Appendix 14.3 Consideration of Scope 3 Emissions

Background

The Climate Change ES chapter has been prepared in line with the IEMA EIA Guide to Assessing Greenhouse Gas Emissions and Evaluating their Significance 2nd Edition (Institute of Environmental Management and Assessment (IEMA), 2022) (the 'IEMA GHG Guidance') and other best practice industry guidance. With some minor exceptions set out in the chapter, the assessment has included a consideration of all scope 1, 2 and 3 GHG emissions from all activities within lifecycle stages A, B, and C of relevance to the Proposed Development, as set out in the Whole Life Carbon Assessment for the Built Environment (RICS, 2023) (the "RICS 2023 Guidance") and BS EN 15978 Sustainability of Construction Works - Assessment of Environmental Performance of Buildings - Calculation Method ("BS EN 15978") guidance. This includes the following scope 3 emissions:

- Upstream emissions related to the extraction, manufacture and transport of building materials to the site during construction and construction-related emissions from subcontractors.
- Downstream emissions related to the future leasing of the student accommodation, including purchased energy, water use, vehicle use and waste generated. This may also include downstream emissions associated with the demolition and management of waste from the development at the end of its life.

The IEMA Guidance advocates for flexibility and proportionality to suit the specific development being assessed. The guidance states that '*certain life cycle modules (or stages) can be excluded if these exclusions are clearly highlighted and justified by the practitioner using professional judgement and in accordance with the materiality and cut-off guidance*.' The sources of GHG emissions excluded from the assessment have been excluded on this basis.

The 2024 Supreme Court judgement on the application of R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others [2024] UKSC 20 (judgement given on 20 June 2024) ("Finch") has raised implications for the assessment of scope 3 emissions from development projects in the EIA process, potentially requiring the consideration of additional indirect emissions that do not, to date, require consideration under the relevant industry good practice guidance, including the IEMA GHG Guidance, the RICS 2023 Guidance and BS EN 15978.

Finch Judgement

In the case, the Supreme Court considered whether, under the EIA Directive and the EIA Regulations 2017, it was lawful for Surrey County Council to grant planning permission for the expansion of an oil drilling facility in the Surrey Hills where the EIA for the project had only considered emissions from sources within the control of the developer (scope 1 emissions). The EIA had not considered emissions arising as a consequence of the activities at the site – specifically from future combustion by downstream users of the fuel into which the extracted oil would be refined (scope 3 emissions).

In its decision, the Supreme Court unanimously rejected the approach taken by the Court of Appeal – that it was for a local authority to determine whether there was a *'sufficient causal connection'* between the project and the scope 3 emissions. The majority of the Court considered that scope 3 emissions were effects of the project (because it was an agreed fact that the oil would be refined; burnt as fuel and release greenhouse gases). The Council's failure to take this into account meant that the planning permission granted was unlawful. The appeal was therefore allowed.

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Some of the core considerations that led to this judgement included:

- The EIA Directive and EIA Regulations 2017 require an assessment of "likely" effects. In this case, it was not only likely, but "inevitable", that the extraction of oil would lead to combustion and the emission of greenhouse gases into the atmosphere;
- Although the terms "direct" and "indirect" are not defined in the legislation itself, the European Commission's Guidance for use by EIA practitioners states that an "indirect effect" was one which occurred '*away from the immediate location or timing of the proposed action*'. The judge therefore concluded that scope 3 emissions are indirect effects of the operation of the scheme; and
- The Directive does not impose a geographical limit on the scope of the environmental effects of a project. The majority therefore considered that there was "no justification" for limiting the EIA in this case to emissions which only occurred at the site. Further, it would not have been in keeping with the challenge posed by climate change to have approached the matter in this way.

In the judgment, Lord Leggatt confirmed that these requirements should apply to projects such as this, where the fossil fuel commodity being extracted will not be used in the creation of a different type of object. There should be an *'inevitable pathway from extraction to combustion'*, with no *'element of conjecture or speculation*' about what will ultimately happen to the commodity. '*It is agreed that it will inevitably be burnt as fuel. And a reasonable estimate can readily be made of the quantity of GHGs which will be released when that happens*.' As advised by the judge, this would therefore apply to projects such as oil extraction and coal mining projects but would not apply to projects such as facilities to manufacture iron or steel or to manufacture motor vehicle or aircraft components.

In the case of steel, the judge advised that it has *'many possible uses and can be incorporated into many different types of end product used for all sorts of different purposes. In the case of a facility to manufacture steel, it could reasonably be said that environmental effects of the use of products which the steel will be used to make are not effects of manufacturing the steel. That is because the manufacture of the steel is far from being sufficient to bring about those effects. Such effects will depend on innumerable decisions made "downstream" about how the steel is used and how products made from the steel are used. This indeterminacy regarding future use would also make it impossible to identify any such effects as "likely" or to make any meaningful assessment of them at the time of the decision whether to grant development consent for the construction and operation of the steel factory.'*

In the case of manufacturing components for use in the construction of motor vehicles or aircraft, the judge advised that '*where a component is manufactured which forms a small part of a much larger object, such as a motor vehicle or aircraft, the view might reasonably be taken that the contribution of the component is not material enough to justify attributing the impact on the environment of the end product to the activity of manufacturing the component part. In any event, the number of motor vehicles or aircraft in which such parts will be incorporated and the use which will subsequently be made of them may be so conjectural that no realistic estimate could be made of GHG emissions arising from such use on which a reasoned conclusion could be based. I have discussed above that the EIA process does not require that attempts be made to measure or assess putative effects which are incapable of such assessment.*'

Implications for GHG Emissions Impact Assessments in EIA

Based on this judgement, we consider that any additional assessment of upstream and downstream scope 3 GHG emissions in EIA, beyond those already recommended in current industry guidance, should be limited to situations where:

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- The likely use of any products from the Proposed Development or likely nature/type and scale of any other upstream or downstream activities related to the Proposed Development can reasonably be determined, such that realistic estimates can be made of the GHG emissions arising from them; and
- In line with good EIA practice, where it is considered proportionate to scope them in (e.g. when they are expected to make a material contribution to a likely significant environmental effect).

Upstream scope 3 GHG emissions that did not require consideration in EIA, as set out in the industry guidance documents previously referenced, but which could now potentially require consideration, in line with the supreme court judgement, could include:

- GHG emissions associated with the manufacture of the plant and machinery used to construct the Proposed Development; and
- GHG emissions associated with the Proposed Development's design and consenting process.

Any plant and machinery used in the demolition and construction of the Proposed Development would not be manufactured and used solely for the Proposed Development. Each item of construction plant or machinery would typically be used in the construction of numerous other development projects over a number of years. The proportion of any embedded GHG emissions associated with the manufacture of such plant and machinery that could be attributed to the Proposed Development is therefore likely to be small. Given the uncertainty regarding the type, quantity, and design life of the various items of plant and equipment that would be used in the demolition and construction process, it would also be extremely difficult to realistically estimate their embedded GHG emissions and what proportion could be attributed to the Proposed Development. On this basis, and given that GHG emissions from this source are not expected to be material in scale such that they could influence the overall significance of effects of the Proposed Development, this source has been scoped out.

Similarly, given the complexities of the Proposed Development design and consenting process and the number of parties that contribute to it, it would be extremely difficult to realistically estimate the GHG emissions associated with this process. It is also considered unlikely that the GHG emissions from this process would be material in scale such that they could influence the overall significance of effects of the Proposed Development. On this basis, this source has also been scoped out.

The Proposed Development, once complete and operational, is not expected to produce any “products”. Therefore, no additional downstream scope 3 GHG emissions that have not already been scoped into the assessment, in line with the industry good practice guidance documents previously referenced, have been identified. As such, no additional downstream scope 3 GHG emissions have been considered in the assessment.

On this basis, the assessment methodology employed in the ES chapter is considered to align with the recent Finch judgement.

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