Tayla Sumner

From: Daniel Brown
Sent: Tuesday, 22 October 2024 1:31 pm
To: Hamish Cuthbert; Lisa Mead; Kristina Healy; Martin Williams; Alice Barnett; Karen Sky; Chris Drayton; Shirley Chamberlin; Grace Burtin; Humphrey Tapper
Cc: David Chittenden; Michael Tucker; Tayla Sumner; Emma Robertson; Matt Spiro
Subject: follow up questions on NPS-REG work [UNCLASSIFIED]

Good afternoon everyone.

Thanks again for the constructive recent meeting to work through policy for the NPS-REG.

We've had some discussions with Ministers on next steps, and they are keen for us to continue engaging with you (amongst others) to help fine tune the policy and drafting prior to material going out for formal consultation (scheduled for February next year).

To that end, we'll look to set up a further session prior to the Xmas break. Timing TBC, but late November may suit at this point. I appreciate Martin was working up some potential wording for us to consider on certain matters, so we can talk about that and other key matters as suits.

Prior to that, we have a shorter-term task to respond to some questions from Ministers, which hopefully you can help with if time allows.

In summary, we are working through how some things referred to in national direction may work in practice, drawing on previous/live examples of projects.

In particular we are interested in the workability of proposals that based on the term '*where practicable'* (ie how this term has been interpreted in practice), the implementation of proposals for *offsetting and compensation* (ie are these being unnecessarily constraining for development), and *'proportionality'* of conditions.

We'll be testing these issues with RM practitioners in local govt as well.

Some specific questions to tease this out include:

1. Are there existing or new REG projects that didn't meet a functional or operational need test? If so, what was the project and why was that the case?
2. Do you have examples of consent decisions that have dealt with the 'where practicable' component of EMH (NPS FM and IB) and more generally in RMA? How is practicability being interpreted? (Examples can be of decisions that went for or against development)
3. Do you have examples of consent decisions that have dealt with offsetting and compensation - where decision-makers / courts have applied the provisions strictly/narrowly (or otherwise)?
4. In any of the cases, do you have examples where conditions have been applied that seem disproportionate (relative costs to benefits) or overly onerous (even if the project went ahead)?
5. What do you suggest that the NPS (or other interventions/guidance) could do to improve practice in these areas?

We are looking to pull together some advice on this in the next week and a half (working to deadline of approx. 4 November) – appreciate this isn't much time, but even some links to relevant consent decisions for us to read, and/or identification of what you think may both be good and bad practice (from your perspective) would be useful. We could follow this with a meeting if diaries allow.

Happy to discuss on the phone with whoever is best place to organise at your end. Apologies again for the short notice and timeframes around this.

Regards

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