Proposed amendments to Directive 2011/92/EU (EIA Directive)
Briefing to the Department for Communities and Local Government, May 2013

The Landscape Institute
The Landscape Institute (LI) is the Royal Chartered body for landscape architects. As a professional organisation and educational charity, we work to protect, conserve and enhance the natural and built environment for the public benefit. The LI champions landscape, and the landscape architecture profession, through advocacy and support to our members, in order to inspire great places where people want to live, work and visit.

Background
Environmental Impact Assessment (EIA) and Landscape and Visual Impact Assessment (LVIA) are key areas of work for many members of the LI, as is demonstrated by our recent guidance published in April 2013[1] on LVIA in particular, in conjunction with the Institute of Environmental Management and Assessment (IEMA). As a result, it is appropriate for the LI to submit its views on the proposed amendments to Directive 2011/92/EU (EIA Directive) to the Department for Communities and Local Government (DCLG).

Following correspondence with Anne Wood of DCLG towards the end of April 2013, the LI was invited to submit its views on the proposed amendments to the EIA Directive. This briefing has been developed following consultation with several members of the Landscape Institute's Policy and Technical Committees

Landscape Institute response
This briefing sets out the LI's response to the proposed amendments as presented by DCLG in Annex A of its Explanatory Memorandum on European Union Legislation[2] of 6 December 2012. In general the LI supports the objective to improve the quality of EIA but feels that, taken together, the proposed changes would seem unlikely to achieve the stated objective of focusing EIA on a smaller number of projects given the increased requirements for screening and other measures proposed. More specifically, taking each of the proposed changes in turn, the LI's comments are as follows:

1. Make amendments to the screening process for projects which will require more detailed information about the impact of the project to be provided up front including the identification of mitigation measures. The Commission argues that small-scale projects would be screened out but as drafted, and confirmed by the Commission in Working Group, the proposals would require the screening of all projects regardless of their size. At present the arrangements for screening differ across the UK consenting regimes. For example, screening takes place for all major infrastructure projects and for offshore oil and gas projects, but for smaller projects screening may only apply to projects above a specific threshold or to those situated in sensitive areas (such as National Parks and AONBs).

[1] http://www.landscapeinstitute.org/knowledge/GLVIA.php
[2] http://europeanmemoranda.cabinetoffice.gov.uk/files/2012/12/15627-12.pdf

The LI has concerns over the proposed changes given the proposal as worded that all projects, regardless of size, would need to be subject to screening. This places an additional and undue burden on developers and planning authorities to assess all projects. In addition, information on mitigation is not always available at screening stage and is part of the assessment process. Screening decisions based on consideration of mitigation proposed may be open to legal challenge dependent upon the weight attached to mitigation in the decision-making process. Clearly defined schedule 1 and 2 entries, or a revised approach to definition of relevant projects, is perhaps a more proactive way of identifying projects to go forward to screening.

2. Make amendments to introduce a one-stop shop for projects which require consent under more than one EU Directive. This may have significant implications for the way the consenting regimes operate in the UK. At present, for example, for projects consented under the planning regime, local planning authorities consider the environmental implications of the development as part of their consideration of whether the use of land is suitable for the proposed project, while the Environment Agency consider operational matters such as the control of emissions under their environmental permitting regime. Developers often wait for planning consent to be granted before applying for the environmental permit.

The LI supports DCLG's concern that this proposed amendment may have significant implications for the way the consenting regimes operate in the UK. The changes proposed would appear to require only one authority to be responsible for the development consenting procedures for each project including EIA but also consenting requirements relating to other EU legislation. This would seem to be impractical to put in place given the various mechanisms for development consenting which operate in the UK at different stages of the planning process. In addition, different consenting procedures require different levels of information which are not necessarily an accepted sub-set of EIA material and may incur additional design development/operation specification requirements at an early stage of the consenting process.

3. Increase the scope of the environmental assessment to cover issues such as climate change, disaster risks, health, use of natural resources and soil (including soil sealing). While some of these were expected as they reflect environmental issues that were not included in the original Directive, it also has the potential to include areas which we would not expect an environmental assessment to cover. It also includes areas where agreement has not been reached on other Directives – as in the case of the draft Soil Framework Directive which is currently blocked. It also misses the opportunity to clarify other issues which have been the subject of legal challenges, such as what is meant by material assets;

The LI welcomes the proposal to include climate change in the scope of an EIA however there are concerns over the proposal to include natural and man made disaster risk which would not seem to be appropriate for consideration with an EIA. If the proposed inclusion of the requirement to consider human health relates to consideration of ground contamination, air borne pollution and noise then that would normally be part of an EIA in any case. However it is not clear how this requirement would be applied and further clarification would be helpful.

4. Include an element of competency creep as they include amendments which would provide the Commission with Delegated Acts. These would enable the Commission to amend the criteria used to specify the information to be provided for in the screening process, the criteria to be used for considering the likely environmental impact and the contents of the environmental report without consultation with Member States. This would for example enable to Commission to increase the information to be provided at the screening stage without consulting Member States about the impact which we would want to resist.

The LI is supportive of DCLG's concerns surrounding the potential impact of the proposal to enable the Commission to increase the information to be provided at the screening stage without consulting Members States.

5. Make scoping reports mandatory. At present they are carried out at the request of the developer, and the introduction of mandatory scoping would significantly increase the workload of competent authorities and introduce delays. The Directive would also define what should be covered by both the environmental report and the scoping opinion including the mandatory consideration of all reasonable alternatives that are relevant to the project which would be a significant additional burden. The existing Directive only requires EIAs to report on those alternatives considered by the developer. Again, this has the potential of significantly increasing burdens for developers and competent authorities.

The LI shares concerns raised by DCLG that the introduction of mandatory scoping could significantly increase the workload of competent authorities and introduce delays. It is our understanding that the relevant authority would be the lead on both the screening and scoping, and the experience of some of our members suggests that these authorities do not always have the necessary expertise in place to undertake these activities.

Mandatory screening for all sizes of projects does not make sense in the context of streamlining the process and reducing the burden on business. Pre-application negotiations will almost always identify issues that are relevant to sustainability and climate change resilience, and developers will almost always be willing to undertake expert assessments if that is what it takes to get their planning applications registered.

The supports DCLG's concerns surrounding an increase in burdens for developers and competent authorities and, more specifically, the LI is concerned by use of the term "all reasonable alternatives" as they create impossibilities.

6. Require the use of accredited and technically competent experts to prepare the environmental report and/or by competent authorities to verify the report. This is another amendment aimed at improving the quality of the environmental assessment. It would add significant costs to the process. The Directive already requires Member States to consult authorities with 'specific environmental responsibilities' who are qualified to comment on any aspect of the environmental information that they consider inaccurate or incomplete or of insufficient quality.

The LI is not persuaded that this proposed new requirement is necessary or proportionate. In our experience, there have been no issues arising because of the absence of an accreditation scheme. However, if this does come into force then it is essential that the government take due account of the fact that EIAs are currently undertaken by specialists who come from a wide range of professional backgrounds. Chartered Members of the LI are among these, though there are of course many others.

If a national EIA accreditation scheme becomes necessary in future, it must be open to all suitably qualified individuals who are able to demonstrate that they meet the required standard, regardless of their membership of any particular professional body. We would be very happy to collaborate with the government and with other bodies to establish and operate such a scheme if the need arises.

If EIA accreditation becomes necessary, the government must commit to an open, fair and accessible scheme, and should not agree to any particular membership organisation or group of organisations being given any kind of privileged status.

7. Establish timeframes for the completion of the screening, scoping and consultation stages of the EIA process. As there are a number of consenting regimes in the UK, this "one size fits all approach" presents potential difficulties. These are set at 30 days, which is significantly longer than allowed for in some of the UK EIA regimes. For example, the Town and Country Planning regime in England sets deadlines of 3, 5 and 3 weeks respectively. The proposal has the potential to lengthen the amount of time taken to complete the EIA process and it is unclear how this would make the process more efficient. While there is normally nothing to prevent a Member State setting more stringent requirements than are set in a Directive we would want to seek clarification that by setting shorter timescales we would not be in breach of the Directive or at risk of legal challenge. For larger projects, the proposal has the potential to shorten deadlines e.g. for those projects which fall within the consenting regime for major energy infrastructure. It is unclear how this would make the process more efficient.

The LI supports the concern that there is the potential to lengthen consultation beyond current limits. The issue of proportionality is an important consideration. The timeframes for consultation with the public and at what stages should be clarified with regard to Article 6.

8. Introduce a new requirement for the monitoring of significant adverse effects. This may enable the effects to be monitored but it is unclear what it would achieve in practice without a mechanism for reviewing the consent. This would place another burden on developers as resources would be required to carry out monitoring.

At first sight the LI welcomes this development. However, practicability and how this measure could be implemented might prove problematic. The 'burden' would not only be on developers but also on regulatory authorities who presumably would be the recipients of the monitoring reports and would have to decide what should be done in response. Whilst monitoring in principle may be desirable from an environmental perspective the requirements for monitoring set out in Article 8 could lead to numerous requests for monitoring over an extended period of time without any specific objectives

or mechanism to react to the outcomes. There is already the ability, through the imposition of planning conditions, to require monitoring for key issues perhaps most common for biodiversity. The Directive as drafted is too far ranging and potentially applies to all mitigation and compensation measures which would be an unreasonable expectation and incur potentially significant additional costs to the detriment of investment in development.