The DCLG and Defra have now completed its technical consultation on transposing the 2014 amended EIA Directive into UK law. We can now expect a new set of EIA Regulations to replace the Town and Country Planning EIA Regulations—no later than 16 May 2017. Simon Henry, Principal Planner at Bidwells—a IEMA EIA Quality Mark accredited firm—gives an insight into the new emphasis on mitigation and monitoring as part of the EIA process and how this might be secured.

Mitigation and Monitoring
The replacement EIA Regulations now place greater emphasis on mitigation measures during the screening stage of projects and environmental monitoring of significant adverse effects post-consent. Specifically, Local Planning Authorities (LPAs) are now required to ensure that mitigation and/or monitoring measures are identified in the Environmental Statement (ES) reports and are carried through to and post consent.

Front-loading of design information early on during screening can be discussed in parallel to pre-application discussions as part of the formal planning process. The aim being that projects could not only ‘design out’ significant environmental effects and avoid EIA, but where a project is EIA it could reduce the number of mitigation and monitoring measures required prior to construction starting on site and even occupation of the proposed development.

It is currently best practice for ES reports to identify the mechanism by which mitigation and monitoring measure will be secured, however LPAs are now required to secure these measures through to and post consent of the application. If further monitoring/mitigation is required pre-commencement, this will need to be timetabled accordingly and could potentially delay the construction of schemes, particularly for ecology measures which have specific survey windows throughout the year. As a planning consultant and EIA practitioner, it is therefore more important than ever to work closely with LPAs to clearly highlight within the ES report where and when mitigation and monitoring is required. In some cases, proactive meetings with the LPA to review and agree planning conditions and any legal agreements before they are formally published, could help to further front-load the process. However, this will not be the case with all LPA’s.

With regards to monitoring significant adverse effects, it is not anticipated that this will have a major change in practice. Currently, monitoring requirements are included in planning conditions, legal agreements and other documents such as Environmental Management and Monitoring Plans and it is anticipated that this will continue. Any post-consent monitoring requirements should be “proportionate” to the scale of development and the issues identified. In such cases, existing monitoring arrangements may be used if they are deemed appropriate.
| It is also not clear in the proposed changes, whether there will be any review of these monitoring measures by LPA’s to understand if significant effects have been avoided and if they have not, how further action will be enforced and who will pick up the cost of any further mitigation or a penalty fine. This is especially complex where a site has since been sold on.

There is concern that the greater requirements on LPAs will stretch their already limited in-house specialists further. To minimise this risk, it is important that EIA practitioners, planning consultants and developers work more closely with LPA’s to signpost and guide LPA’s in terms of what mitigation and monitoring is required to avoid significant effects. For EIA to achieve its objective and protect the environment throughout the lifecycle of a project, EIA cannot simply be a late add-on to the planning process, it must be fully integrated into the planning process.

*Simon Henry, Principal Planner, Bidwells LLP, April 2017.*

| For access to more EIA articles, case studies and hundreds of non-technical summaries of Environmental Statements visit:  
http://www.iema.net/eia-quality-mark/ |