Promoters of projects subject to Environmental Impact Assessment (EIA) procedures under Directive 2011/92/EU (as amended) are required to report the findings of the assessment process, in particular the likely significant effects, in an Environmental Statement.

For projects not caught by the auspices of the EIA Directive but for which some form of assessment is required, for example to enable applicants to meet their environmental responsibilities and obligations under other legislation, promoters can agree with the determining authority to undertake “environmental assessment” (sometimes called “Environmental Appraisal”). Although there is no formal requirement for how an environmental assessment should be reported, it is common for applicants to bring the different studies together within an Environmental Assessment Report (EAR).

A key challenge is achieving proportionality in the environmental assessment process. As with EIA, environmental assessments ought to have a focused scope and should comprise only those studies agreed as being of relevance to the decision-making process. Such studies should, therefore, be undertaken and reported to a level of detail commensurate with the scale of the development and the nature of environmental issues requiring consideration.

Applicants are rightly screening environmentally benign projects listed under Annex II of the EIA Directive out of EIA on the basis of them either not meeting the relevant development thresholds/criteria or there being no likelihood of significant effects. However, some are then being asked by local authorities and statutory bodies to progress an environmental assessment to a level of detail that is disproportionate to the matters at hand and more akin to that produced as part of an EIA.

The reasons behind this vary; however common drivers include:

- a misunderstanding of the process;
- a desire to use the process to prove a screening decision, for example by presenting detailed evidence in an EAR to demonstrate why significant environmental effects are unlikely; and
- a reluctance to accept or determine applications without being furnished with all the information they contend is necessary to make an informed judgement, often in fear of challenge or their reliance on having a comprehensive document upon which to base their judgements and/or make recommendations to others.

The consequences for applicants can mean the production of an EAR that looks, feels and reads like an Environmental Statement – the only hint of difference being what is says on the front cover.

I recently experienced this on a fairly innocuous local highway development. A scheme of widening was being promoted to improve a sub-standard section of carriageway in order to better accommodate the predicted traffic flows of a larger project planned by the same developer. The local authority agreed that consent for the improvements should be sought via a separate planning application as they could be progressed as a standalone development. More importantly, the improvements were needed on the network regardless of whether the larger project ever came to fruition, and as such they agreed that there would be limited opportunity for challenge on the grounds of “salami-slicing”.

As the works were predominantly within the existing highway boundary, the assessment team were confident that the improvements did not constitute EIA development. Accordingly, the team planned to undertake environmental assessment of the development and produce a short EAR – some 60 pages in length – to report on the matters they deemed relevant to the application.

The reality, however, deviated markedly from the plan. What ended up being produced was a multi-volume EAR, the main text of which totalled over 300 pages and was supported by nearly 100 figures and numerous technical appendices. So... what happened?

A screening request was made to the local authority inviting them to confirm that EIA was unnecessary. Although in agreement, the Screening Opinion made clear their expectations on the breadth of environmental studies they felt would still be required as part of the planning application.
The points raised were extensive, many of which the assessment team disagreed with as they represented matters that were unrelated to the environment. This misunderstanding of the purpose of screening led to the scope of the environmental assessment broadening to address the points raised in their Screening Opinion, and a desire to use the EAR as a vehicle for recording the majority of project-related information (environmental or otherwise).

Although not EIA development, the applicant’s legal advisors requested the inclusion of detailed assessment methodologies and significance criteria in the EAR – something typically reserved for the pages of an Environmental Statement – to help identify those effects considered significant and not significant. They also expressed a view that the studies needed to align, where possible, with the environmental topics being considered in the EIA of the wider project, the purpose being to better convey the inter-relationships between the two and facilitate the identification of cumulative effects within the wider project’s Environmental Statement. This required the assessments to be reported in a more detailed manner, which introduced complex terminology into what should have been a largely non-technical document. It also necessitated the adoption of an EIA-style chapter structure and the inclusion of a detailed glossary of terms and abbreviations.

As a substantial amount of information was available regarding the wider project, there was a drive from various parties to include much of this in the EAR to provide context. This introduced confusion regarding the relationship between the development and the wider project, which in turn led to further text being included to clearly explain the elements for which consent was being sought. Requests were also made to provide summary sections within the individual assessments, in addition to the dedicated summary chapter already included, further lengthening the document.

These examples represent a small number of the challenges that conspired against delivering a proportionate EAR. The applicant’s willingness to meet the expectations of the local authority and follow legal advice to the letter led to document obesity, a lack of focus on the salient points, and delays at key stages in the assessment and decision-making processes. What can be learned from this?

- Once a project is formally screened out of EIA, there should be clear separation between the screening and environmental assessment processes. Early discussions can be advanced to establish the views and expectations of relevant parties, such that an appropriate scope can be agreed and a proportionate assessment delivered.

To retain focus on the matters being covered in the environmental assessment, it is advisable to refer the decision-maker and legal advisors back to the screening conclusion where necessary.

- Ensure the applicant understands the difference between EIA and environmental assessment. A common understanding can help in challenging decision-makers and legal advisors (on both sides) and defending a proportionate position.

- Requests to include anything and everything in an EAR should be resisted. Just because certain information exists does not mean there is an obligation to provide it as part of the application.

- Following an Environmental Statement style reporting structure and including detailed assessment criteria introduces unnecessary length and complication into an EAR. The structure should follow a simplified framework. Consider removing elements such as chapter introductions and summaries if they add little value, and avoid terminology typically used in Environmental Statements. Presenting the content in an alternative format, such as entirely tabulated with individual topic reports in appendices, may help reinforce the differences.

- Consider the advantages of reporting environmental studies separately and submitting them as accompanying reports to the application, rather than in an EAR.

- Remind all parties that projects subject to environmental assessment fall outside any statutory duty to consider cumulative or interactive effects (noting, however, that such effects can still be important to determining authorities when considering applications and therefore may warrant some consideration).

- Examine whether other application documents such as Planning Statements and Design + Access Statements may be better vehicles for conveying key background/project information, thereby reducing repetition in reporting and ultimately the length of the EAR.

Although the continuing drive towards achieving proportionate EIA can sometimes feel like a long journey, it is essential that the same approach is taken to environmental assessment. Of related importance is ensuring that we are not effectively delivering an Environmental Statement on every project, just under a different cover.

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