## GOOD PRACTICE ON PROPORTIONALITY

### Introduction

The role and purpose of Environmental Impact Assessment is helpfully crystallised in the Government’s Planning Practice Guidance on EIA. Its aim is simple - to ensure that decision for projects that are likely to have significant effects on the environment are not taken without regard to “a full knowledge of the likely significant effects”.

Equally in the same summary of the purpose of EIA, guidance is clear that: "EIA should not be a barrier to growth". Consequential upon this:

- the scope of assessment should focus on those impacts that are likely to be significant - there is no need to explore other aspects although many find that hard to resist in the interests of averting criticism; and
- "the Environmental Statement should be proportionate and not be any longer than is necessary to assess properly those effects”

### Where Proportionality Can Bite

This best practice note considers two common instances where proportionality can be a point of discussion or contention:

- Prior to consent;
- Following Consent.

#### Prior To Consent

The Environmental Impact Assessment Regulations highlight the issues to be covered in Environmental Statements. The balance of effort and analysis between the potential environmental effects of a project will vary according to the nature of the project, the sensitivity of the location and the nature of the processes. Scoping is intended to assist.

Even so, among projects for development, it is often the case that the most voluminous chapters of the Assessment and that most survey effort is directed at transport issues, archaeology and ecology. Using potential archaeological effects as an example it is possible to draw out some best practice lessons.

On the one hand, consultees (typically the County Archaeologist) will seek to obtain as detailed an understanding as possible of the archaeological potential of project sites. Often, there will be an expectation that applicants should undertake a significant amount of trial trenching before there is prospect of a consent being granted. There is an expectation that such detailed assessments ensure that there are no significant environmental effects of the project.

On the other hand the costs of trial trenching and analysis can run into tens and even hundreds of thousands of pounds - all to be incurred prior to a consent being granted. Such expectations may well become a barrier to growth - as costs have to be managed or proposals not pursued. Even where such detailed work is completed it will rarely be 100% conclusive and it will generally still be the case that an archaeological condition will be applied on a “just in case there is something there” basis.

In terms of best practice the following guidelines for practitioners might be helpful:

- While the effects of a project would normally be identified at outline stage, the planning practice allows for the assessment of such effects post consent (controlled by condition) where “those effects are not identified or identifiable at the time of the principal decision”;

---

IEMA
Transforming the world
to sustainability
• The local planning authority, as decision making body, should broker an appropriate survey effort balancing the views of the specialist archaeological inputs of the parties and having regard to the opportunity to put in place subsequent assessments prior to detailed approvals;
• A key element of this approach may be the preparation of a detailed survey and evaluation and mitigation strategy to be conditioned as part of the consent. All parties should adopt a creative approach in pulling this together as a specific matter that is conditioned.

Following Consent

As noted above, while it may not always be possible to identify all significant environmental effects in proportionate manner prior to taking the in principle decision, where this is possible then this is the approach to take.

In consequence, where it is necessary for Environmental Information to be submitted after outline planning permission has been granted, then this too is to be the subject of the principle of proportionality.

The following best practice guidelines for practitioners - both decision makers and applicants - are offered:

• the guidance suggests that such information is sought only where potential effects of the project were not identified or identifiable at the time of the in principle decision;
• requests for Environmental Information at a subsequent stage of the approval process should not “be used as a general means of gathering environmental information”;

1 Planning Practice Guidance, Para 035.
3 Ibid, para 063