

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4365 of 16 May, 2017

LEGAL NOTICE NO. 91 OF 2017.

TOWN PLANNING ACT 1999

TOWN PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (AMENDMENT) REGULATIONS 2017

In exercise of the powers conferred upon him by sections 23 and 44 of the Town Planning Act 1999, and for the purpose of transposing into the law of Gibraltar Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, the Minister has made the following Regulations-

Title.

1. These Regulations may be cited as the Town Planning (Environmental Impact Assessment) (Amendment) Regulations 2017.

Commencement.

2. These Regulations come into operation on 16 May 2017.

Amendment of the Town Planning (Environmental Impact Assessment) Regulations 2000.

3.(1) The Town Planning (Environmental Impact Assessment) Regulations 2000 is amended in accordance with the provisions of this regulation.

(2) Regulation 2 is amended as follows-

- (a) before the definition of “any particular person” insert-
““Act” means the Town Planning Act 1999;”;
- (b) in the definition of “any particular person” for “organization” substitute “organisation”;
- (c) for the definition of “the Directive” substitute-

““the Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, and as may be further amended from time to time;”;

(d) for the definition of “EIA application” substitute-

““EIA application” means an application for planning permission for an EIA development;”;

(e) after the definition of “EIA development” insert-

““environmental impact assessment” or “EIA” has the meaning given by regulation 3A;”;

(f) for the definition of “environmental statement” substitute-

““environmental statement” has the meaning given by regulation 8A;”;

(g) in the definition of “exempted development” for “regulation 4(8)” substitute “regulation 18”;

(h) in subregulation (2) for “Subjects to sub-regulation” substitute “Subject to subregulation”.

(3) After regulation 3 insert-

“Environmental impact assessment process.

3A.(1) The EIA is a process consisting of-

- (a) the preparation of an environmental statement by the applicant;
- (b) any consultation, publication and notification required by, or by virtue of, these Regulations or any other enactment in respect of EIA development; and
- (c) the steps required under regulation 11A.

- (2) The EIA shall identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors-
- (a) population and human health;
 - (b) biodiversity, with particular attention to species and habitats protected as a result of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds;
 - (c) land, soil, water, air and climate;
 - (d) material assets, cultural heritage and the landscape; and
 - (e) the interaction between the factors referred to in subparagraphs (a) to (d).
- (3) The effects referred to in subregulation (2) on the factors set out in that subregulation shall include the expected effects of the proposed development, arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development.
- (4) The Commission shall ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement.”.

- (4) For regulation 4 substitute-

“General provisions relating to screening.

- 4.(1) Subject to regulation 18-

- (a) the submission by an applicant of a statement referred to by the applicant as an environmental statement; or
- (b) the issuing of a screening direction by the Minister,

shall determine for the purpose of these Regulations whether a List 2 development is EIA development.

- (2) Where the Town Planner or the Minister is considering whether a List 2 development is EIA development, he shall take into account in making that decision-
 - (a) any information provided by the applicant;
 - (b) the available results of any other environmental assessments carried out pursuant to European Union legislation other than the Directive; and
 - (c) such of the selection criteria set out in Schedule 3 as are relevant to the development.
- (3) Where the Town Planner issues a screening opinion, or the Minister makes a screening direction, the Town Planner or the Minister, as the case may be, shall-
 - (a) state the main reasons for the conclusion with reference to the relevant criteria listed in Schedule 3;
 - (b) if it is determined that the proposed development is not EIA development, state any features of the proposed development and measures envisaged to avoid, or prevent what might otherwise have been, significant adverse effects on the environment; and
 - (c) send a copy of the screening opinion to the person who proposes to carry out, or who has carried out, the development in question.
- (4) The Town Planner may give a screening opinion irrespective of whether he has received a request to do so.
- (5) Where the Town Planner issues a screening opinion he shall send a copy of the opinion and the written statement to the Minister with a request that the Minister make a screening direction under subregulation (6).

(6) Pursuant to a request made under subregulation (5), the Minister shall make a screening direction within-

- (a) 6 weeks beginning with the date on which the Minister obtains sufficient information to inform a screening direction; or
- (b) such longer period, not exceeding 90 days, as may reasonably be required, beginning with the date on which the Minister obtains sufficient information to inform a screening direction, but this is subject to subregulation (7).

(7) Where the Minister considers that due to exceptional circumstances relating to the proposed development it is not practicable to issue a screening direction within the period specified in subregulation (6), the Minister may extend that period by notice in writing given to the person bringing forward the development which is the subject of the proposed screening direction.

(8) The Minister shall state in any notice given under subregulation (7) the reasons justifying the extension and the date when the determination is expected, which should be as soon as reasonably possible.

(9) The Minister shall send a copy of any screening direction to the Town Planner.

(10) The Minister on receiving a request for a screening direction shall, if he considers that he has not been provided with sufficient information to give a screening direction, notify in writing-

- (a) the person that made the original request for the screening opinion; and
- (b) the Town Planner,

of the points on which he requires additional information.”.

(5) Regulation 5 is amended as follows-

(a) for subregulation (2) substitute-

“ (2) A person making a request for a screening opinion must provide the following-

- (a) a plan sufficient to identify the land;
- (b) a description of the development, including in particular-
 - (i) a description of the physical characteristics of the development and, where relevant, of demolition works;
 - (ii) a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (c) a description of the aspects of the environment likely to be significantly affected by the development;
- (d) to the extent the information is available, a description of any likely significant effects of the proposed development on the environment resulting from-
 - (i) the expected residues and emissions and the production of waste, where relevant; and
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity; and
- (e) such other information or representations as the person making the request may wish to provide or make, including any features of the proposed development or any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.”;

(b) for subregulation (3) substitute-

“ (3) A person making a request for a screening opinion shall, where relevant, take into account-

- (a) the criteria of Schedule 3; and
- (b) the available results of any other European Union environmental assessments of the effects on the environment.”;

(c) for subregulation (4) substitute-

“ (4) The Town Planner on receiving a request under subregulation (1) shall, if he considers that he has not been provided with sufficient information to give a screening opinion, notify in writing the person making the request of the points on which he requires additional information.”;

(d) after subregulation (4) insert-

“ (5) The Town Planner shall issue a screening opinion, and provide a copy of said screening opinion to the Minister, within-

- (a) 6 weeks beginning with the date of receipt of a request made pursuant to subregulation (1); or
- (b) such longer period, not exceeding 90 days from the date on which the person making the request submits the information required under subregulation (2) as may be agreed in writing with the person making the request.

(6) Where the Town Planner considers that due to exceptional circumstances relating to the circumstances of the proposed development it is not practicable for him to issue a screening opinion within the relevant period specified in subregulation (5), the Town Planner may extend the period by notice in writing given to the person who made the request for a screening opinion.

(7) The Town Planner shall state in any notice given under subregulation (6) the reasons justifying the extension of time

and the date when the determination is expected, which should be as soon as reasonably possible.”.

(6) In regulation 6 for every reference to “sub-regulation” substitute “subregulation”.

(7) Regulation 7 is amended as follows-

(a) for subregulation (4) substitute-

“ (4) The Town Planner shall not give a scoping opinion in response to a request under subregulation (1) until he has consulted the consultation bodies, but shall provide a scoping opinion to the person making the request within-

(a) 6 weeks beginning with the date of receipt of a request made under subregulation (1); or

(b) such longer period, not exceeding 90 days from the date on which the person making the request submits the information required under subregulation (3) as may be agreed in writing with the person making the request.”;

(b) for subregulation (5) substitute-

“ (5) Before giving a scoping opinion the Town Planner shall take into account-

(a) any information provided by the person making the request;

(b) the available results of any other environmental assessments carried out pursuant to European Union legislation other than the Directive; and

(c) such of the selection criteria set out in Schedule 3 as are relevant to the development.”;

(c) in subregulation (6) for “sub-regulation” substitute “subregulation”.

(8) In regulation 8 for every reference to “sub-regulation” substitute “subregulation”.

(9) After regulation 8 insert-

“Environmental Statements.

8A.(1) An EIA application shall be accompanied by an environmental statement for the purposes of these Regulations.

(2) An environmental statement is a statement which includes at least-

- (a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;
- (b) a description of the likely significant effects of the proposed development on the environment;
- (c) a description of the features of the proposed development, and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the significant effects of the development on the environment;
- (e) a non-technical summary of the information referred to in subparagraphs (a) to (d); and
- (f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular proposed development or type of development and to the environmental features likely to be affected.

(3) An environmental statement shall-

- (a) where a scoping opinion has been issued in accordance with regulation 7, be based on the most recent scoping opinion issued (so far as the proposed development remains materially the same as the proposed development which was subject to that scoping opinion);
 - (b) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and
 - (c) be prepared, taking into account any other relevant environmental assessments required under European Union legislation or some other provision of domestic legislation, with a view to avoiding duplication of assessment.
- (4) In order to ensure the completeness and quality of the environmental statement-
- (a) the developer must ensure that the environmental statement is prepared by competent experts; and
 - (b) the environmental statement must be accompanied by a statement from the developer outlining the relevant expertise or qualifications of such experts.
- (5) Where necessary, the Commission shall seek from the applicant supplementary information, in accordance with Schedule 4, which is directly relevant to reaching the reasoned conclusion on the significant effects of the development on the environment.”.
- (10) Regulation 9 is amended as follows-
- (a) for every reference to “sub-regulation” substitute “subregulation”;
 - (b) in subregulation (5)(a) for “copies” substitute “copy”.
- (11) Regulation 10 is amended as follows-

- (a) in subregulation (1) for “sub-regulations” substitute “subregulations”;
- (b) for every reference to “sub-regulation” substitute “subregulation”.

(12) In regulation 11 for every reference to “sub-regulation” substitute “subregulation”.

(13) After regulation 11 insert-

“Consideration of whether planning permission should be granted.

11A.(1) When determining an EIA application in relation to which an environmental statement has been submitted, the Commission shall-

- (a) examine the environmental information;
- (b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in subparagraph (a) and, where appropriate, their own supplementary examination;
- (c) integrate that conclusion into the decision as to whether planning permission is to be granted; and
- (d) if planning permission is to be granted, consider whether it is appropriate to impose monitoring measures.

(2) The reasoned conclusion referred to in subregulation (1) shall be up to date at the time that the decision as to whether planning permission for EIA development is to be granted;

(3) A reasoned conclusion shall be considered up to date for the purpose of subregulation (2) if in the opinion of the Commission it addresses the significant effects that are likely to arise as a result of the development proposed.

- (4) In cases where no statutory timescale is in place the decision of the Commission shall be taken within a reasonable period of time, taking into account the nature and complexity of the proposed development, from the date on which the Commission has been provided with the environmental information.

Information to accompany decisions.

11B. Where an EIA application in relation to which an environmental statement has been submitted is determined, the Commission when making the determination shall provide the applicant with the following information-

- (a) if the decision is to grant planning permission-
- (i) the reasoned conclusion referred to in regulation 11A(1)(b);
 - (ii) any environmental conditions attached to the decision;
 - (iii) a description of any features of the development and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset likely significant adverse effects on the environment; and
 - (iv) any monitoring measures that may be considered appropriate; or
- (b) if the decision is to refuse planning permission, the main reasons for the refusal.

Coordination.

11C.(1) Where in relation to EIA development there is, in addition to the requirement for an EIA to be carried out in accordance with these Regulations, also a requirement to carry out an assessment under the Habitats Directive, the Commission shall, where appropriate, ensure that the assessment and the EIA are coordinated.

(2) In this regulation, the “Habitats Directive” means an assessment under Directive 92/43/EEC or Directive 2009/147/EC-

- (a) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; and
- (b) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.”.

(14) In the main-heading above regulation 12 for “etc. And” substitute “etc, and”.

(15) After regulation 13(2) insert-

“ (3) The information made available to the public shall include-

- (a) the content of the decision and any conditions attached thereto;
- (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
- (c) a summary of the results of the consultations undertaken and the information gathered pursuant to Articles 5 to 7 of the Directive, and how these results have been incorporated or otherwise addressed.”.

(16) After regulation 13 insert-

“Objectivity and bias.

13A.(1) Where the Town Planner or the Minister has a duty under these Regulations, he shall perform that duty in an objective manner so as not to find himself in a situation giving rise to a conflict of interest.

(2) Where the Town Planner or the Minister, is bringing forward a proposal for development and is also responsible for determining the proposal, he shall make appropriate

administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the person bringing forward a proposal for development and the person responsible for determining that proposal.

- (3) Where the Minister is making an application as a developer and this conflicts with his responsibility to issue a screening direction, the Town Planner's screening opinion will determine whether or not the development is EIA development, and regulations 4(1)(b), 4(5) and 5(5) shall not apply.”.

(17) For subregulation 14(6) substitute-

“ (6) Where a Member State has been consulted in accordance with subregulation (5) on the determination of the application concerned the Minister shall inform the Member State of the decision and shall cause a statement to be forwarded to it with the information referred to in regulation 11B.”.

(18) Regulation 15 is amended as follows-

- (a) in the regulation-heading for “Projects” substitute “Developments”;
- (b) for every reference to “developer” substitute “applicant”;
- (c) for every reference to “project” substitute “development”;
- (d) for every reference to “development consent” substitute “planning permission”.

(19) After regulation 16 insert-

“Exchange of information with the European Commission.

16A. Every 6 years as from the 16 May 2017 the Commission shall ensure that the European Commission is informed, where such data is available, of the following-

- (a) the number of List 1 and List 2 developments made subject to an environmental impact assessment in accordance with these Regulations;
- (b) the breakdown of environmental impact assessments according to the development categories set out in Schedules 1 and 2;
- (c) the number of List 2 developments made subject to a determination in accordance with these Regulations;
- (d) the average duration of the environmental impact assessment process;
- (e) general estimates on the average direct costs of environmental impact assessments, including the impact from the application of this Directive to SMEs.”.

(20) In regulation 17 for every reference to “sub-regulations” substitute “subregulations”.

(21) After regulation 17 insert-

“Exemptions.

18.(1) The Minister may direct that a proposed development is exempt from the requirements of these Regulations where-

- (a) the circumstances are exceptional and the Minister considers that-
 - (i) compliance with these Regulations in respect of the development would have an adverse effect on the fulfilment of the development’s purpose; and
 - (ii) despite an EIA not being carried out, the objectives of the Directive will be met; or
- (b) the development comprises or forms part of a development having national defence as its sole purpose, or comprises a development having the

response to civil emergencies as its sole purpose, and in the opinion of the Minister compliance with these Regulations would have an adverse effect on those purposes.

(2) The Minister shall not make a direction under subregulation (1)(a) that a development is exempt unless-

- (a) the Minister has considered whether another form of assessment is appropriate; and
- (b) where the Minister considers that the development is likely to have significant effects on the environment in a Member State, or where a Member State is likely to be significantly affected so requests, the Minister has carried out a form of consultation with that Member State broadly equivalent to the form described in regulation 14 or 15, as appropriate, or is satisfied that such an equivalent consultation has been carried out, before planning permission is granted in respect of the development.

(3) Where a direction is given under this regulation the Minister shall-

- (a) send a copy of any such direction to the Commission;
- (b) make available the information considered in making the direction and his reasons for doing so;
- (c) consider whether another form of assessment would be appropriate; and
- (d) take such steps as he considers appropriate to bring the information obtained under the other form of assessment to the attention of the public.”.

(22) For Schedule 3 substitute-

“SCHEDULE 3

**CRITERIA TO DETERMINE WHETHER LIST 2
DEVELOPMENTS SHOULD BE SUBJECT TO AN
ENVIRONMENTAL IMPACT ASSESSMENT**

1. Characteristics of developments

The characteristics of developments shall be considered, with particular regard to-

- (a) the size and design of the whole development;
- (b) cumulation with other existing and/or approved developments;
- (c) the use of natural resources, in particular land, soil, water and biodiversity;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of major accidents and/or disasters which are relevant to the development concerned, including those caused by climate change, in accordance with scientific knowledge;
- (g) the risks to human health (for example due to water contamination or air pollution).

2. Location of developments

The environmental sensitivity of geographical areas likely to be affected by developments shall be considered, with particular regard to-

- (a) the existing and approved land use;
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including

soil, land, water and biodiversity) in the area and its underground;

- (c) the absorption capacity of the natural environment, paying particular attention to the following areas-
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under national legislation; Natura 2000 areas designated under Directive 92/43/EEC and Directive 2009/147/EC;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in European Union legislation and relevant to the development, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

3. Type and characteristics of the potential impact

The likely significant effects of developments on the environment shall be considered in relation to criteria set out in paragraphs 1 and 2 of this Schedule, with regard to the impact of the development on the factors specified in regulation 3A(2), taking into account-

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
- (b) the nature of the impact;

- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved developments;
- (h) the possibility of effectively reducing the impact.”.

(23) For Schedule 4 substitute-

“SCHEDULE 4

**INFORMATION FOR INCLUSION IN ENVIRONMENTAL
STATEMENT**

1. Description of the development, including in particular-

- (a) a description of the location of the development;
- (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat,

radiation) and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.
4. A description of the factors specified in regulation 3A(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.
5. A description of the likely significant effects of the development on the environment resulting from, inter alia-
 - (a) the construction and existence of the development, including, where relevant, demolition works;
 - (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
 - (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;

- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved developments, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the development on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the development to climate change;
- (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 3A(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at European Union or national level which are relevant to the development.

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.
7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-development analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.
8. A description of the expected significant adverse effects of the development on the environment deriving from the

vulnerability of the development to risks of major accidents and/or disasters which are relevant to the development concerned. Relevant information available and obtained through risk assessments pursuant to European Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.
10. A reference list detailing the sources used for the descriptions and assessments included in the report.”.

Transitional provisions.

4. The Town Planning (Environmental Impact Assessment) Regulations 2000 shall continue to apply as if these Regulations have not come into operation where-

- (a) an applicant has submitted an environmental statement or requested a scoping opinion;
- (b) a request has been made for a screening opinion or screening direction;
- (c) a screening opinion has been issued by the Town Planner; or
- (d) a screening direction has been issued by the Minister,

and the relevant action in paragraphs (a) to (d) was initiated before 16 May 2017.

Dated 16th May, 2017.

P J BALBAN,
Minister with Responsibility for Town Planning.

EXPLANATORY MEMORANDUM

These Regulations transpose into the law of Gibraltar Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.