



## The Association of Environmental Clerks of Work

### The Biodiversity Crisis: Construction Projects, Impacts & Contracts

#### Position Statement

AECOW provided the following written response to the Scottish Government, after attending a biodiversity event on 24<sup>th</sup> June 2021, which was held by the Scottish Government, in preparation of CoP15 (October 2021, China). This response was copied to all AECOW stakeholders, including all environmental regulators across the UK. This text has now been adopted to become AECOW's position statement on the Biodiversity Crisis.

#### Overview

The preparation which AECOW observed in the run-up to CoP 15 was almost silent on planning, development and construction and AECOW provides the following comments to the Government:

- The gulf between what planning applications, and EIAs, state in their predictions / EIA Reports in order to obtain consent, compared with the reality of the environmental, and biodiversity, impacts. These impacts frequently extend far beyond the predicted impacts, and frequently go un-monitored, and un-identified, and are likely to be significantly contributing to the Biodiversity Crisis.
- Absence of evaluating, and valuing ecosystem services, particularly during construction or 'biodiversity net gain' during EIA.
- The relative absence of fair, transparent, 3rd party environmental compliance monitoring, and reporting, during construction, paid for by developers (Employers) and appointed independently of construction projects.
- The absence of environmental legislation that sets out roles and responsibilities for delivering environmental commitments, such as an equivalent to the CDM Regulations for health and safety.
- The relative absence of effective contractual mechanisms to define non-conformance and provide recourse for it.

Contractors are expected to comply with the contract, and law, but often there are few contractual options / recourse in place for the Employer to convert environmental non-conformances into penalties, or it is reliant on Employers/Contractors to self-regulate their own environmental compliance. This does not work well on commercial contracts, particularly with the current lack of effective construction compliance monitoring regulations, which would require Employers, and Contractors, to demonstrate their environmental compliance. ie. CDM Regulations for the environment. This scenario dis-incentivises Employers, and Contractors, from delivering their environmental commitments and mitigation and it is often compounded by poor Contractor / Employer compliance monitoring, and reporting, that is often not publically available.

Due to the current situation, this environmental risk is being realised on every construction project in the country, and they significantly, yet discreetly, contribute to the Biodiversity Crisis.

#### Purpose

AECOW has been engaging with regulators and stakeholders across the UK for several years, to shine a light on these issues. To this end, the purpose of this position statement is to:

- Highlight that weaknesses in planning and environmental legislation exist, particularly regarding 3<sup>rd</sup> party environmental compliance monitoring, and reporting during construction, which is significantly contributing to the Biodiversity Crisis.
- Highlight the critical role of an EnCoW (and its status and authority) in construction contracts, and procurement, in relation to the Biodiversity Crisis.
- Highlight the need for the Government to carry out its own Strategic Environmental Assessment of existing environmental legislation and construction phase compliance monitoring.
- Recommend an open data store/bank – a repository for biodiversity records derived from research and commercial development projects, which must be driven by regulatory requirements and managed centrally by Government.
- Share AECoW's knowledge, and work, as a foundation for future work that Key Agencies, and Government, can progress.
- Inform the Biodiversity Crisis consultation with these issues.

### **Opportunities**

AECoW has helped establish two volunteer working groups with different remits to investigate, and consult, on the above issues:

- Regulatory & Planning Group (Chaired by the Heads of Planning Scotland (HoPS)).
- IEMA Post Consent and Construction Phase Group.

We have observed through our own consultation, and the above working groups, that existing levels of Government resources are not sufficient to address these multi-disciplinary issues, which span planning, environmental regulation, procurement and construction contracts. Consequently, good-willed environmental practitioners / volunteers at AECoW & IEMA are seemingly joining the dots between these areas and raising awareness of their combined impacts on, and contributions towards, the Biodiversity Crisis on behalf of the Government. It is not possible for volunteers to robustly affect these changes, as ultimately these opportunities need to be realised through Government intervention, to address the systemic, root cause of these issues within the planning and regulatory regimes.

AECoW has carried out a substantial amount of consultation and we would like to share our experience, and knowledge with the Government, and other Key Agencies, to highlight opportunities, to reduce impacts on the Biodiversity Crisis from construction projects. This will also support the Natural Capital Agenda, Environment Strategy, Planning Bill reforms and EIA Regulations.

We are using this information to inform discussions with our industry partners and other consultations across the UK and we would welcome discussion with the Government on the matter. For transparency, AECoW sits on the Cross Party Group on Construction and the Linear Infrastructure Environmental Management Group. It has also consulted the Environment Agency, Natural Resources Wales, SEPA, the Northern Ireland Environment Agency, Forestry Land Scotland, Chartered Institute of Ecology and Environmental Management (CIEEM), Chartered Institute of Water & Environmental Management (CIWEM), Institute of Civil Engineers (ICE), Institute of Clerks of Works & Construction Inspectorate (ICWCI) and the Civil Engineering Contractors Association (CECA) Scotland.