## Bridging the Gap – Pre to the post-planning

Academic literature has long advocated that post-planning follow-up should be an integral part of EIA practice \(^{1, 2, 3}\). However, planning conditions, S106 agreements and Unilateral Undertakings are currently the only mechanisms for the ensuring the delivery of mitigation commitments that are relied upon in an ES. But this process is not always efficient \(^4\). While the legal controls in place are strong and well established, it is in the implementation of these controls where there is fallibility.

Key factors include:

- change of responsibility from pre-planning to post-planning;
- lack of ownership and responsibility for implementing and monitoring post-planning mitigation measures; and
- lack of public sector resources and guidance.

Commonly EIA professionals are only retained during the pre-application and pre-determination stages. Consequently, EIA consultants are not usually retained during the subsequent project implementation and post-completion phases to provide advice and to audit the efficacy of mitigation measures in managing environmental impacts in the way predicted in an ES. Equally, contractors or future owners may not be involved in the pre-planning stage, and can find themselves tied into onerous conditions that are not cost-effective or practicable, but which were deemed necessary to secure a planning permission. As such, their perspective and requirements may not have been incorporated into the scheme.

Local planning authorities (LPAs) are obliged to sign-off the discharge of conditions. However, from personal experience enforcement of the appropriate implementation of post-planning measures is inconsistent, and with LPAs’ resources often stretched, this option is not always proportional or achievable. Where enforcement action is taken it is often the result of a LPA responding to notification that a planning condition is not being complied with, rather than through the proactive enforcement of planning controls.

So what’s the solution?

The retention of the EIA professionals during the project implementation and post-completion phases will not solve the problem on its own. What’s needed is effective change management. However, simplifying the transition and having the correct mechanisms in place between the pre-planning to post-planning teams streamlines the process. This reduces the potential for misinterpretation or poor implementation of mitigation measures after handover. Tools to aid this process of change management include commitments registers, method statements, environmental management plans and mitigation action plans, among others. These should be required by condition or could be volunteered by the project team.

Government also has a key role to play. Whilst not a panacea, the amended EIA Directive (2014/52/EU) enforces monitoring of significant adverse effects. Member States have a three year period to adopt these principles.
Although there are no relevant amendments to the UK legislation at this stage, it is likely that we will see increased post-planning monitoring by condition as LPAs seek to implement the change. However, responsibility for implementation is still not defined and it is unclear whether the costs will fall with the developer / owner or the LPA.

In summary, while EIA has developed over the last three decades to become a powerful framework for environmental assessment, weaknesses still remain – to achieve sustainable outcomes mitigation measures must be controlled through condition or a legal mechanism, and the adherence to post-planning conditions must be enforced. However, this is not often achieved owing to a breakdown in communication in the development team and lack of enforcement. The execution of these post-planning commitments should be fully monitored, communicated and acted upon in order to inform future projects. New EU Regulation is now creating this stimulus; however the majority of LPAs lack the resources to perform this function. With no Government guidance currently available, where the responsibility for undertaking monitoring will rest is unclear.

Alistair Walker, Waterman Group, April 2015

For access to more EIA articles, case studies and hundreds of non-technical summaries of Environmental Statements visit: www.iema.net/qmark