

Department for Environment, Food and Rural Affairs

Review of the Major Infrastructure and Environment Unit

June 2013

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1. Purpose of the review

1.1 The Major Infrastructure and Environment Unit (MIEU) was set up by Defra in April 2012 following the Habitats and Wild Birds Directives Implementation Review (March 2012). It is designed to improve implementation of the Directives of major infrastructure projects while helping avoid unnecessary costs and delays to developers. To achieve this, its remit is to:

- i. Support resolution of specific Habitats and Wild Birds Directives issues related to Nationally Significant Infrastructure Projects (NSIPs) at the pre-application stage of the planning process
- ii. Engage with smaller 'complex and sensitive' cases, such as port or road developments, referred to the unit
- iii. Tackle strategic issues related to improving infrastructure project's implementation of the Directives.

1.2 Since April 2012 the MIEU has:

- Introduced new risk assessment criteria (annex a) to identify NSIPs with the most complex issues with the Directives. This has guided the MIEU's interventions.
- Engaged with developers of 14 NSIPs (annex b) and been involved with 13 complex and sensitive cases (annex c).
- Published guidance on application on article 6(4) Imperative Reasons of Overriding Public Interest (IROPI) and on competent authority coordination under the Habitats Regulations.
- Introduced a new evidence process for NSIPs to help implementation of the Directives
- Begun a programme of work with others on offshore wind and the Directives.

1.3 To ensure the MIEU is working effectively, Defra has reviewed the MIEU testing:

- i. The impact of the MIEU (e.g. in helping avoid unnecessary costs and delay).
- ii. Whether the MIEU's remit should be changed and / or expanded.
- iii. Whether the MIEU should remain in Defra or its remit could be delivered elsewhere.

1.4 The review was informed by a wide range of organisation's views (annex d lists the organisations consulted) and conversations between the Implementation Unit in the Cabinet Office and developers who have worked with the MIEU.

2. Review findings

What the MIEU is doing well

2.1 Overall the review found that the MIEU is considered to be working effectively and adding value; other Government departments, developers and Defra's agencies highlighted the MIEU's positive contribution. Specific comments included the MIEU's "heavy hitting remit enabled it to have a positive impact" and the MIEU is "grasping the nettle" on difficult issues.

2.2 Increasingly the MIEU is seen as the interface for Government at pre-application on Habitats and Wild Birds issues. Indeed, one developer who the MIEU has engaged with directly stated that they "welcome the MIEU's engagement on their project and [they] want to maintain dialogue with the MIEU for future projects".

2.3 Key messages included:

- The MIEU has been able to apply its knowledge of both the Directives and the planning system to engage with developers of NSIPs to help support the progress of their projects at pre-application. The reporting system and risk assessment criteria introduced has allowed Defra and its agencies to better prioritise and act on high priority projects.
- The MIEU offers a useful forum for developers, other Government departments, Defra's agencies and environmental NGOs to discuss projects with. This has increased assurance to Government that potential blockages are being tackled and ensuring that the requirements of the Directives are met. Respondents thought that the MIEU responds quickly to priority issues and helps ensure robust processes are in place to avoid delays.

Case study 1: handling arrangements for IROPI within central Government

Following the decision by both Hull City Council and the Marine Management Organisation to consent the £250 million Green Port Hull project on grounds of IROPI, the MIEU worked with other Government departments to agree which Secretary of State would take responsibility for considering the decision to consent the project on IROPI grounds. This prevented any delay on the decision on Green Port Hull.

As a result of this case, the MIEU put in place a new strategy for handling IROPI cases within central Government, agreeing which Secretary of State will lead for which type of project. This will minimise the risk of delay within central Government in considering the decision to consent a project on grounds of IROPI.

- The MIEU's intervention in projects is felt to be helpful for all parties, e.g. feeding back key issues developers raise to Defra's agencies to address. The MIEU's interventions are generally considered by developers and agencies to be effective and helpful, in particular in reducing risk in the consenting process.

Case study 2: MIEU working with a priority project

The MIEU has been working with Scottish Power Renewables (SRP) on their proposals to develop the East Anglia round 3 offshore wind zone.

For East Anglia One, the MIEU ensured SRP received the appropriate level of engagement from Defra's agencies at pre-application to progress the project.

For East Anglia Three and Four the MIEU is co-ordinating an evidence plan for both projects between SRP, Natural England and JNCC. The evidence plan is designed to give SRP increased certainty on the evidence they will need to collect in pre-application, how the evidence will be assessed and to resolve issues earlier in pre-application.

- The MIEU is increasingly seen as a useful "independent broker", ensuring that engagement between all parties is effective and focused on addressing and resolving issues.

Case study 3: ensuring effective engagement between developer and agency

The MIEU worked with a company Sibelco UK to improve its engagement with Natural England to help progress its proposed £10 million investment to realign the B3193 near Newton Abbot in Devon to allow its China clay quarrying operations to be secured in the long-term.

Following its referral from the Department for Business, Skills and Innovation (BIS), the MIEU worked with both the developer and Natural England to help progress the project. This led to Natural England increasing its engagement at senior level and the MIEU working with Natural England to monitor its progress.

As a result of the improved engagement, the developer, Natural England and competent authority (Devon County Council) were able to agree the mitigation proposals and the project was consented in November 2012.

- The MIEU can helpfully bring focus to wider strategic issues that can affect how well infrastructure projects can implement the requirements of the Directives. Respondents thought the MIEU had played a useful role in progressing work on offshore wind and the Directives.

Case study 4: tackling strategic issues

From its engagement with developers of offshore wind projects the MIEU identified that offshore wind projects have significant issues with the Directives that need resolving at a strategic level.

As a result, the MIEU is working with the Department for Energy and Climate Change (DECC) to ensure there is a robust strategy in place to help progress offshore wind projects. This includes looking at issues such as mitigation and compensation, cumulative impacts and under what circumstances an offshore wind farm could be consented on IROPI grounds.

Areas for improvement

2.4 The review found that the MIEU could improve its communications and its profile to both the development community and environmental NGOs. This should include the MIEU being more proactive in explaining its role, the projects it is engaging with and the benefits of the evidence plan process. For example, environmental NGOs felt that while they are aware of the MIEU they were uncertain about the level of its activities with specific projects.

2.5 In its involvement with both NSIPs and complex and sensitive cases, it was felt that the MIEU could:

- Emphasise to developers the value of engaging early with SNCBs and the Planning Inspectorate (PINS) and discussing mitigation proposals as early as possible.
- Emphasise to Defra's agencies the value of locking down and resolving as many issues as possible in pre-application.
- Improve its support to smaller complex and sensitive cases, in particular being more proactive in its engagement with developers of these types of projects, rather than working behind the scenes.

Case study 5: improving take-up of evidence plans

The review found that there was widespread support for the evidence plan process that the MIEU had introduced however awareness of the process was low.

The MIEU is currently trialling the process and the first evidence plans will be agreed in May 2013.

Feedback from those involved in the review was that the MIEU should communicate the new process more effectively, building on the experience of the first evidence plans being put in place.

2.6 Some respondents thought that the MIEU could do more to identify and tackle strategic issues similar to its work on offshore wind. Linked to this, it was felt by some that the MIEU was overly focused on offshore wind rather than terrestrial projects, particularly the level of support given to offshore wind NSIPs.

2.7 To build on the work it has done on offshore wind, respondents thought that the MIEU should undertake an analysis to assess whether there are similar strategic issues that the MIEU could help tackle. This might include evaluating how consenting decisions on NSIPs take into account the Directives.

2.8 Respondents also thought that while the MIEU had made a positive start, the real test of its effectiveness would be over the next year as it moved from its 'start-up phase' and awareness of it increased. Therefore 2013/14 will allow a better judgement to be made on the MIEU's impact on supporting NSIPs and complex and sensitive cases.

Additional activities the MIEU could do

- 2.9 The majority of respondents thought that the MIEU's core focus should remain on improving implementation of the Directives and helping resolve issues as they arise.
- 2.10 While some thought that the MIEU should expand its role to cover wider environmental issues, it was generally thought that the Consents Service Unit (CSU) being set up in PINS (from April 2013) meant the MIEU should remain focused on the Habitats and Wild Birds Directives.
- 2.11 There was general agreement that the MIEU should widen its remit to include major housing development sites, the surplus public sector land programme and Enterprise Zone sites.
- 2.12 A number of respondents raised the interaction between Habitats Regulations Assessments (HRA) and Environmental Impact Assessments (EIAs) and whether the MIEU should have a role on EIAs given their close link with HRAs. It was judged though that given the ongoing negotiations on the EIA Directive in Europe, the MIEU will only consider this following the outcome of the negotiations.

Should the MIEU remain in Defra or could its functions be better delivered elsewhere

- 2.13 A majority of respondents thought that the MIEU should remain in Defra as this allows the MIEU to better influence Government, Defra's agencies and others. In addition, it gives both developers and environmental NGOs increased assurance that Government is serious about tackling potential difficulties at both the project and strategic level in meeting the requirements of the Directives.
- 2.14 Some respondents did feel that the MIEU should move to PINS to ensure it aligns with the National Infrastructure Directorate (NID) and the new CSU. However, as the MIEU has a broader remit than just NSIPs, e.g. complex and sensitive cases and strategic issues, it was felt that at this stage it should remain in Defra.
- 2.15 Instead, it was suggested that the MIEU should ensure that it has an effective relationship with the CSU to avoid duplication and agreeing how the two units will work with developers they are both engaging. The MIEU should also continue to strengthen its relationship with NID.
- 2.16 However, given the potential duplication between MIEU and CSU the MIEU's relationship with PINS and in particular with the CSU, should be considered in the planned review of the Planning Act in 2014 by the Department for Communities and Local Government (DCLG).

Measuring the impact of the MIEU

- 2.17 All respondents acknowledged that it would be useful to measure the impact of the MIEU on improving infrastructure project's implementation of the Directives. This includes assessing the MIEU's impact on projects it directly engages with to better determine the impact of the MIEU's intervention, e.g. were planning timeframes shortened.
- 2.18 It was acknowledged that this would be difficult to do, especially as a number of factors affect a project's progress, not just the Directives. This includes access to finance, demand and other consenting regimes.
- 2.19 Nevertheless, it was agreed that the MIEU should look to develop quantitative indicators to measure its impact. In the short-term this may include using statistics such as number of meetings held with developers, up-take of evidence plans and using case studies to highlight the MIEU's impact on both NSIPs and complex and sensitive cases. The MIEU should then look to report on these indicators every six months.

3. Recommendations

3.1 The following recommendations address the findings from the review.

Recommendation 1: expanding the MIEU's role

- The MIEU will expand its role so that it includes large scale housing sites, e.g. sites coming through the Government's Local Infrastructure Prospectus and the Government's surplus public sector land programme. To do this effectively the MIEU will work with DCLG to track progress of individual sites that are raised by DCLG with the MIEU.
- The MIEU's role will also be expanded to include specific sites within Enterprise Zones and will work with Defra's agencies, DCLG and BIS on sites that are referred to the MIEU.
- The MIEU's terms of reference will be updated to reflect its expanded role.

Recommendation 2: increasing awareness and visibility of the MIEU

- The MIEU will develop a communications strategy to promote its work more effectively. This will be aimed at developers, industry bodies and environmental NGOs.
- As part of this, the MIEU will set up a forum to meet with environmental NGOs every six months to better explain its work and for environmental NGOs to share any concerns with the MIEU.

- The MIEU will also improve its engagement with the BIS Local network, building on the links it has made with BIS Local Yorkshire and Humber.

Recommendation 3: increasing awareness and take-up of the evidence plan process

- The MIEU will improve awareness of the evidence plan process to developers and PINS. As part of this, the MIEU will evaluate the experience of the first three developers using the process to communicate key messages and benefits of the process.
- The MIEU will also work with the CSU to ensure the evidence plan process aligns itself effectively with the new Consents Management Plans to avoid any duplication.

Recommendation 4: developing short and long-term indicators to better assess the impact of the MIEU

- The MIEU will develop quantitative indicators by November 2013 which will be used to assess the MIEU's impact. These will be used to assess the MIEU's added value through its interventions. Indicators will cover both NSIPs and complex and sensitive cases.
- In the short-term the MIEU will develop qualitative indicators (e.g. number of NSIPs engaged, take-up of evidence plans, number of cases referred to the MIEU).
- The MIEU will report on progress against indicators every six months.

Recommendation 5: analysis of strategic issues

- On an ongoing basis the MIEU will consider whether there are any strategic issues it can help tackle relating to the implementation of the Directives and major infrastructure development.
- As part of this, the MIEU will also analyse how the Directives are dealt with in the consenting decisions on NSIPs to see if there are any issues emerging that the MIEU could help address.

Recommendation 6: working effectively with the CSU

- The MIEU will develop a strong working relationship with the CSU to avoid any duplication or confusion over the roles of the different units.
- The MIEU will sit on the CSU Project Board and will invite the head of the CSU to join the MIEU Steering Group.

Recommendation 6: reviewing the MIEU's effectiveness in 2014

- Defra will undertake a review of the MIEU again in 2014 to assess its effectiveness and its added value.
- This will be aligned with the DCLG review of the Planning Act in 2014 and particularly focus on how well the MIEU is working with the CSU and whether there is any benefit of joining up the two units more formally.
- The review will also include consideration of the outcome of negotiations on the EIA Directive and whether the MIEU should have a role on EIAs.

Annex a: pre-application NSIP risk assessment criteria

Criteria 1: what is the expected (or agreed) scale of impact from the project to protected site(s) and / or species (alone or in-combination)
Criteria 2: what is the level of complexity and outstanding Habitats and Wild Birds issues to resolve or have these been resolved and agreed
Criteria 3: how is the engagement between Defra's agency(s) and developer, including responding to consultations / evidence presented by developer and taking into account administrative complexities (e.g. transboundary)
Criteria 4: what is the timetable for expected submission to PINS
Criteria 5: what is the economic value of project or generating capacity of project

Annex b: NSIPs the MIEU has engaged with (April 2012-April 2013)

Avon CCGT Power Station	Burbo Bank Extension
Dogger Bank – Creyke Beck and Teesside	East Anglia ONE, THREE and FOUR
Hornsea Project One and Two	North Killingholme Power Station
Palm Paper 3 CCGT	Rhiannon Wind Farm
Walney Extension Offshore Wind Farm	York Potash

Annex c: complex and sensitive cases the MIEU has engaged with (April 2012-April 2013)

Able Marine Energy Park	B3193 realignment
Brandon relief road	Chilterns railway
Cinderford Northern Regeneration Project	Falmouth Harbour
Green Port Hull	London Array

London Gateway	Monks Cross Shopping Development
Paull	Southampton Approach Channel Dredge
Westermost Rough	

Annex d: list of organisations who inputted into the review

Amphibian and Reptile Conservancy	Associated British Ports (Humber)
C.Gen	Department for Business, Innovation and Skills
Department for Communities and Local Government	Department for Energy and Climate Change
Department for Environment, Food and Rural Affairs	Department for Transport
Environment Agency	HM Treasury
Home Builders Federation	JNCC
Marine Conservation Society	Marine Management Organisation
Natural England	Planning Inspectorate
RSPB	Renewables UK
Scottish Power Renewables	Seabed Developers and Users Group
SMart Wind	The Crown Estate
The Wildlife Trusts	

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Any enquiries regarding this document/publication should be sent to us at:

MIEU@defra.gsi.gov.uk

PB13958