“What do you mean when you refer to a scoping opinion?” was a question recently asked by a client. I trotted out the usual explanation of what a scoping opinion was, the process of producing one and who gave one, but the surprising follow up question of “Why bother?” got me thinking. Is there actually any benefit is seeking to define (or scope) before it is produced the information to be provided in an environmental statement?

Recognising that scoping of an ES is not mandatory, the cynic in me immediately locked onto the reasons why arguably there is no benefit. These reasons include the issue that, even though the various EIA regulatory requirements do not require substantial information to be submitted at scoping stage, invariably the submission of a request for a scoping opinion is accompanied by what is pretty much an environmental assessment of issues in its own right. In effect, have we reached a point where it is not considered possible to demonstrate to decision makers and consultees that information on a certain environmental issue does not need to be provided (because it is unlikely that significant effects on the environment will be generated) without first undertaking an assessment of that issue? If this is the point we have reached, information on each environmental issue may as well just be included within the ES.

Furthermore, I was reminded that the extent and scope of other ‘non ES’ application documents are such that even if issues are ‘scoped out’ of the ES, they are more than likely going to have to be covered in some detail somewhere else within the application.

Such other ‘non ES’ documentation is more often than not needed for the application to be validated and to allow the consideration process to begin. If you are going to have to cover the issue in any event to validate the application, again, why not just also include it in the ES.

Finally, there is the fact that even if issues are legitimately not included in the ES as a result of the scoping process, it is always open to the decision maker to ask for them to be subsequently considered later in the process as part of a ‘Further Information’ request. This, if it occurs, in turn generates additional work and delays the decision making process whilst this information is produced, submitted, consulted upon and considered. To avoid the prospect of this happening it may again be easier just to include the issue in the ES in the first place.

I then, however, put my cynicism aside and decided to look in more detail at the benefits of an effective scoping process. In doing so I went back to basics and looked at the Directive – where I was reminded of two things.

Firstly, the reason for the Directive is clear; it is to ensure that before consent is given, projects likely to have significant effects on the environment are made subject to an assessment with regard to those effects. The important point here is that the assessment is required to be of significant effects only, not an assessment of every single possible effect.
Secondly, the Directive clarifies that it is not just the information contained within the ES which must be taken into consideration in the development consent process. Information gathered during the scoping process, amongst other additional things, must also be taken into consideration.

What these points emphasised to me was that scoping can clearly be a valuable tool in defining the most efficient assessment of significant issues for the development being considered (with the obvious benefits that result) and that it is a key input into the decision making process. The scoping process is clearly, however, only of such value if it is carried out effectively and correctly by those initiating the process, by those being consulted on the process and by those making a decision on the process. As scoping information is an important part of the overall decision making process (along with the subsequent assessment itself) then surely it has to be undertaken with the same care and thought as the assessment itself.

So, if asked again by my client ‘Why bother?’ I would respond that scoping is worth bothering with, but only if it is going to be undertaken effectively, with the necessary thought and care having regard to the specific circumstances of the project that is being considered.

Adams Hendry Consulting Ltd
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