EIA & AA Essentials:

Environmental Impact Assessment
&
Appropriate Assessment

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14th October *2026*

1 - Introduction

Introduction: Objectives

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Environmental Impact Assessment & Appropriate Assessment

- An understanding of the steps in the preparation of EIA & AA Reports
- The presentation of the screening and scoping stages
- Appropriately defining the project
- Appropriately describing the baseline
- Examining and presenting alternatives
- The assessment of effects
- The factors that must be considered
- Mitigation and monitoring
- Residual effects
- Common issues that arise in report preparation
- Breakout rooms – scenarios discussed

Introduction: Agenda

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1. Introduction
2. Overview of EIA, AA (& SEA)
3. Legislation & guidance
4. AA Screening
5. AA Stage 2 (NIS)
6. EIA Screening
7. EIA Scoping
8. Project description
9. Baseline description
10. Alternatives
11. EIA environmental factors
12. Assessment of effects
13. Mitigation & monitoring
14. Residual effects
15. Next steps
16. Common issues

Introduction: Schedule

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09:30 – 11.30: First Session (2 hours)

1. Introduction
2. Overview of EIA, AA (& SEA)
3. Legislation & guidance
4. AA Screening
5. AA Stage 2 (NIS)
6. EIA Screening
7. EIA Scoping

11.30 – 11.45: Coffee Break (15 mins)

11.45 – 13.15: Second Session (1 hour, 30 mins)

8. Project description
9. Baseline description
10. Alternatives
11. EIA environmental factors

13.15 – 14.00: Lunch (45 mins)

14.00 – 15.30: Third Session (1 hour, 30 mins)

12. Assessment of effects
13. Mitigation & monitoring
14. Residual effects
15. Next steps
16. Common issues

Introduction: Important to note…

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- EIA and AA– two extensive topics
- A multi-disciplinary process – many perspectives
- Always ambiguity – the importance of guidance and consistency
- Numerous authorities interpreting the process
- Constantly evolving with new legislation and case law
- Each assessment turns on its own facts
- Pre course survey responses

2 - Overview of EIA, AA (& SEA)

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Environmental Assessments:

Strategic Environmental Assessment (SEA)

- undertaken at the policy level when plans (development plans, local area plans, etc.) are being developed

Environmental Impact Assessment (EIA)

- undertaken at the project assessment (planning application/consent) stage

Appropriate Assessment (AA)

- considered at both plan and project stages

- **Transposed into Irish law from the relevant European Directives**
- **Protection of the environment: to ensure that proper planning and development is based on the principles of sustainable development**

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Environmental Assessments: Strategic Environmental Assessment (SEA)

- SEA is a process for evaluating the environmental consequences of certain plans or programmes, including development plans and local area plans, in the spatial planning area

- SEA informs plans or programmes by considering which options fit best with wider environmental policies and obligations such as climate change, water, air quality and biodiversity

- Public participation is a key feature – to alert the public to a plan-making process and obtain their input/views

- Once established that a plan requires an SEA (screening), a scoping stage determines the range of environmental issues to be covered by the SEA process in the <u>Environmental Report</u>

- The Environmental Report is prepared alongside the draft plan to identify likely significant effects and inform the plan-making process

- Statutory guidelines on carrying out SEA in the plan-making area were published by the Minister for Housing, Local Government and Heritage in March 2022

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Environmental Assessments: Environmental Impact Assessment (EIA)

- EIA is a process of assessment of the effects of a project or development proposal on the environment.

- In the planning area, it is undertaken by a planning authority or An Coimisiún Pleanála(the Competent Authority) during the consideration of applications for planning permission, taking account of an Environmental Impact Assessment Report (EIAR).

- An EIAR is a report or statement of effects, if any, which the proposed project, if carried out, would have on the environment.

- The EIAR must be prepared by, or on behalf of the developer, by qualified and competent experts. The EIAR informs the EIA process.

- EIA identifies, describes and assesses the direct and indirect effects of a proposed project in relation to the following environmental factors:

a. population and human health,
b. biodiversity, with particular emphasis on species and habitats protected under EU Directives,
c. land, soil, water, air and climate,
d. material assets, cultural heritage and the landscape, and
e. the interaction between the factors mentioned in (a - d).

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Environmental Assessments: Environmental Impact Assessment (EIA)

- Assessment of expected effects must include the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the proposed project - SEVESO Directive

- Objective is to ensure the competent authority fully understands the significant effects it is likely to have on the environment and has factored that into the decision

- EPA Guidance on the preparation of the EIAR, published by the EPA (2022)

EIA required:

- Mandatory for the types of development listed in Part 1 or Part 2 of Schedule 5 to the Planning and Development Regulations 2001, as amended (developments considered likely to have significant effects on the environment)

- Certain categories of extensions/changes to an existing development

- Sub-threshold developments (Schedule 5 above) should be considered i.e. screened

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Environmental Assessments: Environmental Impact Assessment (EIA)

Screening:

- **If a 'preliminary examination' of the proposal gives rise to any doubt as to whether an EIA is required, a screening must be carried out and a 'screening determination' prepared**
- **Preliminary examination - no further documentation required**
- **Screening determination – an EIA Screening Report (Schedule 7A Report) must be provided to the PA**

- **No notification requirements**
- **Where the competent authority decides that there is no real likelihood of significant effects on the environment, then an EIA (or EIAR) is not required.**
- **Where, for example, a planning authority decides that there is a real likelihood of significant effects on the environment then the developer must prepare and submit an EIAR, and the planning authority must carry out an EIA.**

Preparing an EIA

- **Scoping process. A scoping opinion may be sought from the CA**

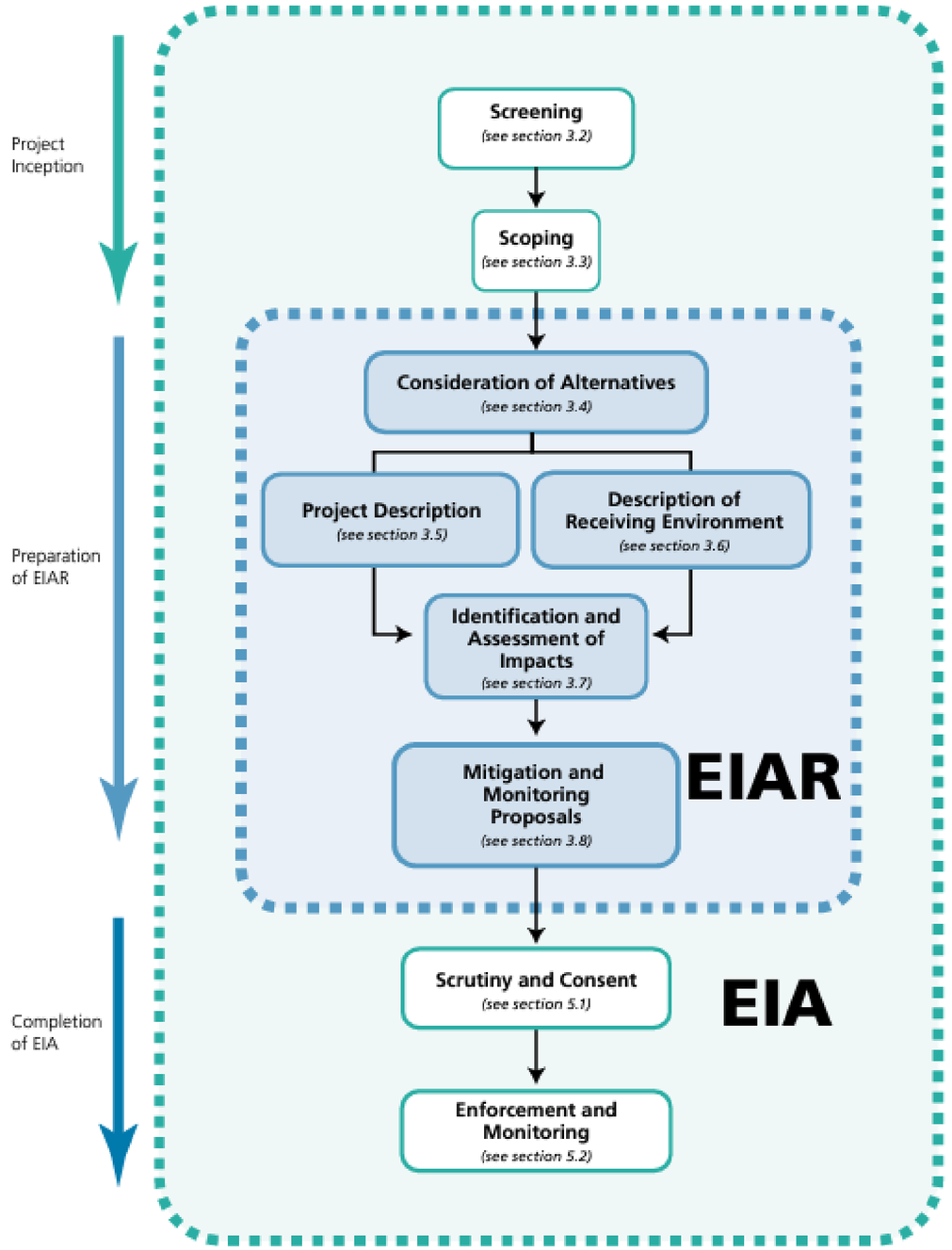
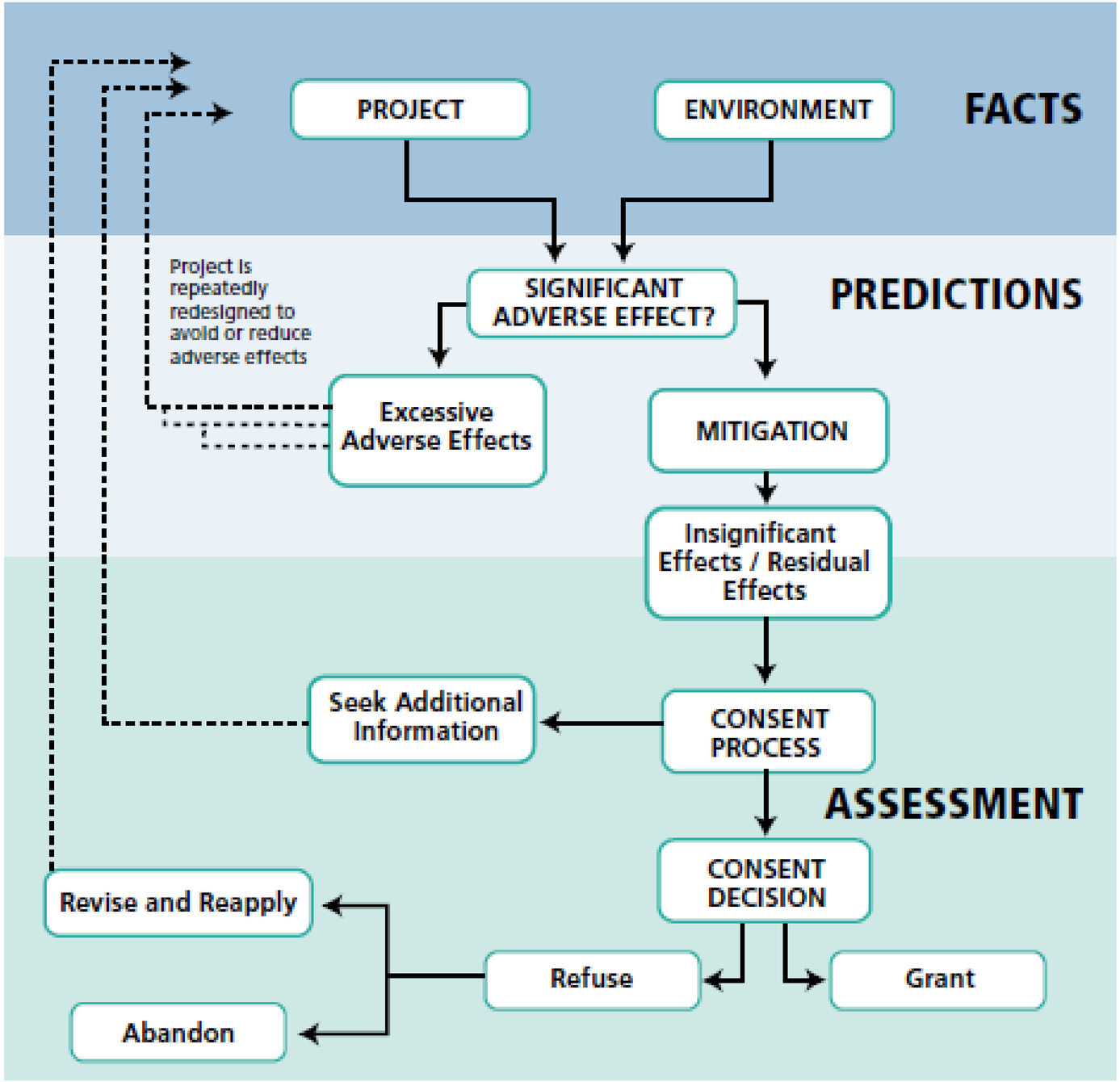


Figure 2.1: The Position of an EIAR within the EIA Process

Guidelines on the information to be contained in Environmental Impact Assessment Reports, EPA, 2022



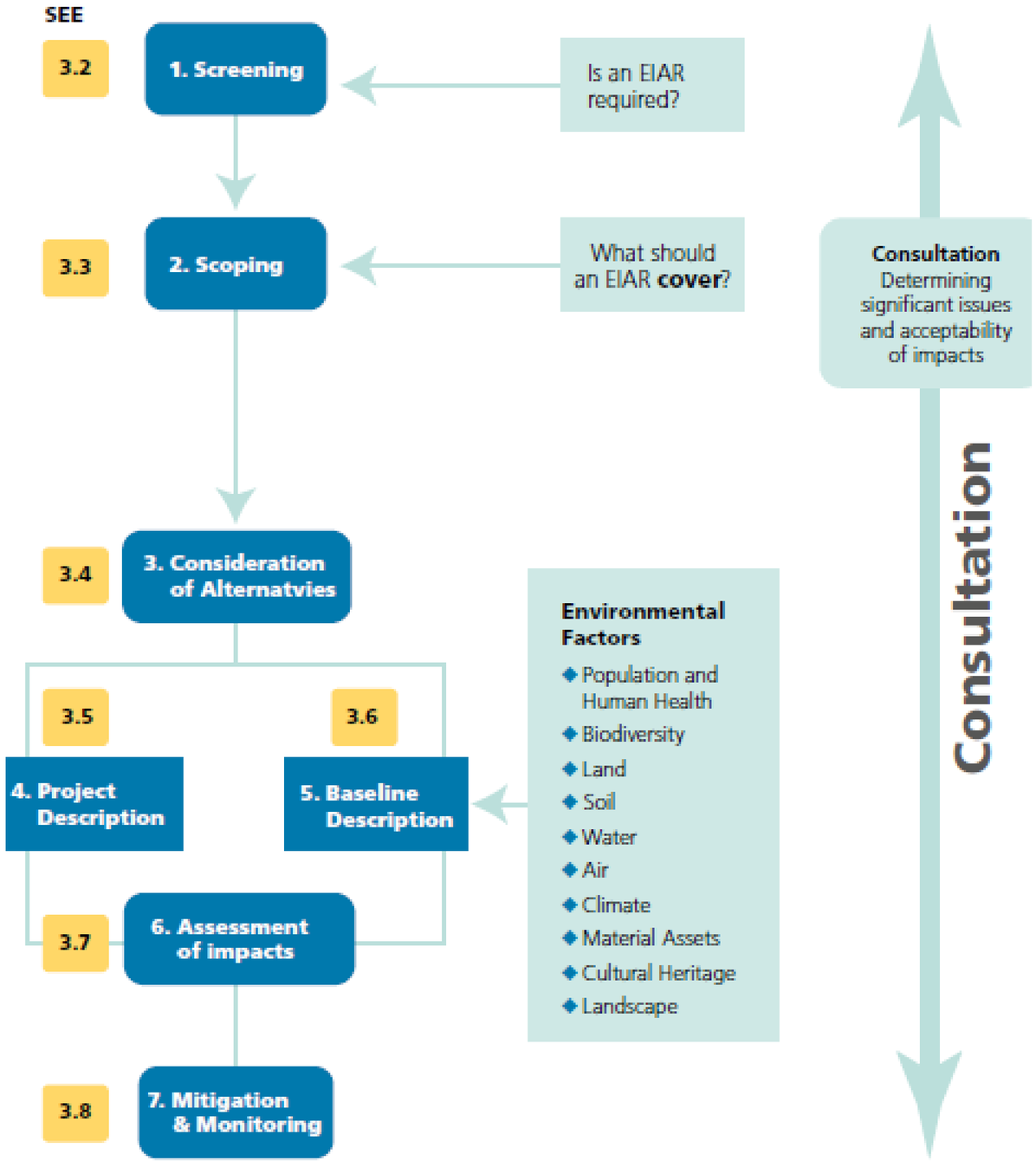
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Figure 2.2: EIA process flow chart

Guidelines on the information to be contained in Environmental Impact Assessment Reports, EPA, 2022

Three parts:

- A compilation of facts;
- Predictions of likely effects (may be iterative as the design is refined);
- The assessment of the environmental effects as part of a consent process which may decide to grant, condition, refuse or seek additional information.



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Figure 3.1: EIAR contents in sequence

Guidelines on the information to be contained in Environmental Impact Assessment Reports, EPA, 2022

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Environmental Assessments: Environmental Impact Assessment (EIA)

Generally, the EIAR should include:

- **a description of the project (site, design, size etc);**
- **a description of the likely significant effects of the project on the environment;**
- **a description of the mitigation proposed to offset likely significant adverse effects on the environment;**
- **a description of the reasonable alternatives;**
- **in-combination effects, and**
- **a non-technical summary.**

EIA and AA

- **Often an application for development consent will involve both EIA (under the EIA Directive) and AA (under the Habitats Directive)**
- **EIA is a holistic assessment of the potential impact on the overall environment while AA is a specific assessment dealing with designated areas that are ecologically sensitive**
- **While there is overlap, there are also significant differences**

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Environmental Assessments: Appropriate Assessment (AA)

- AA is a detailed study of the likely impacts of a proposed plan or project on the ecology of a designated European site – a Natura 2000 site
- A plan or project can only be approved where it can be demonstrated beyond reasonable scientific doubt that it will not negatively affect the integrity of a Natura 2000 site
- The Natura network was established by the Birds Directive (1979) and the Habitats Directive (1992) – rare and threatened habitats and species across the EU

- Two types of Natura 2000 sites – Special Areas of Conservation (SAC) and Special Protection Areas (SPAs). Each has site-specific conservation objectives
- Generally, AA is carried out by the Competent Authority, following the preparation of reports/statements by the applicant - however, there are several exceptions to this
- These exceptions include designated public authorities
- However, public authorities may not assume the function of screening projects that require development consent.

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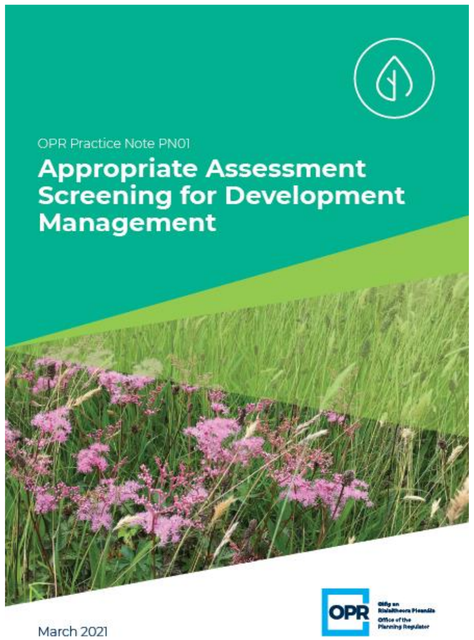
Environmental Assessments: Appropriate Assessment (AA)

AA screening (Stage 1)

- Determines whether or not a plan or project requires an AA of the likely significant effects on a Natura 2000 site
- Cannot rely on mitigation measures to reach this conclusion – although this position has somewhat shifted recently (inherent design features)
- Guidance from OPR – Practice Note PN01

If AA is required for a plan:

- AA is required where a plan has potential to have a significant effect on the Natura 2000 network, or if the effects are uncertain:
- An Issues Paper is prepared alongside the screening process
- A Natura Impact Report (NIR), informed by the Issues Paper, must be prepared to address the implications of the plan, on its own or in combination with other plans or projects



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Environmental Assessments: Appropriate Assessment (AA)

If AA is required for a plan ctd…

- Considers mitigation, alternatives, IROPI and compensation, as appropriate
- Displayed alongside the draft plan – informs the plan-making process
- Final plan must state how the ecological considerations have been integrated into the plan and include an AA conclusion statement

If AA is required for a project:

- A Natura Impact Statement (Stage 2 AA) is prepared - scientific study of the likely impact of the proposed development on the integrity of the Natura 2000 site that may be affected
- Members of the public are afforded an opportunity to make submissions
- Standard required - no adverse effects on the integrity of the Natura 2000 sites, post mitigation

Subsequent AA stages:

- If the AA process concludes that adverse effects cannot be ruled out:
- examination of alternative solutions, or
- the IROPI (imperative reasons of overriding public interest) statutory process.

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Overview of Screening and Appropriate Assessment

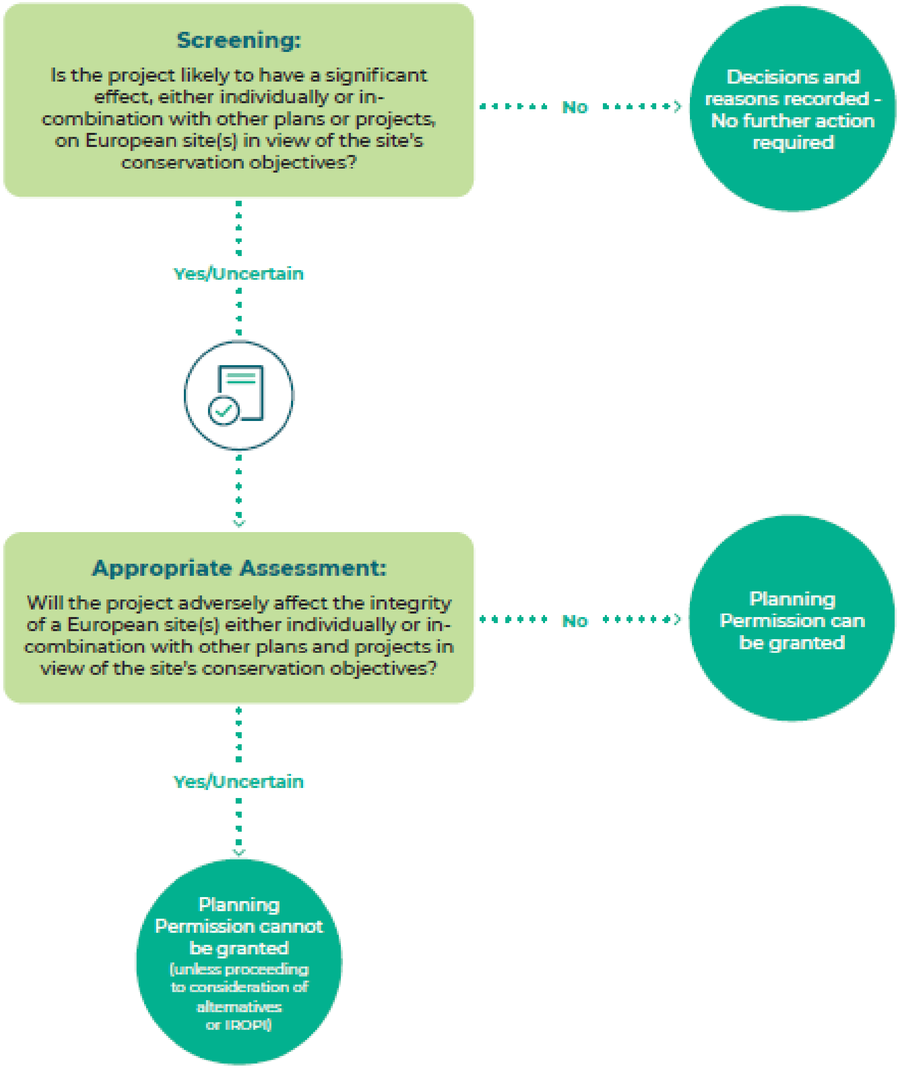


Figure from *Appropriate Assessment Screening for Development Management* (OPR Practice Note PN01, 2021)

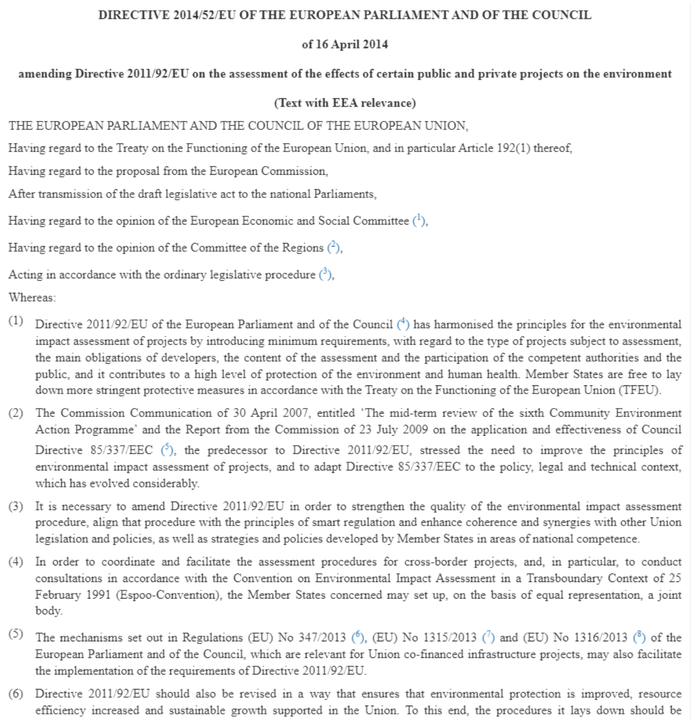
3 – Legislation & guidance

Legislation & Guidance EIA

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Legislation

- The “amended directive”: the codified Directive 2011/92/EU as amended by Directive 2014/52/EU (EIA Directive).
- Informal consolidated version available (no legal standing).
- Transposed into Irish law through numerous acts and regulations, including the Planning and Development Act, 2000, as amended and the Planning and Development Regulations, 2001, as amended.
- Planning and Development Act 2024 – as with the 2000 Act, it is a consolidation of planning law - relevant sections enacted, though not yet fully commenced.



DIRECTIVE 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 April 2014

amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) Directive 2011/92/EU of the European Parliament and of the Council ([4]) has harmonised the principles for the environmental impact assessment of projects by introducing minimum requirements, with regard to the type of projects subject to assessment, the main obligations of developers, the content of the assessment and the participation of the competent authorities and the public, and it contributes to a high level of protection of the environment and human health. Member States are free to lay down more stringent protective measures in accordance with the Treaty on the Functioning of the European Union (TFEU).

(2) The Commission Communication of 30 April 2007, entitled ‘The mid-term review of the sixth Community Environment Action Programme’ and the Report from the Commission of 23 July 2009 on the application and effectiveness of Council Directive 85/337/EEC ([5]), the predecessor to Directive 2011/92/EU, stressed the need to improve the principles of environmental impact assessment of projects, and to adapt Directive 85/337/EEC to the policy, legal and technical context, which has evolved considerably.

(3) It is necessary to amend Directive 2011/92/EU in order to strengthen the quality of the environmental impact assessment procedure, align that procedure with the principles of smart regulation and enhance coherence and synergies with other Union legislation and policies, as well as strategies and policies developed by Member States in areas of national competence.

(4) In order to coordinate and facilitate the assessment procedures for cross-border projects, and, in particular, to conduct consultations in accordance with the Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991 (Espoo-Convention), the Member States concerned may set up, on the basis of equal representation, a joint body.

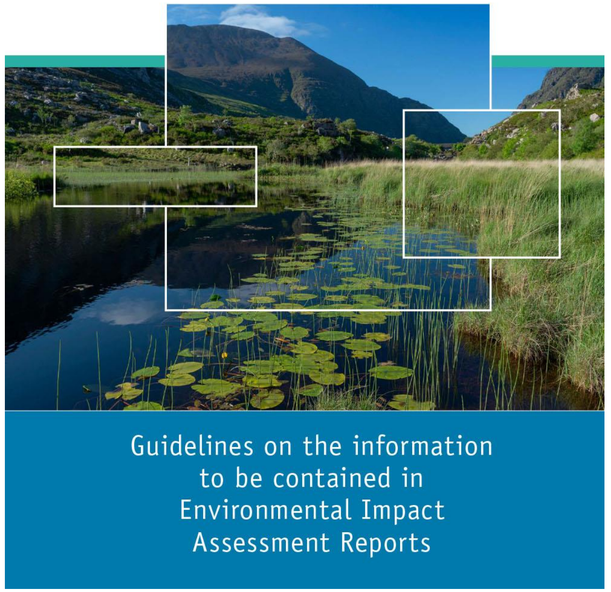
(5) The mechanisms set out in Regulations (EU) No 347/2013 ([6]), (EU) No 1315/2013 ([7]) and (EU) No 1316/2013 ([8]) of the European Parliament and of the Council, which are relevant for Union co-financed infrastructure projects, may also facilitate the implementation of the requirements of Directive 2011/92/EU.

(6) Directive 2011/92/EU should also be revised in a way that ensures that environmental protection is improved, resource efficiency increased and sustainable growth supported in the Union. To this end, the procedures it lays down should be

Legislation & Guidance EIA

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- Significant guidance available – both in respect of the EIA process and the individual assessment of factors within the EIAR.
- Reliance on guidance from within the State
- Reliance on international guidance
- Most recent (Irish) EPA guidance on the preparation of EIA Reports published in May 2022
- Further guidance available from the Commission, the OPR, the Department of Housing, Planning & Local Government, state bodies (e.g. the NTA, 2023) and professional bodies (e.g. Institute of Geologists of Ireland, 2013)
- Using current guidance and being consistent

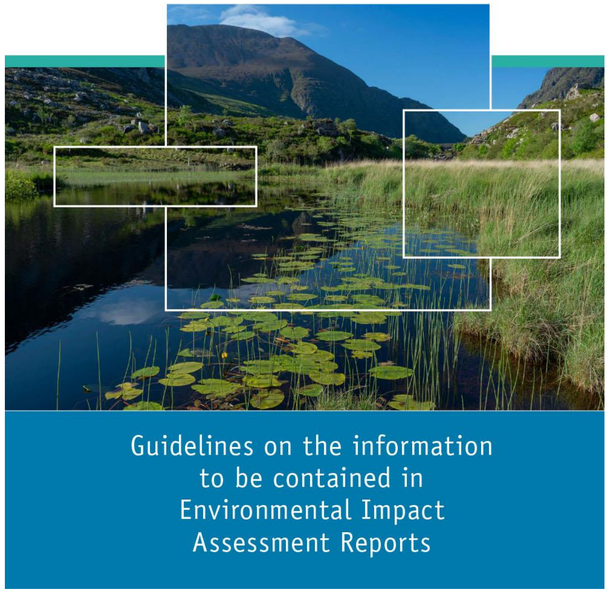


Legislation & Guidance EIA

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The **fundamental principles** to be followed when preparing an EIAR are:

- Anticipating, predicting, avoiding and reducing significant effects
- Assessing and mitigating effects
- Maintaining objectivity
- Ensuring clarity and quality
- Providing relevant information to decision makers
- Facilitating better consultation.



Legislation & Guidance AA

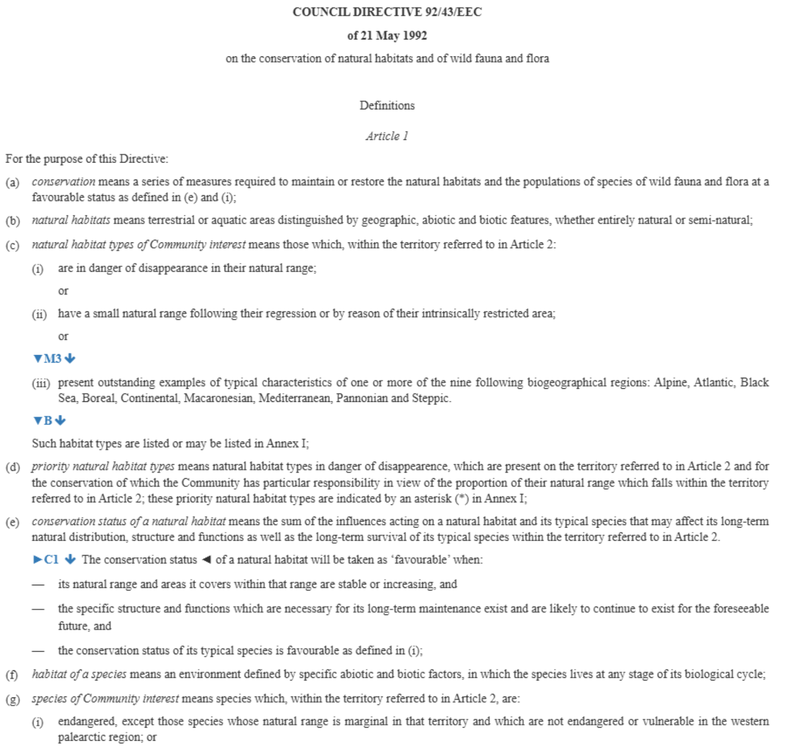
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Legislation

- Appropriate assessment comes from the Habitats Directive (92/43/EEC) - to safeguard the long-term survival of Europe's most valuable and threatened species and habitats – SACs & SPAs, collectively referred to (in Ireland) as European sites. Together, these sites comprise the pan-European Natura 2000 network of protected areas.

- The Birds Directive (Directive 79/409/EEC) was adopted in 1979 - one of the first pieces of environmental legislation to be adopted by the EU. It was amended in 2009 (Directive 2009/147/EC)

- The Habitats Directive (92/43/EEC) and the associated Birds Directive (2009/147/EC) are transposed into Irish legislation by Part XAB of the 2000 Act and the Birds and Natural Habitats Regulations 2011 (S.I. No 477 of 2011). The legislative provisions for appropriate assessment screening for planning applications are set out in Section 177U of the 2000 Act.



COUNCIL DIRECTIVE 92/43/EEC

of 21 May 1992

on the conservation of natural habitats and of wild fauna and flora

Definitions

Article 1

For the purpose of this Directive:

(a) *conservation* means a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status as defined in (e) and (i);

(b) *natural habitats* means terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural;

(c) *natural habitat types of Community interest* means those which, within the territory referred to in Article 2:

(i) are in danger of disappearance in their natural range;

or

(ii) have a small natural range following their regression or by reason of their intrinsically restricted area;

or

▼M3

(iii) present outstanding examples of typical characteristics of one or more of the nine following biogeographical regions: Alpine, Atlantic, Black Sea, Boreal, Continental, Macaronesian, Mediterranean, Pannonian and Steppic.

▼B

Such habitat types are listed or may be listed in Annex I;

(d) *priority natural habitat types* means natural habitat types in danger of disappearence, which are present on the territory referred to in Article 2 and for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory referred to in Article 2; these priority natural habitat types are indicated by an asterisk (*) in Annex I;

(e) *conservation status of a natural habitat* means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2.

►C1 The conservation status ◄ of a natural habitat will be taken as 'favourable' when:

— its natural range and areas it covers within that range are stable or increasing, and

— the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and

— the conservation status of its typical species is favourable as defined in (i);

(f) *habitat of a species* means an environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle;

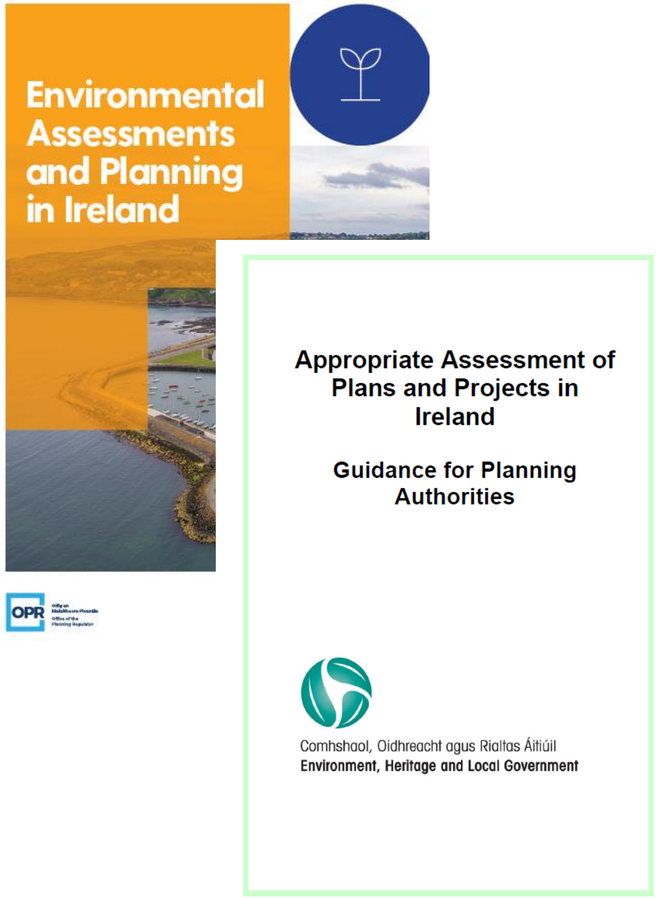
(g) *species of Community interest* means species which, within the territory referred to in Article 2, are:

(i) endangered, except those species whose natural range is marginal in that territory and which are not endangered or vulnerable in the western palearctic region; or

Legislation & Guidance AA

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- As with EIA, there is considerable guidance available – both domestic and European
- Reliance on guidance from within the State v international guidance
- NPWS 2009: Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities
- Office of the Planning Regulator: Appropriate Assessment Screening for Development Management (OPR Practice Note PN01 2021)
- Further guidance available from the Commission, the OPR, the Department of Housing, Planning & Local Government, state bodies and professional bodies
- Using current guidance and being consistent

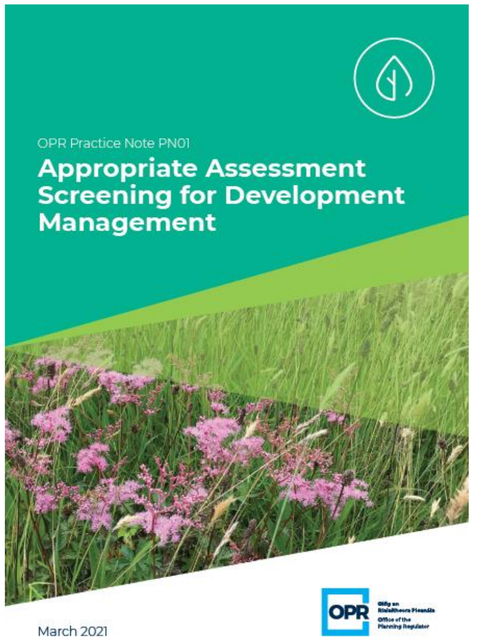


4 – AA Screening

AA Screening

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- Determining whether an AA needs to be undertaken
- An initial examination which must be carried out by the planning authority or An Coimisiún Pleanála as the competent authority (CA).
- If significant effects cannot be excluded based on objective information, without extensive investigation or the application of mitigation, a project should be considered to have a likely significant effect and AA should be carried out.
- A relatively light trigger and must be based on the **precautionary principle**: where the most reliable information available leaves obvious doubt as to the absence of significant effects, the project cannot be screened out and an appropriate assessment must be carried out" (Waddenzee C-127/02)
- "*The project should only be considered to have no appropriate assessment issues if it is obvious that the entire project, through all of its stages, could not possibly have any effect on any European site, and that no measures intended to avoid or reduce potentially harmful effects on a European site are included*." (OPR)



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1. **Describe** the proposed development and local site characteristics.



2. **Identify** the relevant European sites and compile information on Qualifying Interests and conservation objectives.
   (a) Identify all European sites that might be affected using the Source-Pathway-Receptor model.
   (b) Identify the Qualifying Interests of the site concerned and the conservation objectives.
   (c) Determine which of those Qualifying Interests/conservation objectives could be affected by the proposed development.



3. **Assess** the likely significant direct and indirect effects on the conservation objectives of the site(s) in relation to:
   (a) the project alone, *and*
   (b) In-combination with other plans and projects.



4. **Screening determination:** In the absence of mitigation measures, determine if the project alone or in-combination with other plans and projects could undermine the conservation objectives of the site(s) and give rise to likely significant effects.

Steps and matters to be considered as part of the AA screening process

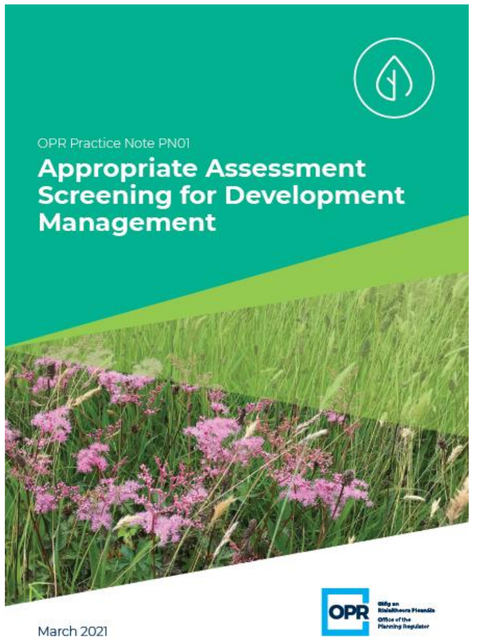
Figure from *Appropriate Assessment Screening for Development Management* (OPR Practice Note PN01, 2021)

AA Screening

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Step 1: Description of proposed development and site characteristics

- A brief description of the proposed development, the application site and its immediate environs will be sufficient for most cases.
- Consistency with EIA, where appropriate.



Step 2: Identification of relevant European sites

- Applications within or immediately adjacent to a European site - easily identifiable from examining GIS mapping - automatically selected
- Identification of other European sites - Source-Pathway-Receptor model (below)
- Avoid the 15km buffer - no longer best practice.
- EPA AA mapping tool

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Source-Pathway-Receptor Model

Figure from *Appropriate Assessment Screening for Development Management* (OPR Practice Note PN01, 2021)

Source

Identify the characteristics of the proposed development such as the nature, size and location and the type of impacts.

Examples

Direct impacts:

- Direct emissions (water, air, noise or light).
- Loss of habitat (including breeding or foraging habitat).

Indirect Impacts:

- Loss of breeding or foraging habitat outside the European site.
- Impact on a non-QI habitat or species within the European site that is ecologically linked to the conservation objectives/QI.
- Barriers to movement e.g. aquatic species, otter, bats, bird species.
- Collision risk.
- Loss of breeding or foraging for a prey species.

Pathway

Identify the existence and characteristics of the pathways that could link European sites and their Qualifying Interests to the proposed development.

Examples

Direct pathways:

- Proximity (i.e. location within the European site).
- Water bodies (rivers/streams, marine, lakes, groundwater).
- Air (for both air emissions and noise impacts).

Indirect pathways:

- Disruption to migratory paths, e.g. bird species, aquatic species, bats.
- '*Sightlines*' where noisy or intrusive activities may result in disturbance to shy species.

Receptor

Establish the location, nature and sensitivities of the qualifying species and habitats, the ecological conditions underpinning their survival and the conservation objectives specified to maintain or restore favourable conservation status.

Examples

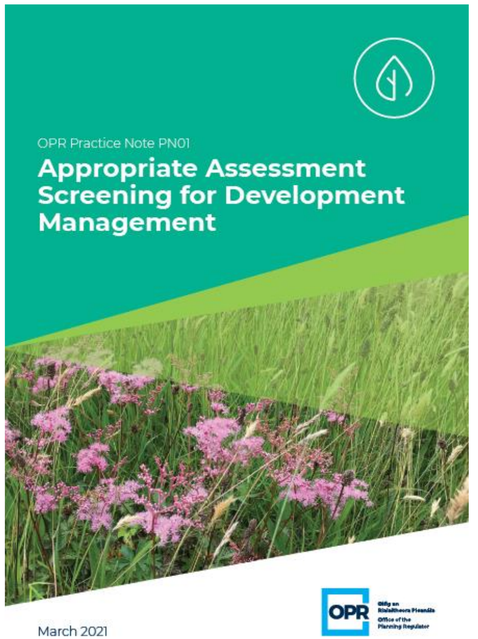
- Freshwater Pearl Mussel extreme sensitivity to siltation in water.
- Lesser Horseshoe Bat sensitivity to noise and light.
- Turlough sensitivity to changes in groundwater levels.

AA Screening

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Step 3: Assessment of likely significant effects using the Source-Pathway-Receptor model

- Risk from likely significant effects only arises where a Source-Pathway-Receptor link exists between a proposed development and a European site
- Pathway is critical to screening
- Qualifying Interests of the sites - vulnerability to impacts arises - either directly or indirectly
- Step 2: Identification of relevant European sites



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The *'Likely Significant Effect'* test

The key test in screening is to establish whether any likelihood of significant effects on European sites can be ruled out. Once the relevant European sites have been identified, this test must then be applied.

Likely means a risk or possibility of effects occurring that **cannot** be ruled out based on objective information.

Significant effects are those that would undermine the conservation objectives of the European sites, either alone or in-combination with other plans and projects. The significance of ecological impacts depends on:

- **the ecological characteristics of the species or habitat, including their structure, function, conservation status and sensitivity to change,** *and/or*
- **the character, magnitude, duration, consequences and probability of the impacts occurring.**

It stands to reason that the higher the sensitivity of the species or habitat to impacts likely to arise from the proposed development, and the higher the magnitude of the impact, the more significant the impact for the purposes of screening.

Ultimately, determining the '*significance*' relies on assessment of the scientific information. If however, the consideration of significance is becoming too complex (i.e. with multiple factors involved) then this should be an indication that uncertainty exists and that appropriate assessment is required.

Critically, any conclusion of the lack of likely significant effects must be made without consideration of '*mitigation measures*'.

From *Appropriate Assessment Screening for Development Management* (OPR Practice Note PN01, 2021)

AA Screening

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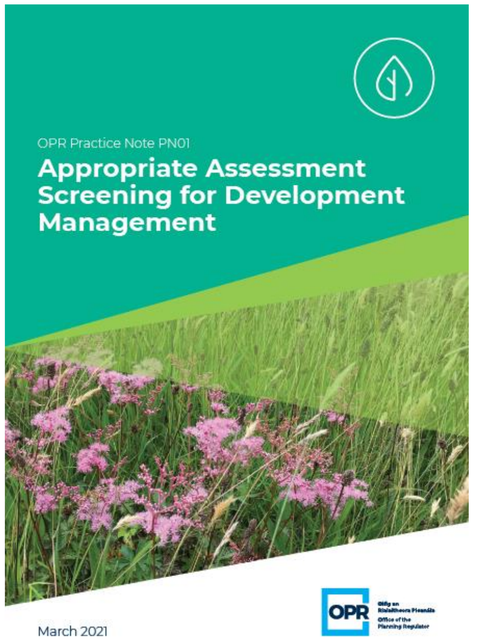
Step 4: Screening determination and possible outcomes

- The screening process must conclude with a clear statement of the conclusion reached, and the basis upon which it was reached.

- Screening can result in the following conclusions or outcomes:

  a) No likelihood of significant effects: AA not required. Documentation of the screening process, including conclusions and the basis on which decisions were made, must be kept on the planning file. or

  b) Significant effects cannot be excluded: AA required before permission can be granted. A **Natura Impact Statement (NIS)** will be required in order for the project to proceed.



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Eco Advocacy CLG v An Bord Pleanála and Keegan Land Holdings Limited [2021] IEHC 265

- Order sought quashing the Board's decision to grant permission for a development of 320 dwellings in vicinity of River Boyne and River Blackwater SAC and SPA – Stage 2 not required.

- High Court referral to the CJEU.

- *"the real question here is whether the surface water drainage system constitutes a mitigation measure or not to be regarded as such because it is simply a standard feature of the design that has nothing to do with the nearby European sites."*
Humphreys J

- *"….in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site, account may be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing the harmful effects of the plan or project on that site, where those features have been incorporated into that plan or project as standard features, inherent in such a plan or project, irrespective of any effect on the site"*
CJEU

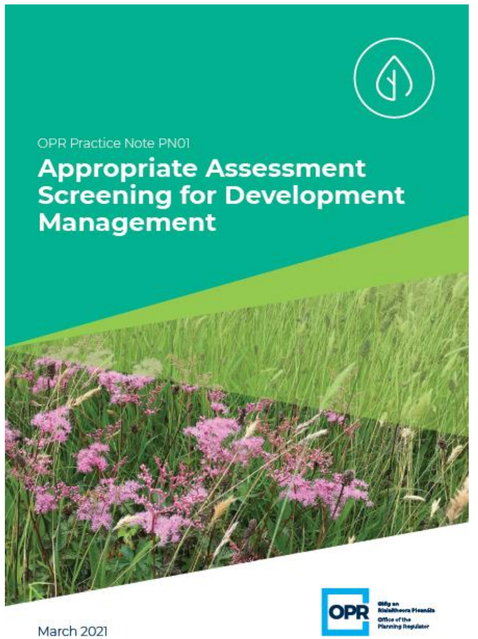
5 – AA Stage 2

AA Stage 2

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Natura Impact Statement (NIS)

- To provide adequate information to the CA to complete the AA
- Conservation objectives of the European site
- Identify aspects of the project (alone and in-combination with other plans/projects) that will affect those objectives
- Defining predicted impacts
- Mitigation measures
- Recent caselaw: C-27/25 (Knocknamona) and C-356/25 (Massey)

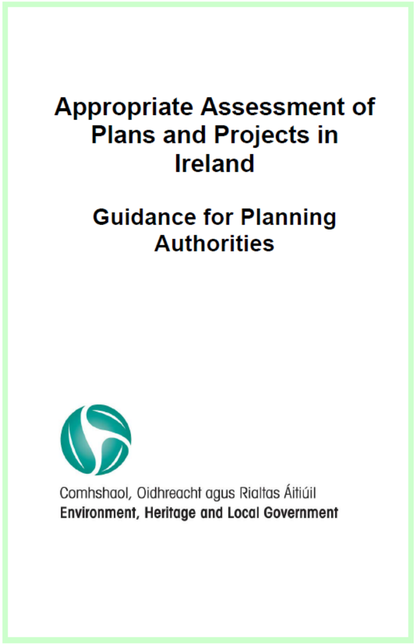


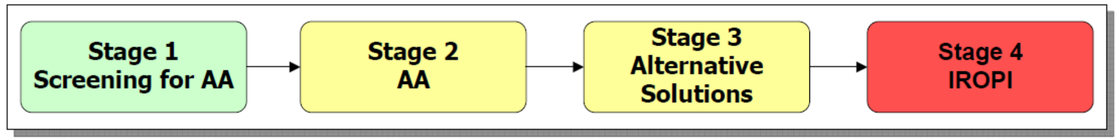
AA Stage 2

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Natura Impact Statement (NIS) – Sample structure/contents

- Introduction
- Legislative Context
- Methodology (Competence, Guidance, Desktop Study, Surveys, Consultations)
- Description of proposed development
- Overview of receiving environment
- Potential Impacts, Zone of Influence & Identifying European Sites
- Assessment effects on European Sites
- In combination Assessment
- NIS Conclusion





6 – EIA Screening

EIA Screening

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- Determining whether an EIA needs to be undertaken
- Determining the project type: projects that require EIA are defined in Article 4 and set out in Annexes I and II of the Directive (including those contained in Schedule 5 of the Planning and Development Regulations, 2001, as amended)
- Recent case: *Milner v An Coimisiún Pleanála* ([2026] IEHC 627)
- Can be more complex than initially appears – may need to consider components of the proposed development
- Consultation with the competent authority (CA) can be helpful
- Next, it is necessary to consider the thresholds set out in the legislation:



EIA Screening

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- Thresholds do not apply to certain projects
- Others project types are subject to EIA where they meet or exceed certain thresholds (e.g. WWtP with capacity exceeding 150,000 population equivalent)
- For certain project types that do not meet these thresholds, the likelihood of the project having significant effects (adverse and beneficial) on the environment must be considered, by reference to Annex III criteria.
- The CA is obligated to screen sub-threshold projects by reference to this criteria
- Guidance designed for the CA is equally relevant to project developers
- Must consider the entirety of the development as well as off-site or secondary projects



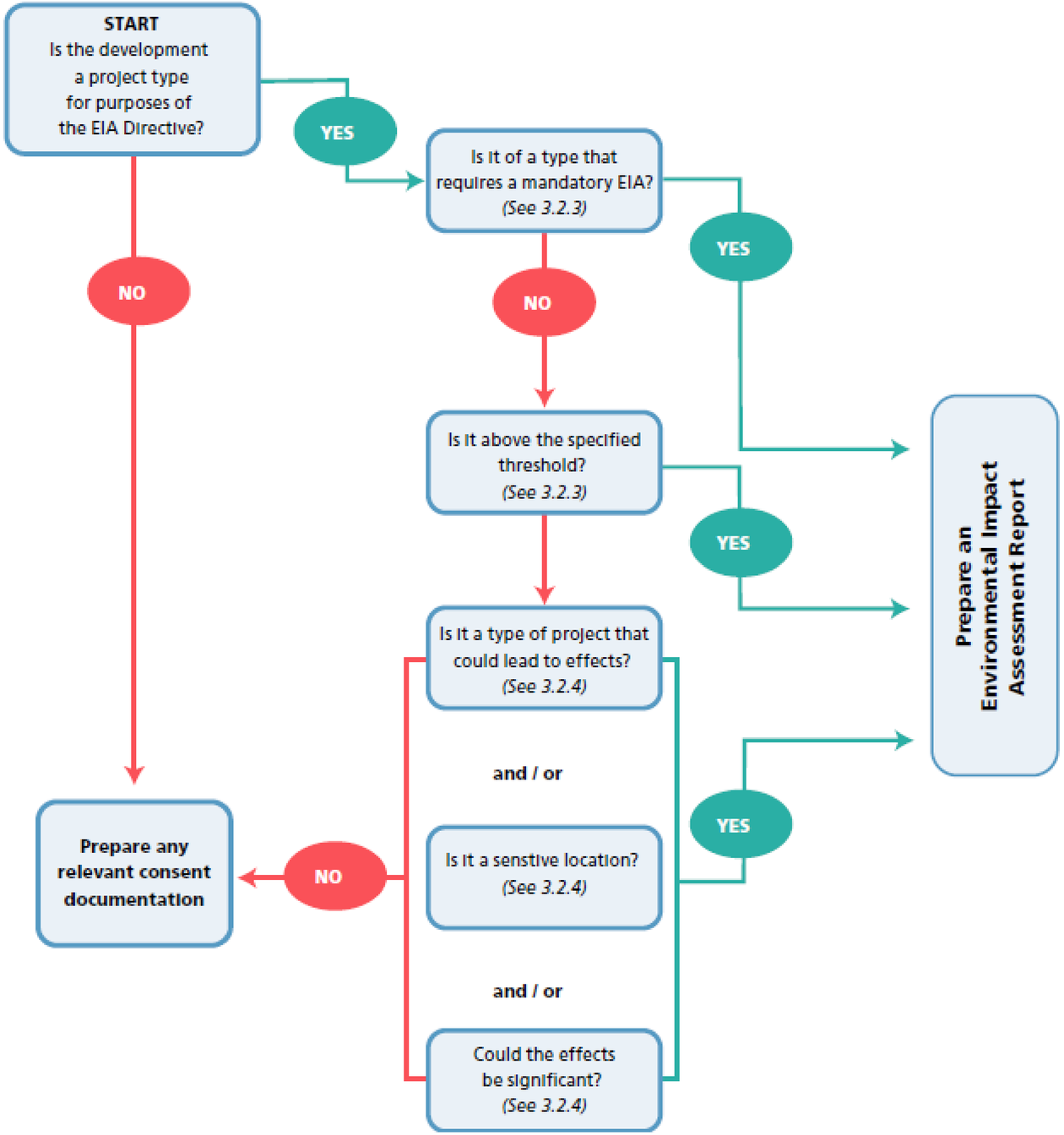
EIA Screening

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- No obligation on the CA to engage in **informal** consultation – though many will.
- Applicant may prepare a statement supporting their view as to whether EIA is or is not required – EIA Screening Report
- Formal pre-app screening consultation with the CA must provide info per Annex IIA
- On receipt of a formal screening determination, the CA must decide on the likelihood of significant effects
- Recent case: *Shorten v An Coimisiún Pleanála* [2026] IEHC 517

Annex IIA of amended Directive

1. 'A description of the project, including in particular:
(a)…
2. A description of the aspects of the environment likely to be significantly affected by the project.
3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:
(a)…
The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.'



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Figure 3.2: Screening

Guidelines on the information to be contained in Environmental Impact Assessment Reports, EPA, 2022

Be aware of **project splitting** in the context of thresholds

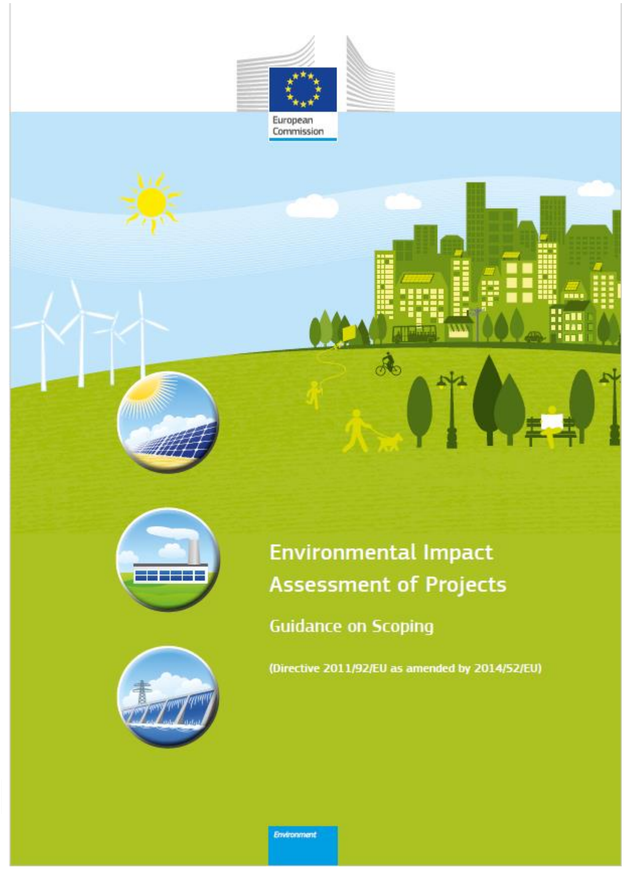
Case C-142/07 Ecologistas en Acción-CODA v Ayuntamiento de Madrid (2008)

7 – EIA Scoping

EIA Scoping

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- "*The process of identifying the content and extent of the information to be submitted to the Competent Authority under the EIA process*" - Guidance on EIA Scoping European Commission, 2017
- Personnel: appropriate expertise and relevant prior experience, coupled with knowledge of the type of project and the receiving environment sensitivities
- Article 5(2) requires developers to formally request the opinion of the CA. Providing good information is essential to getting useful responses from consultees – CA consults authorities (Art. 6(1))
- RED III – from 1 May 2026 - relevant applications shall require a mandatory pre-application **EIA Scoping Opinion**
- No one-size-fits all – turns on the characteristics of the development and the receiving environment - sectoral guidance available
- Should consider the different project phases: pre-construction, construction, commissioning, operations, decommissioning, as appropriate



EIA Scoping

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- Consultation by the developer with the CA can be formal (i.e. pursuant to the legislation) or informal (though the CA is not obligated to engage informally)
- Following the CA providing an opinion (Art. 5(2)), the subsequent EIA shall be based on that opinion (Art. 5(3))
- Key criteria at scoping stage: likely and significant (see below); precedence; and interactions (potential cumulative)
- Other assessments should be considered (SEA, flood risk assessments, SEVESO, other projects, NIS etc.)
- The prescribed environmental factors must be addressed in the EIAR along with the "headings" and "topics" to be considered:

Key stakeholders at scoping stage can include:

- The developer and their team
- The competent authority (CA)
- Other authorities (per legislation), agencies and NGOs
- The public

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Prescribed Environmental Factor	Typical Headings under which Environmental Factors could be addressed in an EIAR	Typical Topics
Material Assets	Roads & Traffic	Construction Phase Operational Phase Unplanned Events [i.e. Accidents]
	Built Services	Electricity Telecommunications Gas Water Supply Infrastructure Sewerage
	Waste Management	Construction Waste Operational Waste
Water	Surface Water	Construction Phase Operational Phase Unplanned Events [i.e. Accidents]
	Ground Water	Construction Phase Operational Phase Unplanned Events [i.e. Accidents]
	Waste Water	Effluent Characteristics On-site Treatment Capacity of Municipal Treatment Plant
Landscape	Visual Effects	Context Character Significance Sensitivity
	Amenity	Public access Public amenities Recreation Tourism

Table 3.1: Sample organisation of headings and topics to address issues arising for each prescribed environmental factor

Guidelines on the information to be contained in Environmental Impact Assessment Reports, EPA, 2022

- Table 3.1 is indicative only and that the "headings" and "topics" will vary for each project
- The inclusion of this table is useful in an EIAR as it demonstrates how the prescribed factors have been addressed
- Topics can be under more than one heading
- Interactions between factors also needs to be considered

EIA Scoping

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- Environmental factors will be considered below
- Ongoing scoping – throughout the preparation of the EAIR. Flexibility to revise the scope, especially at the earlier stages should be maintained
- Further information, as the assessment progresses may identify additional issues which should be included
- The project design should be adapted and continually reviewed in light of the output of the environmental assessments – an iterative process.
- Regular dialogue between environmental specialists and the design team – two-ways (design reviews)



Questions & Discussion

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BREAK-OUT ONE:

Shadowmill Limited v An Bord Pleanála [2023] IEHC 157



- **Order sought quashing the Board decision to grant permission for a development of 18 apartments**
- **Original application was for 32 but one block was omitted from the consent**
- **Applicant argued that the Board had failed to carry out an adequate assessment for the purposes of EIA**

- **What issues might arise for the adequacy of an EIAR, from the removal of one block of apartments from a development proposal?**

Coffee Break



8 – Project description

Project description

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- Will vary for each project but most will include:
- Location of the project
- Physical characteristics of the whole project including during construction and operation and other works integral to the project
- Main characteristics of the operational phase (including energy demand resources used)
- An estimate by type and quantity of the expected residues and emissions (water, air, soil pollution, noise, vibration, light, heat, radiation, waste - for each phase)
- Specific – beyond what otherwise might be used to describe the project

Article 5(1)(a)

The Directive requires that an EIAR include: *"a description of the project comprising information on the site, design, size and other relevant features of the project".*

Project description

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- Describe the dynamic of the construction phase and day-to-day operations
- Include any integrated avoidance measures
- Level of detail must allow the CA to understand the likely significant effects (Art. 5 and Annex IV)
- All stages to be described construction, operations and decommissioning (include any likely changes that may arise)

Other related projects

- The PD should also include a description of other related projects - these fall under two categories, per the guidance:
- **Off-site projects**: those required for the project (e.g. power lines, road upgrades etc.)
- **Secondary projects**: those that may arise largely because of the proposed development (e.g. commercial or industrial projects arising near new transport infrastructure or retail businesses near new housing developments). These are more difficult to predict

Study Area

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- A vital step in the process – has a knock-on affect on the rest of the assessment. Can no longer be a bald X km – caselaw and guidance denotes it must be justified and explained.

- Different to the redline boundary (planning)

- Zone of Influence (ZoI) – *"geographical area over which it could affect the receiving environment in a way that could have significant effects on the Qualifying Interests of a European site*" OPR PN01 - AA

- Source-Pathway-Receptor – more commonly used in AA – risk assessment model – "*if there is no ecological pathway or functional link between the proposed development and a European Site, there is no potential for impact*" OPR PN01 – AA

- Ecological pathways can be physical or air

9 – Describing the baseline

Describing the baseline

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- The second factual foundation of the EIAR
- The current state of the environmental characteristics
- **Sensitivity** and significance of the relevant environmental factors which are likely to be significantly affected by the project
- Likely evolution of the baseline – "*the likely future receiving environment*"
- Changes to the baseline can be natural, or driven by other actions, projects etc., and some factors may not change.

Annex IV(3) of the amended Directive requires:

`A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.'

Describing the baseline

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- Baseline data gathered should be sufficient to assess all types of effects to be assessed
- These may include: direct and indirect; secondary; cumulative; transboundary; short-term, medium-term and long-term; permanent and temporary; and positive and negative effects. (see below)
- A reliable reference for monitoring purposes
- Baseline information should be set out in its constituent elements and categorised under the factors, headings and topics identified during scoping
- Tied back to the likely significant effects

Methodology

- Data relied upon should be from published references
- Not all features will be documented – the importance of specialist site evaluations (the need for up-to-date, site-specific information)
- Note any limitations experienced AND any incomplete information
- Use of recognised standards and classifications
- Systematic, accurate and comprehensive descriptions of: context, character, significance and sensitivity of the existing environment

Describing the baseline

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Common issues

- **Ill-defined or inconsistent study area**
- **Not sufficiently specific to the study area**
- **Inconsistent with the methodology either in certain elements or throughout**
- **Not adhering to the same terminology used in the subsequent assessment of likely significant effects**
- **Omitting and assessment of the evolution of the baseline: *"…an outline of the likely evolution thereof without implementation of the project…"***

10 – EIA Alternatives

Alternatives

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- The reasonable alternatives investigated
- A representative range of the practicable alternatives considered
- Main reasons for selecting the chosen option
- A detailed assessment or "mini-EIA" is not required for each discounted alternative (CJEU Case 461/17)
- Maybe no alternative location, but may be alternative design options
- Alternatives may have already been considered at SEA – higher level options – can be referred to in EIA

Annex IV(2)

"A description of the reasonable alternatives (for example in terms of project 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."

Alternatives

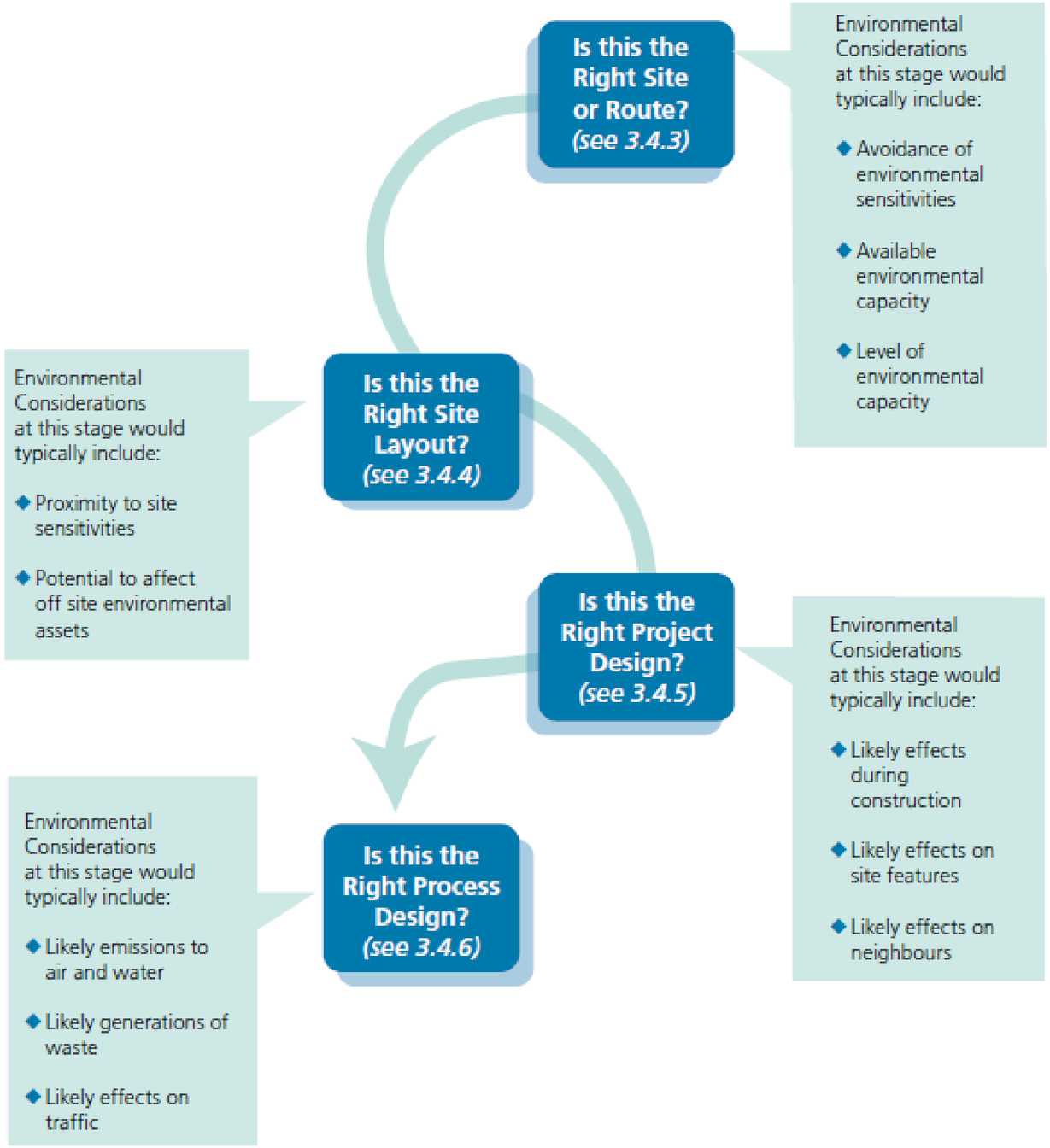
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- Locations
- Layouts
- Designs
- Processes
- Mitigation measures

- Consultation should be considered as it may be useful in identifying alternative options

The Do-Nothing Alternative

- Examines trend currently occurring on the site e.g. likely land use changes, climate change effects, other interventions
- General description of the evolution of the factors at the site and environs, without the project
- Should also consider cumulative effects



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Figure 3.3: Consideration of alternatives in an EIAR

Guidelines on the information to be contained in Environmental Impact Assessment Reports, EPA, 2022

- Illustrates the sequence of alternative options
- Will be different for every project and not all options will be available
- "*reasonable alternatives*"
- Support decisions made

11 – EIA Environmental factors

Environmental factors

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- **EIA identifies, describes and assesses the direct and indirect effects of a proposed project in relation to the following environmental factors:**

a. population and human health,
b. biodiversity, with particular emphasis on species and habitats protected under EU Directives,
c. land, soil, water, air and climate,
d. material assets, cultural heritage and the landscape, and
e. the interaction between the factors mentioned in (a - d).

Article 3(1) of Directive 2014/52

Sample of EIAR Chapters:

1	Introduction
2	Planning Policy
3	Needs & Alternatives
4	Existing Site Conditions
5	Proposed Development
6	Consultations
7	**Air Quality**
8	**Cultural Heritage & Archaeology**
9	**Biodiversity**
10	**Landscape & Visual**
11	**Noise & Vibration**
12	**Water**
13	**Soils & Geology**
14	**Traffic**
15	**Land Use**
16	**Material Assets**
17	**Population & Human Health**
18	Major Accidents
19	**Climate**

Sample chapter structure

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1. Introduction
   - **a. Competency of assessor**
   - **b. Project description**
2. Methodology
   - **a. Step-by-step process**
   - **b. Limitations**
3. Policy, legislation & guidance
4. Baseline environment
5. Likely significant effects (consider the impact and the effect)
   - **a. Construction/operational/decommissioning**
   - **b. Do-nothing**
6. Mitigation measures (including monitoring)
   - **a. Construction/operational/decommissioning**
7. Residual effects
   - **a. Construction/operational/decommissioning**
8. Cumulative effects
9. References

- There is no one size fits all approach – the scope, scale and nature of each project will determine the appropriate structure
- Variations between chapters in the EIAR is inevitable, and while the goal should be for consistency, it is accepted that a level of variance is often unavoidable
- EPA advice notes and other guidance

Environmental factors

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Population & Human Health

- Impacts on population & human health should refer to the assessments of those factors under which human health effects might occur, as addressed elsewhere in the EIAR (e.g. air, water, soil etc

- No specific guidance on the meaning of "human health" in the context of Directive 2014/52/EU however, in the Commission's SEA Implementation Guidance, it is linked to soils, water, air etc.

Population & Human Health

- Employment
- Settlement patterns
- Land use patterns
- Baseline population
- Demographic trends
- Human health (considered with reference to other headings, such as water and air)
- Amenity (e.g. effects on amenity uses of a site or of other areas in the vicinity may be addressed under the factor of Landscape)

From "Guidelines on the information to be contained in Environmental Impact Assessment Reports", EPA, 2022

- Assessment of land-use planning, demographic issues etc. is not required unless these give rise to effects
- Issues commonly arise in relation to consistency of approach with this chapter compared to other factors

Environmental factors

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Biodiversity

- The amended Directive (2014/52/EU) replaced “flora and fauna” with biodiversity, aligning the Directive with the UN Convention on Biological Diversity
- Interaction with assessments carried out under AA, if any, should be given consideration
- Ill-defined zones of influence (ZoI) often give rise to issues
- Inconsistency of the levels of up-to-date surveys, across ecological features
- The process for identification of ecological features should be clearly defined in the chapter's methodology

- Habitats
- Breeding/Feeding/Roosting Areas
- Routes and landscape features
- Mammals/Birds/Fish/Invertebrates/Reptiles
- Vascular plants/bryophytes/lichens/fungi
- Population Stability
- Population Management
- Critical Resources
- Terrestrial/Aquatic/Marine
- Seasonality
- Existing Management
- Ecosystem Services
- Legal protection

From “Guidelines on the information to be contained in Environmental Impact Assessment Reports”, EPA, 2022

Environmental factors

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Water

- Selection of study area should be clearly defined
- Consider use of S-P-R

Water

- Water (for example hydromorphological changes, quantity and quality)
- Ground/Surface/Estuarine/Marine
- Physical characteristics
- Chemical characteristics
- Q value
- Beneficial uses
- Flooding

From "Guidelines on the information to be contained in Environmental Impact Assessment Reports", EPA, 2022

From "Guidelines on the information to be contained in Environmental Impact Assessment Reports", EPA, 2022

Land & Soils

- Land (for example land take)[52]
- Soil (for example organic matter, erosion, compaction, sealing)[53]
- Agricultural capability
- Geology
- Hydrogeology (may alternatively be placed under the heading of Water)

Land & Soils

- Recital 9 of the amended Directive shows that "land" relates to the issue of *land-take.*

Environmental factors

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Climate

- Consideration of relevant policy – and the changes to same
- Guidance
- Cross reference to other chapters

- Greenhouse gases
- Acid Rain
- Thermal Pollution
- Climate change trends (macro and micro)
- Carbon Accounting / Carbon Balance

From "Guidelines on the information to be contained in Environmental Impact Assessment Reports", EPA, 2022

AIr

- Air Quality
  - Pollutants
  - Suspended Particles
- Odour
- Noise & Vibration
  - Daytime Noise
  - Night time Noise
  - Vibration sources
  - Sensitive receptors
- Radiation

Air

- S-P-R
- Study area
- Consideration of unplanned events
- Consideration of all stages of the development

Environmental factors

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Cultural Heritage

- Wide variety of data sources available
- Strict protections under the National Monuments Acts and the P&D Acts

Cultural Heritage

- Archaeology
  - Known archaeological monuments
  - Areas of archaeological potential (including unknown archaeology)
  - Underwater archaeology
- Architectural heritage
  - Designated architectural heritage
  - Other significant architectural heritage
- Folklore and history
  - Designations or sensitivities

Material Assets

- Built Services
- Roads and Traffic
- Waste Management

From "Guidelines on the information to be contained in Environmental Impact Assessment Reports", EPA, 2022

Material Assets

- Architectural and archaeological no longer included in material assets
- Very broad for some projects
- Traffic & public transport

Environmental factors

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Landscape

- Study area
- Professional judgment and the justification and supporting reasons

The Landscape

- Landscape Appearance and Character
- Landscape Context
- Views & Prospects
- Historical Landscapes

From “Guidelines on the information to be contained in Environmental Impact Assessment Reports”, EPA, 2022

Questions & Discussion

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BREAK-OUT TWO: Defining the redline and EIA

Project splitting: O'Grianna and Others v Framore [2014] IEHC 632



- High court quashed decision of the Board granting permission to a wind farm on project splitting grounds
- Developer maintained the EIS could not consider effects of the electricity connection as the design was not available, and would subsequently be carried out by ESB Networks

- Court held the grid connection was an integral part of the development and could not be considered as a separate project
- ***"…the connection to the national grid is fundamental to the entire project, and in principle at least the cumulative effect of both must be assessed in order to comply with the Directive."***

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BREAK-OUT TWO: Defining the redline and EIA



EXAMPLE

- **Major infrastructure scheme to develop a gas-fired power station**
- **Three key elements to the project: the power station, the gas connection, and the electricity connection**
- **Different programmes associated with each element**

- **Discuss the issues that a project team might face in preparing an EIAR?**
- **What approach do you think is the most appropriate, with regard to the EIAR?**

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BREAK-OUT TWO: Defining the redline and EIA

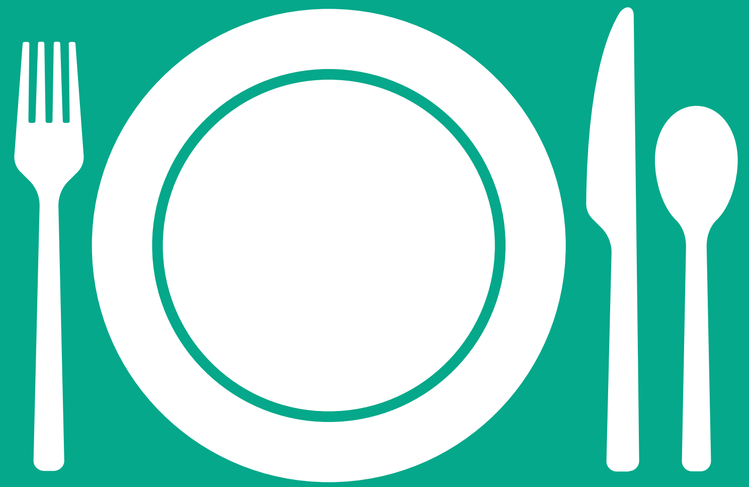


- **Different levels of information available for each element – accordingly, different levels of environmental assessment carried out for each**

- **Is it preferable to include the lower level of information, exclude the element that will be subject to a further permission, or wait until there is sufficient information?**

"It seems to me that the fact that the developer is at the mercy of ESB Networks as far as the details of the plans for that connection to the grid is concerned, cannot absolve the developer from compliance with the Directive in every respect. …"
Peart J in O'Grianna judgment

Lunch



12 – Assessment of effects

Assessment of effects

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Main purpose of the EIAR: to identify, describe and present an assessment of the likely significant effects of a project on the environment

Annex IV(5) of the amended Directive

'A description of the likely significant effects of the project on the environment resulting from, inter alia:

a) the construction and existence of the project, including, where relevant, demolition works;

b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;

c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;

d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);

e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;

f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;

g) the technologies and the substances used.

Assessment of effects

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Annex III(3) of the amended Directive

a) 'the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
b) the nature of the impact;
c) the transboundary nature of the impact;
d) the intensity and complexity of the impact;
e) the probability of the impact;
f) the expected onset, duration, frequency and reversibility of the impact;
g) the cumulation of the impact with the impact of other existing and/or approved projects;
h) the possibility of effectively reducing the impact.'

Annex IV(5) of the amended Directive

The description of the likely significant effects on the [environmental] factors should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project.'

*The EIAR should focus on the **likely, significant** effects…*

Assessment of effects

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Likelihood of effects

- The EIA should focus on those effects that are probable or likely to occur
- Should also identify a reasonably foreseeable worst-case scenario (context)
- Scoping should narrow significantly
- Those that are planned and those which can be reasonably foreseen as an inevitable consequence of construction and operations of the project
- Major accidents and or disasters must be considered (guided by their likelihood (risk) of occurrence)
- Potential risks to human health, cultural heritage or the environment due to vulnerability to external accidents or disasters is considered where those risks are significant. Seveso Assessments or Flood Risk Assessments may be required.

Assessment of effects

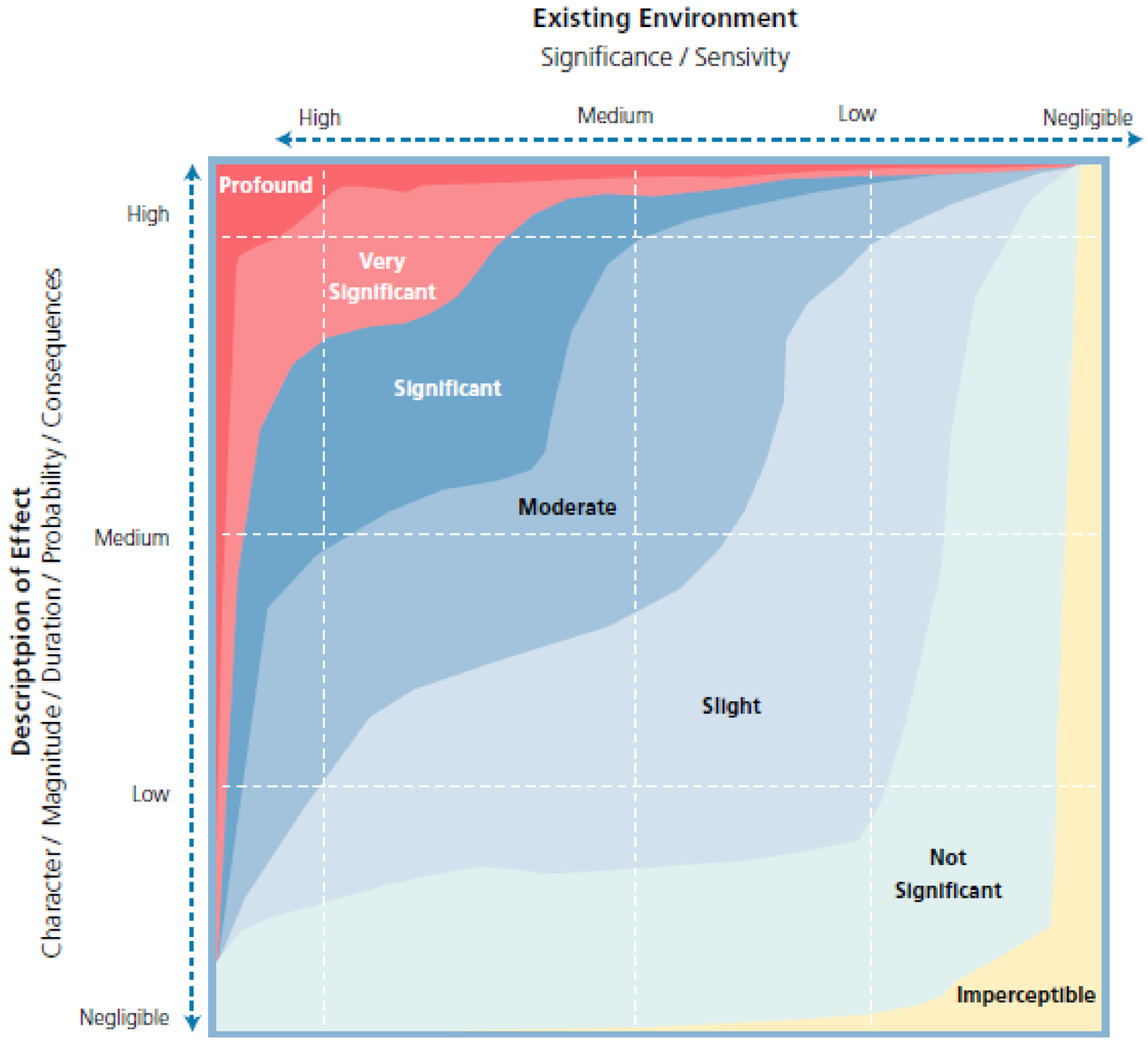
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Significance of effects

- The importance of the outcome of the effects (the consequence of the change): determined by a combination of scientific and subjective concerns.
- A central issue when the EIAR's findings comes under scrutiny
- Guidelines and standards help ensure consistency, but professional judgment of competent experts can be important. The basis for such judgment must be set out to ensure the significance attributed can be understood.

Monkstown Road Residents' Association v an Bord Pleanála [2022] IEHC 318

"the drawing of conclusions is an exercise in professional judgment with which others are entitled not merely to disagree but to be enabled to disagree: they are entitled to know the methodological approach and the data underlying those experts' conclusions which will render their conclusions comprehensible, interrogable and comparable to other evidence on the same topic. This is of the essence of the right of public participation in the planning process."



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Determining significance

- Compare the character of the predicted effect, to the sensitivity of the receiving environment, to determine significance
- Seven generalised degrees of effect significance

Figure 3.4: Chart Showing Typical Classifications of the Significance of Effects (EPA, 2022)

Assessment of effects

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Describing the Significance of Effects 'Significance' is a concept that can have different meanings for different topics – in the absence of specific definitions for different topics the following definitions may be useful (also see *Determining Significance*).	**Imperceptible** An effect capable of measurement but without significant consequences.
	Not Significant An effect which causes noticeable changes in the character of the environment but without significant consequences.
	Slight Effects An effect which causes noticeable changes in the character of the environment without affecting its sensitivities.
	Moderate Effects An effect that alters the character of the environment in a manner that is consistent with existing and emerging baseline trends.
	Significant Effects An effect which, by its character, magnitude, duration or intensity, alters a sensitive aspect of the environment.
	Very Significant An effect which, by its character, magnitude, duration or intensity, significantly alters most of a sensitive aspect of the environment.
	Profound Effects An effect which obliterates sensitive characteristics.

Determining significance

- Compare the character of the predicted effect, to the sensitivity of the receiving environment, to determine significance
- Seven generalised degrees of effect significance

Excerpt from Table 3.4: Description of Effects (EPA, 2022)

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Quality of Effects	Positive Effects
It is important to inform the non-specialist reader whether an effect is positive, negative or neutral.	A change which improves the quality of the environment (for example, by increasing species diversity, or improving the reproductive capacity of an ecosystem, or by removing nuisances or improving amenities).
	Neutral Effects No effects or effects that are imperceptible, within normal bounds of variation or within the margin of forecasting error.
	Negative/Adverse Effects A change which reduces the quality of the environment (for example, lessening species diversity or diminishing the reproductive capacity of an ecosystem, or damaging health or property or by causing nuisance).

Describing the Extent and Context of Effects	Extent
Context can affect the perception of significance. It is important to establish if the effect is unique or, perhaps, commonly or increasingly experienced.	Describe the size of the area, the number of sites and the proportion of a population affected by an effect.
	Context Describe whether the extent, duration or frequency will conform or contrast with established (baseline) conditions (is it the biggest, longest effect ever?)

Describing the Probability of Effects	Likely Effects
Descriptions of effects should establish how likely it is that the predicted effects will occur so that the CA can take a view of the balance of risk over advantage when making a decision.	The effects that can reasonably be expected to occur because of the planned project if all mitigation measures are properly implemented.
	Unlikely Effects The effects that can reasonably be expected not to occur because of the planned project if all mitigation measures are properly implemented.

Describing the Duration and Frequency of Effects	Momentary Effects
'Duration' is a concept that can have different meanings for different topics – in the absence of specific definitions for different topics the following definitions may be useful.	Effects lasting from seconds to minutes.
	Brief Effects Effects lasting less than a day.
	Temporary Effects Effects lasting less than a year.
	Short-term Effects Effects lasting one to seven years.
	Medium-term Effects Effects lasting seven to fifteen years.
	Long-term Effects Effects lasting fifteen to sixty years.
	Permanent Effects Effects lasting over sixty years.
	Reversible Effects Effects that can be undone, for example through remediation or restoration.
	Frequency of Effects Describe how often the effect will occur (once, rarely, occasionally, frequently, constantly – or hourly, daily, weekly, monthly, annually).

Describing the Types of Effects	Indirect Effects (a.k.a. Secondary or Off-site Effects)
	Effects on the environment, which are not a direct result of the project, often produced away from the project site or because of a complex pathway.
	Cumulative Effects The addition of many minor or insignificant effects, including effects of other projects, to create larger, more significant effects.
	'Do-nothing Effects' The environment as it would be in the future should the subject project not be carried out.
	'Worst-case' Effects The effects arising from a project in the case where mitigation measures substantially fail.
	Indeterminable Effects When the full consequences of a change in the environment cannot be described.
	Irreversible Effects When the character, distinctiveness, diversity or reproductive capacity of an environment is permanently lost.
	Residual Effects The degree of environmental change that will occur after the proposed mitigation measures have taken effect.
	Synergistic Effects Where the resultant effect is of greater significance than the sum of its constituents (e.g. combination of SOx and NOx to produce smog).

Describing the effects

- Most scrutinized element of the EIAR. There is a need for the methodology language and meaning to be clear.
- A clear, systematic and consistent approach is required

Further excerpts from Table 3.4: Description of Effects (EPA, 2022)

Assessment of effects

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Deviating from the guidance

- Guidance, by nature, is not mandatory however, deviation from the guidance should be done with caution
- Where other standards exist in relation to a particular factor, these may be relied upon
- Though reasons should be provided as to the selection of standards used

Cumulative effects

- The assessment of in-combination effects can lead to the identification of likely significant effects
- Source of scrutiny by the courts
- Should assess all consented projects, as well as projects that are seeking consent

Assessment of effects

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Interaction	Population & Human Health		Biodiversity		Land, Soils & Geology		Hydrology & Hydrogeology		Air Quality & Climate		Noise & Vibration		Landscape		Material Assets		Roads, Traffic & Transportation		Waste Management		Archaeology		Architectural Heritage	
	Con.	Op.	Con.	Op.	Con.	Op.	Con.	Op.	Con.	Op.	Con.	Op.	Con.	Op.	Con.	Op.	Con.	Op.	Con.	Op.	Con.	Op.	Con	Op
Population & Human Health			✘	✘	✘	✘	✘	✘	✘	✘	✓	✓	✓	✓	✘	✘	✓	✓	✘	✘	✘	✘	✘	✘
Biodiversity					✘	✘	✓	✘	✘	✘	✓	✘	✘	✘	✘	✘	✘	✘	✘	✘	✘	✘	✘	✘
Land, Soils & Geology							✔	✔	✘	✘	✘	✘	✘	✓	✘	✘	✘	✘	✘	✘	✓	✘	✘	✘
Hydrology & Hydrogeology									✘	✘	✘	✘	✘	✘	✔	✔	✘	✘	✘	✘	✘	✘	✘	✘
Air Quality & Climate											✘	✘	✘	✘	✘	✘	✓	✘	✘	✘	✘	✘	✘	✘
Noise & Vibration													✔	✔	✘	✘	✔	✓	✘	✘	✘	✘	✘	✘
Landscape															✘	✘	✘	✘	✘	✘	✘	✘	✓	✓
Material Assets																	✔	✔	✔	✔	✘	✘	✘	✘
Roads, Traffic & transportation																			✘	✘	✘	✘	✘	✘
Waste Management																					✘	✘	✘	✘
Archaeology																							✘	✘
Architectural Heritage																								

Con.	Construction Phase
Op.	Operational Phase
✘	No Interaction

✓	Weak Interaction
✔	Some Interaction
✔	Strong Interaction

Interactions

- Interactions between effects on the different factors should be addressed as relevant

Figure 3.5: Sample Matrix to show Interactions between Factors (EPA, 2022)

Assessment of effects

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CRITERIA	DETAILED QUESTIONS - TO DETERMINE WHETHER THE EIAR HAS:
a. **Magnitude and spatial extent of the effects**	◢ clarified the size and scale of the effects? ◢ indicated the spatial extent of the effects (will some, much or all the areas be affected)? ◢ identified the receptors which will be affected, indicating their sensitivity and significance?
b. **Nature of the effects**	◢ clarified which part of the environment will be affected and how significantly? ◢ identified the aspect of the environment affected? ◢ described whether the effects are positive, neutral or negative?
c. **Transboundary nature of the effects**	◢ indicated the spatial extent of the transboundary effects (will some, much or all of the jurisdiction be affected)?
d. **Intensity and complexity of the effects**	◢ quantified the amount or intensity by which the character/quality of any environmental factor will change? ◢ described the degree of change (e.g. imperceptible, slight or significant)? ◢ identified the significance of the effect [e.g. profound or insignificant]
e. **Probability of the effects**	◢ established the level of certainty of the assessment's findings? ◢ highlighted consequence that cannot be determined?
f. **Expected onset, duration, frequency and reversibility of the effects**	◢ stated whether the effects will be continuous, intermittent or occasional? ◢ indicated whether the effects will be temporary, short, medium or long-term? ◢ highlighted irreversible effects?
g. **Cumulation of the effects with the effects of other existing and/ or approved projects**	◢ described cumulative effects? ◢ considered cumulative effects due to cumulation of effects with those of other projects that are existing or are approved but not yet built or operational?
h. **Possibility of effectively reducing the effects**	◢ indicated whether the effects can be mitigated? ◢ stated whether compensation is available, possible or acceptable?

Assessment Methods

- Describe the forecasting methods or evidence used to identify and assess
- Include any uncertainties or difficulties encountered
- A clear, step-by-step methodology should assist others in arriving at the similar conclusions
- Completed for each topic

Table 3.5: Checklist for Information Required to Describe Effects (EPA, 2022)

13 – Mitigation & monitoring

Mitigation & monitoring

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- Mitigation measures integrated into the fundamental design following early identification of likely significant effects
- Mitigations are an undertaking that **must** be carried out
- Monitoring and enforcement
- Avoid a presentation of mitigation in two-steps
- Definitive language – clear and specific
- Compendium

Annex IV(7):

"A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases."

Mitigation & monitoring

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- Avoidance (alternatives)
- Prevention (technical measures)
- Reduction (the effect and the exposure to the effect)
- Offsetting (compensatory measure – a last resort)
- Mitigation may cause unintentional indirect effects
- Clearly described – only “details” may be agreed post-consent (outcomes cannot)

Monitoring

- Proposing post consent monitoring may be appropriate
- Ensure systems are operating as designed/anticipated
- Cannot be used to gather information necessary for the assessment / consent
- Should be described within the operations of the proposed development

14 – Residual effects

Residual effects

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- The final predicted or intended effects which occur after the proposed mitigation measures have been implemented
- It will not always be possible to mitigate all adverse effects – these are the environmental "costs" of the project that could not be reasonably avoided – a key consideration for the CA
- Must be clearly defined in accordance using the SAME TERMINOLOGY as set out above (assessment of effects)
- Often not presented to the same standard as the assessment of effects pre-mitigation

Conclusions in an EIAR

- Should be avoided
- Use a summary of effects, a compendium of mitigation measures, and a summary of residual effects
- Non-technical summary
- Obligation for material to be accessible and understandable (notwithstanding the technical or complex nature of certain factors and projects)

15 – Next Steps

Next Steps

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- Submission to the competent authority
- Public notification requirements
- CA assessment – check for compliance with main requirements or reasons for any omissions. CA will also confirm the competency of the assessors
- CA will consult with prescribed authorities
- CA will determine if it has sufficient information to determine the environmental effects
- Monitoring & enforcement

CA Decision (Article 8a)

- Can make one of three decisions: seek further information; grant or refuse the application
- Developer may be asked to submit further information
- If granting, the CA attached conditions to the consent – typically relating to mitigation and monitoring measures proposed (may be modified)
- If refusing, the CA may cite specific reasons such as non-conformity

16 – Common issues in EIA & AA Reports

Common issues

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- Reliance on out-of-date guidance
- Reliance on out-of-date polices documents (e.g. development plans, national policy documents etc.)
- Consistency of approach/methodology across EIAR chapters, and even within EIAR chapters
- Consistency of approach to terminology relied upon – and language used (ambiguity)
- Consistency in the project description
- Reliance on approaches used in the past that do not take account of the most up to date guidance and case law
- Bald or unsupported/explained statements
- “Impact” versus “effect”
- Not demonstrating the competency of the experts involved
- Ill-defined study areas or Zones of Influence (ZoI)

To address these

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- Develop an EIAR chapter template at the start for use in each factor – certain elements may need to vary, but not as much as some might think
- Be mindful of the Irish context – EIA directive is European but our transposition and case law is unique to Ireland
- Clearly define the redline and the study area
- Use clear and definitive language (“will” instead of “may” or “could”)
- Identify the guidance that you will rely on in the EIAR – it will, of course, vary from one factor to another, but the overall approach should be as consistent as possible
- It should be an objective to make the report as easy to follow as possible – cross reference between EIAR chapters where it is appropriate
- Support professional judgment with detailed reasons
- Consider the use of tables throughout for the assessment of effects
- Properly detailing/demonstrating the experience and expertise of experts involved
- Use appendices correctly – the right level of supporting information

Questions & Discussion

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BREAK-OUT THREE: Future Plans

Fitzpatrick & Daly v An Bord Pleanála & Others [2019] IESC 23



- **Apple data centre case in Galway**
- Application for permission for a data centre included a masterplan that indicated that the proposal seeking permission was the first of up to eight data centre halls in the applicant's masterplan
- A second application for electrical infrastructure to support 8 data centre halls was also lodged
- The EIA assessed the cumulative effects of the electricity infrastructure and the proposed data centre
- Board granted permission and the HC upheld the decision

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BREAK-OUT THREE: Future Plans

Further appealed to the Supreme Court and the court found that:

- The EIAs only needed to assess the impacts 'of the proposed development, or in this case developments, for which planning permissions were sought'.
- The entire masterplan did not need to be subject to EIA before deciding on the applications for the data centre hall and substation.
- The EIA process was required 'to take account, as far as practically possible, of potential later phases of the masterplan'.

Discuss the implication for masterplans:

the obligation to take account of potential impacts of future phases of a masterplan, as far as is practically possible, does not amount to an obligation to conduct an EIA on the masterplan

What difference to the levels of information required would the above finding result in?

Thank you

Useful Resources

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1. EPA 2022 EIAR - https://www.epa.ie/publications/monitoring--assessment/assessment/EIAR_Guidelines_2022_Web.pdf
2. EPA advice notes: https://www.epa.ie/publications/monitoring--assessment/assessment/EPA_Advice_Notes-on_Current-Practice-on-prep-EIS_2003.pdf
3. EU Commission - https://environment.ec.europa.eu/law-and-governance/environmental-assessments/environmental-impact-assessment_en
4. Department – www.housing.gov.ie
5. OPR - https://www.opr.ie/wp-content/uploads/2022/10/Planning-Leaflet-11-Environmental-Assessments-and-Planning-in-Ireland.pdf
6. OPR - https://www.opr.ie/wp-content/uploads/2021/03/9729-Office-of-the-Planning-Regulator-Appropriate-Assessment-Screening-booklet-15.pdf
7. NPWS - https://www.npws.ie/protected-sites/guidance-appropriate-assessment-planning-authorities

Environmental Protection Agency
An Ghníomhaireacht um Chaomhnú Comhshaoil

European Commission

An Roinn Tithíochta,
Rialtais Áitiúil agus Oidhreachta
Department of Housing,
Local Government and Heritage

OPR
Office of the Planning Regulator