becomes available. However adaptive mitigation also brings risk to a developer as they are now needing to guarantee an outcome and not just an action. This could stymie development.

Adaptive mitigation also raises significant questions when several companies/individuals are involved in different stages of a development. Where a mitigation measure is identified as not having delivered the necessary outcome then which entity would be responsible for the costs of addressing this and how is this risk managed in contracts? The operational effects of residential development for example are particularly hard to mitigate retrospectively when dwellings have been sold to individual purchasers.

Q15. WOULD YOU SUPPORT A MORE FORMAL AND ROBUST APPROACH TO MONITORING? [YES/NO]

Yes.

However, the Government could achieve a more robust approach to monitoring within the existing environmental assessment regimes if issues including funding, roles and responsibilities, and planning authority capacity were addressed (refer to question 16).

Greater clarity is needed on the envisaged purpose of monitoring under the EOR regime. Clarity is also needed on roles and responsibilities for monitoring at plan and project level, on what data is to be collected and by whom (e.g., developer, planning authority, site operator, future occupants, etc.), and on reporting requirements. Would monitoring focus on the plan or project's delivery of specified environmental outcomes, on the accuracy of predictions, on the effectiveness of mitigation measures, or the state of the environment of a defined geographical area? Monitoring is a resource intensive process that in the context of environmental assessment should be focused on those aspects of a development or plan with greatest potential for significant environmental harm. The risk of duplication of monitoring effort with other regulatory regimes – for example Environmental Permitting at the project level, local authority air quality monitoring and reporting at the plan level – will need to be considered in the design of the EOR monitoring approach. Measures will need to be put in place to share and disseminate good practice and learning across the development industry and the regulatory sphere.

The consultation document (paragraphs 8.2, 8.5 and 8.8) refers to the inaccuracy of predictions and scientific uncertainty in environmental assessment as key drivers of the need for increased monitoring. That assertion does not reflect the breadth of matters potentially covered by environmental assessment, not all of which are suited to quantitative modelling and analysis. Landscape and visual impact assessment for example is one topic where assessment is reliant on the judgement of competent professionals as to the likely significant effects of development – it is not clear how monitoring of landscape change could improve the quality and consistency of predictions that are fundamentally based on professional judgement. There are disciplines where monitoring data would help practitioners refine assessment models and methods, but it is not the case for all topics potentially covered by environmental assessment. It should not be assumed that predictions would necessarily be improved by monitoring.

The difference between plan and project-level monitoring of environmental effects and outcomes needs to be reflected in the new regime. At the project level the assessment and the implementation of the project, and any associated monitoring, will not necessarily be carried out by the same organisations. Developers and their advisers may have different monitoring needs to decision making bodies, the former seeking information to improve future scheme design and to refine impact assessment methods and the latter seeking information about actual impacts and mitigation measure effectiveness. The planning system already provides for the monitoring of development, with respect to compliance with planning conditions and obligations. Whilst it is recognised that monitoring is not practiced consistently across all planning authorities, lessons should be drawn from established good practice across sectors such as minerals planning where monitoring is undertaken regularly on a charged basis.

At the plan level there may be scope, dependent on the type of plan concerned, to include monitoring of key indicators of the state of the environment across the plan area. However, care will be required to avoid duplication with existing environmental monitoring regimes, such as the condition monitoring of Sites of Special Scientific Interest (SSSIs) for which Natural England is responsible. Under the SEA regime plan level monitoring is not always undertaken as a discrete exercise, and the regulations recognise the contribution to plan-level environmental performance monitoring that other existing arrangements can fulfil. In practice, for the land-use planning regime, monitoring the environmental effects of plan implementation happens through the development management process (e.g., have the relevant environmental protection policy tests been met and have the key development criteria for allocated sites been complied with) and is captured to some extent in annual monitoring and similar reports. For the EOR regime it is not simply a case of making the system more formal and robust with reference to plans; as the SEA Regulations are clear on the need for monitoring.

The design of the new system with reference to Plan level monitoring should draw on existing examples of strategic level environmental monitoring, such as the Strategic Access Management and Monitoring (SAMM) scheme set up as part of the regional level mitigation strategy (which also includes the provision of Suitable Alternative Natural Greenspace (SANG)) for recreational impacts on the Thames Basin Heaths Special Protection Area (SPA). The approach has been rolled

out by Natural England to other SPAs and could offer valuable lessons for the strategic level monitoring and adaptive management of other aspects of the natural environment.

Q16. HOW CAN THE GOVERNMENT USE MONITORING TO INCENTIVISE BETTER ASSESSMENT PRACTICE?

One of the fundamental issues we experience is that knowledge gained through monitoring is not acknowledged by regulators and advisors as evidence to enable better scoping of other projects to enable resources to be targeted on understanding the significant effects of subsequent projects (i.e. achieve proportionality) and to inform more appropriate mitigation. The issue of risk aversion and reliance on data / information are the main reasons for this. For example, stakeholders will always be able to argue that environmental sensitivity differs between locations or that the type or scale of projects are too different and, therefore, that learning gained from monitoring elsewhere may not be directly applicable to other projects. The inability to share and rely on data from other projects (contractual reliance considerations) inhibits knowledge sharing. However, it should be possible to agree that certain elements of projects of a similar nature are low risk, with the potential to have negligible impact should appropriate mitigation and monitoring be in place which is informed / scoped by lessons learnt on other projects.

While the aspirations set out in paragraph 8.8 are welcomed, without enabling a change in the current process described above, the cycle of complex and lengthy reporting is unlikely to be resolved. One of the key ways to incentivise better assessment practice is to enable learning from monitoring to inform the scoping of other projects. This clearly requires (for example) mechanisms to be developed that enable access to monitoring data, but practical issues of this nature can be readily resolved. The main obstacle to improving practice is to deal with the issue of risk aversion and the tendency to take an (overly) precautionary stance, which is acknowledged as a problem in the consultation material.

Looking forward, the dissemination of monitoring outputs associated with mitigation will enable industry to get a handle on how measures are performing and therefore increase (or where appropriate, and just as valuable) decrease confidence in measures. Ultimately if we know what works with regards to mitigation we will be able to reduce costs for mitigation measures. Monitoring therefore ultimately reduces costs in the long term. To start with, some investment will be necessary.

Currently there is insufficient linkage between three phases of a project: pre consent (often Consultant led), post consent construction (Contractor led) and operation (Operator led). Monitoring needs to be aimed at increasing the feedback loop from later phases of a project into the assessment phase pre-consent. As described above (in response to Q13 &14) monitoring must be the basis of any auditing on whether the project is delivering the outcomes that were committed to at consent stage and therefore, remedial measures for failing to achieve those outcomes must be based on appropriate monitoring. Those remedial measures should provide

the contractor / operator with as much flexibility as possible i.e. removing / changing part of the project to address the negative effect on outcomes or seeking alternative ways to achieve the same outcome.

IEMA considers that monitoring should be agreed at the point of consent being granted however, the monitoring framework for a project must also be practicable and flexible. Efforts should be made to engage, consult and include public stakeholders at this stage and record how this was done. A contractor must agree with the consenting authority / responsible body that it (the monitoring) is fit for purpose (which must be the purpose of monitoring the predicted outcome) at the point of application and must additionally, provide the contractor with a mechanism for proposing changes to the monitoring if it can be demonstrated e.g. to an independent third party body that there is a reason the proposed monitoring, is not, in fact, fit for that purpose and needs to be modified.

IEMA strongly supports use of independent third party monitoring to increase the legitimacy of the data collected (even if that third party is funded by budget provided by the developer). The use of a Planning Monitoring Officer (PMO) in Scotland is an example of how this could be implemented.

IEMA and the Association of Environmental Clerk of Works (AECoW) endorse the use of an Environmental Clerk of Works. A guidance paper has been developed in collaboration between the Heads of Planning Scotland (HoPS) and AECoW, and is due to be released shortly, detailing when an EnvCoW should be engaged, by who, inspection frequency and reporting requirements allowing a more universal monitoring regime beyond that of a PMO. IEMA endorses this guidance paper and believes these can be applied successfully to England.

We would also suggest clarifying who is responsible for monitoring what. If the EOR commits a development to an outcome, rather than specifying detailed mitigation the developer or contractor would be responsible for monitoring their activities to comfort themselves that they are compliant with the outcome (similar to the approach regulatory agencies such as SEPA and the EA take). An independent EnvCoW would then agree that the monitoring undertaken by the developer/contractor is sufficient and then independently verify that the project is meeting its obligations.

To improve the value of the monitoring data there must be clear and consistent guidance on what data is to be collected and in what format and how it is to be published and then this should be available via a national database.

This database could then inform future decisions and benchmark the performance and quality of primary consents at certain, set timeframes in the future. Therefore, an obligation should be put on applicants and decision makers to demonstrate which monitoring data from other projects

they have had regard to in respectively, assessing outcomes and determining the consent application.

Linking clearly attributable health benefits from a project with financial/marketing benefits, such as an accreditation or award with a health focus (such as the Live Well standard in Essex). A requirement for projects to demonstrate net gain in public health and health equity would give more 'teeth' to monitoring and improve outcomes.

The requirement for an EMP, as set out in the response to Q12 above, should sets out how all mitigation proposed will be implemented, along with targets and timescales and implication should be mandated. The EMP could also set out how the effects and mitigation measures will be monitored, and options for adaptive mitigation where there is uncertainty. There could also be a requirement to submit the updated EMP, along with monitoring undertaken to date on a yearly basis, to track the process of the mitigation measures implementation.

By ensuring that all effects of a proposed development are secured and the success of mitigation is monitored and reported, this should provide sufficient evidence regarding the effectiveness of mitigation in certain situations, which can inform future assessment and proposed developments. The key will be ensuring this information is easily accessible for use. However, professional judgement will still be key in the consideration and establishment of mitigation measures, as it is not always the case that effective mitigation in one instance, would be effective in other environments.

Q17. HOW CAN THE GOVERNMENT BEST ENSURE THE ONGOING COSTS OF MONITORING ARE MET?

IEMA considers that one of the most important aspects of the cost of monitoring is to make sure that the scope is correct. If the new regime results in extensive additional costs, then it will not be effective. Monitoring needs to be tailored to what is most important. Therefore, monitoring should be proportionate to the largest uncertainties or the largest contributions to outcomes identified in the EOR. This is necessary to maximise the cost effectiveness of monitoring.

To pay for the monitoring there would seem to be several options including requirement for a bond or similar at application which is only released on completion of monitoring or some form of Service Level Agreement or equivalent to S106 for monitoring. All of these rely on the 'responsible body' or another organisation auditing the monitoring which will require additional resource on the part of that organisation. We are pleased to see that the Government is prepared to consider mechanisms such as bonds to guarantee outcomes. This approach has been successfully used in minerals planning for many years. It would be good to see it extended to all types of planning permissions.

Currently there is no incentive at the strategic-level to ensure that effective monitoring is undertaken. If this cannot be borne by local / national Government then there needs to be clear

guidance on how monitoring is linked to the project-level which may make the approach of omitting outcomes which have been considered at a strategic level a risk without clear and detailed Regulation/guidance.

At the project-level scale the current expectation that the developer meets the cost of monitoring is the best, and possibly only, way of ensuring these costs are met. At the plan-level scale a developer contribution to the Local Planning Authority may be more appropriate given the larger geographical scale at which monitoring would apply. It must also be ensured that the monitoring undertaken at project level can adequately inform the strategic / plan level monitoring, such as ensuring consistency in what is monitored and how the monitoring is undertaken. RTPi enforcement research⁷ has shown just how little proactive monitoring of actual planning permissions local authorities are in a position to do.

With regards to the monitoring of Local Plan EORs, planning application fees could be increased to generate income for Local Planning Authorities to meet any improved monitoring requirements. Alternatively, similar to a Community Infrastructure Levy (CIL) payment upon commencement of the planning applications a fee proportional to the Proposed Development could be paid, which is to be used specifically for the purpose of monitoring the Local Plan EORs. However, there is uncertainty in effectiveness these approaches such as:

- Whether such fees could be adequately ring fenced;
- Implementing a CIL type fee would result in a delay obtaining the fees given planning permissions are required to commence the development within 3 years of any given consent which would make setting up adequate monitoring prior to the payments being received a financial challenge;
- Local Planning Authorities receive a different number and scale of development, so it may be difficult for certain Local Planning Authorities to receive sufficient additional funding from planning applications or planning permissions.

A final mechanism that could be investigated is to use a modified form of planning performance agreements, but for post consent monitoring. Whereby the developer provides a ring fenced payment to the LPA to enable them to fund the independent monitoring, for example through an Environmental Clerk of Works, who will monitor the implementation of mitigations, conditions and outcomes, and report back to the LPA and statutory bodies. This would have the added benefit of speeding up post consent condition discharge (for developers) and also provide an independent source of monitoring (funded by the developer but working for the LPA) who could advise on adaptive management needs to meet the twin needs of the development proceeding, with appropriate adaptive management safeguards in place.

⁷ <https://www.rtpi.org.uk/research/2022/november/planning-enforcement-resourcing/>.

Q18. HOW SHOULD THE GOVERNMENT ADDRESS ISSUES SUCH AS POST-DECISION COSTS AND LIABILITIES?

The Government will need to consider the whole post consent decision making process (including decisions on agreeing to changes in mitigation or responding to monitoring outputs) and the resources needed to deliver this.

The costs post consent can only be borne by the developer however this is a large risk for a developer if there is an unlimited liability for failing to meet an outcome. This can be secured in ways similar to those described for monitoring costs under Q17. However, there must be a mechanism to determine whether the cost or other factor necessary to meet an outcome is disproportionate to the outcome to be achieved (and why this was not known pre-consent / what has changed since the EOR to make it so).

The Government should consider whether there are circumstances in which despite the failure to meet an outcome, if the developer can show best endeavours have been made, no further penalty/enforcement would be levied. There needs to be clear distinction between this and where a developer had not exhausted all reasonable steps and therefore enforcement action may be taken against.

In addition, the risk of enforcement and the extent of the liability needs to be proportionate to the materiality of the original outcome. Failing to meet an air quality outcome of 'no change' because there was a very minor change may not warrant any action for example. This will require expertise and resource within the third-party organisation responsible.

Q19. DO YOU SUPPORT THE PRINCIPLE OF ENVIRONMENTAL DATA BEING MADE PUBLICLY AVAILABLE FOR FUTURE USE?

Yes.

There are potentially two ways of interpreting this question, both of which have merit. Firstly, there is the principle that data **generated by environmental assessments** should be made publicly available for future use by environmental assessments, and other programmes or plans seeking to implement sustainability, conservation, monitoring, and environmental protection.

Secondly there is the principle that all **environmental data generated by all publicly funded or publicly required data** should be made publicly available for future use for the benefit of environmental assessments and other programmes and projects.

Advantages of Environmental Data Sharing

IEMAs members overwhelmingly support both applications of the principle of environmental data being made publicly available for future use. There are multiple benefits arising from such an approach. For example, there will be an increase of available data to inform future

assessments at the strategic and project level. This has the potential to improve the accuracy of assessments, reduce the cost of data collection, aid in the identification of cumulative impacts and trends over time, and support wider research and monitoring efforts. The use of data generated can assist in achieving wider conservation objectives/ environmental protection.

A key advantage of sharing data is to establish over time, through analysis of data by sector, by geography, and development type, what happened during implementation (i.e., post consent or post adoption). Data on what the effects really were, as opposed to predictions can inform and help refine future predictions. Data on which mitigations worked well and which were ineffective can be used to refine future mitigation design. These advantages are self-evident and arise from the concept of lessons learned, or the 'check' and 'act' steps in the Deming cycle of Plan, Do, Check, Act.

However, these advantages can only be achieved with robust monitoring and data collection during the post consent, (construction and operation) phases of plans, programmes and projects. This is an area where lack of monitoring conditions, lack of resources, and limited coordination have all contributed to an absence of monitoring data being collected and shared to inform improvements to future assessments. There is currently no single location where environmental data is collated. A national environmental data hub should be established which can manage and publish the data, and set standards for the format of the data. As an example, The Crown Estate (supported by IEMA, DEFRA, and the Offshore Wind Industry Council Pathways to Growth) is developing a pathfinder project called the Offshore Wind Knowledge and Evidence Hub which aims to bring together all data, including analysis, for the offshore wind sector, to demonstrate the benefits of the better use of data and knowledge.

Another advantage of better data collection and re-use is for the assessment of cumulative effects, which are often better captured at a strategic level rather than project level. Cumulative effects assessment at project level are often ineffective because:

- Inter-project (between different developments) – often limited information on other projects and what receptors are affected are rarely clearly defined; and
- Intra project (within project effects) – lack of guidance and lack of visibility of effects on receptors.

These are not necessarily going to be improved at the strategic level. In the current situation the requirement is to assess both at strategic level and then at project level. If it is made easier to access information on other projects through a database that records and easily shares the key information, e.g. site boundary, description, proposed construction timescales, then this would improve the identification of other projects to aid the assessment of cumulative effects via an impact assessment database for qualifying projects. At the project level, if all projects prepare an impact assessment database, meaningful consideration of whether multiple projects will impact on the same receptors can be made. For more information on the use of digital methods for impact assessment see IEMAs primer on digital impact assessment, and forthcoming guidance on digital impact assessment.

Q20. WHAT ARE THE CURRENT BARRIERS TO SHARING DATA MORE EASILY?

Potential Barriers to Environmental Data Sharing

There are a number of considerations to bear in mind in respect of data sharing. Firstly, strategic level assessments generate less data than project level data, and the project level data is relatively limited in its spatial context. Therefore, strategic assessments are less likely to contribute new data into the wider pool of environmental information during their assessment phase and project level data is likely to be limited in spatial extent, unless there are multiple projects across a relatively small geographic area (for example across London where redevelopment is high density).

However, the monitoring data, where collected, from strategic assessments during the life of the plan or policy could be extremely valuable to be collected and made available. Secondly, strategic assessments are more likely to be reliant on available data sets to inform the desk-based assessment and would therefore benefit most from better access to high quality datasets being made available more widely. A national strategic environmental assessment data repository would be beneficial. However, data alone is not necessarily the whole picture, as can be seen by the use of The Crown Estates Marine Data Exchange. Data needs to be accessible without using specialised or proprietary software and training. Data should be accessible and viewable easily, which requires careful user design, interface and display. Furthermore, data alone is not as insightful as analysis, to get the most from data, the data needs to be analysed and interpreted. The outputs from the analysis (including the interpretation – noting that there may be more than one way to interpret the data) then need to be made available, along with access to the underlying data.

The storage, re-use and analysis of data requires skilled professionals and funds to resource them adequately. One concern is the capacity, competence and capability within existing institutions and in particular LPAs. This would put an additional strain on LPA resources (do they have the skill set and resources to manage this digital data set?) if they are responsible for collating new digital data sets/extending their current data sets. For example, LPA air quality monitoring does not always cover a wide enough geographic area such that it can be used to represent air quality in any given site in that borough/district.

Moreover, environmental data has a shelf life and certain data sets do not age well, becoming less useful over time. In addition, of critical importance is to bring standardisation to data collection, storage and dissemination, using meta data and standards to ensure data is of robust quality and can be accurately catalogued and easily retrieved. Therefore, it is essential that data is collected and stored in a consistent format, and kept up to date on a regular basis. For example, data held by individual councils is often in varying formats, varying access rights and different lead times for access. A final caveat relates to sensitive data, such as with respect to protected species (i.e. badger setts) or vulnerable human groups, whose data needs to be secured for their protection.

The design of the data collection, storage and retrieval is critical to the success of this approach, and there will be specific requirements for different types of data with different constraints, meaning a one-size-fits-all approach is unlikely to be workable. For example, regarding human health and social impacts, the availability of consistent open source data is critical in providing

benchmarks against which to assess outcomes. There are currently a range of quality data sets used to inform assessments of human health (e.g., Fingertips produced by the OHID and Joint Strategic Needs Assessments produced by Local Authorities). However, the quality of data is often not always sufficiently granular, and for human health, it typically has some drawbacks in that a) it's only collected periodically (e.g. as part of the Census) and b) it only is available to a Lower Super Output Area (LSOA). Human health data would need to be collected more frequently and made publicly available for more accurate baselines to be established – allowing for better evidencing long-term health outcomes attributable to individual projects. Human health assessments also benefit from including inputs from consultation and stakeholder engagement activities undertaken.

Continuing from a health perspective, there is a consistent set of health indicators in use that can be shared and compared easily. However, as stated above, public health data is not collected frequently enough to allow an individual project's impacts to be clearly attributable. There are also commercial sensitivities and public/community relationship issues relating to public health and community perception that some developers and contractors may not wish to share.

A final constraint lies around issues of copyright and intellectual property, as well as accessibility. Data is often treated as commercially confidential. Organisations can be unwilling to share data freely without some reciprocal benefit given the often high cost in obtaining the data. In addition, where information is in theory public, this is often held on websites that are difficult to search or to access. In the case of post-consent information, the publication of useful information (detailed management or mitigation plans, monitoring reports) is highly dependent upon developer policy and how much they choose to make it readily accessible. In addition, over time documents may be removed or no longer accessible.

For example, an environmental assessment may purchase the use of an Ordnance Survey Map to use in the creation of an environmental map or figure in the Environmental Statement, this map may be annotated digitally to include a range of data points from both primary and secondary data sources. Ordnance Survey retains the copyright on the mapping base data. Some of the secondary data sources may also be from publicly available data, however some of it may have been purchased from privately owned databases. The primary data collected from surveys will be within the ownership of the entity that has commissioned the EIA. Therefore, the data supporting the figure in the Environmental Statement is a mixture of sources, some of which can be freely shared and some of which have licences or other constraints on re-use and sharing.

There are also some practical constraints that will need to be addressed, for example planning portals do not always support uploads of files greater than 5mB – the portal systems would need to be modified to accept larger file sizes and ideally bulk uploads. Furthermore, the planning register software used by Local Planning Authorities, is very restricted in what documents can be displayed, the size of documents, and does not currently allow for digitised Environmental Statements. Enabling better software, would allow better innovations such as GIS mapping for EIA applications, which would enable accessibility of the environmental information to the public. Currently data is shared within PDFs of an Environmental Statement,

so it is very time consuming to reuse. Particularly as for example some Environmental Statements do not allow a word search function, so data can be difficult to even locate.

Therefore, to support these proposals and to make the best use of data in the environmental assessment process, the Government should engage with IEMAs expert members to carry out an in-depth analysis of the available data for each topic of interest, or outcome, to identify the gaps in national data sets, and to discuss the collection and future use of data generated by future assessments at the strategic and project level. Furthermore, the Government needs to ensure adequate support and investment in maintaining the existing operation of sites such as Defra's MAGIC and the interactive mapping services provided by Natural England, Historic England and other bodies; this is essential for both the current EIA/ SEA process or any replacement assessment process.

Q21. WHAT DATA WOULD YOU PRIORITISE FOR THE CREATION OF STANDARDS TO SUPPORT ENVIRONMENTAL ASSESSMENT?

Standards are a good tool to support environmental assessment, however there are many types of standards that have different applications. Data standards help to standardise the capture, storage and reuse of data. Professional standards help to ensure that professionals have the appropriate competence and expertise to carry out key roles within the environmental assessment process. Organisational standards can be used to identify organisational competencies to lead assessments and ensure institutional commitment to good practice. Finally, procedural and quality standards can be used to guide assessments and reporting practice, including establishing approved methodologies, benchmarks, thresholds, and reference values. IEMA recommends that the priority action is to create the necessary infrastructure, governance and resources by setting up a National Environmental Assessment Unit that can provide guidance on environmental assessment, commission research, disseminate good practice, and manage the ongoing coordination of standards and data for environmental assessment.

Environmental Data Hub

IEMA is supportive of the Government taking a greater role in supporting the development of standards, and in bringing together the various existing sources into a national guidance hub. A central repository could help improve access, transparency and visibility of all sources of guidance, as well as aiding in gap analysis to identify areas where improvements or further guidance is necessary. For example, one area of improvement could be the development of specific metrics relating to health determinants and outcomes that can be collected more frequently than at present, and that lead to a consistent long term monitoring strategy and appropriate remedial, compensatory or mitigation/enhancement measures. We would particularly value data on health determinants and health-related behaviours as these are more easily attributed to a project. For example, data on active travel.

Improvements can also be made on geospatial data for all biodiversity, cultural heritage and landscape designations (international, national, regional and local). Although to be truly effective geospatial mapping should not be confined to designated sites but should also include the wider landscape and habitats, which is essential to show the links and interrelationships with the designated sites, thus enabling a comprehensive environmental assessment.

It is therefore recommended that the creation of the national environmental data hub should be prioritised, and the current standards / format of environmental data reviewed, to establish what data is already sufficient to be published in the database. Expert task forces for different environmental topics can then be formed to create the standards. It is also considered that the standards should be consulted on more widely. An early pilot of this approach is already being progressed by The Crown Estate (supported by IEMA, DEFRA, and the Offshore Wind Industry Council Pathways to Growth) are working on a pathfinder project called the Offshore Wind Knowledge and Evidence Hub which aims to bring together all data, including analysis, for the offshore wind sector, to demonstrate the benefits of the better use of data and knowledge.

Any national data hub needs to deliver better accessibility supported by a permanent move to digital submissions and improved use of interactive mapping to provide clarity on whom or what is impacted. This would also aid the objectives of the Consultation around proportionality, by using other relevant data and assessment results/conclusions to feed into nearby projects. It would also strengthen the evidence base on when a topic or effect does not need inclusion within environmental assessment.

Any national data hub will require testing and governance, potentially by a National Regulator or from an oversight body such as the OEP (see Q.25). Any evidence body should be free from political interference, with the objective of providing evidence based and impartial information.

Data Standards

The use of data standards should be mandated in the collection and submission of data (see Q20). By adopting standards on metadata, format, collection, storage and dissemination, standardisation can be achieved across sectors and industries, allowing a uniform approach to data management. This is a precursor to any attempts to collect and share access to national and regional data sets to inform future environmental assessment and support ongoing monitoring and environmental protection programmes. See IEMAs primer on digital impact assessment⁸ for further discussion on this topic.

Professional Standards

The current EIA regulations require the use of 'competent experts' to prepare the assessment and require the competent authorities to have access to 'sufficient expertise'. Similar to other professions, such as architects, engineers and lawyers, professional specialists should be used

⁸ IEMA (2020) Digital Impact Assessment: A Primer for Embracing Innovation and Digital Working.

to support the environmental assessment process. Assessments should be led by chartered or full member professionals from relevant institutions such as IEMA. IEMA issues Full Member status, as well as Chartered Environmentalist, and also has a professional Register of Environmental Impact Assessment Practitioners. For topic specialists these should be led by appropriately qualified members of the relevant institution, such as ecologists chartered with the Chartered Institute of Ecology and Environmental Management, or archaeologists with the Chartered Institute for Archaeologists.

Organisational Standards

In addition to professional standards for individual practitioners, the coordination and production of an environmental assessment requires significant organisational competence, especially for major infrastructure projects. Following the IEMA State of EIA Report (2011) that reviewed the field of EIA, the IEMA EIA Quality Mark Scheme (hereafter Quality Mark) was developed and launched in 2011 with the aim of improving EIA practice and supporting IEMA members and organisations in the field of EIA. The scheme was reviewed and updated in 2021 following a 10-year review project. To date, the Quality Mark is the UK's only accreditation for EIA services and has been widely adopted by around 60 organisations, in the main large EIA producers: environmental, planning and engineering consultancies. The Quality Mark is viewed as a globally leading scheme by international practitioners and cited as a leading example of its type by academics.

Procedural and Quality Standards

Environmental assessment is already informed by a range of standards which provide methodological guidance across a range of topics. Individual topics have guidance from regulators (i.e. for Ecology, Natural England, Natural Resource Wales and Nature Scot have published guidance), from professional institutes (i.e. CIEEM ecological impact assessment guidelines), and from international standards and guidelines (i.e. for ecology, Red Book data etc.). Similarly, we have joint guidance from IEMA and the Landscape Institute on Guidelines for Landscape and Visual Impact Assessment, which are used in combination with published data such as the National Character Areas. Therefore, existing EIA practice is informed by existing environmental standards, either in legislation, policy or industry standards (such as British Standards and World Health Organisation reference values). Furthermore, there are also overarching standards and guidelines produced by bodies such as the Planning Inspectorate and IEMA which provide guidance on other aspects of environmental assessment, such as scoping, non-technical summaries and cumulative effects assessments. Collectively these standards are a patchwork of documents and references that have been developed over three decades to aid and improve practice.

Q22. WOULD YOU SUPPORT REPORTING ON THE PERFORMANCE OF A PLAN OR PROJECT AGAINST THE ACHIEVEMENT OF OUTCOMES? [YES/NO]

Yes (in principle).

However, concerns remain, given the current lack of detail on developing appropriate outcomes, with insufficient detail on the appropriate range of topics, and multiple and appropriate levels of targets and indicators at national, regional, local, and sectoral levels where applicable. See responses to Q1 to Q3 for concerns regarding implementation and design of outcomes. Furthermore, outcomes and targets are only as good as their influence on decision making and their enforcement. If impacts on outcomes are ignored during decision making (by being 'for information'), and if failure to achieve outcomes by plans, programmes or projects has no repercussions (from enforcement and remedy requirements), then outcome reporting will not achieve an improvement in outcomes.

To be clear, with respect to reporting on outcomes, the environmental assessment of the plan or project prior to implementation is only ever going to be an informed prediction, it will not be an entirely accurate measure of performance against outcomes.

To achieve the actual measurement, you need to monitor during implementation of the plan or project. Without monitoring, the Deming cycle of plan, do, check, act cannot be completed. Without learning from what actually happened, we cannot amend future projects, or learn the lessons from the past, what worked well? what didn't work at all? What was the efficacy of mitigations or enhancements? It is common sense, and fundamental scientific technique, that we need to check if predictions and estimates are correct. Once we have this information it needs to be transmitted and disseminated successfully to inform future plans, projects and assessments. This feedback loop, if correctly implemented, creates a virtuous cycle of continuous improvement that drives greater and greater efficiency and accuracy of process and improves real world outcomes on the ground.

The only caveat to the above is the practical challenges of implementing such a system, for example challenges of monitoring (Qs 15-18) and of data collection, standards and re-use (Qs 19-21). Therefore, IEMA recommends a priority investment of resources needs to be in the central coordination effort, through a national centre of excellence, or National Environmental Assessment Unit, that can bring together the necessary funding and resources to allow long term and coordinated interventions at scale.

Q23. WHAT ARE THE OPPORTUNITIES AND CHALLENGES IN REPORTING ON ACHIEVEMENT OF OUTCOMES?

The provision for a reporting requirement on delivery of specified environmental outcomes by public authorities is welcomed. This allows independent scrutiny of the status and trend for environmental outcomes for an administrative area (akin to a 'State of the Environment Report'). However, this must be properly funded. See response to Q14 and 17 where challenges are raised on monitoring and Q19 to 21 on use of data. There are in addition a number of areas that will need careful consideration to achieve the stated goals of the EOR proposals; on integrated assessment, on resourcing of monitoring, on attribution of effects, on the use of indicators, on cumulative assessment, and on the role of outcomes on decisions.

Integrated Assessment

Current good practice EIA reports on all of the aspects anticipated in the structure of an EOR report. Much of the current good practice within the industry has not been mandated through the EIA Regulations. By mandating established national guidance, this would deliver many of the ambitions of the Consultation without reinventing the core of impact identification and assessment.

The assessment of individual topics in isolation leads to siloed assessment and often fails to identify cumulative effects, interrelationships and interactions between and across topics, effects and receptors. Furthermore, standalone topic-based assessments provide a narrow view of an individual topic without comparison, synthesis or identification of trade-offs against other issues. Similarly, the potential for synergies, beneficial interrelationships, interactions and joined-up solutions is lost. Therefore, many of the benefits set out in the consultation regarding earlier input to design, the use of the mitigation hierarchy and the improvement of environmental outcomes are actively hindered by the loss of integration that the current proposal suggest will occur through the separation and siloed assessment of individual outcomes.

Resourcing Monitoring

It is not clear in the consultation who is responsible for monitoring requirements and reporting against outcomes predicted in the EOR report submitted for the consent at individual project or plan level. The public authorities need to be clearly defined. Is this the LPA or the LPA and Natural England, Environment Agency etc. Will the LPA be responsible for the overall report? In many cases the monitoring and adaptive mitigation to achieve outcomes would be required over the medium to long term. Therefore, this would require significant new resources and budget to be provided to the responsible public authorities. Clarity is required on how this will be funded.

Alternatively, it may be worth considering the pros and cons of developers being responsible for monitoring at project and plan levels and for adaptive mitigation. This would allow better use of public authority limited resources with a duty to focus on inspections and enforcement and overall reporting on outcomes from multiple projects and programmes across their administrative boundaries at an agreed frequency. The key problem of developer-based monitoring is that the current practice in this area has been shown to be poor. The lack of

independence means that contractors will often fail to implement, or properly implement mitigations, and will be incentivised to hide any environmental impacts or non-compliance. Therefore, it is essential that any monitoring is carried out by independent environmental auditors, or environmental clerks of works, that report to the LPA and regulators. The costs of the independent monitoring could be recovered from the applicant, similar to a pre-consent 'planning performance agreement', and post-consent planning performance agreement could be paid for by the developer (or plan proponent) to fund the independent monitoring and auditing. In exchange the plan or project developer gets additional certainty that monitoring conditions will be discharged on time, providing the mitigation and conditions have been complied with.

Attribution of Effects on Outcomes

One of the problems in wider monitoring of environmental outcomes is the issue of attribution. Many environmental issues, such as diffuse pollution of air quality, water quality, and several social determinants of public health, are affected by multiple inputs. Therefore, it is difficult to prove, once operational, if a deterioration of one of these outcomes is directly attributable to a specific project or plan. More comprehensive, long term and robust monitoring of baseline conditions in a given locality and region over time will allow better analysis of existing trends and any changes arising following the implementation of a new plan or project. However, at present, as articulated by many sources, LPAs and regulators lack both resources and skills to properly implement these kinds of monitoring programmes. Following the logic of the precautionary principle, the polluter pays principle, and the mitigation hierarchy it is therefore better to prevent deterioration of the environment through robust environmental assessment to inform the design of projects and plans to avoid the impacts in the first place, rather than placing overreliance on later monitoring and an enforcement system that lack resources.

Use of Outcome Indicators, Targets and KPIs.

To report performance against outcomes a level of assessment of the impacts / effects will be required. This is recognized within the Consultation with reference to 'residual effects' – which can only be concluded following assessment. Therefore, the system will create an additional layer of assessment – an assessment to determine the residual effects and an assessment to understand how those residual effects contribute to an objective.

Another issue raised by our members is the difficulty of setting outcomes in a manner that is applicable at multiple levels. The concept of national targets is particularly problematic for individual projects and plans, which will inevitably be seen to have little impact on the achievement of such a larger scale target. The danger here being that all impacts are argued to not prevent the achievement of the national target, taken in isolation, but when aggregated could easily lead to the national target not being met, i.e. through the cumulative effect of lots of minor losses or deterioration. The proposed solution to national targets being divided into smaller regional or sectoral indicators of performance targets, is rational in principle but fraught with complexity in practice. Many outcomes are not easily subdivided into regions or localities. Furthermore, any kind of indicator, by definition, does not measure the outcome itself, it is by nature an 'indication' or proxy of the outcome. This can lead to unintended consequences as people seek to manage projects to meet these key performance

indicators, which can inevitably skew project and plan outcomes to overly focus on a specific aspect of an outcome represented by the indicator whilst ignoring or having a detrimental effect on another aspect of the outcome, not captured by the indicator. There is substantial literature on the pitfalls surrounding the use of KPIs in the management literature.

Given this, the continued use of professional judgment is critical – this will help to ensure that multiple important factors are considered together, including trade-offs and interactions.

A further area of concern regards the limitation of scope as defined by the outcomes selected. For example, a focus on the environmental outcomes set out in the Environment Improvement Plan would neglect people and communities with multiple social and health outcomes, in addition to several potential environmental outcomes not captured within the EIP outcomes. What the outcomes and indicators will be, will strongly influence whether EORs reduce or improve the standing of the environment in decision making. There is a potential for the degradation of environmental protection as there aren't statutory environmental targets for all environmental matters currently assessed within the EIA process, in such wind environment, or daylight and sunlight conditions, which are affected by development proposals and have direct implications on peoples and communities as well as place-making. There should be provision in the Regulations to set local indicators and outcomes, to ensure the level of environmental protection is as a minimum maintained.

A further omission is climate change (including resilience / adaptation and greenhouse gas emissions) as outlined under Question 6.

Furthermore, the suggestion that other outcomes may arise from other sources or departments further adds to a lack of certainty about what needs to be assessed and what the scope of the assessment, and the outcomes should be. Therefore, a comprehensive set of outcomes covering all the key aspects set out within the existing regimes, including populations and human health and climate change should be developed to provide a robust and cohesive set of outcomes on which a plan or project can be assessed.

Cumulative Effect Assessment

It is a concern that cumulative effects are only proposed to be assessed at the strategic level rather than also at the project level. Strategic level cumulative assessments are necessarily high level as for example they may allocate a site for housing and employment uses but may not state how much housing or employment is allocated to a specific site, therefore the environmental effects of a future proposed development cannot be accurately assessed. Strategic level cumulative assessments will be no substitute for undertaken project level assessment, which are more specific, focused on the development plans proposed in terms of quantity, and massing, rather than more general site allocations. In addition, EIA applications come forward for locations not allocated in the local plan. Project level assessments are more accurate as for example the timescales of cumulative effects can be better understood at the project level such as construction overlapping, and when the development/s will be operational.

The contribution of multiple projects requires consideration in the context of objectives / indicators given the potential for this to inadvertently create constraints on development in small geographical areas, such as city centres.

Importance of Outcomes on Decisions

A final point, which is a recurring theme, it is not clear at present how the assessment against outcomes would be required to inform the decision making, i.e. would all assessment need to pass against all outcomes, to be able to be approved, or can any failures be taken into account when reaching a decision on the planning balance. In other words, how much weight will be placed on achieving environmental outcomes?

Q24. ONCE REGULATIONS ARE LAID, WHAT LENGTH OF TRANSITION DO YOU CONSIDER IS APPROPRIATE FOR YOUR REGIME?

To allow for better alignment between the strategic and the project scale, as mentioned in paragraph 5.1, plan-level EOR would need to come into effect before project-level EOR. Projects that are progressed before the completion of the relevant plans risk conflicting with the plans and open opportunity for legal challenge.

A staggered approach to implementation is important, and basing our response on the three options provided in the question, we would recommend the following from when the EOR Regulations come into effect:

- 6 months for plan-level EORs.
- 1 year for Town and Country Planning.
- 2 years for Infrastructure Planning.

Although we believe this to be very ambitious, particularly for plan-level EORs and would recommend consideration of a longer or more flexible transition period.

Transition will need to be carefully managed. If not, there is risk that both an EIA and EOR would be done for a proposed project. It is recommended that:

- If a SEA or EIA has formally commenced (e.g. competent authority notified of intent to undertake EIA, Screening or Scoping Opinion issued) before the EOR Regulations come into effect, then the SEA or EIA should be followed through to completion.
 - Where a Scoping Opinion has been requested or issued the SEA or EIA should be completed in accordance with the Scoping Opinion and current regulations, with no need to consider the EOR Regulations.
 - Where a Scoping Opinion has not been sought the SEA or EIA:
 - The proponent may decide not to continue with the SEA or EIA, and instead progress under the EOR Regulations.
 - The proponent may decide to continue with the SEA or EIA under the existing regulations but would also need to consider key requirements from the EOR

Regulations. The regulations would need to detail what specifically needs to be considered under such circumstances.

- If a SEA or EIA has not formally commenced the EOR Regulations would apply in full, with no consideration required of the current regulations.

A key challenge for transition will be in respect to Nationally Significant Infrastructure where significant effort goes into the project often well before the Planning Inspectorate is aware of the proposed project. This would need to be carefully considered in the transitional arrangements to avoid the potential for lengthy delays, significant additional expenditure and increased risk of legal challenge for these nationally important projects.

Lastly, paragraph 4.15 states that indicators will be set out in guidance. There is reference to guidance being developed for consideration of reasonable alternatives (paragraph 5.14) as well as potentially other guidance to support the secondary legislation (paragraph 11.4). Such guidance would need to be in place before the EOR Regulations come into effect and the transitional period commences.

Q25. WHAT NEW SKILLS OR ADDITIONAL SUPPORT WOULD BE REQUIRED TO SUPPORT THE IMPLEMENTATION OF ENVIRONMENTAL OUTCOMES REPORTS?

As set out in the OEP's written evidence to the Public Bill Committee for LURB the new regime will require significant support for implementation. Implementation support will be required across a range of areas including: a detailed evidence review of the previous decades of experience with EIA and SEA to understand which aspects worked well and which require improvement, a pilot of the proposed new regime to see how it operates in practice and to identify critical weaknesses prior to full implementation, support to LPAs, support to regulators and statutory consultees, guidance for developers, consultants and proponents, investment in central coordination for knowledge and data, including guidance development.

It is arguable that if the measures set out below were carried out and implemented it would negate the need for a complete reform to environmental assessment in the UK, as the existing EIA and SEA regimes could easily be modified and with the support set out below could be made to improve environmental outcomes, without the need to replace the whole regime design.

A Detailed Evidence Review

A robust and detailed review of the evidence from the previous decades of experience with EIA and SEA needs to be undertaken, to better understand which aspects worked well and which require improvement. The evidence review should not be limited to 'end users' and should include academic and practitioners who have carried out and studied the effectiveness of EIA and SEA. The proposals put forward to date have not been accompanied by any substantive research or evidence base to support the proposals.

A Pilot of the New Regime

A pilot of the proposed new regime needs to be undertaken, ideally on a few different types of development scale and sector, to see how it operates in practice and to identify critical weaknesses prior to full implementation. It would be unwise to launch a scheme of this

nature without any ground-truthing or testing in advance. Given the new regime replaces a system that has been in place for over 30 years a new system should not be rushed. Sufficient time and care need to be taken on the design and implementation of the new regime.

Central Coordination via a National Environmental Assessment Unit

As set out in multiple other question responses, several of the key improvements required are contingent on the leadership and central coordinating of a national guidance body, the like of which does not currently exist, although the OEP could provide a role. There is currently little Government support provided on the implementation of EIA or SEA, other than what is provided in the Planning Practice Guidance (PPG) or published by the Planning Inspectorate in relation to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. Whilst there is a Planning Casework Unit, within the Department for Levelling Up, Housing & Communities, which has higher authority than Local Planning Authorities to issue Screening and Scoping Directions, there is no Government body currently for EIA or SEA to ensure consistency, reduce risk of judicial review, encourage proportionality etc. Such a body should be established to lead and support the implementation of EOR, which should be responsible for the guidance and training to upskill, and reduce the risk of judicial review, and should also be responsible for gathering and maintaining the national environmental data hub. There should be upfront investment in a national centre of excellence in environmental assessment to coordinate knowledge and data, including leading on guidance development and commissioning research.

Enhanced Support to LPAs, Regulators and Statutory Consultees

Without substantive support to LPAs, regulators and statutory consultees any reforms are likely to fail to achieve the gains that are sought. Over the past 15 years there have been substantial cuts to staffing and competence levels within the LPAs, regulators and statutory consultees resource dedicated to engaging with environmental assessment. This is exacerbated by a shortage of skilled environmental professionals and relatively lower wages in the public sector leading to recruitment problems across the sector. A staffing and competency review should investigate the resources available across the public sector to successfully carry out their responsibilities under the environmental assessment regime, this could be led by the OEP or a new National Environmental Assessment Unit. Any gaps identified by the review should look to allocate resources and develop capacity building to ensure that the public sector side of the system has the capacity and competence required to perform the role allocated to them.

Clear Guidance for Developers, Consultants and Proponents

Any new system should be accompanied by clear and detailed guidance on each aspect of the process to guide users, reduce uncertainty, and provide clarity on expectations on methodology and reporting. Many of the issues criticised in the existing regimes would have benefitted from guidance, unfortunately little has been produced by the Government in the past decade. The SEA guidance for example has not been updated since 2005, failing to apply any of the lessons learnt over the intervening 18 years of practice. The new regime should retain the explicit requirements set out in the current regime to use competent experts in the preparation of assessments and require the use of sufficient expertise by the competent authorities in the review of any assessments.

Q26. THE GOVERNMENT WOULD BE GRATEFUL FOR YOUR COMMENTS ON ANY IMPACTS OF THE PROPOSALS IN THIS DOCUMENT AND HOW THEY MIGHT IMPACT ON ELIMINATING DISCRIMINATION, ADVANCING EQUALITY AND FOSTERING GOOD RELATIONS.

Our members have identified potential impacts that may arise from the proposals set out in the consultation document. Regarding eliminating discrimination, advancing equality and fostering good relations, our primary concerns relate to the assessment of human health, the assessment of social impacts, and access to information, public participation in decision-making and access to justice in environmental matters (Aarhus convention).

On People and Communities

IEMA produced two sets of guidance in November 2022 considering the effective scoping and determining significance of human health impacts.⁹ These documents showed that it was possible and desirable to incorporate a public sector equality duty into the process, by considering sensitive receptor groups in terms of, inter alia, those with protected characteristics. Furthermore, a fundamental part of effective human health assessment in EIA (which should be embedded in EORs) is the consideration of health inequalities (i.e. the gap between the most and least healthy in a community). The IEMA guidance referred to above described how a project's impact on this can be assessed and mitigated at the planning stage. There is a risk that the public sector equality duty could be weakened as a result of removing the consideration of health inequalities and identifying the potential effects on sensitive receptor groups.

Furthermore, the proposals do not contain consideration of social value or outcomes, and these have in fact been explicitly removed based on the Government's consultation (and associated consultation events). The impact of plans, policies and projects can have an unequal and detrimental impact on certain communities and individuals, many of which may be disadvantaged, vulnerable or at higher risk. Removing any requirements to consider these groups as part of a statutory assessment, and the differential effects and outcomes on these groups, could risk perceived or actual discrimination.

For example, there are no statutory environmental targets for a number of matters currently assessed within EIA such as wind environment, and daylight and sunlight conditions, dark skies, etc., which are affected by development proposals, it is therefore unclear whether there will be outcomes or indicators on these matters, and if they will be excluded from EOR. In addition, currently residents can read the Non-Technical Summary of the ES, to obtain an understanding of the environmental effects of a project, however if certain topics are excluded from EOR, members of the public would need to read and understand the technical assessments to become informed and get involved with the decision-making process, which will create a barrier to being involved in decision making particular for disadvantaged residents.

⁹ Effective Scoping of Human Health in Environmental Impact Assessment, IEMA (2022) and Determining Significance For Human Health In Environmental Impact Assessment. IEMA (2022).

Access to information, public participation in decision-making and access to justice in environmental matters

The UK is a signatory to the Aarhus convention on access to information, public participation in decision-making and access to justice in environmental matters. There is little detail in the proposals concerning the critical role of the environmental assessment regime in providing access to information to the public, and to different groups within the public, particularly hard to reach groups. Similarly, public participation in decision making is currently not well supported by the existing regime and the new regime should take the opportunity to rectify this situation by improving public participation as a key measure for reducing discrimination, advancing equality and fostering good relations. Finally, with regard to access to justice in environmental matters, there should be a clear and accessible grievance mechanism in place for the public where the environmental regime is not being applied or enforcement, to facilitate all members of the public regardless of their financial means, educational or social status to raise legitimate concerns with authorities where environmental laws are not being followed.

PREVIOUS IEMA SUBMISSIONS

In preparing this consultation response we have contrasted IEMA's previous advice, submissions, consultation responses and positions on EIA and SEA (the IEMA recommendations) against the latest information provided within the EOR consultation. The IEMA position is based on our previous stated and published recommendations contained in the following documents, updated with additional consultation based on the latest EOR consultation information:

1. IEMAs 'Proportionate EIA Strategy'¹⁰ (July 2017);
2. IEMA 'Levelling up EIA to Build Back Better' report (September 2020) to Defra and MHCLG in September 2020 setting out key recommendations for improvements to EIA¹¹;
3. IEMA response (October 2020) to the Ministry of Housing, Communities & Local Government (MHCLG) Consultation on 'Planning for the Future'¹²;
4. IEMA response (March 2021) to the Housing, Communities and Local Government Committee (HCLGC) inquiry: The future of the planning system in England¹³;
5. IEMA response (April 2022) to Defra's Environmental Impact Assessment (EIA) Regulations: Post Implementation Review- Impact Evaluation Survey;
6. IEMA response (May 2022) to Defra's Nature Recovery Green Paper; and
7. IEMA response (July 2022) to the Public Bill Committee: Levelling Up & Regeneration Bill (LURB).

We also wanted to take the opportunity to reiterate the key recommendations from some of our previous responses to the proposed planning and environmental assessment reforms:

¹⁰ Proportionate EIA – A Collaborate Strategy For Enhancing UK Environmental Impact Assessment Practice, IEMA 2017 <https://www.iema.net/resources/reading-room/2017/07/18/delivering-proportionate-eia>.

¹¹ See IEMA's paper on Levelling Up EIA to Build Back Better ([bit.ly/34Hfikt](https://www.iema.net/resources/reading-room/2020/09/01/levelling-up-eia-to-build-back-better)).

¹² See IEMA's formal response to the MHCLG consultation here ([bit.ly/34Hfikt](https://www.iema.net/resources/reading-room/2020/10/01/iema-response-to-mhclg-consultation)).

¹³ See IEMA's written evidence to HCLGC here <https://committees.parliament.uk/writtenevidence/23564/html/>.

IEMA RESPONSE (JULY 2022) TO THE PUBLIC BILL COMMITTEE: LEVELLING UP & REGENERATION BILL (LURB).

The following recommendations were made in the IEMA response to the Public Bill Committee on the Levelling Up & Regeneration Bill:

1. **Enhancing People** So that those involved in Impact Assessment (IA) have the skills, knowledge and confidence to avoid an overly precautionary approach.
2. **Sharing Responsibility** Recognising that disproportionate IA is driven by many factors and that enabling proportionate assessment will require collaborative actions that work towards a shared goal
3. **Governance on ‘scoping’ non-EIA development** Provide new requirements and standards on how the need for reporting is scoped for projects which are not EIA development – i.e. the 99.8% of planning applications.¹⁴
4. **Appraise the role of a national IA unit** Create a National Environmental Assessment Unit/Centre of Excellence:
 - Direction and leadership of EIA and SEA and independent voice;
 - Ownership and maintenance of guidance working with the established content, tone and breadth of the Planning Practice Guidance (PPG);
 - Generation, maintenance and ownership of national IA data;
 - Ownership and maintenance of IA case law database;
 - Coordination of IA skills, training, research and funding (and links to institutions/academia/education) and monitoring feedback;
 - Regulator of competent training; and
 - Driver of requirements for competent professionals in EIA and SEA.
5. **Competence in EIA and SEA** Acknowledge IA as a specialist area of expertise, one that requires competent experts to lead assessments and prepare reports and recognises their role in underpinning the decision-making process. This may include a decision on shared technical capacity across determining authorities so that the value of skills development and training is realised.
6. **Adopt a Tiered Assessment Regime** There should be a new tiered assessment regime, where the level of assessment relates to the complexity of the development and environment. The level of assessment will ideally be determined/informed at the national plan/programme level to provide certainty for developers – it is likely that relatively few

¹⁴ Based on 432,200 planning applications in England in 2019 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875032/Planning_Application_Statistics_October_to_December_2019.pdf) compared to IEMA estimates of annual UK ES submissions ranging between 600 to 900 gives a conservative total of 0.2%.

developments will require an upper tier assessment, the majority of projects will be at the lowest tier.

7. **Embed the Mitigation Hierarchy** There should be a requirement to demonstrate that the 'Mitigation Hierarchy' has been applied from the concept level and then throughout design and implementation, with strong incentives and penalties for failing to avoid and prevent impacts, rather than an over-reliance on often ineffective mitigation and compensation.
8. **Promote Evidence-based Practice** The UK (and/or England) should develop a systematic national evidence programme and central repository (online)¹⁵ with institutional governance and appropriate funding. This would, over time, correct many of the criticised aspects of EIA and SEA practice (scoping, screening, proportionality, costs, accuracy, environmental and social outcomes).
9. **Mandate the use of Competent Experts** IA should be a process that is transparent, independent and distanced from politics, prepared by and used by qualified and experienced professionals. The government should consider adopting standards (such as the IEMA EIA Quality Mark and EIA Practitioner Register) in Central and Local government procurement for EIA services to ensure the use of recognised 'Competent Experts'.
10. **Support an Integrated Assessment of Effects** As one of the few truly integrated assessment tools in the design process (of plans and projects) SEA and EIA, when implemented early and properly by 'Competent Experts', can reduce costs, speed up implementation, build stakeholder and public consensus, and crucially, avoid and minimise unnecessary and undesirable environmental and social impacts. On this basis, it is recommended that some form of integrated environmental assessment is undertaken for all projects and plans, scaled to the appropriate level, and proportionate to the potential effects of the proposal.

11. Improve Public Participation and Stakeholder

Public Participation: Public participation is currently low, mainly due to barriers (often unintentional) to many sections of society from engaging with the current planning and policy system. At present EIA is one of the few parts of the process that offers an opportunity for public participation, however this is highly variable between projects. Any reform should look to widening and enabling greater public participation in line with legal and policy requirements such as the Aarhus Convention.

Accessibility and Transparency: IA reporting and consultation should be transparent both in outcomes and simple language that are accessible to all (both in terms of relevance and terminology). Modern technology, and in particular, information technology and digital innovations have created multiple new techniques for aiding public participation and engagement. These tools need to be better harnessed to provide more accessible, transparent,

¹⁵ See "Industry Evidence Programme Offshore Wind Farms - Pilot Industry Evidence Base" June 2018 (IEMA, TCE & RHDHV).

and timely information to a greater range of affected communities (and diverse groups within communities) and stakeholders.

12. Promote Better Informed Decisions Recommendation on governance infrastructure to lead to better informed decisions:

- Creation of a National Environmental Assessment Unit and a National Regulator (role outlined below);
- A new, single set of EIA Regulations (with sector specific annexes if required);
- The development of a tiered approach to EIA and SEA;
- Central online platform for data and decisions; and
- Creation of a national repository of environmental assessment evidence.

13. Improving Scoping To generate a more consistently focused approach to this critical activity throughout the IA process

14. Embracing Innovation and Digital Modernising IA to deliver effective and efficient assessment and reporting that adds value to projects/plans and their interaction with the environment. Priorities should include a national impact assessment data hub, digital submissions and improved use of interactive mapping to provide clarity on whom or what is impacted.

15. Publish clear requirements and standards for EIA and SEA Convene a working group to define existing good practice to develop an agreed set of enhanced and simplified requirements and standards and would give practitioners and decision makers the evidence to substantiate the approaches taken and decisions made.

16. Ensure EMPs are central to the EIA process and provide certainty on implementation Environmental Management Plans (EMPs) should become a validation requirement of any EIA containing all design and mitigation requirements. The EMP can then be monitored through construction to ensure implementation/deliver post consent monitoring and evolve to provide the structure and control mechanisms of an operational Environmental Management System (EMS).

17. Adopt Receptor-led Assessment

Environmental: Consideration of environmental receptors needs to move beyond the narrow consideration of protected sites and protected species to assess the impact of the proposals on both the biotic and abiotic elements of the affected ecosystems to ensure any impacts to the functioning of ecosystem as well as individual habitats and species are safeguarded. In terms of net environmental gain, reversing biodiversity loss and declining species diversity, richness, and abundance, the focus should be on a proposal's contribution to (and compatibility with) an ecosystem restoration and recovery programme with the aim of maintaining functioning bioregions.

Social: The advantages of changing to a receptor led structure would be that stakeholders, residents and the public with a broader interest in the impacts of a project can more easily access a holistic view of the impacts on a receptor, such as their community or home rather than for example, air quality and noise considered in isolation.

18. **Renewed Focus on Monitoring and Management** Recommendations for Evidence-based Environmental Monitoring and Management:

- Consider a requirement for an Environmental Assessment Coordinator to be appointed at the earliest phase of design akin to the former role of the CDM coordinator for health and safety matters.
- Consider the use of independent Environmental Clerks of Works who report directly to the local authority on implementation of environmental outcomes during construction.
- Major refocus across the post-consent regime on monitoring and adaptive management;
- Renewed focus on gathering evidence and recycling the evidence to inform revisions/updates and subsequent proposals; and
- Mandate Environmental Management Plans (EMPs) – to capture and condition all mitigations and monitoring.

19. **Measure Sustainable Development and Environmental Net Gain**

Sustainable Development: In order to measure achievement, compliance and contribution against the overarching aim of the NPPF and SDGs some measure or other method of incorporating sustainable development should be included explicitly into the practice of EIA and SEA.

Environmental Net Gain: Net gain principles should be a requirement of all developments above a certain threshold (except for example very minor works), encompassing non-EIA development to NSIPs, but scaled appropriately to the impacts of the development. This should not be limited to biodiversity net gain but could include social value or other environmental and climate related metrics.

IEMA 'LEVELLING UP EIA TO BUILD BACK BETTER' REPORT (SEPTEMBER 2020) & IEMA RESPONSE (OCTOBER 2020) TO THE MINISTRY OF HOUSING, COMMUNITIES & LOCAL GOVERNMENT (MHCLG) CONSULTATION ON 'PLANNING FOR THE FUTURE';

In response to the white paper published by the Ministry of Housing Community & Local Government, title 'Planning for the future' in August, 2020, IEMA produced a number of recommendations. A summary of which is provided below.

The UK needs is renew the role of EIA in the context of the need to build back better to tackle current economic and societal challenges and set the tone for the wider planning system taking responsibility for good design and sustainable outcomes. EIA reform represents an opportunity to remove causes of unnecessary cost and delay. These and other weaknesses in some current practice stem from a lack of clear requirements and standards as part of, or in support of, any regulatory

framework. IEMA reported some of the above (and other) weaknesses cohesively in 2011¹⁶ and has consistently been providing forward thinking, good practice advice on improving quality¹⁷, delivering proportionality¹⁸ and responding to the need for digitalisation¹⁹. Delay (and cost) could be rectified with new UK requirements and standards on EIA, mandating good practice. This would reduce uncertainty which is often the cause for disproportionate assessment as an attempt to avoid perceived risks of challenge.

The following are considered priorities:

- **Governance on ‘scoping’ non-EIA development:** Provide new requirements and standards on how the need for reporting is scoped for projects which are not EIA development – the 99.9% of planning applications. As part of this, a consistent mechanism should be defined to ensure the requirements and mitigation of the project are implemented – this could be a through the use of an Environmental Management Plan (EMP).
- **Publish clear requirements and standards for EIA:** Convene a working group to define existing good practice which will deliver the key themes outlined in the August White Paper. This should include re-defining EIA as a design tool for plan making and design coding; a delivery mechanism for net gain; and delivery of effective scoping. This would lead to an agreed set of enhanced and simplified requirements and standards and would give practitioners and decision makers the evidence behind approaches taken and decisions made.
- **Ensure EMPs are central to the EIA process and provides certainty on implementation:** EMPs becomes a validation requirement of any EIA and this singularly houses all design and mitigation requirements – delivering quality design. This can then become a single plan which can be monitored to ensure implementation/deliver post consent monitoring and evolve to provide the structure and control mechanisms of further plans (e.g. construction environmental management plans). There needs to be a re-focus on capturing data on the implementation and effectiveness of mitigation through monitoring.
- **Appraise the role of a national EIA unit:** Revisit previous consideration of a national EIA unit to deliver a uniform approach in determining the requirement for EIA and to develop (or commission) a proportionate evidence base to support screening and scoping decisions. This would reduce uncertainty in the current PPG, provide early certainty to developers, reduce timescales and reduce the risk of successful legal challenge²⁰. This could be explored as part

¹⁶ IEMA, Special Report – The State of Environmental Impact Assessment Practice in the UK, 2011.

¹⁷ Including but not limited to: IEMA, Environmental Impact Assessment Guide to Shaping Quality Development, November, 2015; and IEMA, Environmental Impact Assessment Guide to Delivering Quality Development, July, 2016.

¹⁸ Including but not limited to IEMA, Delivering Proportionate EIA – A Collaborate Strategy For Enhancing UK Environmental Impact Assessment Practice.

¹⁹ IEMA, Digital Impact Assessment – A Primer for Embracing Innovation and Digital Working, March, 2020.

²⁰ Screening remains a key target for current legal challenge as emphasised by a recent flurry of cases in 2020.

of any evolving role of the Planning Inspectorate and would help to deliver a consistent and proportionate approach to screening and scoping.

- **Embrace innovation and digital EIA:** Define the steps that will be implemented and when (acknowledging that some of them will be required to be up and running prior to implementation of reform). Priorities should include a national data hub (both for primary data and EIAs), a permanent move to digital submissions and improved use of interactive mapping to provide clarity on whom or what is impacted. Any national data hub needs to deliver better accessibility and can also be used to share industry intelligence.²¹
- **Competence in EIA:** Acknowledge EIA as a specialist area of expertise, one that requires competent experts to lead and prepare and competent experts to use the tool correctly in the decision-making process. This may include a decision on shared technical capacity across determining authorities so that the value of training is realised (unless the benefits of a National Environmental Assessment Unit resolve this need).

FROM THE PROPORTIONATE EIA STRATEGY 2017

The below is a brief summary of some of the key findings of the Strategy. The Strategy sets out more detail on each of the challenges, recommend responses, and examples of existing initiatives for each of the four recommendations.

Enhancing People: There is a notable absence of EIA and SEA professionals, or professionals with competent experience in EIA and SEA, within statutory consultees, local government and regulators. Stakeholder feedback from these organisations have referenced staff cuts over more than a decade as a principal cause of lack of experience. Therefore, the expertise provided by EIA and SEA professionals working as consultants is undermined by a lack of knowledge, experience and understanding within the stakeholders and authorities, leading to delays, unnecessary requirements and costs. Funding for dedicated EIA and SEA roles within key public organisations and institutions, along with EIA training for existing staff, would make a genuine difference to EIA and SEA practice, reducing timeframes and improving outcomes.

Improving Scoping: Evidence-based scoping to reduce topics and effects for consideration within the EIA and SEA is a critical area of improvement. Lack of proportionate scoping is normally as result of the absence of available evidence and compounded by the earlier point made concerning a lack of professional expertise. In the absence of a robust evidence base concerning the potential effects of certain types of development, and lacking professional confidence and competence to make judgements based on professional experience, stakeholders and authorities can require unrealistic amounts of information in order to scope out issues during the scoping process. This information is not available for two reasons. Firstly, there is no UK wide or industry specific evidence programme

²¹ A priority will be the documentation of commonly occurring impacts that we have a high confidence in being able to mitigate. This will further influence the proportionality agenda.

that collates, analyses and publishes evidence on EIA or SEA. Secondly, the scoping process has traditionally been completed at an early stage in the EIA and SEA process and therefore often precedes any substantial primary data collection. Good practice is to delay the scoping until after initial consultation, initial baseline information and preliminary designs have advanced sufficiently to provide sufficient evidence to justify a reduced scope. However, this is often not achieved in practice.

IEMA has been working in recent years with The Crown Estate to develop a pilot Industry Evidence Programme²² for the Offshore Wind Sector, most recently in the development of the Offshore Wind Evidence and Knowledge Hub (OWEKH)²³ which seeks to address scoping through the collation of an industry evidence base to inform scoping of future projects to be more proportionate in scope. This project is scheduled to produce a working Offshore Wind Evidence Hub in late 2023/early 2024 and is currently being progressed by The Crown Estate in partnership with IEMA.

Sharing Responsibility: IEMA recognises that disproportionate EIA and SEA is driven by many factors and that enabling proportionate assessment will require collaborative actions that work towards a shared goal. Disproportionate assessment is a long-term systemic problem, which cannot be resolved by the actions of any individual stakeholder group within the UK's EIA and SEA community. Broad engagement across the EIA and SEA community is needed to bring stakeholders together to define both the individual and collaborative actions necessary to create a coordinated action plan for proportionate assessment.

Embracing Innovation and Digital: Modernising EIA and SEA will deliver effective and efficient assessment and reporting that adds value to projects and their interaction with the environment. UK EIA and SEA is a mature process set within a series of well-established consenting regimes that emphasise robust evidence-based decision-making, a consequence of which is a general inertia towards novel and new approaches. Since publishing the Strategy, IEMA created a digital working group to take forward this area of practice and in 2020 published a Primer on Digital Impact Assessment²⁴ and an Impact Assessment Outlook Journal on Digital Impact Assessment in Practice²⁵, providing examples and case studies of digital IA innovations by IEMA members and EIA Quality Mark organisations. The adoption of digital and paper-less submissions and virtual consultations has been accelerated by recent amendments to mitigate the Covid Pandemic. IEMA recommends that some of these temporary measures are considered further to become permanent changes, such as the removal of the need to provide hard copies of documents.

²² Industry Evidence Programme Offshore Wind Farms - Pilot Industry Evidence Base June 2018 IEMA TCE RHDHV.

²³ <https://www.thecrownestate.co.uk/en-gb/media-and-insights/news/2022-offshore-wind-evidence-knowledge-hub-enters-discovery-phase-on-road-to-streamlining-consenting-process-through-data/>.

²⁴ IEMA, Digital Impact Assessment – A Primer for Embracing Innovation and Digital Working, March, 2020.

²⁵ IEMA, Impact Assessment Outlook Journal Vol. 6 Digital IA in Practice, May, 2020.

FURTHER INFORMATION

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