

Date

20 September 2023

Title

Environmental assessments (EIA, SEA and HRA)

Report Author

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Responsible Executive Director

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Paper for decision**Open in part****Issue**

1. We are seeking the Board's approval of our environmental law report: 'A review of environmental assessment regimes in England'.

Recommendation

2. We recommend that the Board:
 - (a) approves the report in substantially the form at Annex A (with only minor, non-material amendments – see para 10)
 - (b) notes the proposal to send the final report to Defra and DLUHC on or around 17 October and to engage with officials ahead of this, to ensure a no surprises approach
 - (c) notes the proposal to lay the final report in Parliament on 19 October and consequences for communications work in January 2024, and
 - (d) notes the communications plan to accompany report laying and for dissemination of its key messages.
 - (e) notes the limited resource planned for continuing work on this matter
3. We recommend that the Board delegates to the Chief Executive, in consultation with the Chair, approving that the final report has satisfactorily incorporated such non-material amendments as the Board may direct during its meeting.

Background

4. The strategic intent for this project is to:

- (a) improve Parliamentarians' and others' ability to scrutinise new legislative proposals and hold government to account for them
 - (b) influence the implementation of existing law by public authorities and others
 - (c) influence the coherence and substance of new policy and legislation, through the Government's adoption of our conclusions and recommendations, and through any follow-up work we may undertake, and
 - (d) build our reputation and establish our authority by producing a high-quality report, thereby strengthening our ability to exercise influence in future matters.
5. The Board reviewed an advanced draft of a report at its meeting on 5 September. It noted the evidence that underpins that report and provided feedback on the report's overall tone and detail as well as the clarity of its messaging and the suitability of its proposed recommendations.
6. The Board will recall that the report focuses on three fundamental issues, which we argue do not arise from the environmental assessment legislation itself, so much as from how that legislation is implemented in the context of the wider planning system. These fundamental issues concern inadequacies in:
- (a) data accessibility
 - (b) post-decision monitoring, evaluation and reporting, and
 - (c) public authorities' access to necessary expertise.
7. The Board will also recall that, in light of this, our proposed headline message is that:
- legislative reform alone is unlikely to deliver necessary improvements in how environmental assessments operate: Government must also address structural issues within the planning system which affect how these regimes are implemented in practice.***

Analysis

Achieving our strategic intent

8. We judge that laying a report as proposed (Annex A), combined with the dissemination activity planned (Annex E), would meaningfully contribute towards our strategic intent. These steps would:
- (a) highlight to Parliamentarians and others in a formal, statutory report what we identify as the root causes of many issues with environmental assessments, allowing them to better judge Government's proposals for legal reforms
 - (b) through the same means, highlight to Government and other public authorities where they ought to focus their efforts to make improvements regardless of such reforms

- (c) oblige Government to have to consider our findings and publicly respond, thereby further highlighting the issues and potentially leading to Government adopting some or all of our recommendations, and
 - (d) publish new evidence, analysis and insights which, in the circumstances, we judge to be of sufficient quality to further the OEP's reputation and authority.
9. **We therefore recommend the Board approves the report in substantially the form at Annex A.**
10. The Board should note that non-material amendments are outstanding to:
- (a) insert final graphics once these are agreed. We have provided the first draft for the Board's information. These have just been received and have not yet been reviewed by the team
 - (b) check over all our references and tidy up footnotes, and
 - (c) perform a final sweep to ensure correct cross references, check use of acronyms, remove typographical errors and the like.
11. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Incorporating previous Board feedback

12. At its meeting on 5 September, the Board provided feedback on the draft report. We have sought to reflect this feedback in finalising the report at Annex A. Annex C contains a table setting out how we have done so.

Final recommendations

13. We have adjusted the OEP's recommendations following the Board's feedback, with further thought from the project team and after engagement with experts. For ease of reference, we collate the final proposed recommendations at Annex D.
14. The root causes we identify are complex, deep seated and not susceptible to easy fixes. Others have identified similar problems and made recommendations over the years. Yet these problems persist. Our view is that implementing necessary fixes would require long-term commitment and political will. The conditions for this may not currently exist within Government.
15. We are conscious of the limits to our remit and the need not to 'make policy', whilst also not 'carping from the sidelines' by only pointing out problems, not offering solutions.
16. There have also been unavoidable limitations in project delivery during our first year of operations. These concern the time and resources available to the OEP to tackle such a broad and complex topic – particularly when set against needing to report before DLUHC policy-making crystallises. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

17. This has all pointed us towards making recommendations which vary in how far they offer solutions, demand ambition and carry risks. We have only made more stretching recommendations where we are sufficiently confident in our supporting evidence and insights.
18. Consequently, we make two recommendations (1 and 8) which are not solutions in themselves but encouragements to Government to develop its own solutions (via new plans/strategies). We also make two recommendations (3 and 5) for Government to introduce new IT systems (a database and an online map-based portal). We anticipate that these four recommendations would challenge Government to think hard about the fundamental problems, and to make the long-term commitments needed for their resolution.
19. That said, we also make five recommendations which call for smaller but potentially still worthwhile improvements in the form of:
 - (a) new guidance (recommendations 5 and 9)
 - (b) new standards (recommendations 2 and 8), and
 - (c) content for existing statutory reports (recommendation 7).
20. We anticipate that these are unlikely to be as onerous to follow as the four other recommendations. In several cases these recommendations could work with the grain of developing Government policy – plans to adopt data standards or prepare guidance to support a new EOR approach.

Dissemination of key messages

21. Our proposed communications plan is at Annex E. This includes steps to ensure that the findings and messages from the report land effectively with key audiences to achieve maximum influence. These audiences include policy makers within DLUHC and Defra, Parliamentarians, and practitioners within the planning system at local level. This will involve seeking and creating engagement opportunities over the long term with our key audiences. We will also target specialist media and interested stakeholders with our key findings and messaging as well as posting on our social media channels and website, on the day the report is laid.
22. Our comms messaging will, however, seek to downplay this report as a 'political' step, whilst emphasising its technical focus. We see the dissemination of our key messages happening intermittently over a longer period to achieve influence with our key audiences rather than an intense short-term burst of comms activity with no follow-up.
23. The political backdrop against which this report will be published is changing rapidly and there is perhaps an increased risk that our recommendations could be construed as criticism. We ask the Board to consider this risk both when considering the communications plan and when considering whether to approve publication of the report. In considering this last point, we draw the Board's attention to the number of stakeholders who are aware of the report and expecting its imminent publication. The window to influence policy development within DLUHC also only exists in the short term.

Northern Ireland

24. This project is specifically about England. It was originally planned to include laying a second environmental law report in the NI Assembly. However, given our lower than requested funding settlement from DAERA, that work was not taken forward.

Finance and Resource

25. We will have undertaken work across the 2022/23 and 2023/24 financial years (from July 2022 to October 2023,). We estimate that reaching the project milestone of laying a report will have taken approximately 500 person-days (i.e. 1.8 FTE working on the project for its 15-month duration up until October). We forecast that by then we will also have spent approximately £253,000. A breakdown is provided below. *This section has been redacted as its publication would be prejudicial to commercial interests.*
26. There will be some ongoing demand for staff to work on dissemination activity and to consider Government's response to our report.
27. Our business planning assumption has been that the project would require approximately 375 person-days, so we have already exceeded this. There is therefore an opportunity cost with continuing investment in this work. We judge this is worthwhile to ensure we disseminate key messages from our report.
28. However, our plan does not provide any specific resource for more substantive follow-up activity, such as to provide advice on any eventual EOR regulations. This work was considered but, due to the need to prioritise, not included as a specific item in the business plan. In-year prioritisation will therefore be required if we do undertake more substantive work.

Impact Assessments

Risk Assessment

29. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Equality Analysis

30. No material equalities impacts have been identified.

Environmental Analysis

31. In undertaking this work we have sought to align our strategic intent with the OEP's principal objective and strategy. We have considered relevant legal duties, including in relation to water, habitats and species, countryside and natural beauty.
32. We have considered the OEP's duties to act objectivity, impartially and having regard to proportionality and transparency. We have sought to gather stakeholder evidence without prioritising any particular group. Although we have engaged with DLUHC and will engage

with it further (and as far as we are able, with Defra), our decisions have remained our own – taken by the Board. We have considered both the proportionality of this work and of our recommendations (noting that there is no obligation for any to be taken up). We will publish our environmental law report, together with the three supporting contractor reports.

Implementation Timescale

33. The proposed timeline for laying a report is:
- (a) 28 September - Board to be asked to approve final report
 - (b) early October – meet with Defra and DLUHC officials to discuss key messages
 - (c) 9 to 17 October - HH Global to typeset the report ahead of laying
 - (d) 16 October - Parliament returns from recess
 - (e) 17 October - send embargoed copies of the report to Defra and DLUHC
 - (f) **19 October - lay report in Parliament**
 - (g) 25 October (est.) - Parliament prorogued ahead of the King’s speech
 - (h) 7 November - the King’s speech
 - (i) 19 January - deadline for Government to lay a response to our report.
34. The Board should note that 19 January 2024 is also the last date by which we must lay our EIP progress report. Given the time required for report production, and the times in October when Parliament is not sitting, there is limited flexibility to change the targeted laying date without having to wait until after the King’s speech.

Communications

35. The aims of the communications activity will be to influence proposed reforms and ensure Parliamentary scrutiny of relevant proposed reforms is informed by our work. Longer-term it aims to ensure our report is visible as evidence and insight to those involved in implementing the regimes to help drive positive change.
36. Communications activity will focus on ensuring the report is well publicised, including through media engagement, social media content and stakeholder engagement. Longer term, we will be looking for engagement opportunities with the professional communities within the planning system, including webinars (which may be OEP led), relevant speaking opportunities and taking advantage of existing communications networks to share findings.

External Stakeholders

37. We have engaged extensively in the development of this report. We list at Annex B to the report the stakeholders who we have engaged with or who have provided evidence which informs our report.

Paper to be published	Yes, in part.
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Publication date (if relevant)	After 19 October 2023
If it is proposed not to publish the paper or to not publish in full please outline the reasons why with reference to the exemptions available under the Freedom of Information Act (FOIA) or Environmental Information Regulations (EIR). Please include references to specific paragraphs in your paper	<p>We propose to publish the report in full. However, we are not proposing to publish this paper in full for the following reasons:</p> <ul style="list-style-type: none"> • material intended for future publication • publication would harm the effective conduct of public affairs, including the Board's ability to receive candid advice and engage in free and frank discussion and these represent internal discussions (s.36 FOIA / reg. 12(4)(e) EIR).

ANNEXES LIST

Annex A: *This section has been redacted as it contains information available elsewhere.*

Annex B: *This section has been redacted as it contains information available elsewhere.*

Annex C: *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Annex D: *This section has been redacted as it contains information available elsewhere.*

Annex E: *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Annex A - Environmental law report

[enclosed separately]

Annex B – First draft of graphics from HH Global

[enclosed separately]

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Annex D - This section has been redacted as it contains information available elsewhere.

Annex E - This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.