



## **Institute of Environmental Management and Assessment**

### **Ireland - UK Branch of the International Association for Impact Assessment**

#### **Response to Consultation on:**

#### **Barker Review of Land Use Planning**

**Preamble:** (not included in Response): This is the joint response from the IEMA and Ireland-UK Branch of IAIA to the Barker Review of Land Use Planning in England (Final Report - Recommendations, December 2006) published by Her Majesty's Treasury. The Chancellor and the Deputy Prime Minister commissioned this review of the planning system in England in December 2005, to consider how, in the context of globalisation, and building on the reforms already put in place in England, planning policy and procedures can better deliver economic growth and prosperity alongside other sustainable development goals. The Barker Review can be found at [http://www.hm-treasury.gov.uk/independent\\_reviews/barker\\_review\\_land\\_use\\_planning/barkerreview\\_land\\_use\\_planning\\_index.cfm](http://www.hm-treasury.gov.uk/independent_reviews/barker_review_land_use_planning/barkerreview_land_use_planning_index.cfm)

#### ***Introduction***

The Institute of Environmental Management & Assessment (IEMA) and the Ireland-UK Branch of the International Association for Impact Assessment (IAIA) welcome the opportunity to comment on the Barker Review of Land Use Planning.

As an organisation that promotes the goal of sustainable development, that represents over 10,000 environmental professionals and that has particular expertise in Environmental Impact Assessment and Strategic Environmental Assessment, the IEMA consider that it is important to respond to the content of the 'Barker Review'. The planning system plays an important role in delivering the sustainable development agenda within the UK. Experience across the decades has demonstrated that the planning system can be an agent of environmental, social and economic good, but also harm. Changes to the land use planning system that promote efficiency are supported by the IEMA, but with the exception of those proposals that we consider to be high risk with regard to the delivery of sustainable development. A significant proportion of the IEMA's membership work within businesses and we therefore recognise and have to deal with the challenges of meeting business and sustainable development requirements on a day to day basis.

The International Association for Impact Assessment (IAIA) was established in 1980 and brings together researchers, practitioners, and users of various types of impact assessment from all parts of the world. IAIA involves people from many disciplines and professions, including corporate and public sector planners and managers, private consultants and policy analysts, university and college lecturers, researchers and students. IAIA is the leading global authority on best practice in the use of impact assessment for informed decision-making regarding policies, programmes, plans and projects. IAIA believes the assessment of the environmental, social, economic, cultural and health implications for proposals to be a critical contribution to sound decision-making, and to equitable and sustainable development. IAIA members now number more than 2,500 and represent more than 120 countries. The Ireland - UK Branch of the IAIA was established in 2005 to further promote good practice in the impact assessment community and better represent the interests of IAIA members in Ireland and the UK.

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

Our response to the Barker Review is provided in two sections:

- The first part provides an overview of the content of the Review and addresses the terms of reference and the general approach. Evidence to support the arguments made in this section can be found in Part 2.
- The second part considers specific content within the review. Silence on a particular topic or proposal should not be regarded as support or opposition to it.

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

## ***1. Comments on the general approach to the review***

### **The timing of the review**

The Review identifies that it is being undertaken in less than two years since the passing of the Planning and Compulsory Purchase Act 2004. This constituted a major change to the land use planning system and placed significant burdens upon local planning authorities, not only in terms of producing the Local Development Frameworks, but in complying with new requirements, such as Sustainability Appraisal (SA) incorporating Strategic Environmental Assessment (SEA). Given this context, and faced with the prospect of legal challenge should they not comply with the process, it is inevitable that local planning authorities have concentrated on compliance with their obligations under the Act. This problem is highlighted in the Review (para. 4.17) and changes to the planning system are proposed to address this. However, given the small amount of time since the passing of the Act, it would have seemed appropriate for the Review to have considered whether current difficulties are inherent in the system or associated with 'bedding in'. Interestingly, changes to other elements of the planning system are rejected on the basis that they have only recently been changed (e.g. the Use Classes Order).

### **The terms of reference for the review**

The Government's objectives for the planning system are set out in Planning Policy Statement 1 (PPS 1). The objectives emphasise the role of planning in supporting and developing the economic, social and environmental context in which people live. Sustainable development is identified as the "core principle underpinning planning". Given this context it is disappointing that the Review has been undertaken from a mainly economic perspective that pays relatively little attention to the wider sustainable development objectives of the planning system. This approach appears to be inconsistent with the government strategy on sustainable development (2005) and out of step with the Stern Report (also to the Treasury) that demonstrates the critical importance of considering the environmental implications of economic decisions.

### **Evidence providing the basis for the review**

The Review is based on the premise that economic considerations are not given adequate weight within the current planning system (e.g. 1.3). Some evidence from trade associations or industry groups is presented, but whilst strong arguments can be made for improving the efficiency and speed of the planning process, we consider that the contention that economic considerations are not given adequate consideration remains unproven.

### **The level of understanding of existing approaches**

In order to reform the planning system (or any system) it is appropriate to first understand the reasons for the development of the existing approaches. The review follows this approach when addressing green belt policy, but it is lacking when considering certain other aspects of the planning system. We would ask that particular attention is given to the comments below on Environmental Impact Assessment (EIA).

### **Impact of the proposals**

For some of the recommendations of the Review, it appears that unintended effects may arise which should be considered. For example, the recommendation to reduce (and the

stated desire to eliminate) the role of EIA in managing development could adversely affect the global position and future growth of the UK's environmental consultancy market, estimated by the DTI (November 2006) to be worth £1.23 billion in 2005 (with the EIA sector the second largest field within this). Reducing EIA activity in England could reduce the ability of UK-based EIA consultancies to compete and undertake work at home and abroad, if there is a reduction in EIA experience, skills and training at home..

## ***2. Comments on specific content***

This section is presented in three themes:

- Consideration of Sustainable development
- Sustainability Appraisal/Strategic Environmental Assessment
- Environmental Impact Assessment

### **2.1 Consideration of Sustainable Development**

<b>Reference</b>	<b>Comments</b>
1.7	The implication that the maintenance of high levels of economic growth should take precedence over social and environmental sustainability demonstrates the lack of full consideration given by the Review to sustainable development. There are, of course, significant questions as to whether a high level of economic growth is likely to be sustainable in terms of the use of resources and the protection of the environment, but such issues are given little consideration.
1.12	We support the assertion that decision-makers should continue to assess the likely environmental, social and economic impacts of development, and that it is not appropriate to allow development to proceed when there are good reasons for considering that the environmental and social costs outweigh the benefits. The practice of impact assessment is therefore indirectly acknowledged in the Review to be vital to decision-making by providing the necessary evidence to assess and evaluate the costs (which arise from impacts) and benefits of a development.  It is disappointing that comments on EIA in section 4 of the Review are at odds with these accepted principles.
1.14	The example of new development providing environmental benefits, cited, to support Recommendation 2, should be clarified. A new development with low average energy consumption would not reduce energy consumption (and carbon emissions) unless it was replacing a less energy efficient building, and manufacture and construction was also taken into account.
1.25	Given some estimates of the level of reductions in carbon emissions required, it is likely that all pricing and policy measures available should be deployed to encourage reductions. The representation of an 'either/or'

choice may therefore not be appropriate.

- 1.27 This paragraph appears to be promoting policies that may result in traffic growth, congestion and carbon emissions, which is not likely to be consistent with sustainable development goals.
- 1.28 Adaptation for climate change is addressed with reference to policies and initiatives associated with the Environment Agency and the Secretary of State for Communities and Local Government. Conflicts between development and adaptation to climate change remain a problem and the Review could have provided an opportunity for emphasising the need for development to address these problems. It is notable that the recommendations for this section are silent on any issues relating to climate change adaptation.
- 1.29 For the example given, as the sites and species designated under the terms of the Habitats Directive represent critical natural capital at a European level, the implication that the Thames Basin Heaths have been over-protected from development should be further justified. Development that significantly affects habitats and species within a European site would not be consistent with the approach of promoting sustainable development goals which include the conservation and enhancement of biodiversity.
- 1.31 The report contends that it is not the role of the local authority to consider the need for a proposal, and that the investment decision of the business is a sufficient determination of need. However, the need for a development can be highly relevant to decision-making as it relates to the benefits of the development and the alternatives available. Alternatives can be material considerations to decision-making if the impacts are likely to be significant (and for EIA developments, reported in the Environmental Statement). Need can also define impacts, e.g. whether a retail development would impact on an existing town centre. Assessing need, and the alternative approaches to meeting it can also bring financial benefits to the developer, such as in the Billund airport case.

Recommendation 5 The Review recommends that transposition of European legislation should use existing regulatory mechanisms. This is potentially misguided as, for example, it can be argued that EIA Regulations are overly complex as a result of being 'bolted on' to existing regulatory systems.

- 1.52 The Review proposes that Regional Spatial Strategies should have regard to the Regional Economic Strategy. This alignment of regional policies makes sense to ensure that economic development priorities are taken account of in planning. However, the converse relationship should also exist, which would reduce the risk of the RES including policies that are contrary to other sustainable development goals.

Recommendation 6 The Review recommends that local landscape designations are abandoned given that a national network of designations exists. However, existing Government guidance in PPS7 only allows local landscape designations to

be maintained after strict tests are applied.

3.9 and Recommendation 10 The Review lists a number of issues that will need to be considered prior to the implementation of a more strategic planning approach to the delivery of major projects. One of the items listed is the extent to which the recommended national Statements of Strategic Objectives (SSOs) would require Strategic Environmental Assessment. The Review does acknowledge that SSOs would need to assess environmental, economic and social effects of different options being considered.

The legalities of whether an SEA should be required under the Directive and implementing Regulations would depend on the procedures involved in preparing the SSOs and their role in setting the policy framework for the approval of major developments likely to lead to significant environmental effects. If this recommendation is adopted by Government, we would strongly encourage formal SEA to be undertaken for such statements, as there are benefits of taking account of environmental effects of major development at the earliest stage. Consistency with sustainable development goals and compliance with good governance should dictate that SEA would be undertaken. This approach was taken to decisions on licensing blocks for oil and gas development prior to the implementation of the SEA Directive.

3.11, 4.19-20 The Review correctly identifies the need for public consultation during any strategic planning process, and later discusses the problems encountered in community consultation on plan-making, and 'consultation fatigue'. One risk is that a more strategic planning process may fail to reduce local objections if the local community receiving the development feels disenfranchised by the national process. Due to the potential problems in effectively consulting and engaging local communities on national policies which may have significant local implications, this issue warrants further research into the ways of resolving such problems.

3.12 and Recommendation 10, The Review strongly recommends the introduction of an independent Planning Commission to determine applications for major infrastructure, in place of local planning authorities and Government Ministers. This body, should it be pursued, would need to include a high level of EIA expertise, in order to competently assess the environmental effects of major infrastructure proposals. We would recommend staff are obtained who have IEMA's Registered and Principal EIA Practitioner status, as these provide a recognised measure of professional standards for EIA professionals. IAIA's Guidelines for Lead IA Professionals also provides relevant guidance.

5.16/17 We support the call to encourage more pre-application discussions between developers and local planning authorities, particularly when this is related to the scoping and assessment of environmental impacts. There are real benefits in developers undertaking formal scoping with local authorities and stakeholders, as discussed further in relation to comments on EIA.

5.33 We support the case for improving the training of local planning authority officers and councillors, and we would also emphasise the need to include training in both EIA and SEA good practice. In particular, training aimed at encouraging EIA Scoping Opinions to focus on the key likely significant environmental impacts of importance to decision-making, should improve the EIA process and lead to more succinct reporting in Environmental Statements. There are several high quality training courses available to planners, which could be utilised more widely.

7.3 Chapter 7 of the Review sets out the case for incentives to be provided for the planning system to support economic growth “to ensure that they strike the right balance between economic development and environmental and social objectives”. We have already argued that the case that the correct balance is not being struck by the present system is not proven. Indeed, it would be possible to argue that the system is still not adequately addressing sustainable development requirements (e.g. housing construction in the south east of England and its implications for water resources and construction in the floodplain).

Whilst development can bring significant economic benefits, the Review's case is not helped by misrepresenting the adverse social and environmental effects as being short term and insignificant.

7.4 The Review argues that local planning authorities should be allowed to financially benefit from development, other than covering their costs of processing an application as currently happens with application fees. The risks of such a proposal, and the consistency with sustainable development goals should be carefully considered before implementation, as there is some potential for local authorities to benefit from granting permission for development that will result in significant adverse environmental and social effects.

7.19 We strongly oppose the encouragement of payments, particularly to individuals, to reduce opposition to development proposals. The difference between good-will payments and bribery is not clear here.

## **2.2 Sustainability Appraisal / Strategic Environmental Assessment:**

### **Reference**

### **Comment**

4.21 The Review recommends streamlining Sustainability Appraisal requirements. The value that the appraisal adds to the process is questioned and it is suggested that it is often a 'tick box' exercise. However, the current situation should not be considered to be representative of the process per se. The following points should be noted:

- It is too early to reach any conclusions about the effectiveness of the Sustainability Appraisal process as authorities are likely to be concerned with avoiding legal challenge and satisfying tests of soundness, and this can result in some authorities taking the

approach to sustainability appraisal that is outlined in the Review.

- SA/SEA undertaken in accordance with current good practice guidance should not create additional options to consult on, as it should only assess the reasonable alternatives available to the plan proposals.
- SA/SEA undertaken in accordance with guidance should be carried out alongside plan-making, and avoid becoming a 'tick-box' exercise at the end of the process.
- Anecdotal evidence indicates that where local authorities have attempted to be innovative with the sustainability appraisal process in order to add more value, they have been steered by their regional government office to complying with the approach set out in guidance.
- There are increasing numbers of good practice examples of SA/SEAs which have added value to the plan under assessment in terms of improving the likely effects of development on the environment and towards sustainable development goals. We would anticipate that as experience grows the value added by the process will also develop.
- The Review's recommendation to remove the Issues and Options stage from SA is now out of date. Although the initial draft SA guidance from ODPM in 2004 included for this stage, subsequent draft and final guidance in 2005 removed that requirement.

In relation to the recommendation to remove the requirement for SA of SPDs, we support the call for SA to be proportionate to the likely significance of effects. However, in order to comply with the SEA Directive, SPDs would still need to be 'screened' to ensure that no significant effects escape assessment. Articles 4 and 5 of the SEA Directive allow for the scope of the SEA to be limited in order to avoid duplication. Therefore, legislation already provides the means to avoid duplication, to allow for appraisals to focus on residual issues that are not adequately addressed at more strategic levels.

We therefore consider that the reforms called for by the Review, to streamline the SA/SEA process, are already largely implemented in existing legislation and guidance. It is more likely that a fear of legal challenge and inexperience in the process are the main causes of the Review's concerns. As experience and confidence is gained with the process, practice should significantly improve. Increased training and support for LPA officers implementing the system would help. Guidance aimed at developing and promoting good practice will also need to develop further, which IEMA and the IAIA Branch are keen to assist with. The benefits of good practice SA/SEA in delivering more sustainable plan-making should not be overlooked.



## 2.3 Environmental Impact Assessment

### Reference

### Comment

4.36-37 It is most disappointing that the Review is neither well researched nor balanced in its criticism of the procedure and practice of EIA. The value of EIA in aiding sound decision-making by planning authorities and Government, in informing and involving communities, and in helping developers improve the coordination, quality, environmental impacts and acceptability of their proposals, appears to have been ignored.

EIA has been adopted by Governments worldwide and lending institutions such as the World Bank since 1969, in order to properly assess and take account of the environmental effects of developments prior to their approval and implementation. Research by the EU, UK Government and various international studies (including by the IAIA), and the experience of the IEMA and its predecessors, shows that EIA is an effective tool for further sustainable development goals.

The Review shows little understanding of why the process was introduced (other than a European Directive requirement) or of the extent to which environmental implications were considered by the planning system (and other consent systems) prior to the existence of EIA. The EIA Directive was actually promoted in the 1980s by the Trade Department to the European Commission to ensure that a level playing prevailed in the competitive conditions of the Common Market, in addition to environmental objectives.

We discuss below a number of inaccuracies and misunderstandings contained within the Review that should not remain unchallenged, and then discuss potential alternative solutions to the perceived problems highlighted:

- The Review describes the EIA process as a parallel system (the term Environmental Assessment was replaced by Environmental Impact Assessment in the 1999 regulations). However, it is more accurate to describe it as providing supplementary information. There is little or no duplication.
- The Review claims that information contained in the planning system would make it quite clear what the environmental impact of the proposal is likely to be:
  - It is the main purpose of EIA to provide this information. How this information would be gathered in the absence of an EIA is not made clear in the Review.
  - Common practice would appear to be for separate reports to be prepared on the environmental conditions of a development site, under planning guidance and other legislation. However, such reports do not necessarily clearly report the impacts of the development. EIA does not simply provide information but provides a systematic process of assessment, using available evidence, sound science and expert opinion, with iteration into

project planning and design, to identify and improve the environmental impacts of development. It is a useful coordinating framework for reporting impacts in one accessible document, and requires a summary in non-technical language, which would otherwise often be absent, to aid community and stakeholder consultation.

- EIA was introduced because, in its absence, development decision making processes demonstrably did not take adequate account of the significant environmental impacts of development proposals.
- The Review fails to clarify how the removal of the EIA process would maintain consistency with sustainable development goals.
- Data provided as to the cost and time taken to undertake EIA are misleading: Accurate data is difficult to gather, but recent information from one leading consultancy indicated that 50% fall into the range of £20,000-35,000. So, while it is accurate to identify that some EIAs can cost in excess of £100,000 these are rare and tend to relate to very major proposals likely to result in significant environmental effects. Surveys during the 1990s in the UK, across Europe, in the USA and undertaken by the World Bank found that the cost of an EIA, on average, amounts to up to 0.5% of the capital cost of a project. The likely effect on the competitiveness of developers is therefore likely to be minimal. There is no reason to think that the proportional costs of EIA have risen since the 1990s. Anecdotal evidence from consultancies indicates that they will have reduced as practitioners have a greater understanding of the process and of the methods and techniques to apply for any given situation.
- The Review implies that the time taken to undertake EIA is a major delaying factor in bringing forward development proposals. No evidence is presented to support this opinion. There are further points that should be considered:
  - EIA is not a significant delaying factor for those developers that use the process to develop a more environmentally acceptable proposal. The EIA process should start early and runs in conjunction with other project planning processes (feasibility studies, location searches, project design, consultation). Research conducted in 1996 for the European Commission examined the evidence for EIA being a delaying factor in bringing forward development and found that this only occurred where there was insufficient information on the environmental effects of a project for a decision to be taken.
  - No consideration of the cost of an EIA should be undertaken without considering the savings and benefits that are achieved as a result of the process. These include savings made by not developing project proposals in detail that would prove to be environmentally unacceptable.

The costs of an EIA are not significant when compared to the cost of a public inquiry, and there are examples of good practice EIA

being used to address the concerns of stakeholders to the extent that a public inquiry has been avoided.

- Finally, the costs to the environment and the achievement of sustainable development need to be considered in the absence of a process of considering the environmental effects of decision before they are taken.
- The Review recognises that EIA is required as a result of European legislation and therefore scope for eliminating or reducing its role is limited. Recommendation 17 states that the thresholds that trigger EIA should be re-examined in the light of the costs of the process. It should also be noted that any revision to triggers for EIA should be based on potential environmental effects rather than financial savings. The European Court of Justice judgements in this field would indicate that the latter approach is likely to be successfully challenged.
- The Review does not distinguish between the different types of thresholds that exist. Thresholds for Annex 1 / Schedule 1 developments are established in the EIA Directive for the most major developments that require EIA in every case. Minimum thresholds are set in the EIA Regulations for Schedule 2 developments (the majority of EIA developments), outside defined 'sensitive areas', above which development would require EIA if significant environmental effects are likely. The 'indicative' thresholds and criteria currently set out in Circular 2/99 provide the Government's advice on how local authorities should determine whether significant effects are likely. It is surprising that the Review did not acknowledge that the DCLG have proposed to remove the indicative thresholds in the consultation draft revision of the Circular in 2006.
- Raising minimum thresholds for Schedule 2 developments may have the result that projects likely to have significant environmental effects would not undergo EIA, which could lead to legal challenge in terms of compliance with European law, and would not be likely to further sustainable development goals.
- The draft revised Circular on EIA proposes to remove indicative thresholds due to their apparent misuse by local authorities in allowing developments that fall below indicative thresholds to avoid EIA although significant effects may have been likely. This could lead to an increased number of EIAs being required.
- Contrary to the Review's opinion, there is no clear evidence that local authorities are generally requiring EIAs for developments that do not warrant it (i.e. that are not likely to have significant environmental effects).
  - We agree that it is not efficient for local planning authorities to have to process, or developers to have to provide, excessive paper loads or unnecessary information. Good practice in scoping (see also below) should minimise time and reporting of issues not likely to be significant, although there is still a need to report the absence of a significant effect where it is of benefit to the outcome of the

application. Concise writing and collation of ESs is promoted in guidance, and should avoid ESs being excessively long. We also agree (with other statements in the Review) that all parties should be able to obtain high quality information on the range of issues likely to affect, and be affected by a development. This is what EIA seeks to provide.

EIA can and should be part of any reform of the planning system. However, the contribution of planning system to sustainable development will be sacrificed if its role is diminished. The experience of the IEMA and IAIA Branch is that good practice EIA is rarely successfully challenged and provides many benefits to the developer and community that are both environmental and financial in nature. In order to retain and enhance these advantages and contribute greater efficiencies to the planning process, developers would benefit from an EIA process that provides greater certainty as to the standards required. There are also efficiencies in the EIA process that are achievable, but have been ignored by the Review. We would recommend consideration of the following:

#### Screening research:

We would recommend that the future revision of the Circular 2/99 is based on evidence on the thresholds used by local authorities in EIA screening of schedule 2 developments. This may require additional research to be undertaken.

#### Improved EIA Scoping:

Current practice in EIA can result in the scope of studies being widened to cover a range of impacts, many of which can be identified as not being significant at the start of the process. EIAs that are more focused on the key environmental effects would serve the same purpose in terms of environmental protection and would be more cost effective. Current good practice guidance is clear in encouraging Local Authorities to focus on key significant issues, and 'scope out' issues as well as 'in', but this could be strengthened in future guidance for Local Authorities and stakeholders.

As evident from the recent DCLG research report 'Evidence Review of Scoping in EIA', there is in the majority of cases, a real benefit in the formal Scoping Opinion process, in focussing the scope of the EIA on key issues (reducing unnecessary paperwork), improving the quality of the submitted Environmental Statement (and planning applications), and in reducing calls for further information after submission. We would therefore support guidance that encouraged formal scoping wherever possible, to help EIA be a more efficient process.

There is also an argument for Scoping Opinion to become a mandatory requirement. Currently the formal scoping process is initiated voluntarily by the applicant, and Scoping Opinions are not binding (with the recourse to binding Scoping Directions little used). The Royal Commission on

Environmental Pollution (RCEP)'s 23rd Report on Environmental Planning (2002) previously called for mandatory scoping opinions to prescribe the scope of EIAs after public consultation. Although the Evidence Review of Scoping found that there is not likely to be widespread support from a majority of LPAs and developers for such a change, including due to the perceived need for flexibility and possible increases in resourcing requirements, this is worth considering further.

#### Better training and support for Local Authorities in EIA

We would recommend that improved and structured professional skills training and support in EIA good practice is provided to local authorities, to improve the efficient working of the EIA system.

#### EIA code of conduct

We would recommend the update and recognition of a national Code of Conduct for EIA practitioners, to provide a firm basis for professional standards of working. Both IEMA (who maintain a code of conduct for the EIA Practitioner register) and IAIA (who maintain a code of conduct for members) can advise further on this.

#### A statutory EIA review system

A statutory EIA review system could be established that would minimise the variation in standards in EIA that are accepted by the various local authorities around the country. This would reduce the scope for inadequate EIAs and enhance the potential for achieving the environmental and financial benefits of a good practice approach.

The current EIA system is primarily controlled by local authorities with variable experience of EIA. Those with less experience, or who have a precautionary approach, are concerned to avoid possible legal challenge to their handling of such cases by requiring more information. The involvement of an EIA body, commission, or committee with expertise in EIA could also help establish consistent good practice standards at the scoping stage of EIA and on submission of the ES. Such a body (as exists in the Netherlands) was recommended by RCEP's study on Environmental Planning to provide a more rigorous check on the assessment process, to evaluate ESs and provide good practice guidance. The Government did not progress RCEP's recommendation at the time, but this idea could be reconsidered.