### PRELIMINARY ENVIRONMENTAL INFORMATION FOR APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT UNDER THE PLANNING ACT 2008

The Planning Act 2008 (PA2008) was introduced to “…streamline the decision-making process for nationally significant infrastructure projects, making it [...] faster for communities and developers alike.”

The PA2008, which does not directly apply any EU regulatory provisions, is supported by a suite of secondary legislation. Most importantly, for the purposes of this article, this legislation includes the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, as amended (“the EIA Regulations”), which implement the EIA Directive in relation the making of orders granting development consent (DCO).

For applications under the PA2008, applicants are expected to carry out thorough and effective pre-application consultation with a wide variety of consultees. The EIA Regulations ensure that consultation and publicity requirements imposed by the PA2008 include due consideration of ‘preliminary environmental information’ (PEI).

Whilst effective and appropriate consultation has always formed an intrinsic part of a successful EIA process, the formal introduction of a PEI consultation stage has led to discussions as to exactly what PEI should consist of.

PEI, as defined by the EIA Regulations, is such information as is reasonably required for a reader to assess the environmental effects of a development.

The scope of the information to be provided as PEI is defined, in the Regulations, under the title “Information for Inclusion in Environmental Statements” which has led to the, general, conclusion that a report presenting the PEI (PEIR) should, essentially, take the form of a ‘draft’ Environmental Statement (ES). However, the Department for Communities and Local Government has published ‘Planning Act 2008: guidance on the pre-application process’ (January 2013) which states that this is not, necessarily, expected.

The key issue, given that the purpose of the PEI is to allow for robust and informed consultation, is that the presentation must provide clarity to all consultees.

For example, it is reasonable to assume that a developer could provide a description of a discharge from a power station (be it to air, water, etc.) and that the Environment Agency would be able to look at this description and assess the potential environmental effects. The same assumption cannot be applied to non-specialist readers of the PEI (e.g. members of the general public).

Therefore, there is great benefit for all those involved in the pre-application process (developers and consultees alike) for the PEIR to, at least, resemble the proposed format of the final ES and include the preliminary environmental assessments that have been undertaken at the date of publication. This will assist in guiding non-specialist audiences through the current understanding of the potential impacts of the project and any proposals for mitigation or monitoring considered likely as a result.
The PA2008 places greater emphasis on public consultation than under previous planning regimes for ‘nationally significant infrastructure projects’. Consultation for these purposes includes a duty to take account of any responses to such consultation (which is captured in the Consultation Report).

The timing of the publication of the PEIR is an important topic to consider when considering the pre-application and application timetable for a project. The PEI must allow for the principal aim of consultation (i.e. to allow the design and development of a project to be appropriately influenced) whilst providing sufficient detail to consultees with which to make an informed assessment of the environmental effects of that project.

For example, if a project has been subject to a detailed design phase and that design has subsequently been assessed by a comprehensive EIA process, the content of the PEIR will be very detailed but would not allow the opportunity for the project design to be influenced without significant abortive work.

Similarly, if there is little design at the date of publication, this would represent an opportunity for consultees to influence how the project will be developed but the PEI will be less detailed and may not allow for an informed assessment of its potential environmental effects.

To avoid risk of criticism on the adequacy of consultation, it may be pertinent to agree with the Planning Inspectorate and / or the local authority the level to which the design will have progressed and against which environmental impacts will be assessed by the time the PEIR is published. The agreement of the Statement of Community Consultation would provide the perfect opportunity for such discussions.

Whilst the reasons for differences in the level of design and assessment available at publication of the PEIR will be project-specific, the provisions of the EIA Regulations allow for such an approach. However, it is important to clearly indicate any limitations in the PEI, together with the proposed ‘next steps’ in order to overcome such limitations.

Experience of preparing the PEIR in this way has shown that it also represents a benefit for EIA practitioners. With the final, overall, format of the ES agreed, the ‘next steps’ provide a useful roadmap (for both client and consultant) for the completion of the document, in preparation for the submission of the DCO application.

*Parsons Brinckerhoff, June 2014.*