Prescription of mitigation – some discussion points

<table>
<thead>
<tr>
<th>By necessity project specifications often change throughout the design process. Unforeseen changes could mean that mitigation measures formulated at an earlier stage may not be ‘deliverable’. Some EIA textbooks teach the virtues of prescribing mitigation in detail at the earliest stages of a project and encapsulating them in the Environmental Statement.</th>
<th>The following are hypothetical examples of situations where issues have arisen:-</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experience also shows that mitigation measures may often only be realised if they are stipulated in a planning permission or other consent/licence through appropriate conditions. Sometimes statutory bodies involved in the consultation process advocate the Precautionary Principle, that is mitigation based on the possibility (rather than a certainty) of a significant effect being realised. The author believes that it is beneficial to invest time and effort in prescription (e.g. wording) at an early stage.</td>
<td>• impracticality of some mitigation measures, particularly those requiring a temporary or permanent feature being built on the ground (e.g. adjacent landowner concerns not fully addressed).</td>
</tr>
<tr>
<td>Prescription should be as robust as possible and able to accommodate changes occurring after the publication of the Environment Statement, the planning permission and start of construction. Anticipating such changes is not an easy task.</td>
<td>• mitigation measures specified for construction may be logistically difficult to ‘deliver’ due to safety concerns subsequently raised about public use and construction.</td>
</tr>
<tr>
<td></td>
<td>• pressures arising from a ‘changing economic climate’ whereby some clients are challenged with looking at cost cuts to re-justify a project. In these situations there may be a perception amongst some parties that ‘precautionary’ mitigation measures (prescribed earlier) may no longer be acceptable.</td>
</tr>
<tr>
<td></td>
<td>• a period of several years may elapse between initial prescription and the construction phase and in that time new scientific evidence may emerge (e.g. multi-species wildlife tunnel may need to be re-sized).</td>
</tr>
</tbody>
</table>
there may be a need to seek Counsel opinion and/or apply for a new consent or licence for a revised mitigation.

the challenges of specifying and costing “hand dug” natural features (e.g. new river channels) at an early stage by manual labour rather than the conventional use of machines.

over-prescription of very fine detail for landscaping purposes which might not always be practical (e.g. the use of a very specific type of natural local stone which may no longer be available).

The following are potential solutions from the author’s experience: -

- seek and maintain input from a Contractor from the earliest stages to prescribe only mitigation measures that are likely to be ‘deliverable’.
- involve a CDMC in the early stages to identify key safety concerns surrounding mitigation.
- ensure that funding is allocated and committed to mitigation at an early stage. Measures need to be prescribed to an extent that they can be costed.

- early in the process be prepared to negotiate/ mutually agree mitigation measures with Statutory Bodies on the basis of best available scientific evidence. Be prepared to re-visit the relevant Statutory Body and discuss the case if more scientific evidence comes to light and seek any required planning amendment.
- mitigation measures should perhaps be prescribed (e.g. described in an ES) more in terms of what they are intended to achieve rather than the fine detail of how to achieve it. There may be alternative variants of a particular approach to mitigation that are equally acceptable.
- try to avoid expert witness evidence that departs from the ‘already agreed’ script prescribed in the ES (unless there is good reason to do so). This is not an easy area as the evidence is ‘owned’ by the expert and not necessarily subject to review and change by the wider project team (including Counsel).
- try to avoid over-enthusiastic additional commitments made at a Public Inquiry.
- if you are in a position to do so try to communicate the purpose of mitigation to new individuals and organisations joining the project at subsequent phases. This is particularly important, for example, where the construction is contracted to a company who has not participated in the EIA process and ensuing delivery.
- produce and adhere to a 'register of environmental commitments' as this can be an invaluable tool in communicating the nature and types of mitigation and also in being able to audit delivery.

Finally, the author has found that 'early contractor involvement' has considerable potential (yet to be fully realised) to integrate the early stages of prescription of mitigation with the subsequent stages of design, construction and maintenance.

**For access to more EIA articles, case studies and hundreds of non-technical summaries of Environmental Statements visit:**

[www.iema.net/qmark](http://www.iema.net/qmark)