

Environmental Assessments and Planning in Ireland



Planning Leaflet **11**



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Environmental Assessments and Planning in Ireland

Assessments of environmental issues in the planning process, both in relation to preparing plans and deciding on planning applications and appeals, have become much more common in recent years in Ireland. This is as a response to both pressing environmental challenges and requirements under EU and national law.

Introduction

This leaflet is intended as a practical guide to three of the most common 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; *and*
- **Appropriate Assessment (AA)**, considered at both plan and project stages.

These assessments, along with other environmental requirements including water, air quality and waste management are intended to ensure that proper planning and development is based on the principles of sustainable development.

This leaflet is not a definitive legal interpretation. The law in relation to the above assessments is detailed and if in doubt, you should contact your local planning authority (city or county council) and/or suitably qualified professionals.

Strategic Environmental Assessment

1. What is Strategic Environmental Assessment?

Strategic Environmental Assessment (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. This ensures that any potential impacts on the environment are considered at a strategic level.

The EU SEA Directive, transposed into Irish law, sets out various requirements in the conduct of SEA, some principal features of which in the plan-making area are set out in Question 3.

Statutory guidelines on carrying out SEA in the plan-making area were published by the Minister for Housing, Local Government and Heritage in November 2004 and amended in 2011. The guidelines are accessible at the following link:

<https://www.opr.ie/wp-content/uploads/2019/08/2004-Implementation-of-the-SEA-Directive-2.pdf>

2. Why is SEA required?

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.

In addition, the plan-making process is designed to promote participation by all citizens, groups and organisations that may have particular environmental interests and functions. SEA helps to inform all the stakeholders in the plan-making process to achieve more environmentally sound planning policies.

3. What are the main features of the SEA process?

Once it is established that a plan requires SEA to be undertaken, the process begins with an initial scoping stage, to help identify the range of environmental issues that should be covered by the SEA process and in the report known as an Environmental Report.

As draft plans are prepared the Environmental Report is also prepared as an integral part of the process to help identify likely significant environmental effects and to inform the plan-making process.

This ensures that any environmental issues that arise out of the SEA process are addressed in the development of the plan.

Consultation with the public and environmental authorities for the SEA Environmental Report and the draft plan is also required. Transboundary consultation may also be necessary with other administrations, under international law requirements, where that administration may be impacted by the plan.

The planning authority must consider both the SEA Environmental Report and the submissions made during the consultation process before deciding whether to adopt or modify the draft plan. In making the decision on the plan, the planning authority must set out how SEA influenced its decision and also must agree to implement monitoring systems to check that the environmental provisions of the plan are working, following the plan's adoption.



Environmental Impact Assessment

4. What is Environmental Impact Assessment?

Environmental Impact Assessment (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 Bord Pleanála 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 the 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).

The purpose of EIA is to protect the environment by ensuring that before deciding whether to grant planning

permission for a development proposal, the planning authority or An Bord Pleanála fully understands the significant effects it is likely to have on the environment and has factored that in to the decision.

Statutory guidelines on carrying out EIA were published by the Minister for Housing, Local Government and Heritage in August 2018 and are accessible at the following link:

<https://www.opr.ie/wp-content/uploads/2019/08/2018-Environmental-Impact-Assessment-1.pdf>

5. How is an EIA carried out?

The EIA process is made up of five steps as follows:

- i. An Environmental Impact Assessment Report (EIAR) is prepared by the developer and submitted with the planning application. Details must be published in the newspaper notice and site notice accompanying the planning application;
- ii. The planning authority must carry out consultations, including public consultation;
- iii. The planning authority must carry out an examination of the EIAR, any supplementary information provided by the developer and any relevant information received through consultations;

- iv. The planning authority must provide a reasoned conclusion on the significant effects of the project on the environment, taking into account the results of the examination and, where appropriate, its own supplementary examination; *and*
- v. The reasoned conclusion must then be integrated into the decision of the planning authority.

Within the steps above, there can be other important inputs such as screening for EIA and determining the scope of an EIAR. These are dealt with in Questions 8 and 12 below.

6. When is an EIA mandatory?

The carrying out of an EIA is 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. These are developments considered to be likely to have significant effects on the environment. Examples of projects include certain power stations, airports, railways, ports, waste disposal activities and certain overhead power lines, pig and poultry farms and larger housing (>500 dwellings) and retail (> 10,000 square metres area) developments.

EIA is also mandatory for certain categories of changes or extensions to an existing development, for example, an extension to a pig farm over a certain size.

7. When is EIA required for sub-threshold development?

Some of the classes of development listed in Schedule 5 above have thresholds beyond which there is a mandatory requirement for EIA. If the proposed development is listed as a class of development but is below the threshold, it is referred to as sub-threshold development.

In these cases, the planning authority must consider if the proposed development is likely to have any significant effects on the environment that should be assessed through the EIA process. This is known as 'EIA screening'.

8. EIA Screening

For relatively simple cases, screening can be done through a 'preliminary examination' of the proposal. However, if there is any doubt as to whether an EIA is required, a more detailed process known as a 'screening' must be carried out and concluded in a 'screening determination' by the competent authority (i.e. the planning authority in this instance). The decision as to whether a preliminary examination or screening determination is required is made by the planning authority.

No additional documentation is required to be submitted with the application where a proposal can be considered under 'preliminary examination'. If a 'screening determination' is required, the developer must submit certain information, known as a

Schedule 7A Report or EIA Screening Report, to the planning authority.

The planning authority must also notify the developer of its decision if it has carried out a screening determination, and this must be done within eight weeks (except for exceptional circumstances). There is no such requirement for notification in the case of a preliminary examination.

When making a determination in relation to screening for EIA, the planning authority will consider the following:

- (a) the characteristics of the proposed development (including scale, demolition, use of natural resources, waste production, pollution and risk of major accidents);
- (b) the location proposed (including environmental sensitivity and absorption capacity); *and*
- (c) the type and characteristics of potential impacts (including the size of the area affected, the scale of the impact, how likely the impact is to occur and the duration of any impact).

Where the planning authority decides that there is **no real likelihood of significant effects** on the environment, then an EIA (or EIAR) is not required.



Where the 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.

In the case of appeals to An Bord Pleanála, it is also required to carry out EIA screening, where relevant, even if the process has already been undertaken by the planning authority. In these cases, the outcome of a screening determination may be notified to the developer before the planning appeal decision because of the different timeframes involved.

9. What is an application for a screening determination and how is it made?

A separate application for a screening determination can also be made to the planning authority independent of the planning application process. The planning authority must issue a decision within a statutory period of either three or four weeks (depending on the circumstances). Where the applicant disagrees with the outcome, or where the planning authority has not issued its determination within the statutory period, the matter can be referred to An Bord Pleanála for review.



Under this process, a screening for Appropriate Assessment (see Question 20 below) must be carried out by the planning authority or An Bord Pleanála, at the same time.

10. Can a member of the public seek a screening determination in respect of a local authority development?

Any person may apply to An Bord Pleanála for a screening determination where a local authority proposes to carry out a development and he/she considers that the development would be likely to have significant effects on the environment.

11. Do the exempted development provisions apply to development where EIA is required?

The provisions relating to an exemption from the need to obtain planning permission (exempted development) do not apply if EIA is required.

12. What is involved in the scoping process?

A developer may also request the planning authority to provide an overview of the information likely to be important during EIA, this is termed as 'scoping'. The scoping opinion should set out the range and level of detail required in the EIAR. Where such a request is received, the planning authority must give notice to specified bodies and request their observations within four weeks of such notice. Subject to having sufficient

information, the planning authority has a further three weeks to give a written scoping opinion.

There is no obligation for public participation at this stage, however, the scoping opinion must be made public and the planning authority is permitted to take into account any unsolicited submissions made by members of the public.

13. What is an Environmental Impact Assessment Report (EIAR)?

An EIAR is a document that provides information on the direct and indirect impact(s) that a proposed project is likely to have on the environment. An EIAR must be prepared by, or on behalf of the developer, by qualified and competent experts, and decision-makers must ensure they have sufficient expertise to examine the EIAR.

In general, the EIAR should include the following:

- a description of the project, including information on the site, design, size and any other relevant features of the project;
- a description of the likely significant effects of the project on the environment;
- a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;

- a description of the reasonable alternatives studied relevant to the project and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment; *and*
- a non-technical summary.

14. How can members of the public participate in the EIA process?

The EIA process allows for a large degree of public involvement. The EIAR may be inspected at the offices of the relevant planning authority and a copy can be purchased there. The public are notified of any planning application that is accompanied by an EIAR through the following means:

- the public notices published by the developer;
- the weekly lists of planning applications published by the planning authority;
- access to application particulars via the planning authority's website and through their offices; *and*
- the Department of Housing, Local Government and Heritage's dedicated **EIA Portal** which hosts the details of all EIA applications to various competent authorities in Ireland, including those to planning authorities.

Members of the public have a period of five weeks from the receipt of a planning application to make submissions to the planning authority. The required fee is €20, and any submissions that are received

within the time limit and accompanied by the fee must be considered by the planning authority in its decision.

15. Will I be notified of the planning application decision on cases involving EIAR?

The planning authority will inform all persons, who made a valid submission, of its decision. Any member of the public who made a valid submission can appeal the decision of the planning authority to An Bord Pleanála.

Following recent changes to planning legislation, a grant of permission must include more information than it did previously, including:

- the reasoned conclusion of the competent authority on the significant effects on the environment;
- any environmental conditions attached;
- a description of any features and measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment; ('mitigation measures'); *and*
- monitoring measures, where appropriate.

Any decision to refuse development must also state the main reasons for refusal.

The planning authority must give careful consideration to the conclusion of the EIA process as to whether the proposed development is likely to have significant

effects on the environment after mitigation measures are taken into account.

However, planning permission can still be granted even if some negative effects are identified, as the planning authority must weigh up this conclusion against the arguments in favour of the development.

A negative assessment does not, therefore, necessarily dictate that a proposed project must be refused permission (this differs to the Appropriate Assessment process, detailed below in Question 17). In addition, as in any case of a grant of planning permission, the granting of such permission does not remove the developers statutory obligations or requirements under any other statutory enactments or regulations.

16. Environmental Impact Assessment and Appropriate Assessment

In many cases an application for development consent will involve both EIA under the EIA Directive and an Appropriate Assessment (AA) carried out under the Habitats Directive. EIA is a holistic assessment of the potential impact on the overall environment, whereas AA is a specific assessment dealing with designated areas that are ecologically sensitive. While there may be some overlap between these two assessments, there are also significant differences.

Appropriate Assessment 17. What is Appropriate Assessment?

An Appropriate Assessment (AA) is a detailed study of the likely impacts of a proposed plan or project on the ecology of a designated European site (also known as 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 EU Birds Directive in 1979 and the Habitats Directive in 1992 established the Natura 2000 network of sites of the highest biodiversity importance for rare and threatened habitats and species across the EU.

National guidance for planning authorities on AA of plans and projects in Ireland was published by the Department of Housing, Local Government and Heritage in 2009 and updated in 2010 and is available at the following link:

http://www.npws.ie/sites/default/files/publications/pdf/NPWS_2009_AA_Guidance.pdf

18. Who carries out AA for plans and projects?

Both plans and projects are subject to the AA process. In the case of plans, such as county and city development plans or local area plans, the process is carried out by the planning authority, who must be satisfied that the plan would not adversely affect the integrity of a Natura 2000 site before the plan is adopted.

In the case of projects, the AA process is carried out by the planning authority or An Bord Pleanála prior to deciding whether or not to grant planning permission. Where relevant, AA must be carried out by An Bord Pleanála on appeal, even if it has already been undertaken by the planning authority.

19. What is a Natura 2000 Site?

Natura 2000 is a pan-European network of ecologically important sites. A Natura 2000 site is a site that has been designated as a nature protection area as part of the

network. There are two types of Natura 2000 site that are subject to Appropriate Assessment. They are Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). These sites are designated areas for the protection and conservation of certain habitats and species. Each Natura 2000 site has site-specific conservation objectives which aim to define favourable conservation conditions for a particular habitat or species at that site.

Appropriate Assessment only applies to SACs and SPAs. It does not apply to other ecologically designated areas such as Natural Heritage Areas or National Parks.

20. What is screening for AA?

The screening process determines whether or not a plan or project requires an AA of the likely significant impacts on a Natura 2000 site. In order for a plan or project to be screened out from requiring AA, it must be proven beyond scientific doubt, that no such significant impacts are likely to result from the implementation of the proposed plan or project.

No mitigation measures can be relied upon to reach this conclusion. If there is any doubt, then the plan or project should be screened in and a full AA must be carried out.

21. What happens if AA is required for a plan?

AA screening for plans takes place in tandem with the preparation of the Issues Paper.

AA is required if a plan has potential to have a significant effect on the Natura 2000 network, or if the effects are uncertain. Where AA is required for a plan, a Natura Impact Report (NIR) must be prepared to address the implications of the plan, on its own or in combination with other plans or projects, on the Natura 2000 network. The NIR addresses issues including mitigation, alternatives, IROPI and compensatory measures, as necessary. The NIR is placed on display with the draft plan as part of the public consultation process.

The AA process informs the formulation of the plans policies and objectives and decisions made relating to these.

The final plan must include a statement summarising how the ecological considerations in relation to Natura 2000 sites have been integrated into the plan and an AA conclusion statement.

22. If AA is required for a project or development proposal what documentation must be submitted?

If AA is required for a project or development proposal, a Natura Impact Statement (NIS) must be submitted to the planning authority (as the competent authority for the purposes of decision-making under the Directives) by the applicant. This is a 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 have an opportunity to make a submission to the planning authority during the five week consultation period.

The planning authority must then consider the NIS, any other relevant information submitted with the application, and any submissions made during the consultation period, including by members of the public. The AA will consider if the potential impacts identified at the screening stage can be avoided or reduced through the application of mitigation measures so that no adverse effects on the integrity of the Natura 2000 site will result from the proposed development.

23. What are the subsequent stages of AA?

If the AA process concludes that adverse effects cannot be ruled out, alternative routes can be pursued in order to enable a grant of planning permission. These routes include the examination of alternative solutions, and a specific statutory process where it is considered that the projects should be allowed to proceed for Imperative Reasons of Overriding Public Interest (IROPI). These processes are not common in the Irish planning system.

24. What happens if a local authority development requires AA?

If a local authority development requires AA, the local authority must apply for permission

to An Bord Pleanála and submit a NIS. The local authority must publish notices and the public have the opportunity to make submissions.

Any member of the public who believes a proposed local authority development would likely impact significantly on a Natura 2000 site can apply to An Bord Pleanála for a determination as to whether this is the case.

If An Bord Pleanála agrees with the person who made the submission the local authority is required to prepare a NIS and apply for permission from An Bord Pleanála.

Conclusion

The law governing the planning system, including SEA/EIA/AA requirements is extensive and is set out in the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2001, as amended. You can purchase these from the Government Publications Sales Office, telephone (01) 6476834 or at publications@opw.ie or download them for free from the Department of Housing, Local Government and Heritage's website www.gov.ie/housing. Legislation is also available to view and download from: www.irishstatutebook.ie.

You should consult with professionally qualified advisers if the planning matters you are interested in relate to any of the environmental assessments noted above.

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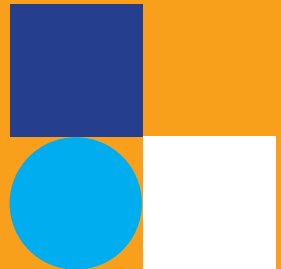
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