

12 December 2008

David Bliss  
Chairman, The BARD Campaign

Dear David

### **Review of Eco-towns SA Reports**

As requested, I have now reviewed the Eco-towns SA documents in my capacity as both an academic and practitioner with some 25 years' experience in the environmental and sustainability assessment field (I attach a brief biography at Appendix 1 for your reference). You asked me to review the eco-towns sustainability appraisal published by DCLG and the previous scoping report with a view to providing: (1) my views as to the robustness or otherwise of the work when measured against accepted SEA/SA standards; and subsequently (2) preparation of a report.

I also confirm that I have seen the letter from SJ Berwin (12 August 2008) commenting on the Scoping Report and concur with the views expressed therein.

Accordingly I have reviewed the following Eco-towns documents:-

- SA and HRA Non-technical Summary of draft PPS and Programme;
- SA and HRA Report of draft Eco-towns PPS;
- SA and HRA Report of draft Eco-towns Programme (and Middle Quinton chapter);
- SA Scoping report; and
- Draft Eco- towns PPS

Attached (Appendix 2) is my tabulated review summary against the Institute of Environmental Management and Assessment (IEMA) SEA/SA review criteria, which is a commonly used checklist of good practice. Below I set out my conclusions from this review, with discussion around a number of key issues and suggestions as to how to deal with issues where there may be potential for failure to comply with the SEA Directive. The Department for Communities and Local Government (CLG) has stated (p.14 of the SA of the draft PPS) that

it “has decided to undertake SA, incorporating the requirements of the European Strategic Environmental Assessment Directive, at a level proportionate to the PPS.” In so doing CLG has, therefore, accepted that the SEA Directive applies to the draft PPS and the Programme and since a PPS is neither a ‘legislative’ nor a ‘regulatory’ provision have, therefore, effectively defined the draft PPS as an ‘administrative provision’ under the SEA Directive.

My first observation is that the two elements (SA of draft PPS and Programme), separately and together, are exceptionally poor examples of sustainability appraisal. My overall review against the IEMA criteria (attached) results in a score of E/F (i.e. poor/very poor) for the draft PPS and the Programme SAs together. I have addressed them together to avoid repetition and because they are so connected. In some places I am quite astonished at the disingenuous nature of the justifications and explanations for the approaches adopted. And I am genuinely surprised that the consultants concerned (Scott Wilson) would have produced such reports unless they had been placed under considerable pressure from CLG, both in terms of the approach and content, and the timescale to complete it. I will deal with the most significant issues first, particularly the issue of alternative options (at PPS and Programme level) which go to the heart of the whole Eco-towns policy.

## 1. Alternative options

To understand the potential alternative options (“reasonable alternatives” under the SEA Directive)<sup>1</sup> it is important first to consider the objectives of the plan or programme. This is not as simple as it first appears, as the draft PPS and the SA reports are not always entirely clear or consistent in the way in which they frame the objectives of the Eco-towns policy, not least they often switch between the use of the words “aims” and “objectives” as if synonymous and use them loosely.

However, notwithstanding that there may be other interpretations of the intended objectives of the policy, as a starting point we can consider the two main objectives which the documents seem to be reasonably consistent about, namely:-

*“First, the need for a major increase in housing supply to meet rapidly rising housing need and improve affordability, and second, the challenge of redesigning the way we live so as to respond more effectively to climate change and greater sustainability challenges.”*

(Box 2: Rationale for the alternatives considered, p. 22, SA and HRA of the Draft Eco-towns Planning Policy Statement)

With regard to the need for a major increase in housing supply, the SA of the draft PPS recognises (p.49) that the Government has already stated its intention to increase the supply of new homes through regional spatial strategies (RSSs), which is consistent with the new planning system introduced by the Government in the Planning and Compulsory Purchase Act 2004. The planning system is fundamentally a plan-led system and the RSS is the appropriate place through which housing allocations are made and accommodated

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<sup>1</sup> Article 5 (1):

*“1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.”*

(notwithstanding any criticisms of the way in which those housing numbers are identified and brought forward). Since the Government is already adding additional housing requirements to RSSs there is already an existing mechanism for increasing housing supply. Given this increase, RSSs will inevitably have to consider new settlements since often they will have few other means of accommodating the extra numbers. So the Government is already addressing the apparent need to increase housing supply (and affordability) through the planning system, which may also result in new settlements. The SA report also recognises that some RSSs are already responding to this policy by considering new settlements, quoting the TCPA: *“In 2007 there are the beginnings of a new wave of new settlements and urban extensions.”* (p. 41, SA report). It would be appropriate to expect all new settlements coming forward now through RSSs to meet the highest environmental and sustainability standards, which can be governed by national and local planning policy and through building regulations, as well as other mechanisms such as the Code for Sustainable Homes which in some instances is currently voluntary and others is a requirement..

This brings us to the second apparent objective of eco-towns – redesigning homes and communities to respond to climate change and sustainability challenges. Here the comparison evaluation made in the SA report of the eco-towns draft PPS against the business-as-usual (BAU) would appear entirely disingenuous. Much of the assessment is not really assessing against BAU, but more accurately against the ‘business-as-current’. In other words it is failing to extrapolate current policy into the future over the same time scale of which the eco-towns policy is expected to begin to deliver eco-towns. A critical issue here is the extent to which eco-towns would deliver higher environmental/sustainability standards than current Government policy. In fact current Government policy is quite clear that by 2016 Level 6 of the Code for Sustainable Homes will be the norm and established within Building Regulations<sup>2</sup>. So by the time any eco-towns are actually expected to be underway (2016), *all* new homes anyway will be expected to be zero-carbon and meet other sustainability requirements of Code Level 6. In fact, the eco-towns draft PPS does not go as far as current policy, since it only requires a minimum of Code Level 4. The suggestion (p.59, Table 6) that this represents a clear improvement on business-as-usual is therefore nonsense. By the time any eco-town is built the standard of its housing is likely to have been exceeded by current Government policy, even without any additional acceleration of that policy. And the standard for non-domestic buildings will also be zero carbon by 2019 which will also be reviewed in 2013 (and therefore could be accelerated) (p.36 SA report).

The Government defines zero-carbon with respect to eco-towns in a very specific and narrow way:-

*“...over a year the net carbon dioxide emissions from all energy use within the buildings on the development are zero or below”* (p.15, draft PPS)

The suggestion is that this is different to any other definition of zero-carbon which might be promulgated for the purposes of individual houses (although the SA report itself spends a considerably amount of time trying to justify how eco-towns will exceed current BAU building standards for individual homes). The exclusion of any transport dimension (and embodied

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<sup>2</sup> Building a Greener Future: Policy Statement, CLG, 23 July 2007 at <http://www.communities.gov.uk/publications/planningandbuilding/building-a-greener>

carbon from construction) from the zero-carbon definition for communities seems illogical. Transport, for example, is clearly not included in the standard for homes because the focus is on the building and its regulation through building regulations. An eco-town – a ‘zero-carbon’ settlement/community – is, however, a wider spatial entity and therefore should be considered as such, not just as a collection of houses and other buildings which use energy. Such a narrow definition circumvents, to my mind, the purpose of such a definition, and is in itself highly misleading. The inclusion of transport in the definition of zero-carbon for eco-towns would, of course, probably mean it would be impossible to achieve zero carbon! So the answer appears to be to leave it out. To have multiple definitions of zero-carbon that bear little relevance to geographical scale, but instead each is determined by different elements you choose to include, will devalue the whole concept of zero-carbon (if that isn’t happening already).

### ***Alternatives to draft PPS***

Having addressed the broad objectives of eco-towns we can now turn to what might be considered to be reasonable alternatives to both the eco-towns draft PPS and the eco-towns programme. The Government view is that the only reasonable alternatives to consider in the SA/SEA are the eco-towns draft PPS and *no* eco-towns draft PPS. In my view this is highly unlikely to be compliant with the SEA Directive requirement to evaluate reasonable alternatives.

What the Government has done is attempt to simply evaluate the likely evolution of the environment without the draft PPS (itself a specific requirement of the SEA Directive) and because it is a specific and separate requirement of the Directive (Annex 1 (b)) from the consideration of reasonable alternatives (Article 5 (1)) it is questionable whether the Government has even evaluated *any* reasonable alternatives let alone a set of reasonable alternatives. The do-nothing option is considered in best practice to be the most basic of requirements to address, but normally only as the baseline against which a number of different approaches to meeting the objectives of the plan or programme is evaluated.

The Government argues that alternatives should be considered in light of the objectives of the relevant policy or plan (Box 2, p.22 SA report) and then goes on to refer to the two objectives quoted above. Its rationale provides no justification for not considering other alternatives. In fact, to a large extent in referring to the Barker Review, PPS 3, the Housing Green Paper and NHPAU revision of housing numbers, it makes the case for why existing policy already addresses the first objective (Box 2, pp22-23, SA Report).

So what might be reasonable alternatives to the eco-towns PPS? The first objective of eco-towns to deliver more homes is already being addressed by current policy. Eco-towns themselves will only contribute a small proportion of the total new housing provision the Government is requiring and it is already increasing the housing numbers in RSSs (and could do so further if it so wished). It does not need an eco-towns policy statement to do that. So the first objective seems less significant than the aspiration to deliver greener homes. Since current policy already is delivering the first objective, alternative options to the PPS would focus on the second objective of greener homes. It is not too difficult to identify at least eight alternative options to the draft PPS, *in addition* to BAU (there may be many more). The second objective of delivering more sustainable homes can be achieved in a number of

different ways and potentially more quickly than could be achieved by the current eco-towns proposals. These could therefore be construed as reasonable alternatives, e.g.:-

- A revision of building regulations to accelerate the delivery of Code Level 6 for all new development at a date earlier than 2016, say 2012 or sooner;
- New settlements coming forward through RSSs and subject to current policy (identified in the SA Scoping Report (p.15) as an alternative that was intended to be considered in the SA, but was not);
- New settlements coming forward through RSSs and subject to an accelerated policy of delivering Code Level 6 earlier than 2016, e.g. by say 2012 or sooner;
- Eco-towns (*without* enhanced building standards beyond those proposed in the draft PPS) focused on Growth Areas (under the Sustainable Communities Plan), and coming forward through RSSs, where sustainability challenges are most acute and where Government is already attempting to develop 'eco-regions' e.g. Thames Gateway;
- Eco-towns (*with* enhanced building standards) focused on Growth Areas (under the Sustainable Communities Plan), and coming forward through RSSs, where sustainability challenges are most acute and where Government is already attempting to develop 'eco-regions' e.g. Thames Gateway;
- A smaller number of larger eco-towns (i.e. using a higher (than 5000) alternative threshold for defining an eco-town);
- A larger number of smaller eco-towns (i.e. using a lower (than 5000) alternative threshold for defining an eco-town);
- Urban extensions (identified by consultation authorities as an option to be assessed, but rejected as an alternative option in the SA on the grounds that they would not fit the criteria set out in the Eco-towns Prospectus<sup>3</sup> and that they would not provide the same innovation opportunities as new settlements).

There is no satisfactory explanation as to why the Government chose not to consider new settlements as an alternative option, as proposed in the scoping report (only a rather confused discussion of the relationship between eco-towns and new settlements (Box 2, p.22 SA Report of draft PPS). Had they done so, it is highly questionable whether eco-towns would have performed any better (and indeed may have performed worse) than new settlements coming forward through the normal RSS route and subject to current policy. However, since they did not do that assessment there is no way of knowing and therefore the assessment undertaken is deficient and in my view likely to be non-compliant with the SEA Directive.

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<sup>3</sup> Box 2, p23 SA of draft PPS. This is a bizarre argument: reasonable alternatives should be considered in light of the objectives of the policy or plan (Box 2, p.22 SA of draft PPS), not in relation to some earlier consultation document focused on project level locations.

The Government argues that eco-towns will provide exemplars. It is questionable whether the Government itself needs to be promoting exemplars in this way (as opposed to creating the policy framework to encourage exemplars to come forward), not least because it recognises that large scale examples of such developments are now beginning to be seen (e.g. Cambourne) (and fails to recognise the widespread experience elsewhere in Europe of promoting more sustainable developments). A key question is: why is Government promoting *projects* through planning policy, when planning policy is designed to set the framework for the plan-led system, i.e. RSSs and Local Development Frameworks (LDFs) within which individual projects are brought forward and are considered against the plans? The eco-towns draft PPS would seem, therefore to act counter to the plan-led system the Government itself has only recently introduced. Furthermore, the policy itself is effectively being determined from the bottom up, i.e. by the projects, rather than the policy establishing criteria to then be applied through the normal planning process to new settlements coming forward through RSSs.

The SA report refers, in relation to the rationale for the choice of 'alternatives' to Government guidance on SEA (ODPM et al 2005), somewhat disingenuously:-

*"Government guidance on SEA suggests similar in the "no plan or programme" or "business as usual" model." (Box 2, p.22 SA report)*

It fails to refer to the rest of the guidance, which highlights the need to consider a range of alternatives, especially strategic alternatives at high level decision-making, such as questioning the need, and alternative modes and processes<sup>4</sup>. Table 1, p.19 in the draft PPS SA report uses only the Annex list of information required, without reading it in conjunction with the original Directive article it supplements (Article 5). The effect is to downplay the importance of not just considering reasonable alternatives, but that they also have to be evaluated.

### ***Alternatives to the draft Programme***

The Government's approach to alternatives with respect to the draft Eco-towns programme is similarly disingenuous. The SA report for the draft programme takes as its starting point the 15 shortlisted locations. Where alternative locations to a specific shortlisted location had been identified by the local authority and it was deemed to fulfil the eco-town criteria, then that alternative was considered in the SA and HRA. Other alternative locations included were some examples not previously shortlisted but could be considered locally alternative locations to a shortlisted location. Some additional locations were also included that had emerged through the consultation.

The key characteristic for an eco-town is that it is to be a new settlement of a minimum of 5000 homes on the basis apparently that *"Planning on this scale allows the development to exploit a number of opportunities and benefits."* (p.2, draft PPS). No evidence is provided to support this claim. So, for example, if the minimum level were 2,500 homes that would open up a much wider range of potential locations and proposals. The selection of an arbitrary

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<sup>4</sup> ODPM (2005), Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents: Guidance for Regional Planning Bodies and Local Planning Authorities, November 2005, Appendix 11, p122.

figure as the threshold immediately sets boundaries to the type of proposals under consideration.

The Middle Quinton chapter makes some astonishing claims as to why no alternatives, other than the “no eco-town” business-as-usual situation, were considered for that location and the purpose of the assessment:-

*“No alternatives to the Middle Quinton eco-town location have been formally proposed by Wychavon District Council or Stratford-on-Avon District Council.”*

(p. 13 Middle Quinton chapter)

*“The aim of this SA was not to determine whether an eco-town location and proposal was either acceptable – i.e. ‘sustainable’ – or unacceptable – i.e. ‘unsustainable’ – and determine which locations progressed on this basis. The purpose of this SA was, rather, to explore the benefits and disadvantages associated with each of the locations and development proposals as an input to the Eco-towns Programme, and suggest ways in which their impact could be rendered more sustainable.”*

(p.12, Middle Quinton chapter)

This seems a peculiarly unorthodox use of strategic assessment, since it is intended to inform the decision-making process and therefore should help to inform the decision on the Programme, i.e. to inform the final selection process of potential eco-town proposals to be taken forward. This has a very significant bearing on what might be considered to be reasonable alternatives. At the programme level, i.e. consisting of a number of projects, **any individual location is a potential alternative to any other location**, given the objectives of the higher level policy – the draft PPS – to increase housing supply and deliver more sustainable housing. Neither the PPS nor the Programme specifies that an eco-town must be delivered in each location. So an alternative location exists wherever there is an alternative eco-town proposal. Consequently one would expect the eco-towns to be assessed against a consistent set of objectives or criteria and compared against each other, with a view to helping to reduce the shortlist to a final set of proposed locations. This is the normal process of programme level SEA/SA (and even in project level EIA), e.g. in alternative site searches for reservoir sites, or minerals quarrying etc..

There is an important precedent in this interpretation of alternatives in relation to sites and locations in the context of EIA, and that is the Inspector’s Report (1997)<sup>5</sup> into the proposal by Nirex UK Ltd for a Rock Characterisation Facility at Sellafield, Cumbria. The Inspector was at pains to point out during the inquiry and in his report that an alternative location for a Rock Characterisation Facility (RCF) existed wherever suitable deep waste repository (DWR) sites (which was what the RCF was intended to explore) had been identified and that the preferred site needed to be assessed against those alternative sites (*“Given the basic purpose of the RCF and delineation of its development site as the PRS [potential repository zone], those comparable sites would be other repository locations. In other words, alternative sites for the RCF are by their very nature alternative sites for the DWR”* Para 3B.35, Inspector’s Report Appeal of UK Nirex Ltd, 1997). The argument by Nirex that there was no alternative because

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<sup>5</sup> Inspector’s Report Appeal of UK Nirex Ltd, 1997.

the RCF was designed only to explore the Sellafield site was dismissed by the Inspector as simply wrong. The Secretary of State in his decision letter to reject the appeal, indicated *that "in any future application for a RCF (or any other major development proposal that represents a milestone towards the design and construction of the repository itself), the Secretary of State would expect the Environmental Statement to address the question of alternatives and to explain and justify why a particular location had been chose in preference to others."* (s 6 (vi) of the Decision Letter 17 March 1997).

The purpose behind the proposal was central to any consideration of what would be appropriate alternatives to consider. Bearing in mind that the EIA Directive is considerably weaker in its requirement to consider alternatives than the SEA Directive, this interpretation at the very least would seem to have a bearing on any consideration of reasonable alternatives. In the context of eco-towns the purpose is clearly to identify the most suitable sites to take forward and therefore any location is an alternative to any other. The objective of the eco-towns programme is to take forward exemplar projects which deliver increased housing provision and greener housing, none of which restrict the consideration to specific locations. The approach adopted by the SA report would seem, therefore, to be fundamentally flawed in its highly restrictive interpretation of reasonable alternatives at the programme level. To suggest that there is no reasonable alternative to the Middle Quinton proposal to assess plainly falls down, since the stated purpose of the eco-towns programme is to deliver up to 10 eco-towns from a short list of 15. All proposed locations are therefore alternatives to each other. Another approach to alternatives – given the Government's emphasis on the specific locations - would also include alternative uses for the sites/locations identified; uses other than for an eco-town or new settlement, or for different scales of eco-town. No such alternatives have been considered, but any of those could be reasonable alternatives to the proposals.

Some proposals may be inherently unsustainable – no matter what suggestions might be made to render them more sustainable. Irrespective of how good the public transport provision might be to an eco-town unless eco-towns ban the use of the car and make no provision for any car parking (which is not the case) eco-towns will inevitably generate considerable traffic and car-based commuting to adjacent communities. To believe otherwise is quite unrealistic, and in the case of Middle Quinton, the Programme SA report raises the issue of the potential for a Western Relief Road for Stratford as part of the further consideration to make Middle Quinton a more 'sustainable' option. Such a relief road would in itself generate additional traffic in the long term. It is difficult to equate such an approach with PPG 13, which seeks to minimise traffic generation.

At best an eco-town is only expected to cater for 50% non-car provision, i.e. at least 50% of transport needs will be by car. And that assumes that the infrastructure can be delivered and will in turn deliver the aspirations; no evidence is provided that such measures will actually work. Consequently more than 50% of journeys will be by car – hardly sustainable in carbon or any other terms.

## 2. The nature of SEA/SA in this case

This is an unusual, though by no means unique, form of SA/SEA, given the strategic and programme nature of the plan/programme concerned. As a vertically 'tiered' assessment it is important that there is a degree of consistency applied from one to the other. The SA of the draft PPS should take a more strategic view and the SA of the Programme a more locationally specific view. The scoping report sought to provide a framework that would be applied to both. This was not followed through to the assessment itself. Other very strategic assessments have been undertaken before at national and regional levels, including by Government departments, e.g. Rural Development Plans/Programmes for England, Wales, Scotland and Northern Ireland as well as by ODPM/CLG for the draft PPS on Sustainable Waste Management<sup>6</sup>.

Arguably the Government has made a rod for its own back by bringing the draft PPS and draft Programme forward at the same time. There would be more logic in a tiered policy/programme process if an SA was undertaken on the broad principles of the draft PPS first, to establish the principles that would then be applied to any programme that came forward subsequently. This would have avoided the problem, discussed above, of the policy being driven by the projects and potentially challenging other policy. This has wider ramifications since a similar situation is likely to be mirrored for national policy statements (NPSs) coming forward under the current Planning Bill (2007). These too are being driven by projects e.g. a programme for nuclear power stations<sup>7</sup>, airport expansion etc, because of the Government's desire to 'speed up' the planning process, rather than by establishing policy first which then forms the framework for subsequent decisions on projects.

A further issue relates to whether the Government might attempt to define the draft PPS so narrowly as to circumvent the purposes of the SEA Directive. I have already suggested a range of reasonable alternatives (though that is far from an exhaustive list). If however, the Government suggests the main aim is to deliver exemplars (which it sometimes hints at in the draft PPS and SA) – and thereby seek to justify no alternatives to the draft PPS - then this would be a peculiarly narrow definition that cuts across the two broad objectives discussed above and may circumvent the purposes of the SEA Directive. In doing so, however, it could not then get away from considering all locations as alternatives to each other, since any could be exemplars. And why would the Government need to establish a specific planning policy statement to achieve this, rather than a simple amendment to existing planning policy?

Having addressed these initial issues around alternatives the rest of my report below takes the issues broadly in the order of the attached review topics, dealing with both the draft PPS and the Programme SAs at the same time, since there are important connections between them. Further detail is provided in the IEMA review report (Appendix 2).

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<sup>6</sup> ODPM (2004), *Consultation on Planning Policy Statement 10: Planning for Sustainable Waste Management Environmental Report produced as a consequence of the Strategic Environmental Assessment*, December 2004.

<sup>7</sup> See for example <http://www.berr.gov.uk/consultations/page47143.html>.

### **3. Scoping (broadly sections 1, 3 and 5 of IEMA criteria taken together)**

The review of other policies, plans, programmes and objectives was undertaken for the scoping report. However, the PPS/Programme SAs are very selective in which PPPs are reviewed (the fact that they were reviewed in the scoping report does not mean that there should not be at least a list of those PPPs reviewed).

The draft PPS SA report uses **only** Housing Provision and Greener Housing objectives, with no clear explanation as to why the draft PPS is not assessed against all of the SA objectives. The failure to assess the draft PPS against all SA/SEA objectives (and therefore all SEA Directive topics) makes this an inadequate SA. Effectively it is assessing the draft PPS against its own objectives, i.e. it is only a simple compatibility assessment of the plan objectives, which is a preliminary stage in any SA/SEA, but is a nonsense in SA/SEA terms if that is the only assessment undertaken. The Programme SA uses the full set of objectives refined from the scoping report (though not clear how and on what basis).

A scoping report was produced by different consultants. Only the comments from the consultation authorities are provided in the SA, even though others commented on the scoping report. The scoping report is ambiguous, but implies that only the statutory consultees were formally consulted at the scoping stage as that is all that is required under the SEA Directive, even though CLG normally recommends wider consultation at the scoping stage<sup>8</sup>, and it appears to have been available on the website. Even here the CLG response in the SA report appendix as to how these comments were taken into account is cursory at best and some of the recommendations, e.g. on alternatives that should be studied were ignored with no real justification (the alternatives justification in the main report is quite inadequate). There is no way of knowing what comments anyone else made or what effect they might have had on the approach adopted, objectives selected etc<sup>9</sup>. The fact that the SA methodology (for the draft PPS in particular) changed from the scoping report to the SA report (to focus only on housing provision and greener housing) calls into question the legitimacy of the consultation undertaken on the scoping report. There is no way of knowing whether other consultees' comments were taken into account or simply ignored.

The approach taken in the SA focuses very much on mitigation rather than avoidance, in contrast to the spirit of the SEA Directive, which seeks a high level of environmental protection.

### **4. Characterisation of the existing environment (baseline)**

There is a highly selective coverage of baseline with information primarily relating to core activities of the draft PPS and only superficial coverage of the rest. Further baseline information is provided in the HRA/AA relating to biodiversity. In the Programme SA report, there is wider baseline information relating to the local area provided, following the structure of the broad SA objectives/topics selected. With respect to the future state of the

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<sup>8</sup> ODPM (2005), *Op cit.*, note 4.

<sup>9</sup> Note that the separate general consultation on Eco-towns in April – June 2008, the comments for which were published on 4 November 2008, was not on the *scoping report* - see <http://www.communities.gov.uk/publications/housing/eco-townsconsultationresponses>.

environment/sustainability this is only considered in the draft PPS SA report in relation to *housing provision* and *greener housing* (and actually even this is often not BAU, more business-as-current). It fails, even on its own terms, e.g. in not recognising that over the time scale for start of delivery of eco-towns (2016) all new housing will have to meet Code Level 6 (more than the minimum for eco-towns). No discussion is provided of how the wider environment/sustainability may change without the draft PPS/Programme. This evolution of the current state without the plan is put forward as the only alternative to the draft PPS, but given the SEA Directive's separate requirement for this (from reasonable alternatives) its purpose is misleading in this SA. The programme SA report local chapter (Middle Quinton) has only a very brief discussion (two paragraphs) on how the future state of the environment/sustainability would change, and then only in relation to the limited remit already set.

## **5. Assessment of impacts**

The PPS SA is very descriptive and mainly is a comparison of the draft PPS against no PPS. The criteria used cover only housing provision and greener housing with no explanation as to why other factors are not considered relevant, i.e. why they have been scoped out entirely. The programme SA report has little explanation as how the SA sub-objectives/criteria and indicators used for assessing have been selected.

A number of SA objectives from the scoping report were modified or dropped for the Programme SA, and were not used at all for PPS SA. This raises serious questions about the legitimacy of the consultation on the scoping report, since one of the purposes of consulting on the scoping report is to facilitate developing a wider understanding of the approach and methodology to be adopted<sup>10</sup> and so improve transparency of the decision-making process. The SA reports fail to describe how and why the approach to SA changed from the scoping stage to the SA assessment stage. Notwithstanding limitations of the scoping report, it did set out an approach and framework that could have been applied consistently across the PPS and Programme level, and could have facilitated the identification of more or less suitable locations and so help reduce the short list further.

There is a separate section called 'cumulative effects' only for the proposed eco-towns programme (Section 3 in the Conclusions of the Eco-town Programme SA), not the PPS. The attempt at considering such effects is however quite inadequate. For each location much of the text is simply background information – highly descriptive and little analysis of potential wider potential cumulative effects. Often it simply says that the cumulative effects are unclear. There is little evidence or analysis given, and nothing about potential interactions between multiple negative effects on the SA objectives for example.

Mitigation measures are the main focus, but little evidence is provided as to how they will be delivered. Indeed, at this strategic level there is no means of guaranteeing/securing a) that mitigation measures will be delivered and b) that they will in any case be successful. A large amount of blind faith in mitigation appears to pervade the SA reports (and HRA/AAs), including in the comments on cumulative effects and habitats.

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<sup>10</sup> p.22, ODPM (2005), *Op cit.*, n.4.

A clear omission under the 'spatial issues' SA objective is the consistency or otherwise of the proposal with the regional and local level strategic plans. Middle Quinton, for example, is recognised in the SA report as being contrary to the regional and local plans (but not in the matrix), something which might be considered to be particularly significant. The whole of the spatial issues category could therefore be covered in the matrix systematically by the conformity to regional and local plans.

There is a circular argument here – the PPS would be a material consideration with regard to RSSs and LDFs, where an eco-town proposal is coming forward that is currently inconsistent with existing RSS and LDFs, i.e. the fact that the eco-town is supported by the eco-town PPS will have to be taken into account in the plans where otherwise it would have been rejected. This makes the PPS and programme process all the more important since it will be a way around the existing planning process. The PPS could be considered to be encouraging developers to circumvent the normal planning system.

The allocation of sites to Bands A-C is quite opaque – no criteria are provided against which the allocations have been judged. The category band descriptions are not themselves criteria for determining which proposals should be allocated to which band, i.e. what are the criteria for judging whether a proposed eco-town location might be suitable subject to meeting specific planning and design objectives, or only likely to be suitable with substantial and exceptional innovation? They are merely a ranking of eco-town proposals rather than an identification and assessment of significant environmental effects which the Directive requires. The very fact that such banding/ranking is used suggests that the SA is supposed to contribute to further short-listing of schemes to go ahead, which itself emphasises why each location should be an alternative to each other.

## **6. Monitoring and follow-up**

Little of substance has been said about monitoring, either for the PPS or the programme. There is a suggestion that indicators should focus on transport and employment – *“two of the most challenging issues associated with eco-towns and two of the most determinants of their overall sustainability”* (NTS, p. 70). The same text on monitoring (in two or three paragraphs, but still the same text) is used in the main SA of the draft PPS and the NTS, and in each eco-town chapter of the SA of the Programme – no specificity is attempted for each location.

## **7. Decision-making and implementation of the plan**

Some changes to the draft PPS are described as a result of the SA process, and also proposals suggested by the consultants to amend the PPS that have been rejected by CLG. It is unclear how the SA of the eco-towns programme has changed or influenced the eco-towns programme, if at all. Not least the SA for the programme has not been framed in a way that would compare each location against each other. Even the final banding (A-C) is left in mid-air, with no explanation as to what that will mean to the programme as a whole (p.71, Conclusions chapter).

Reference is made to subsequent assessments, principally EIA of the individual eco-town proposals and if the proposal is included in an LDF then it will be covered by SA at that level. Surprisingly the PPS has made no attempt to embed the eco-towns more firmly in regional and local plans, e.g. it could have required all eco-town proposals (masterplans) to be subject to Area Action Plans to provide a more strategic direction to the delivery of the specific eco-town proposals. AAPs would also be subject to SA/SEA, while at the same time the masterplans would also be subject to EIA for outline planning permission (and potentially individual components of the masterplan also subject to EIAs following screening<sup>11</sup>). This might have been a way to help bridge the gap between national policy, national programme driven by project proposals, and individual eco-town projects, and ensuring that any eco-town proposal would have to be subject to further strategic assessment in relation to its local and regional surroundings before being included in LDFs.

## **8. Presentation (including non-technical summary)**

The overall SA documents are not user friendly. They are very heavily text based and descriptive. The non-technical summary is neither non-technical nor a summary. At 85 pages, with significant duplication of the main SA report – largely cut-and-pasted from the main reports – there has been little attempt to produce a proper non-technical summary that might be understandable and appropriate for the lay person and ordinary member of the public. There is no information on the length of the consultation period or by when comments should be received in any of the documents. Readers are referred to the CLG website, which is not much good for anyone without internet access<sup>12</sup>.

The Non-technical summary is rightly given prominence in the SEA Directive and the recent *Seaport* judgement identified the key elements that should be covered by the Non-technical summary. The NTS is not a stand alone document, since it refers the reader to the main reports and annexes. It is also highly selective in the way in which it presents the appraisal process and purpose. The NTS fails to summarise all the factors it should (partly because the SAs themselves don't do this), but also for the Programme SA there is **no** summary of impacts for each location, nor a summary matrix, for example, showing all locations against each other, nor mapping of constraints etc.. It would have been sensible to have had a separate NTS for the PPS and another for the Programme. However, this might have been too revealing if the programme NTS had included a summary appraisal, such as a simplified matrix.

It seems highly unlikely that this NTS could be considered compliant with the SEA Directive.

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<sup>11</sup> The Town and Country Planning (Environmental Impact Assessment) (Amendment) (England) Regulations 2008, SI 2008 No. 2093.

<sup>12</sup> The only reference to responding is:- *“If you have comments on issues raised in the SA or HRA please respond as part of the consultation on the PPS, details of which are set out at [www.communities.gov.uk/ecotowns](http://www.communities.gov.uk/ecotowns) . If you would like further information on any of the above please contact the Eco-Towns Team at Zone 2/G9, Eland House, London, SW1E 5DU or by email to: [ecotowns@communities.gsi.gov.uk](mailto:ecotowns@communities.gsi.gov.uk) .”* p.6 Draft Eco-towns PPS SA Report.

## 9. Habitats Regulations Assessment/Appropriate Assessment

When HRA/AA is undertaken at the plan/programme level and in association with SEA/SA it is appropriate to use the SEA as a means to help avoid the need for AA, by using the HRA screening process to identify Natura 2000 sites that might potentially be affected by the plan/programme and where possible amend the plan to try to avoid having an impact in the first place. That is the most efficient and effective means of maintaining the integrity of the conservation status of the sites, and in the spirit of the Habitats Directive which otherwise imposes a veto on the plan or project if it would potentially affect adversely the integrity of the conservation status of the site.

At the draft PPS level it is difficult for HRA/AA to be very specific since there is nothing inherent in the draft PPS which automatically will impinge on Natura 2000 sites. Any such effect is location specific. However, the draft PPS could establish exclusion criteria that would seek to avoid any proposal coming forward that might have a potentially significant effect on a Natura 2000 site. Indeed, not establishing such exclusion criteria could be seen as encouraging potential developers to bring forward inappropriate eco-town proposals in the future. Exclusion criteria might include a statement to the effect that no proposal likely to have an adverse effect on the integrity of a Natura 2000 or Ramsar site would be acceptable, and also a proximity measure, e.g. no eco-towns would be allowed within say 10 or 20km of a Natura 2000 or Ramsar site. Clearly effects may be further than the immediate vicinity, especially with respect to water abstraction and discharge, but the statement would address these wider issues, while the proximity measure would provide a good guideline with respect to the potential for terrestrial impacts. It is surprising, therefore, that the draft PPS itself does not seek to exclude such proposals from further consideration.

At the Eco-towns programme level, however, this is location specific. An important element here, and missing from the SA/SEA and HRA/AA undertaken for the Eco-towns programme, is the appropriate consideration of alternatives. Clearly one way in which potentially adverse effects upon individual sites could be avoided is by excluding those proposed eco-towns locations that might have such an effect from the final programme. Here the SEA/SA can inform the HRA/AA in terms of the likely significant effects of each proposed location. A simple approach – not adopted in the SA/SEA or HRA/AA of the Eco-towns programme – would be to map the location of Natura 2000 sites with the location of the proposed eco-towns and explore the effect of applying different buffer distances around the sites, e.g. 10km, 20km using geographical information systems (GIS). This would have provided simple but valuable information on the proximity of all the sites and could have helped inform which sites could need Appropriate Assessment, or should be excluded from further investigation because they would clearly be likely to have adverse effects given the close proximity to multiple sites. At the SEA/SA level this would have helped inform the comparison of all sites against each other, which has not been done. A slightly more sophisticated mapping could also have included catchments, source protection zones, water stress areas, landscape designations (National Parks, AONBs) and other important land uses and habitats. This would also have been helpful in identifying potential cumulative effects. All of this could have been done with widely available GIS data sets, very simply. In fact GIS was used for each individual location (e.g. p.19 Middle Quinton chapter). It is surprising therefore that it has not been used for the programme as a whole, other than the fact that it would have

highlighted very clearly the potentially close proximity of many eco-town proposals to designated sites and so the potential for cumulative impacts upon the Natura 2000 network (which is what it is) as a whole. The presentation of the location assessments (SA and HRA/AA) individually prevents the reader from seeing an overview of the whole programme assessment. At the programme level the programme SA/SEA and HRA/AA should be about the programme as a whole, not just about each individual location. There is no excuse for this – current techniques and methods of assessment routinely use this approach – there is nothing unique about the eco-towns proposals that means standard assessment techniques are inappropriate.

The Middle Quinton proposal is on the edge of the Cotswolds AONB and therefore visible from the AONB. In the context of National Parks visual impact on the designated area even though the location is outside the designated area would be considered a significant impact (in the case of Sellafeld and the RCF the visual impact on the Lake District National Park was one of three reasons why the proposal was rejected) and such an impact on an AONB should also be considered significant, given the level of protection afforded to such nationally designated areas<sup>13</sup>. The Middle Quinton SA chapter puts forward the weakest of arguments in the matrix: that the existing land uses are also detrimental to the views (the same argument was tried at Sellafeld but was rightly trounced). This is particularly disingenuous given the fact that no alternatives to the proposed eco-town have been considered, such as alternative uses for the site which might promote landscape and biodiversity without an eco-town.

## **10. Conclusions**

Clearly there are many problems with what are exceptionally poor SA reports (PPS and Programme), a number of which could be potential grounds for challenge with respect to non-compliance with the SEA Directive. Some areas to pursue would be:-

- i. Failure to consider and evaluate reasonable alternatives (for draft PPS and Programme SAs);
- ii. The inadequate consideration of the evolution of the baseline without the plan or programme (for draft PPS and Programme SAs);
- iii. Failure to produce an acceptable non-technical summary;
- iv. Failure to assess all likely significant effects (for draft PPS and Programme SAs);
- v. Failure to provide the data necessary to undertake the assessment of likely significant effects and the poor methodology which fails to utilise current knowledge and methods of assessment (for draft PPS and Programme SAs);
- vi. Failure to undertake a compliant assessment of cumulative and synergistic effects (for the draft PPS and the Programme);
- vii. Failure to provide adequate proposals on monitoring (for draft PPS and Programme SAs).

Finally, there may be scope for a formal complaint to the European Commission over failure to properly transpose the SEA Directive with respect to this type of policy statement and

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<sup>13</sup> Planning Policy Statement 7, p.13

related programmes. This is not always the ideal option for seeking resolution to a single poor SEA/SA, but is relevant with regard to issues of principle and wider application, which in the case of the draft Eco-towns PPS seeks to establish policy that will guide subsequent eco-town proposals. In this case it is also the potential precedent the Eco-towns draft PPS/programme SAs may set for what is likely to be repeated in the Government proposals in the Planning Bill 2007 for National Policy Statements (NPSs) and related programmes.

The issue here is that the SEA Directive is quite explicit about tiering ('set[ting] the framework for', Article 3 (2)). In the Eco-towns case while the PPS sets the framework for the consent of subsequent projects subject to EIA, those projects are also effectively setting the framework for the PPS, to the extent that the programme and projects constrain the very nature of the 'reasonable alternatives' available to the draft PPS SA, i.e. that the types of alternatives available at the policy/plan level are not considered 'reasonable' in relation to the objectives of the draft PPS, because that might open up options other than projects (eco-towns). To my mind this potentially represents a circumvention of the purposes of the SEA Directive in a similar way to well-established ECJ case law on EIA has addressed attempts to circumvent the purposes of the EIA Directive. Since a similar approach to tiering is being adopted in the Eco-towns draft PPS/Programme SA and for the NPSs and related programmes, it would be appropriate to bring this issue to the attention of the European Commission sooner rather than later.

I am, of course, happy to discuss the issues raised here further.

Yours sincerely

William Sheate  
*Reader in Environmental Assessment, Imperial College London.*  
*Associate, Collingwood Environmental Planning*

## APPENDIX 1

### William Sheate - Biography

Originally an ecologist, Bill has worked, lectured and published widely on environmental assessment and policy for some 25 years. He has worked as a practicing ecologist, in consultancy, academia and in the voluntary sector. Most of his professional career has been spent working in interdisciplinarity. He splits his time evenly between academia (Imperial College London, where he is Reader in Environmental Assessment) and consultancy (Collingwood Environmental Planning, where is an Associate). His experience lies in the development and application of environmental policy and legislation (especially EIA/SEA/SA) in the European Union, assessment procedures, methodologies, and public and NGO participation. He has been an expert advisor to the EC, the European Environment Agency, the UK, Irish and Uruguay governments, CPRE and the National Trust; was a board member of Transport 2000 and a long-standing member of the Environment Agency (and formerly NRA) Thames Regional Committees; and has been involved in various committees of the International Association for Impact Assessment (IAIA). He has managed major studies for the European Commission DG Environment on SEA and Integration of the Environment into Strategic Decision-Making (2000/01); on the relationship between the EIA and SEA Directives (2004/5); was UK project manager for an EU 4FP project on EIA law (PENELOPE, 1998-2000), and led an international team in the development and application of sustainability assessment of biodiversity management scenarios for declining agricultural areas in upland Europe (EU 5FP, 2002-5). Recent and current activities include research and practical SEAs in Scotland and Wales; research in Ireland on the Water Framework Directive and its relationship with other environmental Directives; research for the European Environment Agency on scenario and foresight studies; SEA/sustainability appraisal for the Greater London Authority on the GLA's proposed Water Strategy and Climate Change Adaptation Strategy; SEA of River Basin Management Plans for the Environment Agency of England and Wales; and was principal investigator for a recently completed Defra case study on ecosystem services and green infrastructure in the Thames Gateway.

Bill has published extensively in the assessment and environmental policy field, and is the author of *Making an Impact: A Guide to EIA Law and Policy* (1994, 2nd edition 1996) published by Cameron May, London. He is also the founder and Editor of the *Journal of Environmental Assessment Policy and Management* (ICP/WSPC), now in its 10th year. He has many years' experience of teaching and training at advanced levels, and at the [Centre for Environmental Policy](#), Imperial College London, for the last 11 years has been the Director of the interdisciplinary Core Course of the internationally renowned MSc in Environmental Technology, covering subjects as diverse as pollution control, risk assessment and ecology to environmental policy, economics and law. He has supervised some 15 PhD students and is a regular external examiner for MSc degrees and PhDs. He is also a member of the Academic Panel of [Francis Taylor Building](#) legal chambers and an Honorary Senior Fellow in the School of Environment and Development at the University of Manchester. He has, among others, ongoing research collaboration with CNRS Montpellier, the Institute of Science and Technology Lisbon and the Universities of Waterloo (Canada) and Göteborg (Sweden). Recently (May 2008) he gave an invited speech to the ministerial high-level segment of the 4th Meeting of the Parties of the Espoo Convention on Environmental Impact Assessment in a Transboundary Context, in Bucharest, Romania.