



THE CITY OF LONDON LAW SOCIETY

4 College Hill
London EC4R 2RB

Telephone 020 7329 2173
Facsimile 020 7329 2190
DX 98936 – Cheapside 2
mail@citysolicitors.org.uk
www.citysolicitors.org.uk

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Matthew Bigault
Communities and Local Government
Planning Resources and Environment Policy A
Zone 1/A1, Eland House
Bressenden Place
LONDON, SW1E 5DU

By email: Matthew.Bigault@communities.gsi.gov.uk

Dear Matthew

Re: Consultation Paper on a New Planning Policy on Development and Coastal Change

The City of London Law Society ("CLLS") represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multi-national companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response in respect of the proposed new planning policy on Development and Coastal Change has been prepared by the CLLS Planning and Environmental Law Committee.

1. Consultation Questions
 - 1.1 ***The new policy and supporting practice guide promotes a strategic risk based approach to managing future physical changes to the coastline, to meet the government objectives set out in the proposed policy so that long term adaptation of communities can be planned. It allows necessary development that is appropriate and safe whilst avoiding inappropriate development in areas***

at risk from coastal change. Do you agree with this approach? If not, what alterations and approach do you suggest?

Answers / comment:

It is sensible and appropriate to allow LPA's the ability to consider permitting some forms of development in locations that are at potential threat of coastal change as being acceptable. It is reasonably foreseeable, however, that there will be difficulties in securing the return of locations to their original state upon the expiry of time limited or temporary permissions and there is also a credible risk that the rate of coastal change may accelerate beyond predictions made so that property, infrastructure and assets are lost before locations can be adequately restored or reinstated, posing potential environmental and safety risks.

It is suggested that the policies of long term adaptation of communities, adjustments to the location of developments and facilitation of relocation should be strengthened so that time limited / temporary permissions should only be granted in CCMA's if no suitable safer inland location is available.

- 1.2 ***Policy DCC1 sets out the requirements for evidence on the current and predicted impacts of physical changes to the coast to support plan making and planning decisions. Do you agree that SMP's, complemented by other plans and information set out in the policy, provide an adequate supporting evidence base? If not, what other sources of information should RPB's and LPA's take into account?***

Answer / Comment:

The adequacy of SMP's and the other plans and information mentioned in the policy depends upon the extent to which they represent the best available information at any given time. Coastal change prediction techniques are not currently established science and it is likely that, as scientific and technical knowledge increases, the accuracy of predictions will get better. The sources referred to in the policy should be the minimum evidence upon which plan making and planning decisions are taken but the policy should also require consideration of the availability of any other more up to date or accurate predictive information which may be available through, for example, vulnerability assessments for significant projects.

- 1.3 ***It is proposed that coastal change should be taken into account at all stages of the planning process (i.e. regional, local and site specific level) to determine the level of impact and the regional and local spatial responses that might be***

required. Does the policy in DCC2 and DCC3 on the regional and local planning approach to plan making, and the policy in DCC4 to DCC6 on development management facilitate this? If not, how might it be improved?

Answer / Comment:

The determination of CCMA's under DCC3.1 should be led by objective factual evidence rather than policy. The wider social, economic and environmental policy objectives and the strategic approach in the regional spatial strategy (DCC2) and other strategies and plans of significance to the coast should be taken into account in assessing the appropriateness of development proposals within a CCMA, rather than in determining the extent of a CCMA.

In setting time limits to reflect the planned lifetime of the proposed development, provision needs to be made for consideration of the accuracy of the predictions made at the time of setting the time limit. The factual circumstances and more accurate predictive techniques may warrant an extension or removal of a time limit which, it is assumed, will have to be determined on a conservative basis because of the possibility of coastal change acceleration being exacerbated by climate change.

- 1.4 ***Policy DCC3.2 requires that, where development and infrastructure need to be relocated outside CCMA's, LPA's allocate sufficient land for this beyond CCMA's. Planning constraints (e.g. landscape designations) or wider constraints (e.g. coastal communities' acceptance of the need to change) might make this difficult. Do you have any examples of the impact of constraints on the relocation of development affected by coastal change and how constraints can be overcome? Do you have any experience of using planning tools or other mechanisms to facilitate the relocation of development in land over time?***

Answer / Comment:

Securing the long term adaptation of coastal communities, through adjustment to location of development and facilitating relocation to safer inland areas, is probably the only way to deliver sustainable development and secure economic prosperity for areas and communities affected by physical changes to the coastline. To succeed in that, coastal change, as a material consideration, will have to be able in appropriate circumstances to overcome other planning constraints. Wider constraints are beyond the ability of planning policy to overcome but will be an important part of the ongoing role of LPA's for coastal communities.

- 1.5 ***The practice guide framework sets out the proposed structure of the practice guide. Do you agree that the structure of the practice guide is right, and that it will cover all the relevant topics? If not, what is missing, and why?***

Answer / Comment:

Nothing further to add to the comments already made (see above).

- 1.6 ***Policy DCC3 requires LPA's to define a coastal change management area (CCMA). The draft practice guide sets out how the CCMA should be defined, and the role of stakeholders. Do you agree with this? If not, what alternative ways of defining a CCMA do you suggest?***

Answer / Comment:

Coastal change issues will often be cross boundary and involve multiple bodies and stakeholders. In order to secure consistency of identification and presentation it is suggested that the number of zones for the three time horizons to be shown in the CCMA should be specified and should be at least two (up to 20 and 100 years).

It is essential that CCMA's should be defined using the best available information.

- 1.7 ***It is proposed to allow certain types of development in CCMA's when appropriate. Are the criteria set out in the practice guide the correct ones by which to judge what is appropriate? If not, what should these be?***

Answer / Comment:

The criteria fails to identify what may be appropriate development within the 20 - 50 year risk area. The potential suitability of developments such as hotels, shops, offices or leisure activities may require particular consideration with regard to density issues in addition to the risks of coastal change. The concept of grades or bands of acceptable development, linked to the level of risk and impact of coastal change, is an appropriate approach.

Consideration of restricting general permitted development by way of Article 4 Direction must only be taken where the risk from coastal change is sufficiently proximate. If the SMP predicts significant coastal change in the short term (within the next 20 years) then the LPA should in any event already be giving serious active consideration to development location adjustment and relocation.

1.8 ***Policy DCC6.2 is that LPA's should set a time limit for developments permitted in a CCMA, and the practice guide advises on operating time limited developments. Would the proposal to use time limited permissions be sufficient to manage and control development within a CCMA to ensure buildings and infrastructure remain safe during their planned lifetime? If not, what alternative approach to you propose?***

Are the arrangements for operating time limited developments in the practice guide appropriate and sufficient? If not, what arrangements would you suggest?

Do you have any examples of time limited planning permissions and/or relevant planning conditions and obligations?

Answer / Comment:

The sufficiency of time limiting developments to manage and control their safety during their planned lifetime depends upon the sufficiency and accuracy of SMP's and the other evidence bases used to predict the potential impacts of coastal change. Sufficient flexibility needs to be built in to react appropriately if predictions are either conservative or unduly optimistic. The trigger for review of the appropriateness of time limits ought to be a substantive amendment to coastal change predictions in the SMP or other appropriate source of best available information. This approach should maximise the use of suitable CCMA locations while appropriately managing the risks posed by evolving coastal change.

1.9 ***Policy DCC5.1 requires that an assessment of the vulnerability of the proposed development to coastal change and its impact on coastal change accompany planning applications in the CCMA. The practice guide advises on the scope of vulnerability assessments. Is the scope of vulnerability assessments and the criteria set out in the practice guide appropriate? If not, what should these be?***

Answer / Comment:

Since coastal change impact results in the loss of properties, infrastructure and assets it will not be possible for a vulnerability assessment to demonstrate that new development will provide "wider sustainability benefits that outweigh the predicted coastal change impact". Issues of "wider sustainability benefits" should more properly be considered when assessing whether the development is appropriate within the CCMA. The vulnerability assessment should focus on objective facts and predictions rather than policy issues.

- 1.10 ***We are seeking views on whether there is need to extend the Environment Agency's statutory consultee role in relation to planning applications in areas that are vulnerable to coastal change (i.e. CCMA's). Do you agree with the approach set out in Section 4 of Part 1 of this consultation document? If not, why?***

Answer / Comment:

The opportunity to make any necessary representations will only be given to the Environment Agency to the extent that they are consulted by LPA's. It may not necessarily be the case that each coastal LPA has sufficient expertise to make this decision themselves. Given the cross-boundary nature of coastal change issues and the potential implications of climate change it is suggested that it would be suitable and appropriate for the Environment Agency to be made a statutory consultee for planning applications in CCMA's.

- 1.11 ***Do you agree that the current arrangements for referring planning applications in CCMA's for consideration by the Secretary of State set out in Section 5 of Part 1 of the consultation document are adequate? If not, why?***

Answer / Comment:

The current arrangements are considered to be adequate if the Environment Agency is to be made a statutory consultee for planning applications within CCMA's (see above).

- 1.12 ***We are seeking views on the appropriateness of advising planning authorities to consider removing some permitted development rights for developments in areas in the CCMA that are identified as at risk from coastal change within a short term period (i.e. the next 20 years). Do you agree with the approach to this set out in Section 6 of Part 1 of the consultation document? If not, why?***

Answer / Comment:

In CCMA areas at risk from coastal change in the next 20 years it is appropriate for LPA's to be encouraged to consider whether to make greater use of an Article 4 Direction under the General Permitted Development Order 1995. However, as previously stated, at the same time active consideration should be being given to adjustment of development location and facilitating development relocation.

- 1.13 ***The consultation stage impact assessment sets out the likely benefits and costs of the draft new policy. Do you agree with the assumptions made? If not, or if***

you think it is incomplete, please tell us why and provide any quantifiable evidence available to you on benefits and costs?

Answer / Comment:

No comment.

- 1.14 *The impact assessment in Part 4 ask the following question with regards to the cost of carrying out vulnerability assessments (see DCC5.1). What would you consider to be the range of costs of such an assessment, how would this vary with the time taken to do such an assessment and how many assessments do you think might be needed each year?*

Answer / Comment:

No comment.

Yours sincerely

**David McIntosh
Chair
City of London Law Society**

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