

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL IN BELIZE

BETWEEN:

**(1) THE BELIZE ALLIANCE OF CONSERVATION
NON-GOVERNMENTAL ORGANISATIONS
(2) PHYLLIS DART
(3) GODSMAN ELLIS**

Petitioners

-and-

**(1) THE DEPARTMENT OF THE ENVIRONMENT
(2) BELIZE ELECTRICITY COMPANY LIMITED**

Respondents

**PETITIONERS' NOTE ON BELIZE'S EIA REGIME
For hearing 3rd December 2003**

Introduction

1. The Respondents have sought to argue that the legislation in Belize justifies approval of the project whilst leaving over for further consideration the issues your Petitioner raises in relation to archaeology, geology, rare plants and wild life, most particularly assessment of the impact of the project and mitigation measures.
2. It may therefore be of assistance for the Petitioners to set out their understanding of the legislative scheme in Belize.
3. Within the Belizean EIA regime the term "environmental impact assessment" ("EIA") is used in 3 senses: (i) to describe the assessment undertaken ("assessment"), (ii) to describe the report of the assessment ("the report"), and (iii) to describe the overall process of assessment, reporting, consultation and consideration/determination by the NEAC/DOE ("the overall process")¹. See thus, for example, the Environmental Protection Act(EPA) s20(1) and in the Environmental Impact Assessment Regulations (EIA Regulations) regulation 17.

¹ DOE agrees (para 9.1)

The EPA

The obligations under the EPA

4. The overall obligations arise from the EPA are:
 - (1) s20(1) – which provides the basic obligation - a developer of a project which “may significantly effect the environment” shall undertake an assessment and submit a report of it to the DOE for evaluation. By EPA s21, regulations may prescribe the projects for which that it required.
 - (2) By EPA s20(2) and s20(3), the report shall “identify and evaluate” the environmental effects of specified developments and include measures which the developer intends to take to mitigate any adverse effects and a statement of reasonable alternative sites and the reasons for their rejection. (The requirements are thus mandatory. Although regulations under s21 may prescribe the details of the procedures to be followed, the regulations must construed so as to be consistent with the requirements of s20(2) and s20(3).)
 - (3) By EPA s20(5), when making an EIA, the developer must consult the public.
 - (4) By EPA s20(6), the DOE may also undertake its own assessment and synthesise with it the views of the public and of interested bodies.
 - (5) By EPA s20(7), the decision to approve an EIA may be subject to conditions and it is agreed between the parties that s 20(7) implies a power on the DOE to grant environmental clearance; approval of the EIA is thus the decision which allows the developer to proceed with their project – described in the documents of the case as the grant of “environmental clearance”². Such clearance thus depends on production and consideration of an EIA which complies with the requirements of the EPA and regulations. Here, approval was made conditional on compliance with the ECP.
5. Both Respondents seek to contrast EIA approval under the scheme in Belize with the fact that EIA approval under the UK scheme is expressly

linked to the grant of planning permission³: see Reg 4(2) of the 1988 Regulations; Reg 3(2) of the 1999 Regulations. The point made is difficult to follow. In any event:

- (1) Under both regimes approval requires the EIA undertaken to be lawful; contrary to DOE's submissions incompleteness renders the EIA unlawful.
- (2) The fact that the lawfulness of the EIA is tested in the UK at the planning permission stage is simply the result of the UK's decision to implement the requirement to implement EIA within existing procedures for consent (see Art 2(1) 1985 and 1997 Directives (although "development consent" is not limited to the grant of planning permission: see R -v- North Yorkshire ex p Brown and Cartwright⁴; also the AG's opinion of 25th September 2003 in Wells⁵; also the decision by the House of Lords of 30th June 2003 to refer Barker⁶ to the ECJ).
- (3) DOE para 2.4 is therefore incorrect in suggesting that clearance does not depend on a compliant EIA process and report. Those matters are even more central to the Belize regime than is the equivalent in the UK precisely because, as the DOE point out (para 8.1) Belize does not have a separate regime of planning control: in Belize, the EIA regime is the regime of planning control.

Sanctions

6. The EPA creates two offences¹²:

² DOE agrees (para 9.4)

³ DOE paras 8.1 and 10.5; BECOL para 59

⁴ Authorities Vol 2 Tab 5 establishing the need for EIA in determination of conditions on an old minerals consent

⁵ Authorities Vol 5 Tab 8 dealing with the need for EIA when considering conditions left outstanding following grant of approval (as per Brown)

⁶ Authorities Vol 5 Tab 9 dealing with outline planning permission/reserved matters. The issue is very similar to that in Wells and, by order of 25th October 2003, the ECJ has stayed consideration of Barker until it has reached its decision in Wells

⁷ para 9.5; also BECOL para 60

⁸ The fact that, in Belize, developments do not generally require consent does not undermine the formality of the process which applies to developments within the ambit of the EIA regime. DOE is wrong to suggest otherwise (para 10.5)

⁹ DOE para 14.1 which also quite inappropriately seeks to distinguish EIA from the decisions under challenge when in truth they are one and the same.

¹⁰ DOE agrees (para 9.2)

¹¹ BECOL para 59

¹² DOE agrees (para 8.4)

- (1) Failure to carry out an EIA as required under the EPA or EIA regulations which, on conviction leads to a fine of up to \$25,000 or imprisonment for 6 months (minimum) to 5 years, or both [EPA s22].
- (2) If the DOE seeks to impose a more severe sentence or requires specific remedial steps to be undertaken, it has the discretion to serve an enforcement order [EPA s52] failure to comply with which, on conviction leads to a fine of up to \$25,000 or imprisonment for 5 years (minimum) to 8 years, or both [EPA s58].

The English regime has an equivalent of (2) but not (1) (i.e. a criminal offence only arises from non-compliance with an enforcement notice (which can be appealed against)). This serves to reinforce the centrality of compliant EIA within the Belizean regime.

7. EIA regulation 28(1) also make it an offence to contravene any provision of the regulations which, on summary conviction, leads to a fine not exceeding \$2,000 or to imprisonment for up to 12 months, or both.

The EIA Regulations

The framework

8. Regulation 6 describes the stages of the overall process which the EIA process shall include a "screening" (as to which see regulation 14, as below), a review by the NEAC (as to which see regulation 25) and (by 6(c)), the design and implementation of a "follow up" programme. It thus fleshes out the process required by EPA s20(1). Note that 6(c) is a reference to the imposition of conditions on the approval (under EPA s20(7)) and the process of securing compliance with those conditions during the implementation of the project in accordance with the approval. It is not implying (as the DOE contend¹³) that the overall EIA process (including assessment and reporting of matters under EPA s20(2)/(3) generally extends beyond the time of approval under EPA s20(7)).

¹³ DOE para 10.6.2 and 12.3. The fact that the EIA process "contemplates monitoring and the working through of conditions after clearance is granted" does not (contra DOE para 10.6.2) give a mandate to "leave matters unresolved at the clearance stage to a much greater extent than in England". Both regimes allow for approvals to be subject to conditions. And in both regimes, it is impermissible to try and use assessments (etc) pursuant to conditions as a "surrogate for EIA" (per Laws LJ in Gillespie para 48 Authorities Vol 2 Tab 9)

9. By regulation 3(1), the criteria and procedure under the regulations shall be used to determine whether an activity is likely to significantly affect the environment and is therefore subject to EIA.
10. Regulation 3(2) requires all persons (unless exempted) before embarking on a proposed project to apply to the DOE for a determination as to whether an EIA is required.
11. Regulation 4 identifies the objectives of the overall process and is prescriptive. By regulation 4(1), before the project commences, the EIA process to be followed shall be identified by identifying and examining the significant environmental issues which are relevant to the project.
 - (1) Regulation 4(1) "identifies" the EIA process itself by reference to significant environmental issues i.e. ascertaining the issues is the defining and essential feature of the scheme.
 - (2) The reference to "issues" probably foreshadows (i) Regulation 5 and, more importantly, (ii) contemplates the possibility of re-submission of the EIA under Regulation 22 and 23, if necessary.
 - (3) The obligation to identify and examine significant environmental "issues" sets the threshold for investigating any particular environmental effect lower than the UK equivalent, which requires "likely significant environmental effects" to be considered¹⁴.
12. Regulation 5, on the other hand, is both descriptive in purpose and prospective: thus Regulation 5(f) looks ahead to the EIA describing any gaps in knowledge and uncertainty which may be encountered. It sets out the basic minimum requirement for the assessment process (as distinct from the report arising from the assessment under Regulation 19) which includes, a description of what is being proposed, a description of the affected environment, a description of the alternatives, an identification of the "measures available" to mitigate the adverse effects and an assessment of those effects, and (by 5(f)) an indication of the gaps in

¹⁴ see UK 1999 EIA regulations (Authorities Vol 1 Tab 5) in which the decision maker, when granting planning permission under Regulation 3(2), must take environmental information (i.e. the environmental statement plus representations: see Regulation 2(1)(b)) and for which the environmental statement must describe (under Sch 4 para 4) the "likely significant effects" of the development on the environment: Authorities Vol 1 Tab 5 page 70

knowledge and uncertainties which may be encountered in computing “the required information”.

13. The Respondents are driven to place particular reliance on Regulation 5(f); and your Petitioners would suggest:
 - (1) Regulation 5(d) requires a comprehensive and all embracing description of likely or potential environmental impacts (direct and indirect, cumulative, short-term and long-term). The description is not defined in 5(d) as describing “significant environmental effects”.
 - (2) Regulation 5(e) is likewise a comprehensive and all embracing requirement to identify and describe all mitigation measures available to mitigate adverse effects and an assessment of these mitigation measures.
 - (3) Regulation 5(f) provides the exception to the earlier requirements imposed by Regulation 5(a)(b)(c)(d) and (e). Regulation 5(f) is therefore to be construed strictly.
 - (4) Regulation 5(f) also foreshadows the procedure for resubmitting the report of the EIA under regulations 22 and 23 (see further below).
 - (5) Regulation 5(f) resembles para 7 in Part 4 of the English EIA regulations¹⁶ and Annex 4 para of the EU Directive¹⁷ which state that the ES may contain “an indication of any difficulties (technical deficiencies or lack of know how) encountered by the applicant in compiling the required information”. There are no ECJ cases or domestic authorities which suggest that assessments or mitigation measures may be deferred on the basis of those provisions.
 - (6) DOE contends (para 12.1ff) that 5(f) expressly recognises that EIA overall can lawfully leave matters for later resolution post approval of the project. That is not so. 5(f) does not provide a mandate for deferring assessments or the design or assessment of mitigation measures beyond approval; that would be *ultra vires* EPA s20(2).

The procedural stages

¹⁵

¹⁶ Authorities Vol Tab 5 page 71

¹⁷ Authorities Vol 1 Tab 8

14. The detail of the steps involved in the overall process, in sequential order, is as follows:
15. By regulation 11, every developer, before proceeding with the "final design" of an undertaking, shall notify the DOE in writing on a prescribed form of the proposed undertaking. Accordingly, the design must be "final" before the EIA process even starts, and the DOE is therefore wrong to claim that design of the MRUSF could be left until after EIA and after the approval of the project¹⁸.
16. By regulation 14, within 30 days of receipt of the regulation 11 form, the DOE must decide whether EIA is required (described in the heading to regulation 14 as a "screening"). Screening includes a consideration of the factors set out in regulation 26(1).
17. EIA is mandatory for all projects within schedule 1 of regulations (regulation 7), is required at the discretion of the DOE for those within schedule 2 (regulation 8) and is not required for projects covered by regulation 9.
18. Following a regulation 8 determination in relation to a Schedule 2 project: by regulation 10, where the DOE has decided EIA is not required, the developer may proceed with the project; by regulation 13(1), where the DOE has decided that EIA is required, it shall order an EIA.
19. The clear implication of the regulations discussed in paras 17 and 18 above, is that the developer of any Schedule 1 project, or of a Schedule 2 project which is to be subject to EIA, cannot proceed without completion of the EIA process; and, as above, if they do so, they act in contravention of EPA s20(1) and commit a criminal offence under EPA s22.
20. The project here is a Schedule 1 project.
21. By regulation 12, the DOE "shall not consider or decide upon" such a project unless an EIA has been prepared for the project²⁰. The "decision" in question is the decision to approve the project²¹ against which the developer has a right of appeal (regulation 27(2)). A complete report of the required assessments in accordance with the regulation is thus a

¹⁸ DOE para 20.8

¹⁹ ref Schedule 1??

²⁰ As explained below, by regulation 22(1), the DOE must come to a decision within 60 days after the completed EIA has been submitted and, by regulation 22(2), a developer shall not commence development until he has been advised on the DOE's decision.

²¹ DOE agrees (para 9.4)

precondition to the DOE's decision to grant clearance for the project. Any other interpretation would be *ultra vires* EPA s20(1) which makes the EIA report central to the DOE's approval of the project (under EPA s20(7)).

22. By regulation 15, where EIA is to take place, the developer submits to the DOE draft terms of reference (TOR) for the purposes of the EIA.
23. By Regulation 16, the DOE determines whether the draft TOR is adequate to form the TOR for the EIA; advises the developer of its decision; and may order modifications to the draft²².
24. By regulation 17, the developer must commence the EIA and then submit it to the DOE by the specified date²³.
25. By regulation 18, during the process of assessment:
 - (1) In accordance with a procedure determined by the DOE (regulation 18(4)), the developer must hold public meetings to provide information and record the concerns of the local community (regulation 18(1)) (thus complying with the EPA s20(5) obligation); and
 - (2) the DOE may invite written comments on the of the proposed project (regulation 18(2)) and submit them to the developer who shall answer and pertinent questions they raise (regulation 18(3))²⁴ (thus giving effect to the EPA s20(6) obligation).
26. By regulation 19, the report of the EIA (which would be the "environmental statement" (ES) in UK law²⁵) "shall include" a detailed prescribed list of elements including, "the data necessary to identify and assess the main effects" of the proposed development, a "description of the likely significant effects", "all mitigation measures to be employed"²⁶,

²² The DOE did so here including by imposing more detailed requirements in relation to archaeology: BACONGO case summary para 51 and the references it provides

²³ Regulation 13(2)(b) appears to overlap

²⁴ Regulation 18(3) refers to written comments under regulation 18(1), which must mean regulation 18(2)

²⁵ The requirements of the Belizean regime are notably more detailed than those in England. See para 47(2) below.

²⁶ Although the underlining is added, it is plain from the use of the word "all" that the drafter intended to reinforce the message that deferral of reporting on the mitigation measures to be used is not permitted. The point is reinforced by the fact that regulation 5(e) requires the mitigation measures to be identified and assessed within the EIA process. Plainly, the measures cannot be assessed within the process if they are not to be designed until after post approval assessments have been carried out pursuant to EPA s20(7) conditions (here through the ECP).

and a report on the public hearings, if any²⁷. Regulation 19 thus gives detail to amplify the matters set out in EPA s20(2) and (3).

27. The Respondents draw attention to Regulation 19(b) providing *inter alia* that the summary should highlight “the conclusions, areas of controversy and issues which remain resolved”. The Report therefore contemplates the possibility that issues may still be unresolved: again foreshadowing the procedure for resubmitting the report of the EIA under Regulations 22 and 23. As for regulation 5(f) considered at para 13 above, Regulation 19(b) resembles the provisions in the English and EU EIA regime which have not been held by the courts to permit deferral of assessment.
28. By regulation 20, the person who has “submitted” the EIA must publicise, in a tightly specified way, information about the location of the proposal, the application, the ES, where and when the ES can be inspected, and the fact that objections and representations may be made to the DOE in relation to the EIA. It thus gives effect to part of EPA s20(6).
29. By regulation 21, when the DOE receives the report:
 - (1) it may direct that the report is made available for inspection by interested persons (regulation 21(1)(a)) (pursuant to EPA s20(6))
 - (2) it shall examine whether the EIA complies with the TOR (regulation 21(1)(b))
 - (3) it shall examine (i) whether further assessment is required, or (ii) any significant harmful impact is indicated (regulation 21(1)(c)) (i.e. as part of its evaluation of the report for the purposes of EPA s20(1)).
30. By regulation 22(1), the DOE shall advise the developer of its decision²⁹ within 60 days after the completed EIA report has been submitted.
31. By regulation 22(2), the developer may not commence or proceed with the development until it receives that decision (otherwise there would be a

²⁷ being the public meetings held by the Developer under regulation 18

²⁸ The fact that the summary of the report (reg 19(b) identifies “areas of controversy and issues remaining to be resolved” cannot be read as legitimising the deferral of matters which must – by EPA s20(2)/(3) – be within the report; otherwise reg 19(b) is, to that extent, *ultra vires* the EPA. DOE is wrong in suggesting otherwise (para 12.2).

²⁹ Including potentially thus its overall decision to grant clearance or not for the project under EPA s20(1)

violation of EPA s20(1) and commission of an offence under EPA s22³⁰ and an offence under regulation 28(2)³¹ and liability to enforcement action bringing enhanced penalties on conviction³²).

32. During that period, by regulation 25(1), the NEAC reviews the EIA, advises the DOE on its adequacy and advises whether a public hearing is desirable or necessary.
33. By regulation 26(1) that assessment by NEAC shall include consideration of the environmental effects of the project, their significance, public comments, "measures that are technically and economically feasible to prevent or mitigate significant or serious environmental effects of the project, and by regulation 26(2), its purpose, alternatives to it, and the need for it. Plainly, NEAC (and the DOE which acts on its recommendation) undertake a broad assessment of the merits and desirability of the project and whether it should be allowed to proceed³⁴.
34. By regulation 22(3), where a developer is required to provide further information, the EIA is deemed not "complete" until the developer has supplied that information (i.e. the 60 day determination period under Regulation 22(1) does not start running).
35. Once the EIA is completed under Regulation 22, by regulation 23, the DOE may (on the recommendation of NEAC) require the developer to conduct further studies, supply further information, amend the report and "resubmit" the EIA i.e. to submit the EIA to be publicised in accordance with Regulation 20.
36. By regulation 24(1), the DOE may, on the recommendation of NEAC, require the holding of a public hearing in respect of a project for which EIA is required.

³⁰ DOE agrees (para 8.10). As above, the Belizean regime thus makes compliance with the EIA regime an absolute prerequisite for lawful development of a Schedule 1 project. That is in stark contrast with the English regime which interposes the discretionary regime of planning enforcement and an appeal to the Secretary of State on the planning merits.

³¹ DOE agrees (para 9.4)

³² DOE agrees (para 9.4)

³³ See DOE para 9.4. DOE para 10.6.1 is notably equivocal on the point.

³⁴ DOE agrees (para 9.2 footnote 3)

³⁵ DOE is incorrect in stating that the regulations do not provide for "re-advertising" (para 8.11)

³⁶ Note that BECOL accepts that, where further studies are required, the DOE should "normally" require amendment and resubmission of the EIA (para 61)

³⁷

37. In deciding whether such a hearing is required, the DOE shall take into account the magnitude of the project, the degree of public interest in the project, the complexity of the problem and the possibility that the developer may be assisted "to comply with its responsibilities" (presumably in relation to the EIA process) by the information presented at the public hearing. The content of such a hearing should secure the objectives for which a hearing has been required.
38. Here, NEAC was unanimous in recommending the holding of a hearing³⁸. The fact that the minutes use the term "consultations" as well as the term "hearing" is not significant because (i) NEAC has the power under regulation 24(1) to recommend hearings but none to recommend any other form of consultation, (ii) the issue of whether to make a recommendation is one of substance not form. In any event, the division of opinion within NEAC was as to whether the hearings needed to be before or after NEAC made its decision on the project³⁹; NEAC does not appear to have considered the relationship between any hearing and a decision by the DOE.
39. By regulation 27(1), where the DOE has decided that a project may not proceed, the developer may appeal against the refusal to the Minister.

The purpose of the EIA process

40. The purposes of the EIA process are, among other things, (i) to identify significant environmental issues and (ii) to identify any mitigation measures needed to address adverse environmental effects, (iii) to receive public comments on those matters, so as secure informed decision-making.
41. The first objective (of identifying significant environmental issues for the purposes of the overall) process is achieved:
- (1) by imposing a duty under s 20(1) EPA to ensure that any project likely to have significant environmental effects submits an EIA;
 - (2) by requiring under Regulation 3(1) that the criteria and procedure under the EIA Regulations shall be used to determine whether an activity is likely to have significant environmental effects and is therefore subject to EIA.

³⁸ B7A page 265 para 2.01

³⁹ B7A page 264 para 1.04

- (3) by identifying the purpose of an EIA as ensuring that significant environmental issues are identified and examined before the project is commenced under Regulation 4(1);
 - (4) by requiring the Report to contain data necessary to identify and assess significant economic impacts under Regulation 19(g) and to describe those effects under Regulation 19(h);
 - (5) by requiring NEAC to assess significant or serious environmental effects under Regulation 26(1)(a)(b); and
 - (6) by giving the DOE the power to decide (i) whether a further EIA is required or (ii) any significant harmful impact is indicated under Regulation 21(1)(c).
42. The second objective (of ensuring mitigation measures are in place for the purpose of the overall process) is achieved:
- (1) by imposing a duty to take any mitigation measure the proposed developer intends to take in relation to any adverse environmental effect under s 20(3) EPA;
 - (2) by requiring an identification and description of any mitigation measures available under Regulation 5(e) EIA regulations;
 - (3) by requiring the Plan to contain all mitigation measures to be employed to reduce adverse effects under Regulation 19(j) and a mitigation plan under Regulation 19(k)
 - (4) by requiring NEAC to consider measures which are technically and economically feasible that would mitigate or prevent any significant or serious adverse environmental effects under Regulation 26(1)(d);
 - (5) by giving the DOE the power to decide (i) whether a further EIA is required under Regulation 21(1)(c).
43. The third objective (of achieving public consultation) is achieved by:
- (1) Public consultation during the assessment process;
 - (2) Reporting of those consultations within the report;
 - (3) Publicity for the report;
 - (4) Considering of the public comments on the report; and

(5) The holding of hearings prior to approval.

See thus, EPA section 20(5) and 20(6) and Regulations 18(1), 18(2), 18(3), 18(4), 19(n), 20(1), 20(2), 21(1)(a), 23(d), 24(1), 24(2), 25(1)(c), 26(1)(c).

COMPARISON WITH THE EU/ENGLISH EIA REGIMES

44. It is common ground that this case depends on a proper understanding of the Belizean EIA regime and not on inappropriately importing concepts and requirements from the English regime. The DOE rightly says that the Belize and English EIA regimes are different⁴⁰. But they share many key features such that many of the general conclusions drawn by the English courts are applicable.
45. The DOE says that it is “wrong to apply a highly developed scheme as that found in the EC to Belize”⁴¹. However, several points should be noted. The respondents rely on this to undermine the applicability of the decision in Smith v Secretary of State for the Environment⁴² but that case turned on the 1988 EIA regulations (giving effect to the 1985 Directive) and not the 1999 regulations (giving effect to the 1997 Directive) on which the Respondents have focussed. It is notable that the 1988 regulations considered in Smith are more rudimentary than the legislative scheme in Belize which was introduced in 1995 after the original EU 1985 Directive but before the 1997 Directive.
46. Moreover, the Belizean EIA regime is markedly more sophisticated in many respects than the English regime, even following the amendment of the English regime.
- (1) the Belizean regime includes an enhanced role for public consultation and involvement in comparison with the English EIA regime⁴⁹. Thus, in England, there is no obligation on a developer to consult with the public during the assessment process which Belize requires by primary legislation⁵⁰, nor thus to include a report of

⁴⁰ DOE para 8.1

⁴¹ para 10.4

⁴² Authorities Vol 2 Tab 7 especially paras 25-28

⁴³ Authorities Vol 1 Tab 7

⁴⁴ Authorities Vol 1 Tab 6

⁴⁵ Authorities Vol Tab 9 for amending directive and Tab 8 for the 1985 directive as then amended

⁴⁶ Authorities Vol 1 Tab 5

⁴⁷ ref??

⁴⁸ ref??

⁴⁹ DOE recognises this but denies its implications (para 13.2)

⁵⁰ cf Belize EPA s20(5)

those consultation meetings within the report of the EIA⁵¹ (called the Environmental Statement (ES) in England);

- (2) The matters to be contained within the report of an EIA in Belize (regulation 19) are more detailed and prescriptive than the equivalent in England⁵²; the point is well illustrated by the treatment of "mitigation" and "alternatives" in the two regimes:
 - (a) in relation to mitigation measures (a live issue in this case), in England, even in the 1999 regulations, the obligation is only to provide "a description of the measures envisaged [i.e. by the developer] to prevent, reduce and where possible offset any significant adverse effects on the environment"⁵³ and, because that is within Part 1 of Schedule 4 of the English regulations, that information must only be presented if "reasonably required to assess the environmental effects of the development ... having regard in particular to current knowledge and methods of assessment [the developer can be] reasonably required to compile it"⁵⁴. However, in Belize, the assessment must identify, describe and assess "available" mitigation measures (i.e. not just those suggested by the developer) (regulation 5(e)), the report must describe all mitigation measures (regulation 19(j)) as well as a "mitigation plan" (regulation 19(k)), and NEAC must consider "measures that are technically and economically feasible that would mitigate or prevent (etc)" (i.e. not just those suggested by the developer)
 - (b) In England, the ES needs only to provide "an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice"⁵⁵, whereas in Belize the report must describe "all reasonable alternatives in comparative form exploring each alternative including the no-action alternative The object is to identify the least environmentally damaging alternative that satisfies the basic purpose and the need for the project"⁵⁶; nor does the English

⁵¹ Belize regulations 19(n)

⁵² See Authorities Vol 1 Tab 5 regulation 2(1) definition of Environmental Statement, and Schedule 4

⁵³ See Authorities Vol 1 Tab 5 Schedule 4 Part 1 para 5

⁵⁴ See Authorities Vol 1 Tab 5 regulation 2(1) definition of Environmental Statement

⁵⁵ See Authorities Vol 1 Tab 5 Schedule 4 Part 1 para 2

⁵⁶ EIA regulations 19(i)

EIA regime have an equivalent of Belize's regulation 24 public hearings;

- (c) The English regime has no equivalent of the sophisticated and expert NEAC evaluation/recommendation process under regulation 26. Rather, in England, the local planning authority can proceed directly to a decision on a development on having merely consulted specified statutory and other expert consultees⁵⁷.

47. The DOE is thus simply wrong to say that the Belizean regime is "much less formal or elaborate"⁵⁸.
48. Likewise the references⁵⁹ to the Rio Declaration on Environmental Declaration on Environmental Development are not to point although it is noteworthy that principle 17 of the Declaration states that an EIA "shall be undertaken for proposed activities that are likely to have a significant adverse effect on the environment"⁶⁰.

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1st December 2003

⁵⁷ DOE gets the point the wrong way round (para 13.2)

⁵⁸ DOE para 11.4.1

⁵⁹ DOE paras 10.2-10.4

⁶⁰ Authorities Vol 5 page 3

⁶¹ ref??

⁶² ref??

⁶³ DOE para 18.1.1

