

# EIA: MYTH-BUSTING

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ENLIGHTENED THINKING

## Reminder:

- EIA development – planning permission cannot be granted until EIA has been carried out.
- Screening required – Schedule 2 development.
- Wednesbury reasonableness – courts will not interfere in exercise of judgment, unless irrational/ perverse.

# Screening – is EIA required?

## **Myth: non EIA dev has a lesser status**

- Actual position – consent can be refused on grounds of environmental impact even if there is no EIA

## Myth: Every large project will require EIA

- Schedule 2 contains thresholds
- even large projects might not require EIA – eg. 207ha site for 98MW solar + 100MW BESS.

## Myth: requirements of Schedule 2 re categories of EIA development

- Check actual wording of Schedule 2, including thresholds
- Some categories are broad/ vague – eg. “urban development projects”
- Solar projects - not mentioned in Sch 2 - in Ireland, the court held that means solar projects cannot be EIA dev. Scottish Electricity EIA Regs – “a generating station” – so solar projects 50+MW can be EIA dev.

## Myth: Salami-slicing “the project” is a serious JR risk

- Rule that developments cannot be split into component parts to avoid or reduce the scope of EIA
- Court decisions have rarely identified salami-slicing
- Test: functional interdependence - functional relationship is not enough
- Eg. road bridge – until housing built, bridge led nowhere and served no purpose – project = bridge + housing - R (oao Ashchurch RPC) v Tewkesbury BC [2023] EWCA Civ 101)

## Myth: EIA is not required under PD rights

- Actual position - EIA development is excluded from PD rights.
- Case study – demolition of flats in Glasgow. Screening not done properly first time. Screening upheld second time. Screening decision was critical because demolition is PD. Petition by Caz Rae for Judicial Review, Court of Session, 1 August 2024



# SCOPING – WHAT TOPICS TO BE INCLUDED IN EIA



## Myth: Scoping – include the “usual” chapters

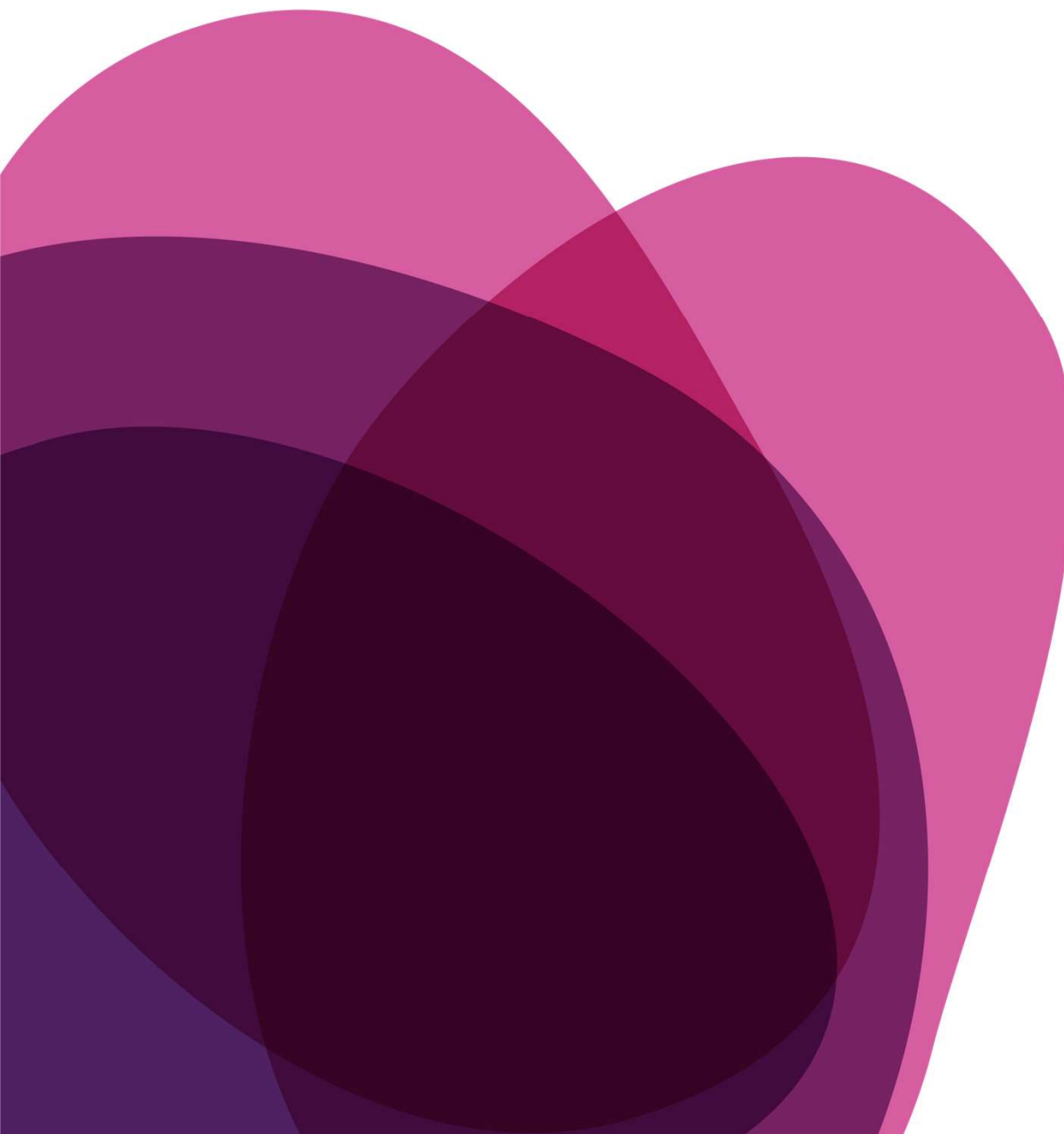
- Issues are still relevant to the consent decision even if not included in EIAR
- Eg. On-shore wind – tourism rarely scoped-in anymore; discussions around scoping out socio-economic
- Precautionary principle does not apply (only to Habitats Regulation Appraisal) – not necessary to ‘play it safe’.
- Scoping – exercise of judgment – courts only intervene if perverse/ irrational

## **Myth: EIA needs to show no alternative site**

What is actually required:

“A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.”

# OUTCOME OF EIA



## Myth: EIA always reports positively on the project

- This misunderstands the full extent of the EIA process:
  - If consultants say “no go” at the beginning, the project is unlikely to proceed to EIA
  - EIA is part of iterative design process – informing the design process – to avoid the final design having unacceptable impacts.

## Myth: Significant impacts means no planning permission

- Actual position – EIAR provides information – one of many factors to be taken into account in decision on consent application.
- “Planning balance” is assessed in Planning Statement and by decision-maker
- Planning permission can be granted even if significant environmental effects – eg. socio-economic benefits might outweigh env impacts.

## Myth: Judicial review is a significant risk

- Very low numbers of successful EIA JRs – eg. exercise of judgment is only quashed if perverse/ irrational - eg. Glasgow tower blocks – 2 JRs re screening – Council conceded 1st; successfully defended 2nd.
- But - seriousness of consequences if planning permission is quashed.
- Cannot prevent judicial review but can minimise risk of it succeeding

# KEY CONTACTS



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