### Risks of Major Accidents and /or Disasters: An NSIP Experience

The 2017 EIA Infrastructure Planning Regulations in accordance with Directive 2014/52/EU require ‘a description of the expected significant adverse effects of the development deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project involved.’

It is noted that the EIA Regulations themselves provide no guidance on the definition or scope of what this should include. Further, no Government guidance on the issue has been published. Indeed the DCLG EIA guidance which was updated in July post implementation of the 2017 EIA Regulations also offers no direction on the matter. It is expected therefore that the scope and definition of what this exactly involves and when it should be applied will likely be defined through the Courts.

DHA Environment are currently involved in coordinating an Environmental Statement in support of an application to seek a Development Consent Order from the Secretary of State (SoS) for Business, Energy and Industrial Strategy for a new gas fired CHP plant to serve an existing paper mill.

As part of the application process DHA Environment attended a meeting with senior EIA team members (including others) from PINS in summer 2017. The outcome of this meeting highlighted that PINS themselves could offer no guidance on how the matter should be addressed except to say that ‘it was for the applicant to satisfy themselves that the requirement of the Regulations in this regard was met.’

On this basis the approach was taken that the first action was to identify whether the project fell within the remit of Directive 2012/18/EU (control of major-accident hazards involving dangerous substances) or Directive 2009/71/Euratom (d) (establishing a Community framework for the nuclear safety of nuclear installations) specifically identified in the EIA Regulations. It was concluded that the development did not fall under these regulatory regimes. A consultation response the Health and Safety Executive as part of the scoping process confirmed this to be the case. To this regard HSE stated that they were in consultation with DCLG with regard to the inclusion of major accidents and disasters with the EIA regime.

Notwithstanding the above, and having satisfied ourselves that the development did not fall within the scope of the specific regulations identified the following approach was adopted as part of our scoping request to PINS.

When considering the likelihood of significant effects the 2017 EIA Regulations in recognition of the Court of Appeals decision in [Loader] 2012 EWCA Civ 869 allow mitigation measures that are modest in scope and/or plainly and easily achievable to be taken into account by the local planning authority during screening. The presence of other legal obligations which would mitigate likely major accidents or disasters was therefore used to demonstrate no likely (or ‘expected’) significant effects during scoping of the aforementioned project in a similar fashion to screening i.e. mitigation is accepted as a means of negating the potential for significant environmental effects.

A list of the relevant project specific Regulations (relating principally to preventing gas explosions and fire) were provided as part of the scoping request to demonstrate that as far as reasonably practical that major accidents and disasters would be mitigated and therefore as far as reasonably possible were unlikely to occur and in accordance with the EIA Regulations no expected significant adverse effects were envisaged.
PINS in their formal Scoping Opinion do not go so far as to confirm this approach is acceptable but do nonetheless state:

“The Inspectorate notes that the Applicant proposes to scope out a standalone risk assessment for consideration in the ES. Having regard to the nature of the Proposed Development and the justification provided the Inspectorate agrees that the Proposed Development is unlikely to require a standalone assessment regarding its vulnerability to risks of major accidents and/or disasters.”

The ES has therefore been drafted setting out a full comprehensive list of Regulations applicable to the development that ensure that the risk of major accidents and disasters are mitigated as far as reasonably possible such that consequential significant adverse effects on the environment can be scoped out.

The draft ES has now been released as part of the formal section 42 consultation process as required by the Planning Act 2008 but subsequent to no further comments from consultees will be formally submitted on that basis.

Whilst it is accepted that this approach will not be appropriate to all EIA developments, the outcome will seek to provide at least for our own purposes, guidance on the application of this requirement for similar situations and/or projects that have an equal or lower vulnerability of risk of major accidents or disasters.

_DHA Planning, January 2018._