## EIA Screening and Statutory Undertakers

|Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 provides ‘permitted development’ rights to statutory undertakers and others to undertake development without the need for a prior planning approval. In the case of highway authorities, statutory undertakers, port operators etc, these permitted development rights are extensive – in many cases enabling the construction of multi million pound projects as permitted development. However, the requirements of the EIA Regulations must be carefully considered as permitted development rights are automatically removed for all EIA development. Statutory undertakers can be fiercely protective of their permitted development rights, and rightly so, as they would be unable to perform their statutory duties without them. Most if not all statutory undertakers are fully conversant with their permitted development rights, however it is not clear if the requirements of the EIA Regulations are always so well known and understood. Strictly speaking, any development of a type listed in Schedule 2 of the EIA Regulations should be the subject of an EIA Screening process, and a request for a Screening Opinion from the Local Planning Authority (and/or Marine Management Organisation). It is not uncommon for statutory undertakers to have their own ‘shadow’ EIA screening processes, where the potential for significant effects on the environment are assessed and a decision made by the statutory undertaker whether the project needs to be subject to a formal EIA Screening process. This is not, however, a substitute for a formal determination from the Local Planning Authority as it is only the determining authority (or the Secretary of State) that can decide whether the proposed development is EIA development or not.|
|Progressing with the construction of a project as permitted development without securing the determining authorities Screening Opinion can leave the project open to legal challenge and/or significant delay if the project is subsequently determined to be EIA development – necessitating a planning application with an ES to be prepared and submitted. Another area of risk for statutory undertakers relates to how the project is defined for EIA Screening. For projects involving a single build on a single site this is a relatively straightforward exercise. For others, where there can be multiple items of construction in one or numerous physical locations, project definition can be a complex and messy process in determining the extent to which developments are genuinely part of the same project, or can be separated out. Great care needs to be taken to avoid accusations of ‘salami slicing’ to avoid undertaking EIA of the whole project. Having said that, in some cases there can genuinely be a number of individual projects being undertaken in the same geographic area by the same statutory undertaker for completely unconnected reasons. Are these part of the same project? The statutory undertaker will have its own view on this; however the determining authority may reach a different conclusion. This again emphasises the importance of the EIA Screening process. There is a further area where statutory undertakers and others can unwittingly expose themselves to potentially significant legal and timescale risks, even after they have subjected their project to EIA Screening and confirmed that it is permitted development. In seeking to secure best value and innovation in construction projects, scheme designs are frequently iterated and improved throughout the design and construction process. This can result in significant changes to the design, construction processes, or construction programmes for projects, all of which could have the potential for significant effects on the environment.|
There cannot be many projects where the original scheme design ends up as the design of the finally completed scheme, yet how many of the teams working on these altered projects give consideration to the potential need to ‘re-screen’ the amended project under the EIA Regulations? Some statutory undertakers and contractors seek to rely on the initial EIA Screening process and then hope that those initial judgements remain valid for the altered scheme. How realistic and effective is this approach, however, and does it provide the environmental protection for the environment in the way that the EIA Regulations and Directive intend?

EIA Screening should be seen as an essential part of all statutory undertakers’ work. Done well, EIA Screening is a positive tool to secure necessary protection for the environment through consenting processes for projects. Undertaken at the right time, it can inform and de-risk project programmes and budgets. However, ignored, misunderstood or misapplied, it can lead to significant delay and risk of challenge to the delivery of much needed infrastructure by our statutory undertakers.

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