Implementing Mitigation Measures through Monitoring

Proposing effective mitigation measures has been part of the EIA process for almost 30 years. The Town and Country Planning Regulations (EIA Regs) previously didn’t provide a clear mechanism for monitoring the implementation and success of these measures. However, under the 2017 EIA Regs, a mechanism for monitoring this has been formally introduced. Paragraph 26(1)(d) of the Regulations states that:

“If planning permission or subsequent consent is to be granted, the local planning authority or Secretary of State must consider whether it is appropriate to impose monitoring measures”

It is agreed by EIA Practitioners1 that monitoring is a positive step to ensure implementation of construction and operational mitigation measures. It has previously been included in planning conditions, mostly related to ecological mitigation but that has been by exception rather than the standard. And often conditions typically related to the implementation of the mitigation measures and not to monitoring their effectiveness. For monitoring to be effective it needs to be based on sound mitigation measures. The IEMA article ‘Practical and Effective Environmental Mitigation’ ii by Mouchel sets out what makes effective mitigation and proposes that it should be properly designed (e.g. realistic and practicable) so that it can be monitored and easily delivered.

The purpose of monitoring

Monitoring or monitoring requirements should not:

- replace or duplicate existing monitoring arrangements under other regulatory regimes;
- be used as a general means of gathering environmental information;
- be based on limited baseline information; and
- monitor the impact of all developments or the results of other changes in the environment – which means that for some aspects imposing a planning condition to monitor at the project level is not appropriate.

Monitoring proposals or requirements:

- need to be proportionate to the nature, location and size of the relevant project and its effects on the environment;
- must be achievable and monitor an actual effect of the project;
- needs to be based on an understanding of what successful mitigation is; and
- needs to contribute to building a bank of evidence of what mitigation measures work and what needs to be improved.

In addition, monitoring measures need to be enforceable and monitoring should be part of the feedback loop of informing the scope of future EIA and what needs to be assessed.
Should we as EIA practitioners recommend appropriate monitoring?

EIA practitioners are well-placed to understand the environmental effects of a development and therefore could outline monitoring measures to help developers understand their ongoing commitments, i.e. what needs to be included in tender documentation.

However, there is an issue of lack of consistency and standard measures that could arise from this approach. Is it more appropriate that the Local Authority sets monitoring requirements? Or should it be a collaborative effort?

Within an EIA, there should be sufficient information to inform the monitoring requirements at pre-planning stage. In order to separate the mitigation and monitoring requirements from the ES, the mitigation and monitoring proposals should be provided in a standalone document that can then be updated and amended as required, without the need to update the ES i.e. Environmental Management Plan/s. Please note there are a plethora of names used for the plan that collates this information.

How should monitoring requirements be communicated?

Construction environmental mitigation measures are often effectively communicated by being included in construction method statements and/or on the construction drawings. However, construction and operational monitoring measures are better collated and communicated via a Construction and/or Operational Environmental Management Plan/s, produced at pre-planning stage. These plans can also collate the mitigation measures.

Who should pay for monitoring and who should undertake the monitoring?

Due to budgetary constraints, Local Authorities are unlikely to be able to carry out their own monitoring and will expect the developers/contractors and facilities managers to carry out monitoring of the effectiveness of the construction or operation mitigation measures. Will the monitoring need to be carried out by a third party companies to ensure impartiality even though they will be paid for by the construction or operating company?

We can assume that local authorities will want to inspect the results of monitoring. The expense of monitoring may be met through the construction or operational company but, similar to external reviews of Environmental Statements, Local Authorities may employ the monitoring company themselves.

There are still many questions to be answered in relation to how this added step of monitoring will come into effect. As developments under the new EIA regs work their way through planning we will start to see how this is implemented.

References

1 Juan Murray of NJL Consulting LLP. Post EIA Monitoring IEMA Quality Mark Article - https://www.iema.net/assets/uploads/EIA%20Articles/njl_consulting_article_post-eia_monitoring.pdf

Peter Gardner, Senior Consultant, Waterman Infrastructure & Environment, December 2017.