Managing overlapping regulatory consultations for new development proposals in Wales

Welsh Government, in line with the requirements Directive 2014/52/EU, revised and reissued its EIA Regulations (https://www.legislation.gov.uk/wsi/2017/567/) in 2017, shortly following the introduction of the Planning (Wales) Act (2015). The 2015 Act has sought to incorporate improvements to the Welsh devolved planning system, inclusive of a new system of mandatory pre-application consultations for certain types of development. This article analyses these requirements in the context the EIA Regulations and how tiered, sometimes overlapping consultations can be managed effectively.

In March 2016 subordinate legislation¹ (DMPWO 2016) came into force in Wales, among the provisions of which is a requirement for proponents of new schemes that are categorised as Major Development² (DMPWO 2012) to undertake mandatory pre-application consultations, inclusive of Developments of National Significance (DNS). DNS are a relatively new category of large-scale infrastructure project that now fall to be determined by the Welsh Ministers.

Consultations and publicity on Major Development and DNS are now required to:

- Display a site notice in at least one place on or near the land to which the proposed application relates for a period of no less than 28 days before submitting an application for the proposed development.
- Write to “any owner or occupier of any land adjoining the land to which the proposed application relates”.
- Make the draft planning application information available publicly.
- Consult community and specialist consultees before applying for planning permission (28-day minimum period).
- Consider if Environmental Impact Assessment (EIA) is required for the project.
- Publish a Pre-Application Consultation Report.

There is a clear overlap in these requirements and those of the EIA regulations. Orchestrating consultations in order to avoid duplication and confusion to consultees whilst presenting a streamlined consultation strategy to meet both sets of regulatory requirements is therefore advisable and potentially less costly; EIA practitioners will benefit their clients through an advisory service that reflects these dual consultation needs.

From the outset we recommend the formulation of a stakeholder consultation strategy for a given project. It does not need to be complex or detailed, but simply to show the staging of the dual consultation requirements relative to the programme for the project. Our recommendation is to reflect the following staged approach in such a strategy:

1. Conduct EIA Screening and Scoping to set out the parameters for the EIA (as per EIA Regulations 2017).
2. Conduct baseline work and prepare draft planning documents, inclusive of the draft Environmental Statement, for commencement of the PAC process (as per DMPWO 2016). Such documents will need to be made available through a publicly accessible file-sharing site.

3. Issue notices to the landowners and erect Site Notice(s) upon the commencement of the pre-application consultation (as per DMPWO 2016).

4. Conduct consultations to the level your client requires, whether the basic minimum or more substantive engagement activities (as per DMPWO 2016). Approaches to the consultation exercise are described more wholly in the PAC guidance document Best Practice Guidance for Developers (November 2017).

5. Determine, following the PAC consultee representations, whether the proposal needs alteration and redesign, and make arrangements for any associated changes to made to the draft ES or other planning documents. The advantage of this stage is compliance with PAC requirements to engage with stakeholders on the draft scheme and thus seek improvements to it arising from third party recommendations, in the event that useful, constructive advice is given; this stage also dovetails well with the EIA Regulations whereby the applicant has sought input and opinions upon draft details prior to formulation of the final proposal, thereby hopefully resolving issues at the draft design stage in preference to potential conflict with stakeholders in the determination phase who are no longer in a position to influence the scheme.

6. Publish a Pre-Application Consultation (PAC) Report to fulfil application validation requirements, forming part of the obligatory suite of planning documents.

7. Proceed with planning application for Major Development / DNS, supported by the Environmental Statement and PAC Report, which will then be processed through to determination under the auspices of both the regulatory requirements of the 2015 Act and the EIA Regulations 2017.

In taking the above approach, EIA practitioners are in a position to able to advise clients on steering an effective course for fulfilling the consultation requirements of parallel planning regulations, thereby delivering a more constructive and effective engagement process at the pre-application phase. The outcomes should therefore be in the best interests of all stakeholders, including the applicant, and may well result in better, more sustainable proposals for large infrastructure projects in Wales.

Dulas Ltd, December 2018.

Notes:
2 As defined under article 2 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.