### A Case for Post-Development Monitoring of Mitigation


Mitigation measures form a critical part of the Environmental Statement (ES) and can be commitments influential in the decision whether to approve a planning application. The implementation of mitigation is often tied to a planning consent as part of the mandatory conditions. However, as the situation currently stands, neither the existing EIA Directive (2011/92/EU) nor the UK EIA Regulations (Town and Country Planning Environmental Impact Assessment Regulations, 2011) include any requirement to follow up and monitor these mitigation measures. As a result, even where mitigation is conditioned and subsequently carried forward by the developer, there is no means of determining whether or not it has been effective at reducing the adverse environmental impact. This therefore brings to light the question of whether EIA is being used to its full potential.

For example, ecological mitigation proposed within an ES that may be controlled by planning condition can often include marginal habitat creation and enhancement features. However, without post-development monitoring of this habitat, how can the success of the implemented mitigation works be accurately gauged? One of the most comprehensive examinations of the implementation and effectiveness of ecological mitigation measures in completed EIA developments to date (see Drayson and Thompson (2013) *Journal of Environmental Management*) reported evidence to suggest a low rate of success of habitat mitigation measures. It was concluded that habitat measures that are critical to achieving no net loss of biodiversity should be subject to monitoring as a matter of course.

Suggested improvements included the following; (a) to identify those measures that would benefit from monitoring; (b) to condition or obligate an appropriate monitoring regime that will maximise benefits; and (c) to ensure that the audit and monitoring results are made publicly available and reviewed by the Local Planning Authority (LPA), with appropriate enforcement action taken where necessary. Whilst this alone will not be sufficient, it would help to expedite the UK’s progress in achieving its EU obligation to halt biodiversity loss by 2020.

A new requirement for ESs to commit to and report monitoring arrangements, where appropriate, would subsequently build a bank of evidence regarding the success, or otherwise, of the proposed mitigation measures. This information would help determine the effectiveness of mitigation measures, crucial to reducing the significant impacts of a proposed development on the environment. The dissemination of information that is learnt from activities, such as monitoring to inform those undertaking future EIAs on behalf of developers, would represent one of the main benefits. In the case of the developers, it would demonstrate a strong commitment to the environment. This is something that is being seen as becoming increasingly important to companies on a commercial basis.

The financial and resourcing implications of undertaking mandatory monitoring would doubtless be a key consideration for the developers who would inevitably be responsible for it. In addition, monitoring would require a much longer term commitment to be made, not only by the developers themselves, but by the LPAs to ensure that the monitoring is being implemented. In the current situation, the LPA has only an obligation to ensure that any conditions set out in the decision notice are complied with. As indicated above, such conditions typically relate to the implementation of the mitigation measures, and not to monitoring their effectiveness.
Despite there being time and cost implications associated with making the monitoring of mitigation mandatory, there are also clear advantages to both consultants and developers alike, and ultimately the environment. As a result of a review process, on 26th October 2012, the European Commission adopted a proposal for a revised Directive. The European Commission 5-year report on the application and effectiveness of the EIA Directive (2009) stated that post-project monitoring is needed “...to provide authorities a sound basis for knowledge of the development of real-world impacts” and “a yardstick for making more in-depth and experience-based assessments in later EIA procedures, and thereby influence the decisions of scoping procedures in the future”.

The lack of post-development monitoring has been raised as one of the key flaws of current EIA practice in the UK. The monitoring and follow-up reporting of both significant adverse and beneficial effects has the potential to inform and vastly improve future EIA practice.

Thea Cox, Graduate Consultant, Waterman EED.