EU Directive 2014/52/EU Implications on the Approach to EIA Screening

Introduction


EIA Screening – Anticipated Changes to Regulations and Requirements

When transposed into UK law, the Directive will result in changes to the regulations and requirements which apply to the EIA Screening process.

A key change is that the information that is required to be submitted by developers at Screening Stage will be standardised. The information to be provided is set out in a new annex to the Directive, Annex IIA. It is intended that this will help to focus EIA on those cases where there is a ‘real’ likelihood of significant environmental effects.

Currently, EIA Screening Requests should include: a Site Location Plan, a description of the proposed development, and any other such information the developer wishes to provide.

EIA Screening undertaken after the 16th May 2017 will be required to include: a Site Location Plan, a description of the development proposals, a description of the sensitivities of the proposed location, a description of the aspects of the environment likely to be significantly affected, a description of likely significant effects from a list of specifics and any other information that the developer wishes to provide. Of significance, this can include a statement which sets out any proposed mitigation or avoidance measures that have been ‘designed in’ to development proposals. Consideration can be given to other environmental assessment work that has been undertaken such as Strategic Environmental Assessment (SEA).

The Directive introduces the requirement for local planning authorities to make a screening determination ‘as soon as possible’ and within a period not exceeding 90 days from submission of all the information required. It is proposed that a longer period can be agreed with developers in writing but that this extended period must not exceed 90 days.

It is proposed that where a screening direction has been requested, the Secretary of State (SoS) should provide this direction within a period of three weeks. Where the SoS considers that a longer period is required, this period cannot exceed 90 days and notice of this decision should be made.

What this means in Practice for ‘Schedule 2’ development

It is not proposed that the screening thresholds for ‘Schedule 1’ and ‘Schedule 2’ projects as defined by The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and as amended by the Town and Country Planning (Environmental Impact Assessment) Regulations 2015 will change.
These are a UK construct allowable by the Directive. Therefore, the types of projects that are listed within Schedule 1 will remain subject to a requirement for EIA in all cases.

The thresholds and criteria for Schedule 2 lists remain the same. Therefore, as an example, ‘Urban Development Projects’ including residential projects, of more than 150 dwellings or for sites where the overall area of the development exceeds 5 hectares will remain to be considered as potential Schedule 2 projects.

If a project is listed in Schedule 1, an assessment is required in every case. If a project is listed in Schedule 2, the local planning authority should consider whether it is likely to have significant effects on the environment by taking account of the selection criteria at Schedule 3 of the Environmental Impact Assessment Regulations. Projects which are located in, or partly in, a sensitive area also need to be screened, even if they are below the thresholds or do not meet the criteria. In practice, the requirement for developers, practitioners or local authorities to undertake EIA screening for relevant projects will not therefore be effected by the new Directive.

The Directive provides a definition of the information that will be required at screening stage. Whilst the information that will be required for the EIA Screening process reflects existing best practice, the Directive will in effect standardise EIA Screening which should in term improve consistency in practice and outcomes of the Screening Process.

Where the Screening Process indicates that a development project is likely to result in significant environmental effects, the Directive clarifies the opportunity to present mitigation or avoidance measures which are ‘designed in’ to a development proposals. The extent to which mitigation or avoidance measures can be used to ‘screen out’ development from a requirement to undertake EIA will depend upon its specific circumstances.

EIA Practitioners and developers should consider opportunities to understand where significant environmental effects could occur and consider mitigation or avoidance measures early within the design process so that this can be integrated as part of development projects at the screening stage. This approach is likely to reduce the number of projects subject to EIA. Where a local planning authority accepts that an EIA is not required because of mitigation or avoidance measures, the local planning authority must state the main reasons for its screening determination. Developers and Practitioners can assist this by providing clear, precise and accurate information as part of EIA Screening Requests.

Conclusions

The Directive will result in changes to the EIA Screening Process. This will provide clarity and consistency for developers, practitioners and local planning authorities. In practice, the Directive will formalise current best practice.

A key benefit of the Directive will be the opportunity for developers and practitioners to be proactive in identifying and mitigating potential significant environmental effects at the outset of the design process. Identifying this information at screening stage could help to focus the EIA process to projects where significant environmental effects cannot be mitigated through design.

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