

GUIDANCE FOR EIA AND AA SCREENING OF ACTIVE TRAVEL PROJECTS FUNDED BY THE NTA



Contents

1. Introduction - EIA Screening in Active Travel Initiatives	7
1.1 What is an EIA Screening?	7
2. Triggers For EIA and EIA Screening of Active Travel Initiative	9
2.1. The EIA Directive	9
2.2. Is the Active Travel Initiative a “project” for the purposes of the EIA Directive?	9
2.3. Which “projects” require an EIA or EIA Screening?	11
2.4 Project Thresholds and Guidance in relation to “urban development”	13
3. The EIA Screening Process and Contents of the EIA Screening Report (What is required to be done and when?)	21
3.1 Preparation of an EIA Screening Report	21
3.2 EIA Screening Determination	24
3.3 What is a “preliminary examination under Article 120 of the 2001 Regulations and can it be used?	26
3.4 “Project Splitting”	27
3.5 The Part 8 Process	31
4. Appropriate Assessment Screening (AA Screening)	33
4.1 What is AA screening?	33
4.2 Legislative Context for AA screening	33
4.3 What are the 3 stages of Appropriate Assessment?	34
5. The AA Screening Process: What is required to be done and when?	40
5.1 The AA Screening Report	40
5.2 AA Screening Determination	43
5.3 Making Documentation Available to the Public	43
5.4 Important Things to Note for Local Authorities	44
5.5 Mitigation Measures in AA Screening	45

6. What is the appropriate statutory approval process for my project?	47
7. Quick Reference Guides	49
Appendices	53
Appendix A	53
Part 1 - Annex I to the EIA Directive	53
Part 2 - Part 1 of Schedule 5 to the 2001 Regulations	57
Appendix B	61
Part 1 - Annex II to the EIA Directive (as amended)	61
Part 2 - Part 2 of Schedule 5 to the 2001 Regulations	67
Appendix C	78
Part 1 - Extract from Section 50 of the Roads Act 1993 (as amended)	78
Part 2 - Extract from the Roads Regulations 1994 (as amended)	80
Appendix D - Information to be included in EIA Screening Reports	81
Appendix E	83
Part 1 - Annex III to the EIA Directive (as amended)	83
Part 2 - Schedule 7 to the 2001 Regulations	85
Appendix F - EIA Screening Checklist	87
Appendix G - Indicative Structure of the EIA Screening Report	90
Appendix H - Indicative Structure of the AA Screening Report	97
Appendix I - EIA Screening Determination Template	102
Appendix J - AA Screening Determination Template	105
Appendix K - Glossary of Terms	107
Appendix L - Article 9a of the EIA Directive (as amended)	109

Active Travel and the role of the NTA

Among the priorities of the National Transport Authority (NTA) are to encourage the use of more sustainable modes of transport and to ensure that transport considerations are fully addressed as part of land use planning. Walking, cycling and Public Transport are key sustainable travel modes. These modes of transport can substantially meet the mobility needs of people in carrying out their daily activities, if they are properly facilitated by land use planning.

In order to help achieve the above priorities, the NTA funds transport infrastructure measures which facilitate and promote walking, cycling and public transport. The NTA, in collaboration with McCann FitzGerald, have therefore developed and provided input to this high level guidance document on the matters that must be considered when pursuing any Active Travel Initiative and in determining whether any screening for Environmental Impact Assessment (EIA) and/or screening for Appropriate Assessment (AA) is required. This will assist Local Authorities and their consultants in the carrying out of EIA and AA Screening of active travel initiatives.

The report contains the following sections:

Part 1 - Introduction

Part 2 - Triggers for EIA and EIA Screening of Active Travel Initiatives

Part 3 - The EIA screening process and the Contents of the EIA screening report

Part 4 - Appropriate Assessment Screening

Part 5 - The AA Screening Process

Part 6 - What is the appropriate statutory approval process for my project?

Part 7 - Quick References Cheat Sheets

Appendices including relevant extracts from legislation, and indicative structures for EIA Screening Reports and Determinations and AA Screening Reports and Determinations

Note: This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting on any of the matters discussed. If in any doubt as to the requirement for EIA or AA Screening, or the outcome of any EIA / AA screening, consult your legal team.

It should be noted that knowledge, understanding and application of all aspects of AA Screening and EIA Screening are subject to changes in legislation, and emerging case law in the national and European courts. While the most relevant case law and legislation is reflected in this guidance, this is not exhaustive, and the reader should consider any subsequent case law or legislation and consult your legal team in that regard.

Introduction

EIA Screening in Active
Travel Initiatives

1

1

Introduction EIA Screening in Active Travel Initiatives

» 1.1 . Introduction - What is an EIA Screening?

- EIA Screening is a process by which a local authority can determine whether a project or proposal should be subject to an Environmental Impact Assessment (under the EIA Directive).
- In some cases an Active Travel Initiative will require EIA Screening and in others it will not. The important thing is that in pursuing any Active Travel Initiative a local authority needs to consider what it is doing and whether it requires EIA Screening.
- The importance of this cannot be understated, as an EIA Screening Determination will inform the statutory approval process required for the Active Travel Initiative.
- Equally, if EIA Screening is required and is not carried out, this could leave the local authority open to challenge.



Part Two

Triggers For EIA and EIA Screening
of Active Travel Initiatives

2

2

Triggers For EIA and EIA Screening of Active Travel Initiatives

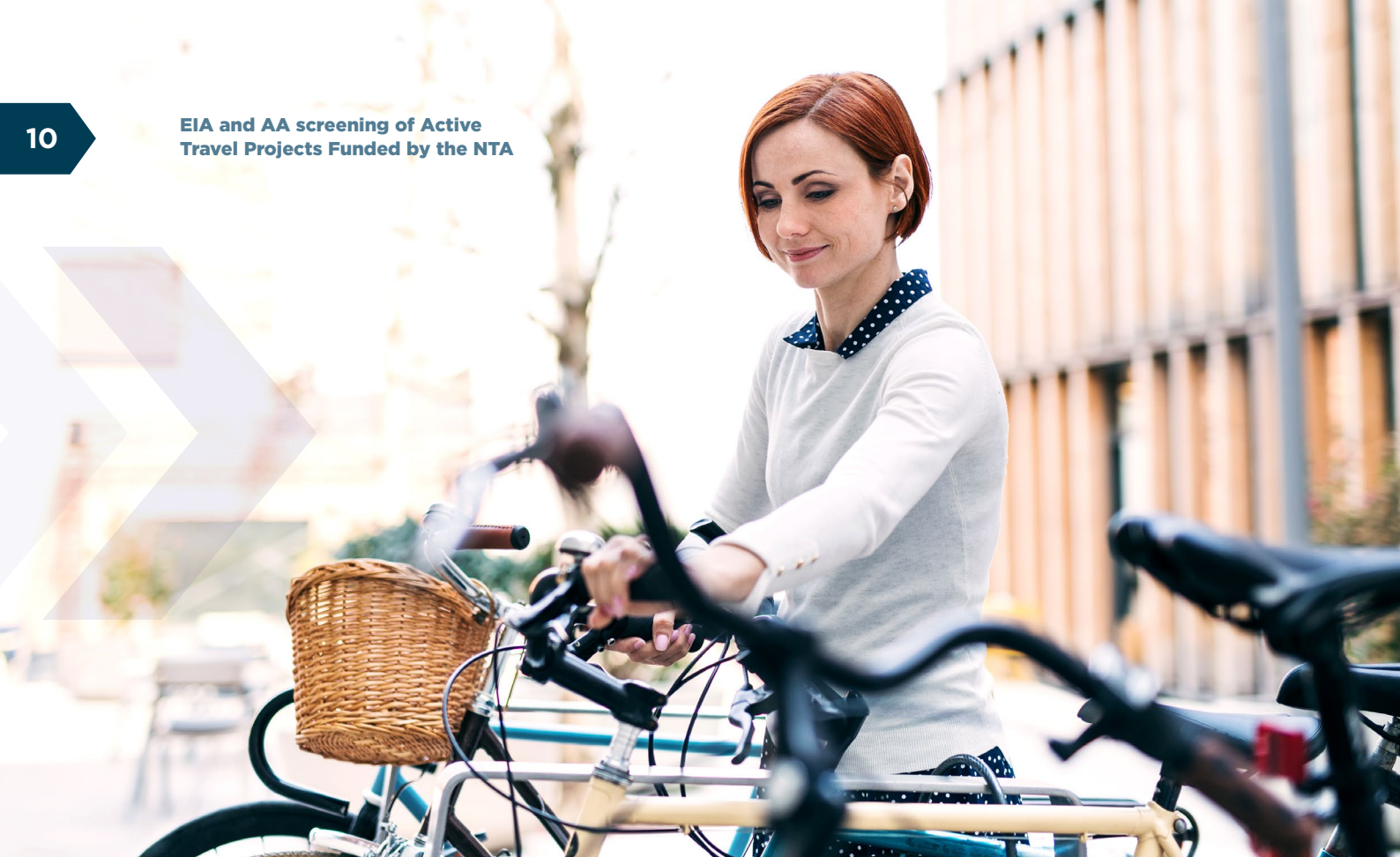
» 2.1. The EIA Directive

The EIA Directive requires that certain types of “projects” that are likely to have significant effects on the environment be made subject to an assessment (i.e. an EIA) prior to **“Development Consent”**¹ being given. Appendices A, B and C beginning on page 53 contain relevant extracts from the EIA Directive, the 2001 Planning and Development Regulations (hereafter called the 2001 Regulations), the Roads Act 1993 (hereafter called the 1993 Act), and the 1994 Road Regulations (hereafter called the 1994 Regulations) which set out those projects that trigger an automatic EIA. A quick guide is also provided (see Figure 2.1 on page 12 below) on the classes of projects that trigger an EIA.

» 2.2. Is the Active Travel Initiative a “project” for the purposes of the EIA Directive?

1. The starting point in determining whether an EIA or EIA Screening is required, is to determine if the Active Travel Initiative constitutes a “project” for the purposes of the EIA Directive.
2. The definition of “project” is set out on page 10 below. In most cases, the question is whether the Active Travel Initiative proposed involves the execution of some type of “construction works”, or other installations or schemes, or other interventions in the natural surroundings and landscape, such that they could constitute a “project” for the purposes of the EIA Directive.
3. The term “works” is not defined in the EIA Directive, but the Planning and Development Act, 2000 (hereafter called the 2000 Act) includes a very broad definition of “works” as set out below which can provide some guidance.
4. Based on this broad definition of “works”, many Active Travel Initiatives could potentially be considered “projects” within the meaning of the EIA Directive.

1 “Development Consent” means “the decision by the Competent Authority or authorities that entitles the Developer to proceed with the Project.”



Key Definitions

› EIA Directive

Project

- “the execution of construction works or of other installations or schemes”
- “other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources”

› Planning and Development Act, 2000 (hereafter called the 2000 Act)

Works

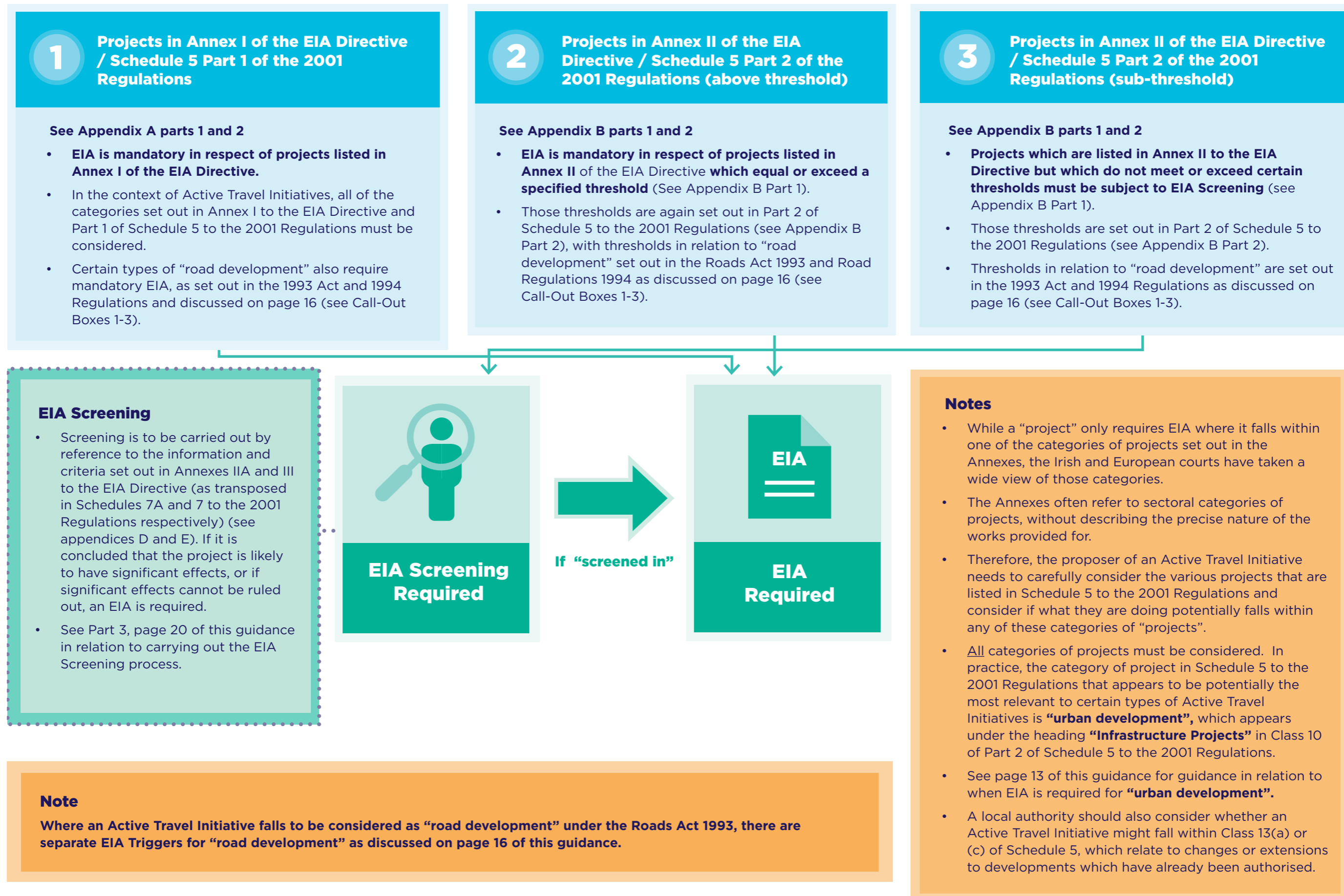
- “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure

» 2.3. Which “projects” require an EIA or EIA Screening?

1. To assist in determining whether a “project” may require EIA or EIA Screening, guidance is contained in the EIA Directive (specifically Annexes I and II to that Directive) which has been transposed in Parts 1 and 2 of Schedule 5 to the Planning and Development Regulations 2001 (hereafter called the 2001 Regulations) (and, for “road developments”, in the roads legislation).
2. The graphics in [Figure 2.1](#) and [Call-Out Boxes 1-3](#) below illustrate the types of projects which require EIA Screening and/or an EIA. In addition, guidance in relation to “Urban Development” (i.e. Class 10(b)(iv) of Part 2 of Schedule 5 to the 2001 Regulations) (which may be relevant to many Active Travel initiatives) is provided on page 13.
3. The decision of the High Court in *Kavanagh v An Bord Pleanála & Ors* [2020] IEHC 259, which concerned an application for planning permission for a photovoltaic solar farm, suggests that EIA and/or EIA Screening will **not** be required where the development concerned is **not** a “project” of a type listed in either Annex I or Annex II to the EIA Directive (these Annexes are set out in the appendices).



Figure 2.1 - Triggers for EIA and EIA Screening of Active Travel Initiatives



» 2.4 Project Thresholds and Guidance in relation to “urban development”

Class 10(b)(iv) of Part 2 of Schedule 5 to the 2001 Regulations:

10. Infrastructure projects

(b) (iv) *Urban development which would involve an area greater than 2 hectares in the case of a business district¹, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.*

2.4.1 What types of projects might be considered as “urban development”?

- 1.** The Court of Justice of the European Union (CJEU) has observed that the category ‘*urban development projects*’ is sufficiently broad to capture “demolition” projects ². The High Court has also found that the construction of the Spire on O’Connell Street was “urban development”. ³
- 2.** Guidance issued by the European Commission in 2015⁴ states that “*Projects for integrated urban transport schemes (e.g. parallel works at different locations to upgrade bus lanes, tramlines, bus, tram and/or metro stops), could also fall under this project category.*” This Guidance also mentions developments such as cinema complexes, housing developments, car parks, etc. as being “urban development” within the meaning of the EIA Directive.

1 “**business district**” is defined in this context as “*a district within a city or town in which the predominant land use is retail or commercial use.*”

2 *Commission v Ireland (Case C-50/09)*. This was an infringement action brought by the European Commission against Ireland in which the Commission alleged, among other things, that Ireland had failed to apply the EIA Directive to demolition works, because under the legislation as it stood at that time, demolition works were not subject, as a general rule, to an environmental impact assessment but, on the contrary, were entitled to an exemption in principle.”

3 *O’Nualláin v The Right Honourable the Lord Mayor, Aldermen and Burgesses of Dublin* (1999) IEHC 11

4 European Commission, *Interpretation of definitions of project categories of annex I and II of the EIA Directive*, 2015

3. More recent guidance on EIA Screening published by the Office of the Planning Regulator⁵ says that “an urban development project should be seen as a project that is urban in nature regardless of its location” and that “commonly understood urban developments... would include public realm improvement schemes many of which would be subject to the Part 8 process if EIA is not required.”
4. In a 2021 decision⁶ which is currently under appeal, the High Court held that the Strand Road Cycleway Trial (which involved among other things the installation of road signage, changing road markings, moving bus stops, and the removal of mini-roundabouts) was “urban development”, but was below the 2 hectare threshold that applies in a business district.⁷ EIA Screening is required for “urban development” which is below the 2 hectare threshold that applies in a business district.



5 Office of the Planning Regulator, *OPR Practice Note PN02: Environmental Impact Assessment Screening*, June 2021

6 *Carvill and Flynn v. Dublin City Council, Ireland, and the Attorney General* (2021 IEHC 544)

7 Note, however, that elsewhere in this judgment the Court found that “both an EIA and an AA is required for the proposed cycleway...”

2.4.2 What to do when considering any Active Travel Initiative and whether or not it might constitute “urban development”

1. A local authority must be careful to look closely at any proposed Active Travel Initiative and consider whether it could constitute “urban development”. Figure 2.2 below outlines the EIA screening thresholds for projects which could constitute urban development.
2. If an Active Travel Initiative involves very minor measures such as the moving around of planters on a street etc., and where clearly no “works” are taking place, and the Local Authority is of the view that the initiative **does not** constitute “urban development” (and does not fall within any of the classes of projects and thresholds set out in Annex I and II to the EIA Directive, and/or Parts 1 and 2 of Schedule 5 to the 2001 Regulations (see Appendix A)), then this should be clearly set out in any documents relating to and/or any decision to proceed with the Active Travel Initiative.

Figure 2.2 EIA screening thresholds for Urban Development

Requirements for EIA / EIA Screening of “urban development” projects

If any Active Travel Initiative **could** constitute “urban development”, then:

- (a) If the area involved is greater than 2 hectares (in a business district), 10 hectares (in other parts of a built-up area), or 20 hectares (elsewhere), **an EIA is required**; and,
- (b) If the area involved is below these thresholds, **EIA Screening is required**, and if “screened in” (i.e. the result of the EIA Screening is that the project is likely to have significant impacts on the environment) then **an EIA is required**.

Call-Out Boxes 1-3 - Triggers for EIA and EIA Screening of “road developments” under the Roads Act 1993

1 “Road Development”

- The 1993 Act requires EIA and/or EIA Screening for certain types of “road development”.
- Is the active travel initiative a “road development”?
 - (i) No definition of “road development” in the 1993 Act or the 2000 Act.
 - (ii) Expansive definition of “road” in the 1993 Act.¹
 - (iii) “development” defined in the 2000 Act as “*the carrying out of any works on, in, over or under land...*”²

Recent decision of the High Court (under appeal)

- In a recent decision which is currently under appeal³, the High Court held that the Strand Road Cycleway Trial (which involved among other things the installation of road signage, changing road markings, moving bus stops, and the removal of mini-roundabouts), was “road development” for the purposes of section 50 of the 1993 Act, but there was no explanation or analysis in relation to these conclusions.⁴

1 See section 2 of the 1993 Act.

2 See section 2 of the 2000 Act.

3 Carvill and Flynn v. Dublin City Council, Ireland, and the Attorney General [2021 IEHC 544]

4 While the judge in paragraph 41 of this judgment says “I found that both an EIA and an AA is required for the proposed cycleway...”, it is unclear as to whether this is connected to his finding that what was proposed here was “road development” for the purposes of section 50 of the 1993 Act.

2 Automatic EIA (Roads Act)

Motorways etc.

- EIA is automatically required for:-
 - (i) A Motorway Scheme;
 - (ii) A Busway Scheme; or,
 - (iii) A Service Area Scheme.⁵
- Most Active Travel Initiatives will not fall into any of these categories

Other Prescribed Types of Road Development

- EIA is also automatically required for **“a prescribed type of road development consisting of the construction of a proposed public road or the improvement of an existing public road.”**
- If the Active Travel Initiative consists of *“the construction of a proposed public road or the improvement of an existing public road”*:-
 - Consider the prescribed types of road development set out in **Regulation 8 of the 1994 Regulations**, namely:-
 - “(a) the construction of a new road of four or more lanes, or the realignment or widening of an existing road so as to provide four or more lanes, where such new, realigned or widened road would be eight kilometres or more in length in a rural area, or 500 metres or more in length in an urban area;*
 - (b) the construction of a new bridge or tunnel which would be 100 metres or more in length.”*⁶
- Consider each element of part (a) of Regulation 8 as follows:-
 - (i) *“the construction of a new road of four or more lanes”*; **OR**
 - (ii) *“the realignment or widening of an existing road so as to provide four or more lanes”*;
 - (iii) *“where such new, realigned or widened road would be 8 kilometres or more in length in a rural area, or 500 metres or more in length in an urban area”*

If either (i) or (ii) above is satisfied, and the Active Travel Initiative exceeds the length thresholds in (iii) above, then an EIA is automatically required by Regulation 8(a) of the 1994 Regulations (which was the case for a number of the Bus Connects Core Bus Corridor Schemes in Dublin).

If the Active Travel Initiative involves “the construction of a new bridge or tunnel which would be 100 metres or more in length”, then an EIA is automatically required by Regulation 8(b) of the 1994 Regulations.

3

EIA Screening (Roads Act) (if no automatic EIA)

Screening under Section 50(1)(c) of the 1993 Act

- Applies to: “road development (not subject to automatic EIA)... consisting of the construction of a proposed public road or the improvement of an existing public road.”
- If the Active Travel Initiative
 - (i) could be considered “road development” and
 - (ii) consists of “the construction of a proposed public road or the improvement of an existing public road”, and
 - (iii) an automatic EIA is not required, then an EIA is required **if** the road authority “considers” that the road development is likely to have significant effects on the environment.
- The only way that a road authority can satisfy itself one way or another as to whether a road development would have significant effects on the environment is to conduct an EIA Screening.
EIA Screening is therefore required, under s. 50(1)(c).

Section 50(1)(d) of the 1993 Act

- Applies where the road development is “on”
 - (i) a European Site,
 - (ii) land designated as a nature reserve,
 - (iii) land designated as a refuge for flora or fauna, or
 - (iv) land designated as an NHA.
- For such road developments, the road authority is required to “decide” whether or not the road development would be likely to have significant effects on the environment.
- The only way that a road authority can satisfy itself one way or another as to whether a road development would have significant effects on the environment is to conduct an EIA Screening.
EIA Screening is therefore required, under s. 50(1)(d).

Note: There is a specific requirement to place the EIA Screening Determination on the local authority’s website, and make it available for inspection, if s.50(1)(d) applies⁷ but even if screening under 50(1)(c) only, the local authority should still do this.

5 Section 50(1)(a) of the 1993 Act.

6 Regulation 8 of the 1994 Regulations.

7 Section 50(1)(f) of the 1993 Act.

3

EIA Screening (Roads Act) (if no automatic EIA) - Continued

EIA Screening Determination (see also section 3.2 below)

- **Is the Active Travel Initiative that is a road development under the 1993 Act likely to have significant effects on the environment?**
 - (i) If “yes”, an **Environmental Impact Assessment Report (EIAR) must be prepared and an EIA is required.**
 - (ii) If “no”, an **EIA is not required.**

Note: If the Active Travel Initiative is “screened in” for EIA under section(s) 50(1)(c) and/or 50(1)(d) of the 1993 Act, the road authority should inform An Bord Pleanála (ABP) of this prior to making an application for approval under section 51 of the 1993 Act. ⁸



8 Section 50(1)(c) of the 1993 Act.

Part Three

The EIA Screening Process and
Contents of the EIA Screening Report
(What is required to be done and when?)

3

3

The EIA Screening Process and Contents of the EIA Screening Report (What is required to be done and when?)

» 3.1 Preparation of an EIA Screening Report

1. Once the authority has ascertained that a mandatory EIAR is not required, and that EIA Screening is required, an EIA Screening Report must be prepared following the selection criteria set out in Schedule 7 to the 2001 Regulations, which transposes the requirements of Annex III to the EIA Directive, and including the information set out in Schedule 7A to the 2001 Regulations, which transposes the requirements of Annex IIA to the EIA Directive. Schedules 7 and 7A to the EIA Directive are set out below and an EIA screening template guide has been added to the appendices of this report.

Figure 3.1 – Schedule 7 to the 2001 Regulations

Schedule 7 to the 2001 Regulations

1. Characteristics of proposed development

The characteristics of proposed development, in particular—

- (a) the size and design of the whole of the proposed development,
- (b) cumulation with other existing development and/or development the subject of a consent for proposed development for the purposes of section 172(1A)(b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment,
- (c) the nature of any associated demolition works,
- (d) the use of natural resources, in particular land, soil, water and biodiversity,
- (e) the production of waste,
- (f) pollution and nuisances,

- (g) the risk of major accidents, and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge, and
- (h) the risks to human health (for example, due to water contamination or air pollution).

2. Location of proposed development

The environmental sensitivity of geographical areas likely to be affected by the proposed development, with particular regard to—

- (a) the existing and approved land use,
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground,
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under legislation, including Natura 2000 areas designated pursuant to the Habitats Directive and the Birds Directive and;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards laid down in legislation of the European Union and relevant to the project, or in which it is considered that there is such a failure;
 - (vii) densely populated areas; and
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

3. Types and characteristics of potential impact

The likely significant effects on the environment of proposed development in relation to criteria set out under paragraphs 1 and 2, with regard to the impact of the project on the factors specified in paragraph (b)(i)(I) to (V) of the definition of ‘environmental impact assessment report’ in section 171A of the Act, taking into account—

- (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 development the subject of a consent for proposed development for the purposes of section 172(1A)(b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment, and
- (h) the possibility of effectively reducing the impact.

Figure 3.2 - Schedule 7A to the 2001 Regulations

Schedule 7A to the 2001 Regulations

INFORMATION TO BE PROVIDED BY THE APPLICANT OR DEVELOPER FOR THE PURPOSES OF SCREENING SUB-THRESHOLD DEVELOPMENT FOR ENVIRONMENTAL IMPACT ASSESSMENT

1. A description of the proposed development, including in particular—

- (a) a description of the physical characteristics of the whole proposed development and, where relevant, of demolition works, and
- (b) a description of the location of the proposed development, with particular regard to the environmental sensitivity of geographical areas likely to be affected.

2. A description of the aspects of the environment likely to be significantly affected by the proposed development.

3. A description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment resulting from—

- (a) the expected residues and emissions and the production of waste, where relevant, and
- (b) the use of natural resources, in particular soil, land, water and biodiversity.

4. The compilation of the information at paragraphs 1 to 3 shall take into account, where relevant, the criteria set out in Schedule 7.

2. In order to demonstrate that the EIA Screening undertaken has complied with the requirements of the 2001 Regulations and the EIA Directive, the EIA Screening Report should include all the criteria and sub criteria headings set out in Schedule 7 and 7A to the 2001 Regulations as set out above, and must include appropriate detail on all potential impacts on the environment.
3. In addition to ensuring that the EIA Screening Report satisfies all of the above requirements, the EIA Screening¹ Checklist included in the European Commission's 2017 guidance in relation to EIA Screening should be completed and included in the EIA Screening Report. A copy of this EIA Screening Checklist is included at Appendix F.
4. The EIA Screening Report must also clearly set out the competence of and relevant expertise, qualifications, and experience of the person or persons writing the screening report.
5. While the structure and content of the EIA Screening Report will vary between different initiatives, and will have to be considered on a case by case basis by the local authority and its expert consultants, an indicative structure for a typical EIA screening report has been included for general guidance purposes in Appendix G.

» 3.2 EIA Screening Determination

1. Once the EIA Screening report has been prepared in accordance with the requirements set out above, a formal EIA Screening Determination must be made by the Competent Authority.

1 European Commission, *Environmental Impact Assessment of Projects; Guidance on Screening* (2017)



2. This is a separate document prepared by the Competent Authority (which in relation to EIA Screening for active travel initiatives will be the Local Authority), and must set out the reasons for the determination as to whether an EIA is required or not.

IMPORTANT NOTE:

If acting **both** as Competent Authority for EIA Screening **and** as developer (e.g. where a local authority is both promoting an Active Travel Initiative and carrying out the screening for that initiative), to avoid any suggestion that there is a conflict of interest, ensure that there is a “**functional separation**” between the individuals involved in promoting an Active Travel Initiative and those responsible for making the EIA Screening Determination. See **Article 9a of the EIA Directive** (Appendix L).

3.2.1 Making Documents available to the Public

1. Both the EIA Screening Report and EIA Screening Determination must be made available to the public after the determination has been made. This is typically done by making these documents available for inspection:-
 - (i) at the offices of the Local Authority; and,
 - (ii) electronically (usually by making documents available on local authority website).

3.2.2 Notes in relation to EIA Screening

1. Timing

- The Steps in 3.1 and 3.2 above must be completed **before** any decision is taken to implement any Active Travel Initiatives as this will determine the statutory approval route to be followed. Therefore it is very important not to in any way pre-judge the statutory approval route prior to a screening determination having been made.

2. Mitigation Measures

- Mitigation measures can be taken into account in EIA Screening but must not be taken into account in AA Screening.
- If conducting both EIA Screening and AA Screening, ensure that none of the mitigation measures taken into account in the EIA Screening are mistakenly taken into account in the AA Screening.

» 3.3 What is a “preliminary examination under Article 120 of the 2001 Regulations and can it be used?”

1. Article 120 of the 2001 Regulations sets out a process of “preliminary examination” which is a preliminary step allowing a local authority to determine whether or not an EIA or EIA Screening is required for certain types of development.
2. While Article 120(1)(a) suggests that it applies to **all** local authority “sub-threshold” development (i.e. projects of a type listed in Part 2 of Schedule 5 to the 2001 Regulation but which do meet or exceed the relevant threshold), there are subsequent references in this Article to notices published under Article 81 of the 2001 Regulations (i.e. Part 8 Notices) and so there is a question mark over whether this “*preliminary examination*” process in Article 120 can be used other than in Part 8 developments and a question therefore arises as to whether it could be relied upon in relation to an Active Travel Initiative which was not subject to the Part 8 process.
3. Further, the preliminary examination process is not provided for in the EIA Directive and/or in the European Commission’s 2017 guidance document “*Environmental Impact Assessment of Projects; Guidance on Screening*”. Therefore a “preliminary examination” process is not a substitute for an EIA Screening and can only safely be relied upon in Part 8 developments.

» 3.4 “Project Splitting”

1. A key step in the EIA Screening process is identifying the “project” that the local authority proposes to implement that will be the subject of the EIA Screening. “*Project splitting*” occurs where a development is split up so as to avoid the requirement to carry out an EIA in respect of any aspect of the development. It generally occurs where a development is divided up in such a way so that each element on its own is sub-threshold and does not require an EIA.
2. “*Simons on Planning Law*” (3rd edition) describes “*project splitting*” in the following terms at paragraph 14-280:

“If a project is identified in a restricted way, this may result in the evasion of the obligation for EIA. For example, if what is in reality only one project is artificially presented as a series of separate projects, it may be that none of these on its own will trigger an EIA. This practice is known as ‘project-splitting’ (sometimes also referred to as ‘salami-slicing’)”
3. An example of this type of “*project splitting*” arose in the Spanish Roads case², which concerned the construction of an urban ring road in Madrid. This was a complex civil engineering scheme which consisted of improving and refurbishing virtually the whole of the urban ring road surrounding Madrid. Madrid City Council had split the larger project into 15 independent sub-projects and, treated separately, only one of those exceeded the threshold at which an EIA was required. However, the larger project taken as a whole substantially exceeded the threshold for which an EIA would be required. The CJEU in that case noted that the purpose of the EIA Directive cannot be circumvented by the splitting of projects and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the obligation to carry out an EIA when, taken together, they are likely to have significant effects on the environment. It was clear in this case that the sub-projects were all part of the larger project.
4. The issue of “*project splitting*” has also been considered a number of times in the Irish courts. In *O’Grianna v An Bord Pleanála*³, the High Court considered whether a grid connection and the windfarm it was to serve were part of the same “*project*” for the purpose of the EIA Directive and concluded that they were, because the grid connection is an integral part of the overall development and the wind turbines serve no function unless they can be connected to the national grid.

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

3 (2014) IEHC 632

5. This concept of “*functional interdependence*” was considered in both the High Court and the Supreme Court in the case of *Fitzpatrick v An Bord Pleanála*⁴, which involved the proposed development by Apple of a data centre at Athenry, County Galway.
6. In *Fitzpatrick*, the development for which planning permission had been sought was a single data centre. A masterplan had been submitted with the application for the single data centre which made clear that it was envisaged that eight data halls would potentially be constructed on the site in the future. The appellants argued that the single data hall formed part of a larger “*project*”, i.e. the masterplan, and that the masterplan should have been subject to EIA.
7. The High Court considered that the question was whether the proposed development in respect of which permission is sought (in that case the single data hall) can operate on a standalone basis or whether it was part of a larger development, i.e. the masterplan. The High Court, and the Supreme Court on appeal, concluded that it could operate on a standalone basis and was not *functionally interdependent* with the masterplan.
8. The Supreme Court concluded on the issue of whether the data hall and the masterplan were “*functionally interdependent*” at paragraphs 50 to 52 of its judgment in the following terms:-
 - “50. *The trial judge in this case decided that there was no functional interdependence between the development of the first data centre for which permission was sought and the future potential of the build out of further data halls in accordance with the master plan. I agree with his assessment and determination. The development of the first data centre is not either functionally, as in the case of O’Grianna, or legally, as in the case of Brown, dependent upon the build out of further data centres, as envisaged in the masterplan. Once built, it could be operated as a single data hall. Hence, in that sense it was a project which was a standalone project and capable of being the subject of a planning application for which an EIA could properly be carried out.*
 51. *In reaching that conclusion, I do not wish to suggest that the data centre development was functionally independent of the substation and grid connection. They are functionally interdependent. The environmental impacts of those two applications were correctly considered together in a cumulative assessment.*

4 [2017] IEHC 585; [2019] IESC 23

No objection has been taken in the proceedings to the manner in which that was done. Therefore, subject to that comment, the Board was correct in considering the development of the first data centre and ancillary works to be a standalone development which could properly be the subject of a planning application and EIA. While the Board took into account the fact that the data centre was the first of eight data centres proposed in the masterplan when considering the justification for the site selected, it does not follow that impermissible project splitting or slicing has taken place. The first data centre is stand-alone in the sense of not being functionally dependent on future phases of the masterplan. The fact that it was the first phase of the masterplan was a matter to be taken into account as part of the relevant circumstances which are to be considered both when conducting the EIA and making the planning decision. The scope of the EIA of the data centre required by reason of the fact that it is phase one of a masterplan is a separate issue considered below.

52. Accordingly, my conclusion on the primary and core contention of the appellants is that there was no obligation on the Board to conduct an EIA of the masterplan in the course of an application for planning permission for phase one thereof. As a matter of law, the obligation pursuant to the EIA Directive, as implemented in this jurisdiction by the 2000 Act, as amended, and the Regulations made thereunder, is to carry out an environmental impact assessment of the proposed development, or in this case developments, for which planning permission was sought. On the facts of this case, I have concluded that, notwithstanding that the data centre application is the first phase of an overall masterplan, it was permissible to treat it as a standalone project or development both for planning purposes and for the assessment under the EIA Directive, as it was not functionally or legally dependent on later phases of the masterplan. The EIA of the data centre application did require to assess its cumulative impacts with, inter alia, the proposed development of the substation and grid connection, as was carried out. Nevertheless, the fact that they were phase one of the overall masterplan affects the scope of the EIA of the proposed developments which was required to be carried out.”





9. On the basis of this case law, there are two distinct questions to be considered in determining whether any “*project splitting*” risk arises in relation to any proposed active travel initiative:-

(a) Functional/legal dependence:-

This requires all integral parts of a project, which are part of the project or upon which the project depends, to be included within the scope of any environmental assessment carried out.

(b) Functional/legal interdependence:-

This requires consideration of whether there are any factual or legal circumstances which could give rise to an interdependency between two projects.

10. Therefore, in order to avoid any risk of “project splitting” arising in relation to a proposed active travel initiative, a local authority should ensure that the active travel initiative in question, which is the subject of the EIA Screening, is a stand-alone initiative which is not functionally or legally dependent on or interdependent with any other project.
11. In particular, where an active travel initiative is being progressed at the same time as other nearby projects (say for example where a cycle track is to be provided on one street in a town, and public realm improvements are proposed for a nearby street) a local authority must consider whether in fact there is any functional or legal interdependence between those different measures such that they should be considered together as one project for EIA Screening purposes. If, as will often be the case, there is no such functional or legal interdependence and the active travel initiative is a standalone “project” capable of being constructed and operated independently, then a robust cumulative impacts assessment will be required as part of the EIA Screening exercise, to ensure that the cumulative impacts of the active travel initiative together with other projects in the area are properly assessed and to avoid allegations of a defective EIA Screening.

The scope of such a cumulative impacts assessment will need to be carefully considered in each individual case, but it is important to bear in mind that it may need to encompass more than other “existing and/or approved” projects, which is the legal requirement under the EIA Directive, and also include, for example, other nearby projects which the local authority is aware are in the planning process but are not yet approved, and other proposed developments that are being pursued by the local authority.

» 3.5 The Part 8 Process

- 1.** As set out on page 47 below, Local authority own development which is “screened in” for EIA cannot proceed under the ‘Part 8’ process (Section 179(6)(e) of the 2000 Act). Where an EIA is required, an EIAR must be prepared and an application for approval must be made to An Bord Pleanála.
- 2.** Where an initiative has been screened out for EIA and AA and is proceeding under the ‘Part 8’ process, the report by the chief executive to the elected members recommending whether or not that initiative should proceed (prepared under Section 179(3)(a)(i) of the 2000 Act) must include the EIA Screening Determination and must set out the measures, if any, envisaged to avoid or prevent what might have otherwise been significant adverse effects on the environment of the development (section 179(3)(b)(iia) of the 2000 Act).
- 3.** Further, where an initiative is “screened out” for both EIA and AA and is being progressed under the Part 8 process, a member of the public who is dissatisfied with the local authority’s EIA Screening Determination (i.e. a person who believes that an EIA should be required for that initiative) can, within 4 weeks of the publication of the Part 8 Notice, make an application to An Bord Pleanála under Article 120(3)(b) of the 2001 Regulations for a screening determination as to whether that initiative would be likely to have significant effects on the environment. Where such an application is made, An Bord Pleanála shall make a screening determination on the matter within 8 weeks of being provided with the relevant information by the local authority (Article 129)(3A)(a) of the 2001 Regulations). If An Bord Pleanála determines that the initiative would be likely to have a significant effects on the environment, then an EIA will be required, and an application for approval must be made to An Bord Pleanála.

Part Four

Appropriate Assessment
Screening (AA Screening)

4

4

Appropriate Assessment Screening (AA Screening)

» 4.1 What is AA screening?

1. Appropriate Assessment Screening involves a consideration of whether a plan or project, either individually or in combination with other plans or projects, is likely to have a significant effect on any European Site (i.e. any Special Area of Conservation (SAC) or Special Protection Area (SPA)).
2. An AA Screening Report is a report prepared to assist the competent authority in making an AA Screening Determination.

» 4.2 Legislative Context for AA screening

1. The Habitats Directive and Habitats Regulations (see Call-Out Boxes 4-6 on p35) aim to protect Europe's most valuable and threatened species and habitats. One of the measures which protects these areas is the requirement that every project must undergo an assessment of its implications for any European Site before consent for the project is given.

AA Screening is required for any proposal which constitutes a “*plan or project*” within the meaning of the Habitats Directive and/ or the Habitats Regulations and which is not “*directly connected with or necessary to the management of the site as a European Site*”.

2. The Habitats Directive (92/43/EEC) and the associated Birds Directive (79/409/EEC) are transposed into national law through Part XAB of the 2000 Act and the 2001 Regulations, and by the Habitats Regulations.

» 4.3 What are the 3 stages of Appropriate Assessment?

1. As described in the European Commission's 2021 Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC, there are three stages of appropriate assessment; that is, stage 1 (AA Screening), stage 2 (Appropriate Assessment), and stage 3 (the procedure under Article 6(4)), which must be followed in sequence. Most active travel initiatives will require stage 1 (AA Screening) and some may require stage 2 (Appropriate Assessment), but they are unlikely to require stage 3 (the process under Article 6(4) of the Habitats Directive). This guidance is focused on Stage 1, Appropriate Assessment Screening.
2. Stage 1 examines the likelihood of a plan or project having significant effects upon a Natura 2000 site, either alone or in combination with other plans or projects. If likely significant effects cannot be excluded beyond any reasonable doubt, the plan or project will have to undergo a full appropriate assessment. If it is determined that there are no likely significant effects, then it is not necessary to proceed with the remaining steps in the AA process.



IMPORTANT NOTES:

- Mitigation Measures must not be taken into account in AA Screening. See section 5.5 below in relation to this issue.
- Failure to carry out an AA Screening (if required) will leave a local authority open to challenge.



Call-Out Boxes 4-6 – When is AA Screening required for Active Travel Initiatives?

4

What is Appropriate Assessment Screening?

- As with EIA Screening, AA Screening will be required for certain types of Active Travel Initiatives to determine whether or not an Appropriate Assessment of those initiatives is required.
- This involves a consideration of **whether a “plan or project” is likely to have a significant effects on any European Site.**
- The importance of this process cannot be overstated, as it will inform the statutory approval process required for an Active Travel Initiative, and a failure to carry out an AA Screening (if required) will leave a local authority open to challenge.

5

When is AA Screening required for Active Travel Initiatives?

The Habitats Directive

- Article 6(3) of the Habitats Directive:-

*“Any plan or project **not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects**, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.” (emphasis added)*

5

When is AA Screening required for Active Travel Initiatives? - Continued

The Habitats Regulations

- Article 42 of the Habitats Regulations:-

“A screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site.”

AA Screening is required for any proposal which constitutes a “plan or project” within the meaning of the Habitats Directive and/or the Habitats Regulations and which is not “directly connected with or necessary to the management of the site as a European Site”.¹

“Plan” and “Project” are broadly defined in the Habitats Regulations (see Key Definitions) and a broad interpretation is generally given to these terms by the Courts. Most Active Travel Initiatives would be unlikely to constitute “plans”, but many might fall to be regarded as “development of land or on land” or “other land use activities” such that they could arguably be a “project” requiring AA Screening.

Note: Where an Active Travel Initiative does not appear to meet the definition of either a “plan” or a “project”, but is in close proximity to a European Site or could potentially impact on a European Site for any reason, a precautionary approach would be to conduct an AA Screening exercise out of an abundance of caution.

1 The NPWS’ 2009 guidance document (as revised in 2010) “Appropriate Assessment of Plans and Projects in Ireland; Guidance for Planning Authorities” notes that “Plans or projects that are directly connected with or necessary to the nature conservation management of a Natura 2000 site are essentially exempt from further consideration. Such exceptions will be comparatively rare and it is recommended that the reasons and justifications, and any possible wider effects and mitigation measures, are assessed and recorded in advance of the decision to proceed in each case, together with evidence of consultation with the National Parks and Wildlife Service (NPWS) of the Department.”

Note

In a recent (January 2022) decision, the High Court found that the re-introduction of traffic calming measures on two streets in Tralee (which involved the closure of those streets to traffic between 10:30am and 6pm each day, by the insertion of bollards that were sunk into the road and were only raised during the hours that the restrictions were in place) was not a “project” within the meaning of the Habitats Regulations requiring AA Screening. See *Kerry Fish (Ireland) Unlimited Company v Kerry County Council* [2022] IEHC 29.

6 AA Screening

If AA Screening is required, the test is as follows:-

- Can it be **excluded**, in view of best scientific knowledge and on the basis of objective information that the Active Travel Initiative, either individually or in combination with other plans or projects, will have a significant effect on any European site(s) in view of the conservation objectives of those site(s)?

→ **If yes, an AA is not required.**

→ **If no, a Natura Impact Statement must be prepared and an Appropriate Assessment is required.**

See page 39 of this guidance in relation to the AA Screening process.



Key Definitions

Neither “plan” nor “project” is defined in the Habitats Directive. However, they are defined widely in the Habitats Regulations as follows:-

Plan:

“plan”, subject to the exclusion, except where the contrary intention appears, of any plan that is a land use plan within the meaning of the Planning Acts 2000 to 2011, includes —

- (a) *any plan, programme or scheme, statutory or non-statutory, that establishes public policy in relation to land use and infrastructural development in one or more specified locations or regions, including any development of land or on land, the extraction or exploitation of mineral resources or of renewable energy resources and the carrying out of land use activities, that is to be considered for adoption or authorisation or approval or for the grant of a licence, consent, permission, permit, derogation or other authorisation by a public authority, or*
- (b) *a proposal to amend or extend a plan or scheme referred to in subparagraph (a);”*

Project:

“project”, subject to the exclusion, except where the contrary intention appears, of any project that is a development requiring development consent within the meaning of the Planning and Development Acts 2000 to 2011, includes—

- (a) *land use or infrastructural developments, including any development of land or on land,*
- (b) *the extraction or exploitation of mineral resources, prospecting for mineral resources, turf cutting, or the exploitation of renewable energy resources, and*
- (c) *any other land use activities, that are to be considered for adoption, execution, authorisation or approval, including the revision, review, renewal or extension of the expiry date of previous approvals, by a public authority and, notwithstanding the generality of the preceding, includes any project referred to at subparagraphs (a), (b) or (c) to which the exercise of statutory power in favour of that project or any approval sought for that project under any of the enactments set out in the Second Schedule of these Regulations applies;”*

Part Five

The AA Screening Process

What is required to be done and when?

5

5

The AA Screening Process What is required to be done and when?

» 5.1 The AA Screening Report

1. An AA Screening Report must be prepared following the steps outlined below (and shown in Figure 5.1 below, which is taken from the Office of Planning Regulator's 2021 guidance on Appropriate Assessment Screening for Development Management):

5.1.1 Description of the plan or project

The plan or project must be described in detail including its nature, size and location.

The AA Screening Report must also consider, for example, the possible or likely effects, and any draft policies, objectives, land use zonings and associated strategies, at an appropriate location in the AA Screening Report.

The AA Screening Report must also set out in an appropriate place the qualifications and relevant experience of the person or persons writing the AA Screening Report.

5.1.2 Identification of relevant Natura 2000 sites

The relevant Natura 2000 sites, their qualifying interests and conservation objectives must be identified and listed.

Where the plan or project is within or adjacent to any Natura 2000 sites, this must be set out and those sites should be automatically selected for consideration in the screening exercise.

Further, a plan or project can have direct, indirect or cumulative effects even if it falls outside the boundary of a Natura 2000 site. The identification of European sites within a 15km zone had become common practice in screening projects for AA. However the zone of influence of a project should be considered using the Source-Pathway-Receptor model and so therefore it is not sufficient to rely on this 15km zone.¹

1 [Appropriate Assessment Screening for Development Management \(OPR, 2021\)](#)



Digital mapping systems such as the NPWS map viewer or a local authority's own GIS system can be used to identify any potential European sites that require further consideration. The EPA AA mapping tool² is particularly useful as it allows more detailed filtering such as European sites downstream of a particular project.³

5.1.3 Assessment of Likely Effects

The direct and indirect effects of the project, either individually or in combination with other plans and projects, in view of the conservation objectives of each relevant site, must be assessed and recorded (and therefore it is important to ensure that there are Site Specific Conservation Objectives in place for all sites being considered in the AA Screening). This should be carried out using both a desktop study based on available information (from NPWS/ EPA websites etc.) and data gathered from local site visits and ecological surveys. Following this, a determination must be made as to whether the project, either individually or in combination with other plans or projects, is likely to have a significant effect on any European Site. A precautionary approach is fundamental and, in cases of uncertainty, it should be assumed that any effects could be significant.

5.1.4 Screening Report conclusion

The findings and conclusion reached by the authors of the AA Screening Report, and the reasons for reaching that conclusion, must be clearly set out in the report, based on supporting evidence and objective criteria. This is of particular importance in cases where the AA process ends at the screening stage because the conclusion is there are no likely significant effects on any European Site.

2 <https://gis.epa.ie/EPAMaps/AAGeoToo>

3 Appropriate Assessment Screening for Development Management (OPR, 2021)

Figure 5.1 - The AA screening Process ⁴

Steps and matters to be considered



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.

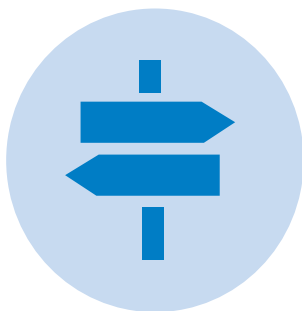
(c) Determine which of those Qualifying Interests/conservation objectives could be affected by the proposed development.



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.

⁴ From the Appropriate Assessment Screening for Development Management (OPR, 2021)

» 5.2 AA Screening Determination

1. Once the AA Screening report has been completed as described in 5.1 above, a formal AA Screening Determination must be made by the Competent Authority.
2. This is a separate document prepared by the competent authority (which in relation to AA Screening for active travel initiatives will be the Local Authority), which must set out the reasons for the determination made.
3. The screening process must conclude with a clear statement of the conclusion reached, and the basis upon which it was reached (i.e. the reasons for the determination). As set out in the Office of the Planning Regulator's 2021 guidance on Appropriate Assessment Screening for Development Management⁵, the screening determination should include four key elements, to varying degrees of detail depending on the characteristics of the project/proposal and the site location:
 1. **Describe:** Provide a description of the project/proposal and local site characteristics,
 2. **Identify:** Identify the relevant European sites,
 3. **Assess:** Assessment of likely effects – direct, indirect and in-combination, and
 4. **Conclude:** Provide a clear statement on the outcome of the screening process and a summary of the reasons for reaching the conclusion (without reliance on mitigation measures).
4. **Screening will result in the following conclusions or outcomes:**
 - a) **No likelihood of significant effects:** A full Appropriate assessment (Stage 2) and resulting NIS is not required.
 - b) **Significant effects cannot be excluded:** Appropriate assessment is required and a Natura Impact Statement (NIS) will have to be prepared.

» 5.3 Making Documentation Available to the Public

1. **The AA Screening Report & Screening Determination must be made available to the public for inspection**
 - (i) at the offices of the Local Authority; and,
 - (ii) electronically (usually by making documents available on the local authority website). (see section 5.4.4 below on the requirement for public consultation of the Screening Determination since July 2021)

⁵ Appropriate Assessment Screening for Development Management (OPR, 2021)

» 5.4 Important Things to Note for Local Authorities

5.4.1 The Part 8 Process

As set out on page 27 below, Local authority own development which is “screened in” for appropriate assessment cannot proceed under the ‘Part 8’ process (Section 179(6)(e) of the 2000 Act). Where appropriate assessment is required, an NIS must be prepared and an application for approval must be made to An Bord Pleanála.

Where an initiative has been screened out for EIA and AA and is proceeding under the ‘Part 8’ process, the report by the chief executive to the elected members recommending whether or not that initiative should proceed (prepared under Section 179(3)(a)(i) of the 2000 Act) should also be accompanied by an AA Screening Determination (in addition to an EIA Screening Determination as discussed in section 3.5 above).

Further, where an initiative is “screened out” and is being progressed under the Part 8 process, a member of the public who is dissatisfied with the local authority’s AA Screening Determination (i.e. a person who believes that an Appropriate Assessment should be required for that initiative) can make an application to An Bord Pleanála under Article 250(3)(b) of the 2001 Regulations for a determination as to whether that initiative would be likely to have a significant effect on a European Site, and where such an application is made An Bord Pleanála shall make a determination on the matter as soon as possible. If An Bord Pleanála determines that the initiative would be likely to have a significant effect on a European Site, then an appropriate assessment will be required and an NIS will need to be prepared, and an application for approval must be made to An Bord Pleanála.

5.4.2 Timing

Steps 5.1 and 5.2 above must be completed **before** any decision is taken to implement any Active Travel Initiative.

5.4.3 Conflicts of Interest

Ensure that the department/section that makes the AA Screening Determination is different from the department/section which is promoting the Active Travel Initiative, so as to ensure an appropriate **functional separation** between those roles and avoid any suggestion of a conflict of interest arising.

5.4.4 Public Participation if “screened in” for Appropriate Assessment

Following recent changes to the Habitats Regulations made in June 2021⁶, public consultation is required if a plan or project is screened in for AA under the Habitats Regulations.

6 *S.I. 293 of 2021 - European Union (Birds and Natural Habitats) (Amendment) Regulations 2021*

The Regulations outline the process to be followed in carrying out such a public consultation which must last a minimum of 30 days and include publication of the NIS prepared in respect of the plan or project and the project “application”.

» 5.5 Mitigation Measures in AA Screening

1. Mitigation measures **must not** be taken into account in AA Screening.
2. The test as to whether a measure is a “mitigation measure” or not is not determined by whether the measure proposed is “integral” to a project, rather than merely “additional”. The question to ask is whether the proposed measure can be said to have been **intended to avoid or reduce harmful effects on a Natura 2000 site**, and if so it is not permitted to be taken into account in AA Screening.⁷
3. A good example of a measure adopted solely and exclusively for some other purpose (i.e. not to avoid or reduce harmful effects on a Natura 2000 site) is Sustainable Urban Drainage Systems (“SuDS”), i.e., standard drainage systems which are required (with limited exceptions) to be incorporated into all new developments. SuDS have been regarded as standard measures, regardless of proximity to a European site.⁸
4. Recently, some doubt was cast on whether even SuDS could fall to be considered as “mitigation measures” and so not permitted to be taken into account in the screening exercise, but the decision of the CJEU in *Eco Advocacy v An Bord Pleanála* clarified that when carrying out an AA Screening, “*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.*”⁹
5. Therefore, measures such as SuDS, which are incorporated into a project as standard features, inherent in the project and irrespective of any effect on any European Site, can be taken into account at the AA Screening stage.
6. However, where such measures are taken into account, the AA Screening Report should spell out how the local authority can be comfortable that those measures have been incorporated as standard features irrespective of any effect on any European Site, and that there can be no doubt but that is the case, for example by reference to construction or design standards that require the incorporation of such measures.

⁷ In *People Over Wind and Sweetman v Coillte Teoranta* (C-323/17), the CJEU held that it was not appropriate to take account of measures intended to avoid or reduce the harmful effects of a plan or project at the screening stage.

⁸ *Kelly v An Bord Pleanála & Anor* (Eoin Kelly v. An Bord Pleanála [2019] IEHC 84)

⁹ *Eco Advocacy CLG v An Bord Pleanála*, Case C-721/21

Part Six

What is the appropriate statutory approval process for my project?

6

6

What is the appropriate statutory approval process for my project?

1 Approval process for Active Travel Initiatives (which are not "road development")

- The results of any EIA Screening and/or AA Screening process will inform the statutory approval process required for an Active Travel Initiative:-
 - EIA only Required**
Requires an EIA, but does not require an AA. Local Authority applies to An Bord Pleanála for approval under **section 175 of the 2000 Act.**
 - AA only Required**
Requires an AA but not an EIA. Local Authority applies to An Bord Pleanála for approval under **section 177AE of the 2000 Act.**
 - Both EIA and AA Required**
Requires both an EIA and an AA. Local Authority makes one application to An Bord Pleanála for approval, complying with both **sections 175 and 177AE of the 2000 Act.**
 - Neither EIA nor AA required - Consider other process.**

2 Approval process for "road development" Active Travel Initiatives

- The results of any EIA Screening and/or AA Screening process will inform the statutory approval process required for an Active Travel Initiative:-
 - EIA only Required**
Requires an EIA under the 1993 Act, but does not require an AA. Local Authority applies to An Bord Pleanála for approval under **section 51 of the 1993 Act.**
 - AA only Required**
Requires an AA but not an EIA. Local Authority applies to An Bord Pleanála for approval under **section 177AE of the 2000 Act.**
 - Both EIA and AA Required**
Requires an EIA under the 1993 Act, and also requires an AA. Local Authority applies to An Bord Pleanála for approval under **section 51 of the 1993 Act.**
 - Neither EIA nor AA required - Consider other planning controls.**

Exemption of the Part 8 Process:

- Section 179(6)(bb) of the 2000 Act provides that Section 179 (Part 8 process) **does not apply** to proposed development which:-
 - "consists of works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided under section 95 (as amended by section 37 of the Road Traffic Act 1994) of the Road Traffic Act 1961 or under section 38 of the Road Traffic Act 1994"*
- Section 179(6)(b) of the 2000 Act also provides an exemption from the Part 8 process where the works are necessary "for dealing urgently with any situation which the chief executive considers is an emergency situation calling for immediate action".

3 If neither EIA nor AA is required, consider other planning controls

- If the Active Travel Initiative does **not** require an EIA or AA, and is "exempted development", other planning controls may still apply.
- Other planning controls which may apply to different types of Active Travel Initiative include, for example:-
 - (i) Section 38 of the Road Traffic Act 1994** (traffic calming measures);
 - (ii) Section 95 of the Road Traffic Act 1961** (traffic signs); and,
 - (iii) the Part 8 process** (section 179 of the 2000 Act).
- Consider which, if any, of these other statutory processes might apply to a particular Active Travel Initiative.

Note: Section 138 of the Local Government Act 2001

- Even where the Part 8 process does not apply, Section 138 of the Local Government Act 2001 likely will apply.
- This requires the Chief Executive to inform the elected members of the local authority prior to carrying out any "works".
- Section 139 allows the elected members by resolution to direct the chief executive **not** to proceed with those works.



Part Seven

Quick Reference Guides



7

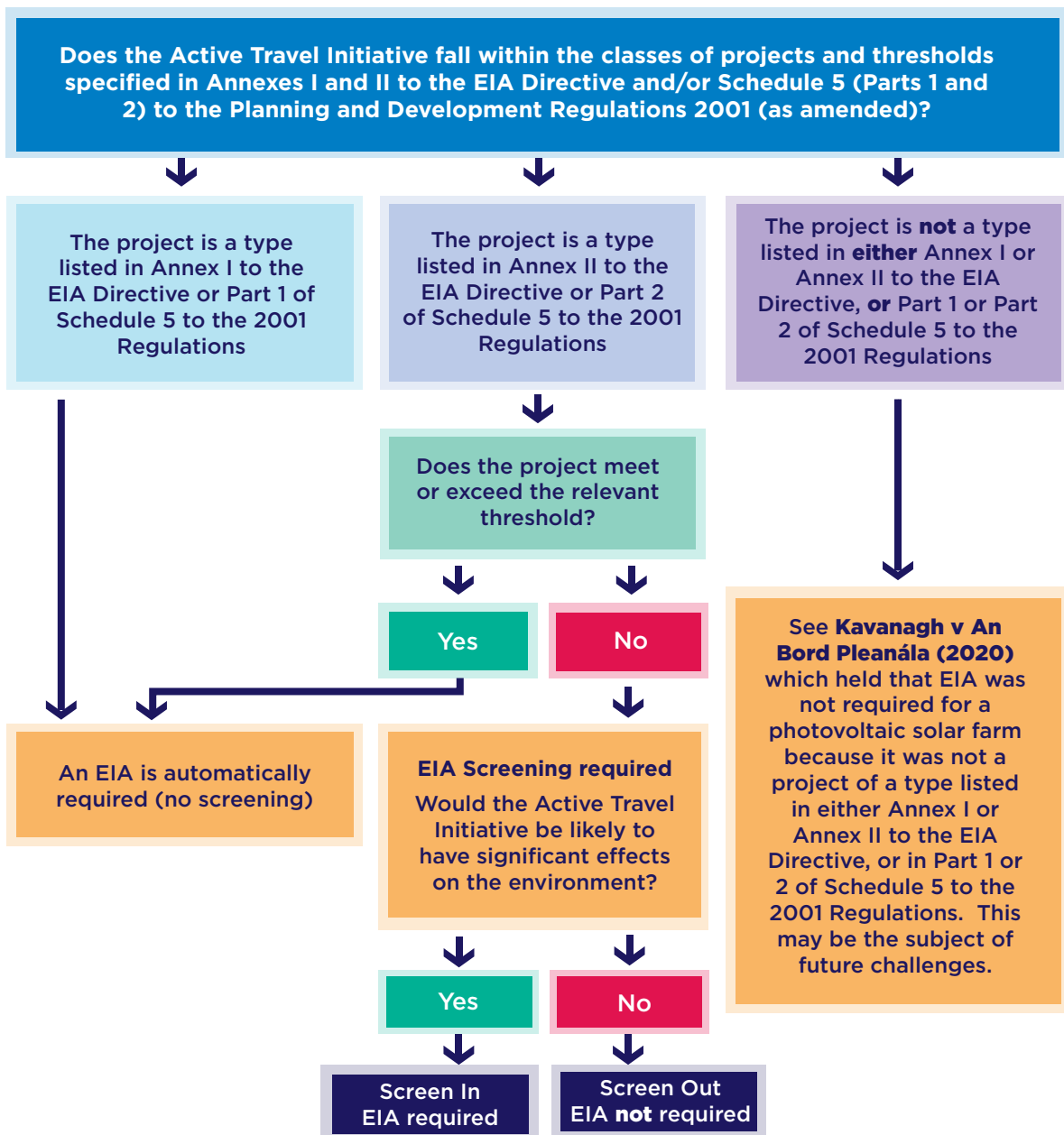
7

Quick Reference Guides

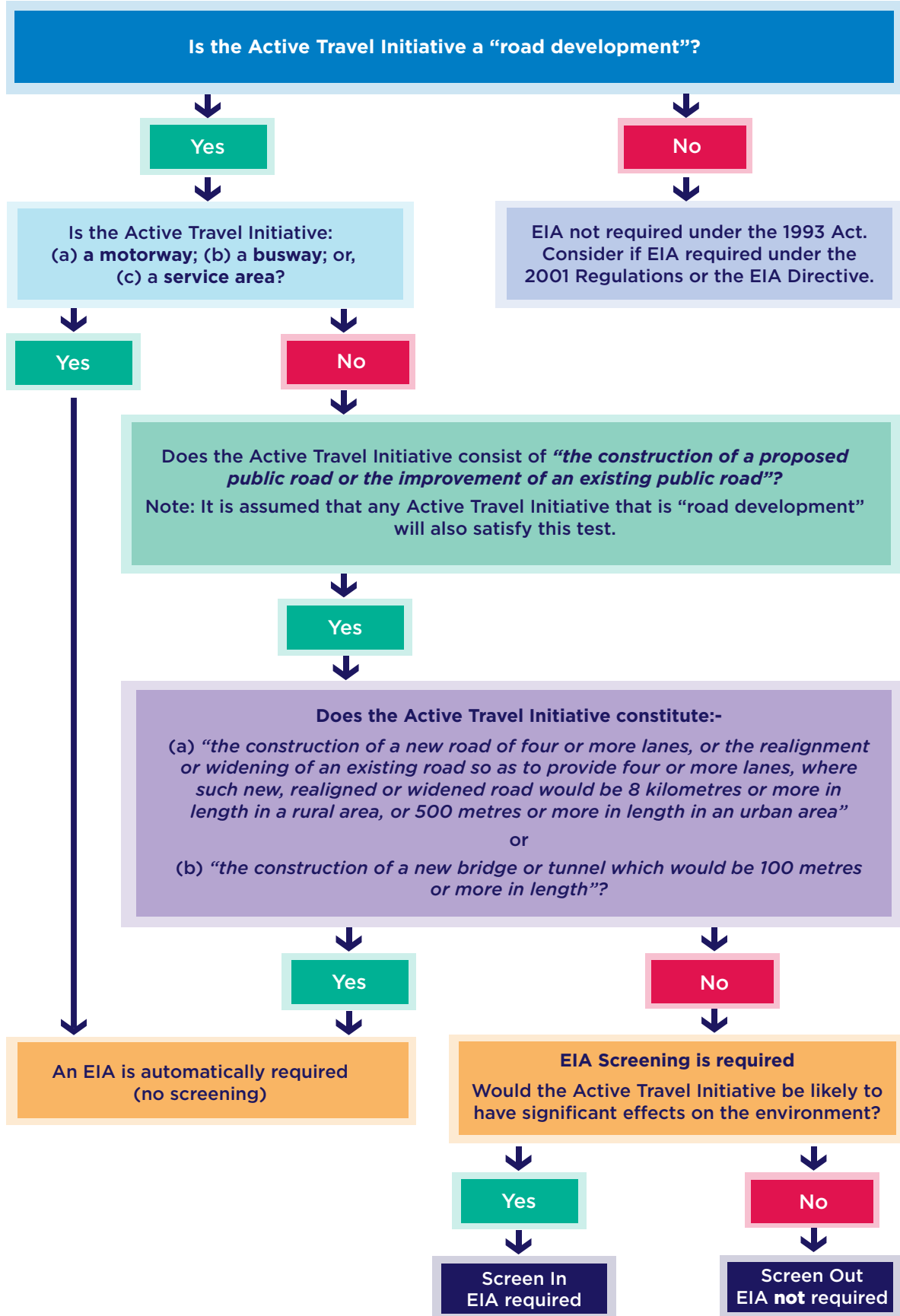
Below are a number of quick guides or cheat sheets to help you decide whether EIA Screening and/or EIA, and whether AA Screening and/or AA are required

1. Is EIA/EIA Screening Required?

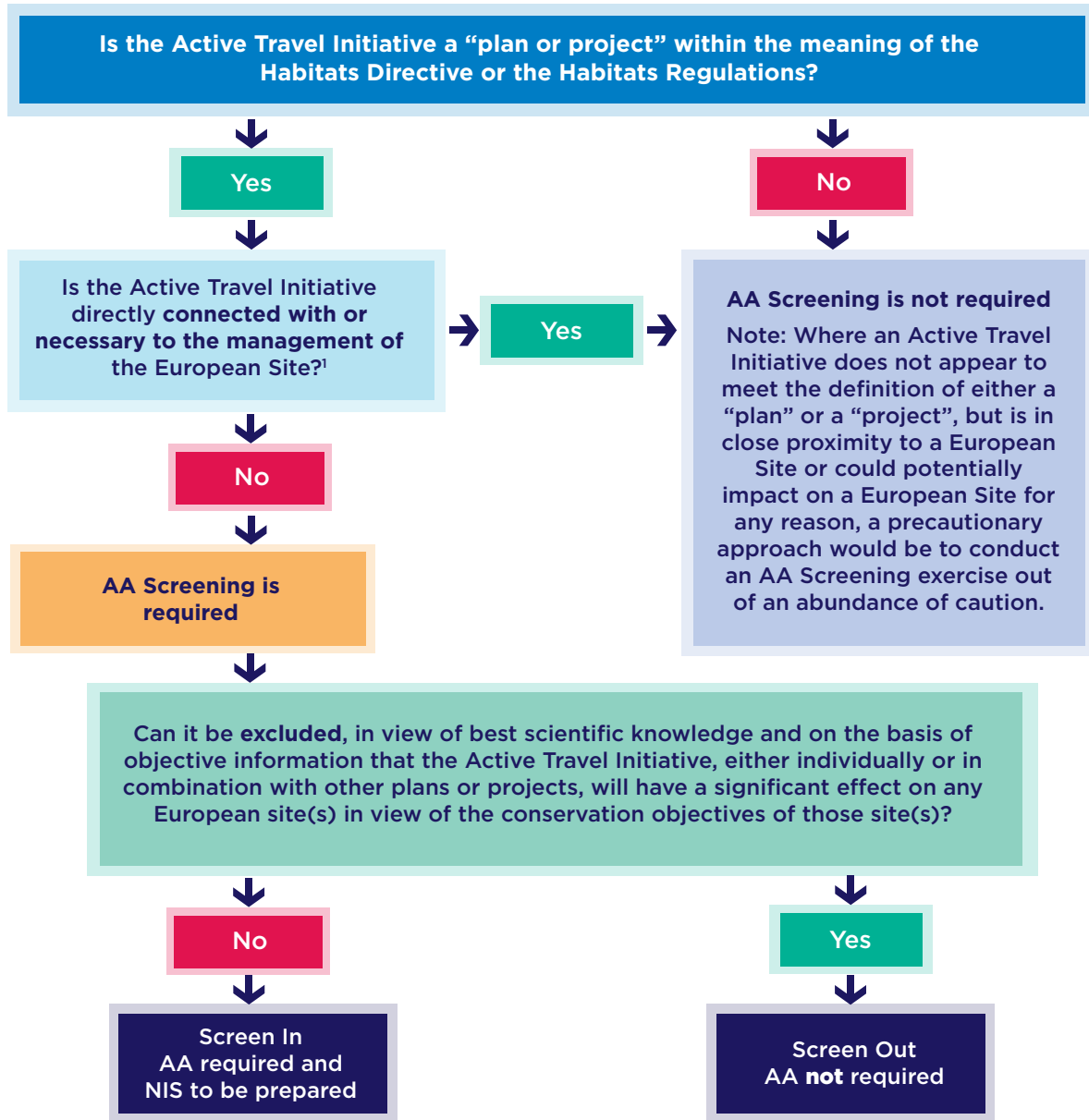
Active Travel Initiatives which are not “road development”



2. Is EIA/EIA Screening Required under the 1993 Act?



3. Is AA Screening and/or AA Required?



1 The NPWS’ 2009 guidance document (as amended 2010) “Appropriate Assessment of Plans and Projects in Ireland; Guidance for Planning Authorities” notes that “Plans or projects that are directly connected with or necessary to the nature conservation management of a Natura 2000 site are essentially exempt from further consideration. Such exceptions will be comparatively rare and it is recommended that the reasons and justifications, and any possible wider effects and mitigation measures, are assessed and recorded in advance of the decision to proceed in each case, together with evidence of consultation with the National Parks and Wildlife Service (NPWS) of the Department.”

Appendices





Appendix A

Part 1 - Annex I to the EIA Directive

PROJECTS REFERRED TO IN ARTICLE 4(1)

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
2. (a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more;
(b) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors⁽¹⁾ (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. (a) Installations for the reprocessing of irradiated nuclear fuel;
(b) Installations designed:
 - (i) for the production or enrichment of nuclear fuel;
 - (ii) for the processing of irradiated nuclear fuel or high-level radioactive waste;
 - (iii) for the final disposal of irradiated nuclear fuel;
 - (iv) solely for the final disposal of radioactive waste;
 - (v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.
4. (a) Integrated works for the initial smelting of cast iron and steel;
(b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

1 Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.



- 5.** Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilisation of more than 200 tonnes per year.
- 6.** Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:
 - (a) for the production of basic organic chemicals;
 - (b) for the production of basic inorganic chemicals;
 - (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
 - (d) for the production of basic plant health products and of biocides;
 - (e) for the production of basic pharmaceutical products using a chemical or biological process;
 - (f) for the production of explosives.
- 7.**
 - (a) Construction of lines for long-distance railway traffic and of airports⁽²⁾ with a basic runway length of 2 100 m or more;
 - (b) Construction of motorways and express roads⁽³⁾;

2 For the purposes of this Directive, 'airport' means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14).

3 For the purposes of this Directive, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

- (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road or realigned and/or widened section of road would be 10 km or more in a continuous length.
- 8.** (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes;
- (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.
- 9.** Waste disposal installations for the incineration, chemical treatment as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste under heading D9, or landfill of hazardous waste, as defined in point 2 of Article 3 of that Directive.
- 10.** Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.
- 11.** Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
- 12.** (a) Works for the transfer of water resources between river basins where that transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;
- (b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 % of that flow.
- In both cases transfers of piped drinking water are excluded.
- 13.** Waste water treatment plants with a capacity exceeding 150 000 population equivalent as defined in point 6 of Article 2 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.
- 14.** Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.
- 15.** Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

- 16.** Pipelines with a diameter of more than 800 mm and a length of more than 40 km:
 - (a) for the transport of gas, oil, chemicals;
 - (b) for the transport of carbon dioxide (CO₂) streams for the purposes of geological storage, including associated booster stations.
- 17.** Installations for the intensive rearing of poultry or pigs with more than:
 - (a) 85,000 places for broilers, 60 000 places for hens;
 - (b) 3,000 places for production pigs (over 30 kg); or
 - (c) 900 places for sows.
- 18.** Industrial plants for the production of:
 - (a) pulp from timber or similar fibrous materials;
 - (b) paper and board with a production capacity exceeding 200 tonnes per day.
- 19.** Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.
- 20.** Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
- 21.** Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.
- 22.** Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide.
- 23.** Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Annex, or where the total yearly capture of CO₂ is 1,5 megatonnes or more.
- 24.** Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.





Appendix A

Part 2 – Part 1 of Schedule 5 to the 2001 Regulations

PART 1

1. A crude oil refinery (excluding undertakings manufacturing only lubricants from crude oil) or an installation for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
2. (a) A thermal power station or other combustion installation with a heat output of 300 megawatts or more.

(b) A nuclear power station or other nuclear reactor⁴ including the dismantling or decommissioning of such a power station or reactor (except a research installation for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. (a) All installations for the reprocessing of irradiated nuclear fuel.
(b) Installations designed -
 - for the production or enrichment of nuclear fuel,
 - for the processing of irradiated nuclear fuel or high level radioactive waste,
 - for the final disposal of irradiated fuel,
 - solely for the final disposal of radioactive waste,
 - solely for the storage (planned for more than 10 years) of irradiated fuels or radioactive waste in a different site than the production site.
4. (a) Integrated works for the initial smelting of cast iron and steel.
(b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

4 Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

- 5.** An installation for the extraction of asbestos or for the processing and transformation of asbestos or products containing asbestos-
 - (a) in case the installation produces asbestos-cement products, where the annual production would exceed 20,000 tonnes of finished products,
 - (b) in case the installation produces friction material, where the annual production would exceed 50 tonnes of finished products, or
 - (c) in other cases, where the installation would utilise more than 200 tonnes of asbestos per year.

- 6.** Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are-
 - (a) for the production of basic organic chemicals,
 - (b) for the production of basic inorganic chemicals,
 - (c) for the production of phosphorous, nitrogen or potassium based fertilisers (simple or compound fertilisers),
 - (d) for the production of basic plant health products and of biocides,
 - (e) for the production of basic pharmaceutical products using a chemical or biological process,
 - (f) for the production of explosives.

- 7.** A line for long-distance railway traffic, or an airport⁵ with a basic runway length of 2,100 metres or more.

- 8.**
 - (a) Inland waterways and ports for inland waterway traffic which permit the passage of vessels of over 1,350 tonnes.
 - (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.

5 For the purposes of this Directive, 'airport' means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

- 9.** Waste disposal installations for the incineration, chemical treatment as defined in Annex IIA to Directive 75/442/EEC⁶ under heading D9, or landfill of hazardous waste (i.e. waste to which Directive 91/689/EEC⁷ applies).
- 10.** Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9, of nonhazardous waste with a capacity exceeding 100 tonnes per day.
- 11.** Groundwater abstraction or artificial groundwater recharge schemes, where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
- 12.** (a) Works for the transfer of water resources between river basins, where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.
(b) In all other cases, works for the transfer of water resources between river basins, where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5 per cent of this flow.

In the case of (a) and (b) above, transfers of piped drinking water are excluded.
- 13.** Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2, point (6), of Directive 91/271/EEC⁸.
- 14.** Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.
- 15.** Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

6 OJ No. L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 94/3/EC (OJ No. L 5, 7.1.1994, p.15).

7 OJ No. L 377, 31.12.1991, p. 20. Directive as last amended by Directive 94/31/EC (OJ No. L 168, 2.7.1994, p.28).

8 OJ No. L 135, 30.5.1991, p.40. Directive as last amended by the 1994 Act of Accession.

- 16.** Pipelines with a diameter of more than 800mm and a length of more than 40km:
- for the transport of gas, oil, chemicals, and,
 - for the transport of carbon dioxide (CO₂) streams for the purposes of geological storage, including associated booster stations.
- 17.** Installations for the intensive rearing of poultry or pigs with more than-
- (a) 85,000 places for broilers, 60,000 places for hens,-
 - (b) 3,000 places for production pigs (over 30 kilograms), or
 - (c) 900 places for sows.
- 18.** Industrial plants for the-
- (a) production of pulp from timber or similar fibrous materials,
 - (b) production of paper and board with a production capacity exceeding 200 tonnes per day.
- 19.** Quarries and open-cast mining where the surface of the site exceeds 25 hectares.
- 20.** Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.
- 21.** Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200,000 tonnes or more.
- 22.** Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.
- 23.** Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide⁹
- 24.** Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Part, or where the total yearly capture of CO₂ is 1.5 megatonnes or more.



9 OJ No. L 140, 5.6.2009, p.114



Appendix B

Part 1 - Annex II to the EIA Directive (as amended)

PROJECTS REFERRED TO IN ARTICLE 4(2)

1. AGRICULTURE, SILVICULTURE AND AQUACULTURE

- (a) Projects for the restructuring of rural land holdings;
- (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
- (c) Water management projects for agriculture, including irrigation and land drainage projects;
- (d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;
- (e) Intensive livestock installations (projects not included in Annex I);
- (f) Intensive fish farming;
- (g) Reclamation of land from the sea.

2. EXTRACTIVE INDUSTRY

- (a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);
- (b) Underground mining;
- (c) Extraction of minerals by marine or fluvial dredging;
- (d) Deep drillings, in particular:
 - (i) geothermal drilling;
 - (ii) drilling for the storage of nuclear waste material;
 - (iii) drilling for water supplies; with the exception of drillings for investigating the stability of the soil;with the exception of drillings for investigating the stability of the soil;
- (e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.



3. ENERGY INDUSTRY

- (a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);
- (b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);
- (c) Surface storage of natural gas;
- (d) Underground storage of combustible gases;
- (e) Surface storage of fossil fuels;
- (f) Industrial briquetting of coal and lignite;
- (g) Installations for the processing and storage of radioactive waste (unless included in Annex I);
- (h) Installations for hydroelectric energy production;
- (i) Installations for the harnessing of wind power for energy production (wind farms);
- (j) Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Annex I to this Directive.

4. PRODUCTION AND PROCESSING OF METALS

- (a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;

- (b) Installations for the processing of ferrous metals:
 - (i) hot-rolling mills;
 - (ii) smitheries with hammers;
 - (iii) application of protective fused metal coats;
- (c) Ferrous metal foundries;
- (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);
- (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
- (f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;
- (g) Shipyards;
- (h) Installations for the construction and repair of aircraft;
- (i) Manufacture of railway equipment;
- (j) Swaging by explosives;
- (k) Installations for the roasting and sintering of metallic ores.

5. MINERAL INDUSTRY

- (a) Coke ovens (dry coal distillation);
- (b) Installations for the manufacture of cement;
- (c) Installations for the production of asbestos and the manufacture of asbestos products (projects not included in Annex I);
- (d) Installations for the manufacture of glass including glass fibre;
- (e) Installations for smelting mineral substances including the production of mineral fibres;
- (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

6. CHEMICAL INDUSTRY (PROJECTS NOT INCLUDED IN ANNEX I)

- (a) Treatment of intermediate products and production of chemicals;
- (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;
- (c) Storage facilities for petroleum, petrochemical and chemical products.

7. FOOD INDUSTRY

- (a) Manufacture of vegetable and animal oils and fats;
- (b) Packing and canning of animal and vegetable products;
- (c) Manufacture of dairy products;
- (d) Brewing and malting;
- (e) Confectionery and syrup manufacture;
- (f) Installations for the slaughter of animals;
- (g) Industrial starch manufacturing installations;
- (h) Fish-meal and fish-oil factories;
- (i) Sugar factories.

8. TEXTILE, LEATHER, WOOD AND PAPER INDUSTRIES

- (a) Industrial plants for the production of paper and board (projects not included in Annex I);
- (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;
- (c) Plants for the tanning of hides and skins;
- (d) Cellulose-processing and production installations.

9. RUBBER INDUSTRY

Manufacture and treatment of elastomer-based products.

10. INFRASTRUCTURE PROJECTS

- (a) Industrial estate development projects;
- (b) Urban development projects, including the construction of shopping centres and car parks;
- (c) Construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I);
- (d) Construction of airfields (projects not included in Annex I);
- (e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);
- (f) Inland-waterway construction not included in Annex I, canalisation and flood-relief works;
- (g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);
- (h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;



- (i) Oil and gas pipeline installations and pipelines for the transport of CO₂ streams for the purposes of geological storage (projects not included in Annex I);
- (j) Installations of long-distance aqueducts;
- (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
- (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;
- (m) Works for the transfer of water resources between river basins not included in Annex I.

11. OTHER PROJECTS

- (a) Permanent racing and test tracks for motorised vehicles;
- (b) Installations for the disposal of waste (projects not included in Annex I);
- (c) Waste-water treatment plants (projects not included in Annex I);
- (d) Sludge-deposition sites;
- (e) Storage of scrap iron, including scrap vehicles;
- (f) Test benches for engines, turbines or reactors;
- (g) Installations for the manufacture of artificial mineral fibres;
- (h) Installations for the recovery or destruction of explosive substances;
- (i) Knackers' yards.

12. TOURISM AND LEISURE

- (a) Ski runs, ski lifts and cable cars and associated developments;
- (b) Marinas;
- (c) Holiday villages and hotel complexes outside urban areas and associated developments;
- (d) Permanent campsites and caravan sites;
- (e) Theme parks.

- 13.** (a) Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);
- (b) Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.





Appendix B

Part 2 - Part 2 of Schedule 5 to the 2001 Regulations

PART 1

1. AGRICULTURE, SILVICULTURE AND AQUACULTURE

- (c) Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.
- (d) (ii) Replacement of broadleaf high forest by conifer species, where the area involved would be greater than 10 hectares.
(iii) Deforestation for the purpose of conversion to another type of land use, where the area to be deforested would be greater than 10 hectares of natural woodlands or 70 hectares of conifer forest.
- (e) (i) Installations for intensive rearing of poultry not included in Part 1 of this Schedule which would have more than 40,000 places for poultry.
(ii) Installations for intensive rearing of pigs not included in Part 1 of this Schedule which would have more than 2,000 places for production pigs (over 30 kilograms) in a finishing unit, more than 400 places for sows in a breeding unit or more than 200 places for sows in an integrated unit.
- (f) Seawater fish breeding installations with an output which would exceed 100 tonnes per annum; all fish breeding installations consisting of cage rearing in lakes; all fish breeding installations upstream of drinking water intakes; other freshwater fish breeding installations which would exceed 1 million smolts and with less than 1 cubic metre per second per 1 million smolts low flow diluting water.
- (g) Reclamation of land from the sea, where the area of reclaimed land would be greater than 10 hectares.

2. EXTRACTIVE INDUSTRY

- (a) Peat extraction which would involve a new or extended area of 30 hectares or more.
- (b) Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.
- (c) All extraction of minerals within the meaning of the Minerals Development Acts, 1940 to 1999.
- (d) Extraction of stone, gravel, sand or clay by marine dredging (other than maintenance dredging), where the area involved would be greater than 5 hectares or, in the case of fluvial dredging (other than maintenance dredging), where the length of river involved would be greater than 500 metres.
- (e) With the exception of drilling for investigating the stability of the soil, deep drilling, consisting of—
 - (i) geothermal drilling,
 - (ii) drilling for the storage of nuclear waste material,
 - (iii) drilling for water supplies, where the expected supply would exceed 2 million cubic metres per annum, or
 - (iv) any other deep drilling, except where, in considering whether or not an environmental impact assessment should be carried out—
 - (I) a planning authority or the Board—
 - (A) concludes, or
 - (B) having regard to the criteria set out in Schedule 7, determines, for the purposes of Part X of the Act, that the proposed drilling concerned would not have a significant effect on the environment,
 - (II) a local authority, in exercise of the powers conferred on it by regulation 120, concludes or determines that there is no real likelihood of significant effects on the environment arising from the proposed drilling concerned,
 - (III) a State authority, in exercise of the powers conferred on it by regulation 123A, concludes or determines that there is no real likelihood of significant effects on the environment arising from the proposed drilling concerned,
 - (IV) it is decided, in accordance with section 13A of the Foreshore Act 1933 (No. 12 of 1933) (in this subparagraph referred to as the “Act of 1933”), by the appropriate Minister (within the meaning of the Act of 1933) that the drilling concerned would not have a significant effect on the environment,

- (V) the appropriate Minister (within the meaning of the Act of 1933) confirms—
 - (A) in accordance with paragraph (a) of subsection (2) of section 13B of the Act of 1933, that the authorisation of the Minister for Communications, Climate Action and Environment records that a screening or assessment referred to in that paragraph has been carried out by the Minister for Communications, Climate Action and Environment in respect of the underlying project to which the petroleum activity relates, or
 - (B) in accordance with paragraph (b) of the said subsection (2), that the Minister for Communications, Climate Action and Environment will carry out such a screening or assessment in respect of that project, or
- (VI) the Minister for Communications, Climate Action and Environment—
 - (A) in accordance with section 8A of the Minerals Development Act 1940 (No. 31 of 1940), determines that a screening determination for environmental impact assessment is not required,
 - (B) when making a screening determination for environmental impact assessment in accordance with subsection (8) of the said section 8A of the Minerals Development Act 1940 (No. 31 of 1940), determines that the drilling concerned would not be likely to have significant effects on the environment.
- (f) All surface industrial installations for the extraction of coal, petroleum (excluding natural gas), ores or bituminous shale not included in Part 1 of this Schedule.
- (g) All extraction of petroleum (excluding natural gas) not included in Part 1 of this Schedule.
- (h) All onshore extraction of natural gas and offshore extraction of natural gas (where the extraction would take place within 10 kilometres of the shoreline) not included in Part 1 of this Schedule.

3. ENERGY INDUSTRY

- (a) Industrial installations for the production of electricity, steam and hot water not included in Part 1 of this Schedule with a heat output of 300 megawatts or more.

- (b) Industrial installations for carrying gas, steam and hot water with a potential heat output of 300 megawatts or more, or transmission of electrical energy by overhead cables not included in Part 1 of this Schedule, where the voltage would be 200 kilovolts or more.
- (c) Installations for surface storage of natural gas, where the storage capacity would exceed 200 tonnes.
- (d) Installations for underground storage of combustible gases, where the storage capacity would exceed 200 tonnes.
- (e) Installations for the surface storage of fossil fuels, where the storage capacity would exceed 100,000 tonnes.
- (f) Installations for industrial briquetting of coal and lignite, where the production capacity would exceed 150 tonnes per day.
- (g) Installations for the processing and storage of radioactive waste not included in Part 1 of this Schedule.
- (h) Installations for hydroelectric energy production with an output of 20 megawatts or more, or where the new or extended superficial area of water impounded would be 30 hectares or more, or where there would be a 30 per cent change in the maximum, minimum or mean flows in the main river channel.



- (i) Installations for the harnessing of wind power for energy production (wind farms) with more than 5 turbines or having a total output greater than 5 megawatts.
- (j) Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Part 1 of this Schedule.



4. PRODUCTION AND PROCESSING OF METALS

- (a) All installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting.
- (b) Installations for the processing of ferrous metals-
 - (i) hot-rolling mills and smitheries with hammers, where the production area would be greater than 500 square metres,
 - (ii) application of protective fused metal coats, where the production area would be greater than 100 square metres.
- (c) Ferrous metal foundries with a batch capacity of 5 tonnes or more or where the production area would be greater than 500 square metres.
- (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining foundry casting etc.), where the melting capacity would exceed 0.5 tonnes or where the production area would be greater than 500 square metres.
- (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process, where the production area would be greater than 100 square metres.
- (f) All installations for manufacture and assembly of motor vehicles or manufacture of motor-vehicle engines.
- (g) Shipyards, where the area would be 5 hectares or more, or with capacity for vessels of 10,000 tonnes or more (dead-weight).
- (h) All installations for the construction of aircraft with a seating capacity exceeding 10 passengers.
- (i) Manufacture of railway equipment, where the production area would be greater than 100 square metres.

- (j) Swaging by explosives, where the floor area would be greater than 100 square metres.
- (k) All installations for the roasting and sintering of metallic ores

5. MINERAL INDUSTRY

- (a) All coke ovens (dry coal distillation).
- (b) All installations for the manufacture of cement.
- (c) All installations for the production of asbestos and the manufacture of asbestos based products not included in Part 1 of this Schedule.
- (d) Installations for the manufacture of glass, including glass fibre, where the production capacity would exceed 5,000 tonnes per annum.
- (e) All installations for smelting mineral substances including the production of mineral fibres.
- (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, or with a kiln capacity exceeding 4 cubic metres and with a setting density per kiln exceeding 300 kilograms per cubic metre.

6. CHEMICAL INDUSTRY (DEVELOPMENT NOT INCLUDED IN PART 1 OF THIS SCHEDULE)

- (a) Installations for treatment of intermediate products and production of chemicals using a chemical or biological process.
- (b) All installations for production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides using a chemical or biological process.
- (c) Storage facilities for petroleum, where the storage capacity would exceed 50,000 tonnes.
- (d) Storage facilities for petrochemical and chemical products, where such facilities are storage to which the provisions of Articles 9, 11 and 13 of Council Directive 96/82/EC¹ apply.

7. FOOD INDUSTRY

- (a) Installations for manufacture of vegetable and animal oils and fats, where the capacity for processing raw materials would exceed 40 tonnes per day.

1 OJ No. L 10, 14.1.1997, p.13.

- (b) Installations for packing and canning of animal and vegetable products, where the capacity for processing raw materials would exceed 100 tonnes per day.
- (c) Installations for manufacture of dairy products, where the processing capacity would exceed 50 million gallons of milk equivalent per annum.
- (d) Installations for commercial brewing and distilling; installations for malting, where the production capacity would exceed 100,000 tonnes per annum.
- (e) Installations for confectionery and syrup manufacture, where the production capacity would exceed 100,000 tonnes per annum.
- (f) Installations for the slaughter of animals, where the daily capacity would exceed 1,500 units and where units have the following equivalents:-
 - 1 sheep = 1 unit
 - 1 pig = 2 units
 - 1 head of cattle = 5 units
- (g) All industrial starch manufacturing installations.
- (h) All fish-meal and fish-oil factories.
- (i) All sugar factories



8. TEXTILE, LEATHER, WOOD AND PAPER INDUSTRIES

- (a) All installations for the production of paper and board not included in Part 1 of this Schedule.
- (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation or dyeing of fibres or textiles), where the treatment capacity would exceed 10 tonnes per day.
- (c) Plants for the tanning of hides and skins, where the treatment capacity would exceed 100 skins per day.
- (d) Cellulose-processing and production installations, where the production capacity would exceed 10,000 tonnes per annum.

9. RUBBER INDUSTRY

Installations for manufacture and treatment of elastomer based products, where the production capacity would exceed 10,000 tonnes per annum.

10. INFRASTRUCTURE PROJECTS

- (a) Industrial estate development projects, where the area would exceed 15 hectares.
- (b) (i) Construction of more than 500 dwelling units.
 - (ii) Construction of a car-park providing more than 400 spaces, other than a car-park provided as part of, and incidental to the primary purpose of, a development.
 - (iii) Construction of a shopping centre with a gross floor space exceeding 10,000 square metres.
 - (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.
(In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)
- (c) All construction of railways and of intermodal transshipment facilities and of intermodal terminals not included in Part 1 of this Schedule which would exceed 15 hectares in area.
- (d) All airfields not included in Part 1 of this Schedule with paved runways which would exceed 800 metres in length.
- (dd) All private roads which would exceed 2000 metres in length.
- (e) New or extended harbours and port installations, including fishing harbours, not included in Part 1 of this Schedule, where the area, or additional area, of water enclosed would be 20 hectares or more, or

which would involve the reclamation of 5 hectares or more of land, or which would involve the construction of additional quays exceeding 500 metres in length.

- (f) (i) Inland waterway construction not included in Part 1 of this Schedule which would extend over a length exceeding 2 kilometres.
- (ii) Canalisation and flood relief works, where the immediate contributing sub-catchment of the proposed works (i.e. the difference between the contributing catchments at the upper and lower extent of the works) would exceed 100 hectares or where more than 2 hectares of wetland would be affected or where the length of river channel on which works are proposed would be greater than 2 kilometres.
- (g) Dams and other installations not included in Part 1 of this Schedule which are designed to hold water or store it on a long-term basis, where the new or extended area of water impounded would be 30 hectares or more.
- (h) All tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport.
- (i) Oil and gas pipeline installations and pipelines for the transport of CO₂ streams for the purposes of geological storage (projects not included in Part 1 of this Schedule).
- (j) Installation of overground aqueducts which would have a diameter of 1,000 millimetres or more and a length of 500 metres or more.
- (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dikes, moles, jetties and other sea defence works, where the length of coastline on which works would take place would exceed 1 kilometre, but excluding the maintenance and reconstruction of such works or works required for emergency purposes.
- (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Part 1 of this Schedule where the average annual volume of water abstracted or recharged would exceed 2 million cubic metres.
- (m) Works for the transfer of water resources between river basins not included in Part 1 of this Schedule where the annual volume of water abstracted or recharged would exceed 2 million cubic metres.





11. OTHER PROJECTS

- (a) All permanent racing and test tracks for motorised vehicles.
- (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.
- (c) Waste water treatment plants with a capacity greater than 10,000 population equivalent as defined in Article 2, point (6), of Directive 91/271/EEC not included in Part 1 of this Schedule.
- (d) Sludge-deposition sites where the expected annual deposition is 5,000 tonnes of sludge (wet).
- (e) Storage of scrap metal, including scrap vehicles where the site area would be greater than 5 hectares.
- (f) Test benches for engines, turbines or reactors where the floor area would exceed 500 square metres.
- (g) All installations for the manufacture of artificial mineral fibres.
- (h) All installations for the manufacture, packing, loading or placing in cartridges of gunpowder and explosives or for the recovery or destruction of explosive substances.
- (i) All knackers' yards in built-up areas.

12. TOURISM AND LEISURE

- (a) Ski-runs, ski-lifts and cable-cars where the length would exceed 500 metres and associated developments.
- (b) Sea water marinas where the number of berths would exceed 300 and fresh water marinas where the number of berths would exceed 100.

- (c) Holiday villages which would consist of more than 100 holiday homes outside built-up areas; hotel complexes outside built-up areas which would have an area of 20 hectares or more or an accommodation capacity exceeding 300 bedrooms.
- (d) Permanent camp sites and caravan sites where the number of pitches would be greater than 100.
- (e) Theme parks occupying an area greater than 5 hectares.

13. CHANGES, EXTENSIONS, DEVELOPMENT AND TESTING

- (a) Any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:-
 - (i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and
 - (ii) result in an increase in size greater than -
 - 25 per cent, or
 - an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.
- (b) Projects in Part 1 undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than 2 years.

(In this paragraph, an increase in size is calculated in terms of the unit of measure of the appropriate threshold.)
- (c) Any change or extension of development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, which would result in the demolition of structures, the demolition of which had not previously been authorised, and where such demolition would be likely to have significant effects on the environment, having regard to the criteria set out under Schedule 7.

14. WORKS OF DEMOLITION

Works of demolition carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.

- 15.** Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.



Appendix C

Part 1 – Extract from Section 50 of the Roads Act 1993 (as amended)

- 50.** (1) (a) A road development that is proposed that comprises any of the following shall be subject to an environmental impact assessment:
- (i) the construction of a motorway;
 - (ii) the construction of a busway;
 - (iii) the construction of a service area;
 - (iv) any prescribed type of road development consisting of the construction of a proposed public road or the improvement of an existing public road.
- (b) If An Bord Pleanála considers that any road development proposed (other than development to which paragraph (a) applies) consisting of the construction of a proposed public road or the improvement of an existing public road would be likely to have significant effects on the environment it shall direct that the development be subject to an environmental impact assessment.
- (c) Where a road authority or, as the case may be, the Authority considers that a road development that it proposes (other than development to which paragraph (a) applies) consisting of the construction of a proposed public road or the improvement of an existing public road would be likely to have significant effects on the environment, it shall inform An Bord Pleanála in writing prior to making any application to the Bord for an approval referred to in section 51(1) in respect of the development.
- (d) In particular, where a proposed development (other than development to which paragraph (a) applies) consisting of the construction of a proposed public road or the improvement of an existing public road would be located on—
- (i) a European Site within the meaning of Regulation 2 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011),
 - (ii) land established or recognised as a nature reserve within the meaning of section 15 or 16 of the Wildlife Act 1976 (No. 39 of 1976),

(iii) land designated as a refuge for fauna or flora under section 17 of the Wildlife Act 1976 (No. 39 of 1976), or

(iv) land designated a natural heritage area under section 18 of the Wildlife (Amendment) Act 2000,

the road authority or the Authority, as the case may be, proposing the development shall decide whether or not the proposed development would be likely to have significant effects on the environment.





Appendix C

Part 2 - Extract from the Roads Regulations 1994 (as amended)

8. The prescribed types of proposed road development for the purpose of subsection (1)(a)(iv) of section 50 of the Act shall be—
 - (a) the construction of a new road of four or more lanes, or the realignment or widening of an existing road so as to provide four or more lanes, where such new, realigned or widened road would be eight kilometres or more in length in a rural area, or 500 metres or more in length in an urban area;
 - (b) the construction of a new bridge or tunnel which would be 100 metres or more in length.





Appendix D

Information to be included in EIA Screening Reports

A. - Annex IIA to the EIA Directive (as amended)

INFORMATION REFERRED TO IN ARTICLE 4(4) (INFORMATION TO BE PROVIDED BY THE DEVELOPER ON THE PROJECTS LISTED IN ANNEX II)

1. A description of the project, including in particular:
 - (a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;
 - (b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
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 expected residues and emissions and the production of waste, where relevant;
 - (b) the use of natural resources, in particular soil, land, water and biodiversity.

The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.

B. - Schedule 7A to the 2001 Regulations

INFORMATION TO BE PROVIDED BY THE APPLICANT OR DEVELOPER FOR THE PURPOSES OF SCREENING SUB-THRESHOLD DEVELOPMENT FOR ENVIRONMENTAL IMPACT ASSESSMENT

1. A description of the proposed development, including in particular—
 - (a) a description of the physical characteristics of the whole proposed development and, where relevant, of demolition works, and

- (b) a description of the location of the proposed development, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
- 2.** A description of the aspects of the environment likely to be significantly affected by the proposed development.
 - 3.** A description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment resulting from—
 - (a) the expected residues and emissions and the production of waste, where relevant, and
 - (b) the use of natural resources, in particular soil, land, water and biodiversity.
 - 4.** The compilation of the information at paragraphs 1 to 3 shall take into account, where relevant, the criteria set out in Schedule 7.





Appendix E

Part 1 - Annex III to the EIA Directive (as amended)

SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3)

(CRITERIA TO DETERMINE WHETHER THE PROJECTS LISTED IN ANNEX II SHOULD BE SUBJECT TO AN ENVIRONMENTAL IMPACT ASSESSMENT)

1. CHARACTERISTICS OF PROJECTS

The characteristics of projects must be considered, with particular regard to:

- (a) the size and design of the whole project;
- (b) cumulation with other existing and/or approved projects;
- (c) the use of natural resources, in particular land, soil, water and biodiversity;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of major accidents and/ or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;
- (g) the risks to human health (for example due to water contamination or air pollution).

2. LOCATION OF PROJECTS

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to:

- (a) the existing and approved land use;
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;



- (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under national legislation; Natura 2000 areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

3. TYPE AND CHARACTERISTICS OF THE POTENTIAL IMPACT

The likely significant effects of projects on the environment must be considered in relation to criteria set out in points 1 and 2 of this Annex, with regard to the impact of the project on the factors specified in Article 3(1), taking into account:

- (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.



Appendix E

Part 2 - Schedule 7 to the 2001 Regulations

CRITERIA FOR DETERMINING WHETHER DEVELOPMENT LISTED IN PART 2 OF SCHEDULE 5 SHOULD BE SUBJECT TO AN ENVIRONMENTAL IMPACT ASSESSMENT

1. CHARACTERISTICS OF PROPOSED DEVELOPMENT

The characteristics of proposed development, in particular—

- (a) the size and design of the whole of the proposed development,
- (b) cumulation with other existing development and/or development the subject of a consent for proposed development for the purposes of section 172(1A)(b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment,
- (c) the nature of any associated demolition works,
- (d) the use of natural resources, in particular land, soil, water and biodiversity,
- (e) the production of waste,
- (f) pollution and nuisances,
- (g) the risk of major accidents, and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge, and
- (h) the risks to human health (for example, due to water contamination or air pollution).

2. LOCATION OF PROPOSED DEVELOPMENT

The environmental sensitivity of geographical areas likely to be affected by the proposed development, with particular regard to—

- (a) the existing and approved land use,
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground,

- (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under legislation, including Natura 2000 areas designated pursuant to the Habitats Directive and the Birds Directive and;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards laid down in legislation of the European Union and relevant to the project, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

3. TYPES AND CHARACTERISTICS OF POTENTIAL IMPACT

The likely significant effects on the environment of proposed development in relation to criteria set out under paragraphs 1 and 2, with regard to the impact of the project on the factors specified in paragraph (b)(i)(I) to (V) of the definition of 'environmental impact assessment report' in section 171A of the Act, taking into account—

- (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 development the subject of a consent for proposed development for the purposes of section 172(1A)(b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment, and
- (h) the possibility of effectively reducing the impact.



Appendix F

EIA Screening Checklist

Questions to be Considered For further guidance on factors to be considered see the more detailed questions listed in the Scoping Guidance	Yes / No /? Briefly describe	Is this likely to result in a significant impact? Yes/No/? – Why?
Brief Project Description:		
1. Will construction, operation, decommissioning or demolition works of the Project involve actions that will cause physical changes in the locality (topography, land use, changes in waterbodies, etc.)?		
2. Will construction or the operation of the Project use natural resources such as land, water, materials or energy, especially any resources which are non-renewable or are in short supply?		
3. Will the Project involve the use, storage, transport, handling or production of substances or materials which could be harmful to human health, to the environment or raise concerns about actual or perceived risks to human health?		
4. Will the Project produce solid wastes during construction or operation or decommissioning?		
5. Will the Project release pollutants or any hazardous, toxic or noxious substances to air or lead to exceeding Ambient Air Quality standards in Directives 2008/50/EC and 2004/107/EC)?		
6. Will the Project cause noise and vibration or the releasing of light, heat energy or electromagnetic radiation?		
7. Will the Project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?		
8. Will there be any risk of accidents during construction or operation of the Project that could affect human health or the environment?		
9. Will the Project result in environmentally related social changes, for example, in demography, traditional lifestyles, employment?		
10. Are there any other factors that should be considered such as consequential development which could lead to environmental impacts or the potential for cumulative impacts with other existing or planned activities in the locality?		

Questions to be Considered For further guidance on factors to be considered see the more detailed questions listed in the Scoping Guidance	Yes / No /? Briefly describe	Is this likely to result in a significant impact? Yes/No/? – Why?
11. Is the project located within or close to any areas which are protected under international, EU, or national or local legislation for their ecological, landscape, cultural or other value, which could be affected by the Project?		
12. Are there any other areas on or around the location that are important or sensitive for reasons of their ecology e.g. wetlands, watercourses or other waterbodies, the coastal zone, mountains, forests or woodlands, that could be affected by the Project?		
13. Are there any areas on or around the location that are used by protected, important or sensitive species of fauna or flora e.g. for breeding, nesting, foraging, resting, overwintering, migration, which could be affected by the Project?		
14. Are there any inland, coastal, marine or underground waters (or features of the marine environment) on or around the location that could be affected by the Project?		
15. Are there any areas or features of high landscape or scenic value on or around the location which could be affected by the Project?		
16. Are there any routes or facilities on or around the location which are used by the public for access to recreation or other facilities, which could be affected by the Project?		
17. Are there any transport routes on or around the location that are susceptible to congestion or which cause environmental problems, which could be affected by the Project?		
18. Is the Project in a location in which it is likely to be highly visible to many people?		
19. Are there any areas or features of historic or cultural importance on or around the location that could be affected by the Project?		
20. Is the Project located in a previously undeveloped area where there will be loss of greenfield land?		
21. Are there existing land uses within or around the location e.g. homes, gardens, other private property, industry, commerce, recreation, public open space, community facilities, agriculture, forestry, tourism, mining or quarrying that could be affected by the Project?		

Questions to be Considered For further guidance on factors to be considered see the more detailed questions listed in the Scoping Guidance	Yes / No /? Briefly describe	Is this likely to result in a significant impact? Yes/No/? – Why?
22. Are there any plans for future land uses within or around the location that could be affected by the Project?		
23. Are there areas within or around the location which are densely populated or built-up, that could be affected by the Project?		
24. Are there any areas within or around the location which are occupied by sensitive land uses e.g. hospitals, schools, places of worship, community facilities, that could be affected by the Project?		
25. Are there any areas within or around the location which contain important, high quality or scarce resources e.g. groundwater, surface waters, forestry, agriculture, fisheries, tourism, minerals, that could be affected by the Project?		
26. Are there any areas within or around the location which are already subject to pollution or environmental damage e.g. where existing legal environmental standards are exceeded, that could be affected by the Project?		
27. Is the Project location susceptible to earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions e.g. temperature inversions, fogs, severe winds, which could cause the Project to present environmental problems?		
Summary of features of Project and of its location indicating the need for EIA:		





Appendix G

Indicative Structure of the EIA Screening Report

Important Note:

The structure and content of the EIA Screening Report will vary between different initiatives, and will have to be considered on a case by case basis by a local authority and its expert consultants. The below is an indicative structure for a typical EIA screening report, for general guidance purposes only, and expert and legal advice should be procured as appropriate.

1. Introduction

1.1 Purpose of the report

(This section should describe the purpose of the EIA Screening Report, i.e. that it has been prepared to enable the Competent Authority to consider whether the proposed development is likely to have significant effects on the environment such that an EIA is required and an EIAR should be prepared, in accordance with the provisions of the EIA Directive.)

1.2 Proposed Development

(This section should set out a description of the proposed development.)

1.3 Qualifications and Experience

(This section should set out the expertise, qualifications, and experience of the authors of the EIA Screening Report and any expert consultants who fed into the assessment of the various environmental disciplines.)

2. EIA Screening Process

2.1 Introduction

2.2 Relevant Legislation and Guidance

(This section should set out the legislative context for EIA Screening and identify the various guidance documents (including in particular the relevant European Commission Guidance, Ministerial Guidance, EPA Guidance, and OPR Guidance) which the authors of the report have had regard to in preparing the EIA Screening Report.)



2.3 Methodology

(This section should explain the methodology adopted by the authors of the report in preparing the EIA Screening Report.)

3. Requirement for Mandatory EIA

(This section should set out the classes of development which trigger an automatic EIA, and explain the basis on which the authors of the EIA Screening Report have concluded that a mandatory EIA is not required.)

4. Sub Threshold Development

(This section should set out the reasons why an EIA Screening is required for the proposed development, and identify the particular class of development (as set out in Part 2 of Schedule 5 to the 2001 Regulations, or in the 1994 Regulations in the case of “road development”) which applies to the proposed development and the basis on which the authors of the report have concluded that the proposed development falls below the relevant threshold applicable to that class.)

5. Characteristics of the Proposed Development¹

(This section should set out an assessment of the likely significant effects of the proposed development by reference to the characteristics of the development, using the specific categories identified in Annex III to the EIA Directive, as transposed in Schedule 7 to the 2001 Regulations.

1 Schedule 7 to the 2001 Regulations, paragraph 1

It is important to note that Schedule 7 to the 2001 Regulations includes one additional category over and above those set out in the EIA Directive, namely “the nature of any associated demolition works”, and so this category must also be addressed as at heading 5.3 below. Each of these categories is set out in the headings below, and in each case the EIA Screening Report must describe the characteristics of the proposed development under that heading (for example, describe the size and design of the proposed development), and also carry out an assessment as to whether this characteristic is likely to give rise to a significant effect on the environment.)

5.1 The size and design of the whole of the proposed development²

5.2 The cumulation with other proposed development³

Note: The scope of this cumulative impacts assessment will need to be carefully considered in each individual case, but it is important to bear in mind that it may need to encompass more than other “existing and/or approved” projects, which is the legal requirement under the EIA Directive, and also include, for example, other nearby projects which the local authority is aware are in the planning process but are not yet approved, and other proposed developments that are being pursued by the local authority.

5.3 The nature of any associated demolition works⁴

5.4 The use of natural resources, in particular land, soil, water, and biodiversity⁵

5.5 The production of Waste⁶

5.6 Pollution and Nuisances⁷

5.7 Risk of major accidents⁸

Note: As set out in Schedule 7 to the 2001 Regulations, this assessment must include major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge.⁹

2 Schedule 7 to the 2001 Regulations, paragraph 1(a)

3 Schedule 7 to the 2001 Regulations, paragraph 1(b)

4 Schedule 7 to the 2001 Regulations, paragraph 1(c)

5 Schedule 7 to the 2001 Regulations, paragraph 1(d)

6 Schedule 7 to the 2001 Regulations, paragraph 1(e)

7 Schedule 7 to the 2001 Regulations, paragraph 1(f)

8 Schedule 7 to the 2001 Regulations, paragraph 1(g)

9 Schedule 7 to the 2001 Regulations, paragraph 1(g)



5.8 Risk to human health (for example due to water contamination or air pollution)¹⁰

6. Location of the proposed development¹¹

(This section should set out an assessment of the likely significant effects of the proposed development by reference to the location of the development, using the specific categories identified in Annex III to the EIA Directive, as transposed in Schedule 7 to the 2001 Regulations. Each of these categories is set out in the headings below, and in each case the EIA Screening Report must describe the location of the proposed development under that heading (for example, describe the existing and approved land use), and also carry out an assessment as to whether this aspect of the location of the development is likely to give rise to a significant effect on the environment.)

6.1 Existing and approved land use¹²

6.2 The relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water, and biodiversity) in the area and its underground¹³

10 Schedule 7 to the 2001 Regulations, paragraph 1(h)

11 Schedule 7 to the 2001 Regulations, paragraph 2

12 Schedule 7 to the 2001 Regulations, paragraph 2(a)

13 Schedule 7 to the 2001 Regulations, paragraph 2(b)

6.3 The absorption capacity of the natural environment¹⁴

Note: As set out in Schedule 7 to the 2001 Regulations, this assessment must pay particular attention to the following areas:-¹⁵

- (i) wetlands, riparian areas, river mouths;
- (ii) coastal zones and the marine environment;
- (iii) mountain and forest areas;
- (iv) nature reserves and parks;
- (v) areas classified or protected under legislation, including Natura 2000 areas designated pursuant to the Habitats Directive and the Birds Directive and;
- (vi) areas in which there has already been a failure to meet the environmental quality standards laid down in legislation of the European Union and relevant to the project, or in which it is considered that there is such a failure;
- (vii) densely populated areas;
- (viii) landscapes and sites of historical, cultural or archaeological significance.

7. Types and characteristics of Potential Impacts¹⁶

(This section should assess the likely significant effects on the environment of the proposed development in relation to the criteria set out in sections 5 and 6 above, with regard to the impact of the proposed development on the each of the factors identified at 7.1 to 7.11 below.

In relation to each environmental discipline, this section must take into account:- ¹⁷

- (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;

¹⁴ Schedule 7 to the 2001 Regulations, paragraph 2(c)

¹⁵ Schedule 7 to the 2001 Regulations, paragraph 2(c)

¹⁶ Schedule 7 to the 2001 Regulations, paragraph 3

¹⁷ Schedule 7 to the 2001 Regulations, paragraphs 3(a) to 3(h)

- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other developments (see note above in section 5.2 in relation to scope of the cumulative impacts assessment); and,
- (h) the possibility of effectively reducing the impact.)

7.1 Population and Human Health;¹⁸

7.2 Biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Birds Directive;¹⁹

7.3 Land²⁰

7.4 Soil²¹

7.5 Water²²

7.6 Air²³

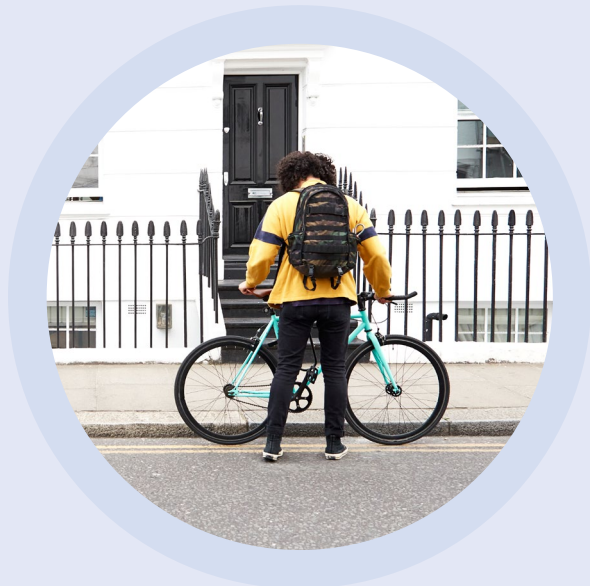
7.7 Climate²⁴

7.8 Material Assets²⁵

7.9 Cultural Heritage²⁶

7.10 The Landscape²⁷

7.11 The interaction between the factors mentioned at 7.1-7.10 above²⁸



18 2001 Act, section 171A(b)(i)(I)
 19 2001 Act, section 171A(b)(i)(II)
 20 2001 Act, section 171A(b)(i)(III)
 21 2001 Act, section 171A(b)(i)(III)
 22 2001 Act, section 171A(b)(i)(III)
 23 2001 Act, section 171A(b)(i)(III)
 24 2001 Act, section 171A(b)(i)(III)
 25 2001 Act, section 171A(b)(i)(IV)
 26 2001 Act, section 171A(b)(i)(IV)
 27 2001 Act, section 171A(b)(i)(IV)
 28 2001 Act, section 171A(b)(i)(V)



8. Conclusion

[The conclusion section of the EIA Screening Report **must** set out the conclusion reached by the authors of the report as to whether or not the proposed development would be likely to have a significant effect on the environment, and therefore whether or not an EIA is required and an EIAR is to be prepared. This conclusion section must also set out the reasons for the conclusion reached by the authors of the report.

It is critical to ensure that this conclusion section applies the correct legal test (i.e. whether the proposed development by itself or in combination with other projects²⁹, is likely to have significant effects on the environment).]

Note: EIA Screening Checklist³⁰

[The European Commission's 2017 Guidance in relation to EIA Screening³¹ includes a Screening Checklist, designed to help users to determine the likely significant impacts of projects and, in so doing, to decide whether an EIA is required. This checklist is included at Appendix F to this guidance document, and should be completed and included as part of an EIA Screening Report at an appropriate location.]

9. Appendices

[Any reports, drawings, etc. that were relied upon by the experts in preparing the EIA Screening Report and reaching their conclusion as to whether or not an EIA is required should be appended to the EIA Screening Report.]

29 While in general “in combination effects” arise in the AA context and “cumulative impacts” arise in the EIA context, the European Commission's 2017 guidance in relation to EIA Screening (*European Commission, Environmental Impact Assessment of Projects; Guidance on Screening (2017)*) defines “cumulative effects” in the EIA Screening context as “Changes to the environment that are caused by an activity/project **in combination with** other activities/projects.” (emphasis added)

30 European Commission, *Environmental Impact Assessment of Projects; Guidance on Screening (2017)*

31 European Commission, *Environmental Impact Assessment of Projects; Guidance on Screening (2017)*



Appendix H

Indicative Structure of the AA Screening Report

Important Note:

The structure and content of the AA Screening Report will vary between different initiatives, and will have to be considered on a case by case basis by a local authority and its expert consultants. The below is an indicative structure for a typical AA screening report, for general guidance purposes only, and expert and legal advice should be procured as appropriate.

1. Introduction

1.1 Purpose of the report

[This section should describe the purpose of the AA Screening Report, i.e. that it has been prepared to assist the competent authority to undertake a Screening for Appropriate Assessment in respect of the proposed development and to determine whether an Appropriate Assessment is required and a Natura Impact Statement is to be prepared.]

1.2 Qualifications and Experience

[This section should set out the expertise, qualifications, and experience of the authors of the AA Screening Report and any expert consultants who fed into the report.]

1.3 Legislative Context

[This section should set out the legislative context for AA Screening.]

2. Methodology

[This section should explain the methodology adopted by the authors of the AA Screening Report. In particular, this section should identify the sources of information relied upon by the authors of the report in any desktop study carried out, the nature and extent of any baseline surveys conducted, the details of the site visits conducted by the author of the AA Screening Report, and the various guidance documents (including in particular the relevant European Commission Guidance, NPWS Guidance, and OPR Guidance) which the authors of the report have had regard to in preparing the AA Screening Report.]



3. Description of the Project

[When describing the project it will be necessary to identify all aspects that have a potential to affect the Natura 2000 site, either alone or in combination with other plans or projects. All phases of the project have to be taken into account including construction, operation and decommissioning.¹

The European Commission's 2021 Methodological guidance on Article 6(3) and (4) of the Habitats Directive sets out an indicative list of the key parameters of the plan or project to be identified, as follows (as noted in the guidance, this list is indicative only and is to be adapted or complemented to suit each case):⁻²

- size (e.g. in relation to direct land-take);
- overall affected area including the area affected by indirect impacts (e.g. noise, turbidity, vibrations);
- physical changes in the environment (e.g. modification of riverbeds or morphology of other water bodies, changes in the density of forest cover);
- changes in the intensity of an existing pressure (e.g. increase in noise, pollution or traffic);
- resource requirements (e.g. water abstraction, mineral extraction);
- emissions (e.g. nitrogen deposition) and waste (and whether they are disposed of on land, water or in the air);
- transportation requirements (e.g. access roads);

1 European Commission (2021), *Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC*, C(2021) 6913, page 14

2 European Commission (2021), *Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC*, C(2021) 6913, page 14-15

- duration of construction, operation, decommissioning, etc.;
- temporal aspects (timing of the different stages of a plan or project);
- distance from Natura 2000 sites and in particular from their designating features;
- cumulative impacts with other projects and plans.]

4. Identification of Relevant European Sites

[This section should identify the Natura 2000 sites that may be affected by the project, taking into consideration all aspects of the project that could have potential effects on any Natura 2000 sites located within the zone of influence of the project. This must also take into account the qualifying interests or special conservation interests of the site, and their site specific conservation objectives.

The identification of European sites within a 15km zone had become common practice in screening projects for AA. However the zone of influence of a project should be considered using the Source-Pathway-Receptor model and so therefore it is not sufficient to rely on this 15km zone (see section 5.1.2 of the guidance document in that regard).

It can be useful to represent this information visually in a table along the following lines:-

European Site	Distance from the Proposed Development	Site Summary	Are there potential pathways for impacts from the proposed road development to this site? Explain.
[Insert site code, name, and designation]	[•]km	[Describe the European Site and set out all of the sites' Qualifying Interests or Special Conservation Interests]	[Assess whether or not there is a "source-pathway-receptor" link between the proposed development and the European Site.]

Where a Natura 2000 Site may be potentially affected by the project, for example where the project is within or adjacent to the site, or where there is a "source-pathway-receptor" link between the project and the site, then that site must be considered further in the AA Screening Report in order to establish whether or not the project is likely to have a significant effect on that site.]

5. Assessment of Likely Significant Effects

[This section should set out an assessment of the likelihood and potential significance of potential effects on the Natura 2000 Sites identified in section 4, taking into account potential in-combination effects with other plans or projects.³

In this regard, the European Commission's 2021 Methodological guidance on Article 6(3) and (4) of the Habitats Directive notes that "*A likely significant effect is, in this context, any effect that may reasonably be predicted as a consequence of a plan or project that would negatively and significantly affect the conservation objectives established for the habitats and species significantly present on the Natura 2000 site. This can result from either on-site or off-site activities, or through combinations with other plans or projects.*"⁴]

6. Potential In-Combination Effects

[This section should assess the potential for the project to give rise to in-combination effects with other plans or projects.

The scope of this in combination effects assessment will need to be carefully considered in each individual case, but it is important to bear in mind that where the practice may have been to assess impacts in combination with other "existing and/or approved" projects, mirroring the requirement under the EIA Directive, the in-combination effects assessment in an AA Screening, like the cumulative impacts assessment in EIA Screening, may need to go further and include, for example, other nearby projects which the local authority is aware are in the planning process but are not yet approved, and other proposed developments that are being pursued by the local authority.

Very importantly, the assessment of in-combination effects in the AA Screening (unlike the cumulative impacts assessment in an EIA Screening) must take into account plans as well as other projects.]



3 European Commission (2021), *Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC*, C(2021) 6913, page 19

4 European Commission (2021), *Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC*, C(2021) 6913, page 19

7. Conclusion

[The conclusion section of the AA Screening Report must set out the conclusion reached by the authors of the report as to whether or not the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on any European Site, and therefore whether or not an AA is required. This conclusion section must also state the reasons for the conclusion reached by the authors of the report.

It is critical to ensure that this conclusion section applies the correct legal test. In order to conclude that an Appropriate Assessment is not required, the authors of the report must be satisfied that:-

On the basis of objective information and in view of best scientific knowledge and applying the precautionary principle, the proposed development, either individually or in combination with other plans or projects, and without relying on any mitigation measures, is not likely to have a significant effect on any European Site(s), in view of the sites' conservation objectives, and there is no reasonable scientific doubt in relation to this conclusion.]

8. Appendices

[Any reports, drawings, etc. that were relied upon by the experts in preparing the AA Screening Report and reaching their conclusion as to whether or not an AA is required should be appended to the AA Screening Report.]





Appendix I

EIA Screening Determination Template

1. Project Name, Reference Number, etc.

2. Description of the Proposed Development

3. Legislative Context

[This section should set out the legislative basis on which the EIA Screening was conducted.]

4. EIA Screening Report

[This section should set out that the local authority has commissioned the preparation of an EIA Screening Report. It should identify the section or department of the local authority which commissioned the preparation of the report, and identify the individual(s) within the local authority (from a different section or department as discussed below) who have considered the contents of the report, and should state that the local authority agrees with the contents of the report.

It should then set out the conclusion reached by the authors of the EIA Screening Report and set out a summary of the reasons for that conclusion as set out in the report. It is not enough in this section to simply cross-refer to the EIA Screening Report, the reasons for the conclusion must be set out in the determination itself.]

5. Determination

[This section should set out the formal determination of the local authority (as Competent Authority) as to whether or not an Environmental Impact Assessment is required and an EIAR is to be prepared. This section must explain and set out the Competent Authority's reasons for that determination.¹

1 Article 4(5) of the EIA Directive, and the European Commission's 2017 guidance in relation to EIA Screening (European Commission, *Environmental Impact Assessment of Projects; Guidance on Screening* (2017)) both state that an EIA Screening Determination should set out the "main reasons" for the determination. However, it is good practice to set out all the reasons in full in the EIA Screening Determination.

Where it is determined that an EIA is not required, the determination must set out any features of the project and/or measures envisaged to avoid or to prevent what might otherwise have been significant adverse impacts on the environment (where such measures are proposed).²

It is critical that this formal determination apply the correct legal test. An example of a formal determination that an EIA is not required, where the reasons for this determination have already been summarised, is:-

Therefore, it has been concluded, for the reasons set out above and in the EIA Screening Report, that the proposed development, by itself or in combination with other projects³, is not likely to have a significant effect on the environment and accordingly that an Environmental Impact Assessment is not required. An EIAR is therefore not required.

The determination should then set out whether or not there is a real likelihood of significant effects on the environment, in accordance with Article 120(1B) of the 2001 Regulations. This can be set out in tabular format along the following lines (placing a check mark in the appropriate box):-

No real likelihood of significant effects on the environment	<input type="checkbox"/>	EIA is not required
Real likelihood of significant effects on the environment	<input type="checkbox"/>	EIA is required

6. Signature Block

[This section should be signed by an appropriate individual within the local authority, on the basis of a formal delegation of functions by the Chief Executive of the local authority. The individual signing the determination, and their function or role, must be identified and the determination must be dated.

The person signing the EIA Screening Determination must have sufficient expertise and experience to examine an EIA Screening Report and make an EIA Screening Determination.

² Article 4(5)(b) of the EIA Directive.

³ While in general “in combination effects” arise in the AA context and “cumulative impacts” arise in the EIA context, the European Commission’s 2017 guidance in relation to EIA Screening (European Commission, *Environmental Impact Assessment of Projects; Guidance on Screening (2017)*) defines “cumulative effects” in the EIA Screening context as “Changes to the environment that are caused by an activity/project **in combination** with other activities/projects.” (emphasis added)

This section should also set out the arrangements that have been put in place by the local authority to ensure an appropriate functional separation in accordance with Article 9a of the EIA Directive.]

Important Note:

As discussed in Part 3 of this guidance document, where a local authority is both promoting an Active Travel Initiative and carrying out the screening for that initiative, to avoid any suggestion that there is a conflict of interest, it is important to ensure that there is a “**functional separation**” between the individuals involved in promoting an Active Travel Initiative and those responsible for making the EIA Screening Determination.

Therefore the person signing the EIA Screening Determination in respect of a particular initiative should be from a different department or section of the Local Authority from those involved in the promotion of the initiative, and this should be made clear in the EIA Screening Determination itself.





Appendix J

AA Screening Determination Template

1. Project Name, Reference Number, etc.

2. Description of the Proposed Development

3. Legislative Context

[This section should set out the legislative basis on which the AA Screening was conducted.]

4. AA Screening Report

[This section should set out that the local authority has commissioned the preparation of an AA Screening Report. It should identify the section or department of the local authority which commissioned the preparation of the report, and identify the individual(s) within the local authority (from a different section or department as discussed below) who have considered the contents of the report, and should state that the local authority agrees with the contents of the report.

It should then set out the conclusion reached by the authors of the AA Screening Report and set out a summary of the reasons for that conclusion as set out in the report. It is not enough in this section to simply cross-refer to the AA Screening Report, the reasons for the conclusion must be set out in the determination itself.]

5. Determination

[This section should set out the formal determination of the local authority (as Competent Authority) as to whether or not an Appropriate Assessment is required and a Natura Impact Statement is to be prepared. This section must explain and set out the Competent Authority's reasons for that determination.

It is critical that this formal determination apply the correct legal test. An example of a formal determination that an AA is not required, where the reasons for this determination have already been summarised, is:-

Having regard to the foregoing, on the basis of objective information and in view of best scientific knowledge and applying the precautionary principle, for the reasons set out above and in the AA Screening Report, it has been concluded that the proposed development, individually or in combination with other plans or projects, without relying on any mitigation measures, will not have a significant effect on any European Sites, in view of the sites' conservation objectives, and that there is no reasonable scientific doubt in relation to this conclusion.]

6. Signature Block

[This section should be signed by an appropriate individual within the local authority, on the basis of a formal delegation of functions by the Chief Executive of the local authority. The individual signing the determination, and their function or role, must be identified and the determination must be dated.

The person signing the AA Screening Determination must have sufficient expertise and experience to examine an AA Screening Report and make an AA Screening Determination.

This section should also set out the arrangements that have been put in place by the local authority to ensure an appropriate functional separation and avoid any conflict of interest arising.]

Important Note:

As discussed in Part 5 of this guidance document, the local authority should ensure that the department/section that makes the AA Screening Determination is different from the department/section which is promoting the Active Travel Initiative, so as to ensure an appropriate **functional separation** between those roles and avoid any suggestion of a conflict of interest arising.



Appendix K

Glossary of Terms

ABP	An Bord Pleanála
EIA	Environmental Impact Assessment
EIA Screening	The process of determining whether a Project listed in Annex II of the EIA Directive is likely to have significant environmental effects.
AA	Appropriate Assessment
AA Screening	The process of establishing whether, in relation to a particular plan or project, appropriate assessment is required. Its purpose is to determine, on the basis of a preliminary assessment and objective criteria, whether a plan or project, alone and in combination with other plans or projects, could have significant effects on a Natura 2000 site in view of the site's conservation objectives.
EIAR	Environmental Impact Assessment Report
NIS	Natura Impact Statement
EIA Directive	Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (as amended)

European Sites	European sites comprise Special Areas of Conservation (SAC) and Special Protection Areas (SPA). The process for selecting areas as European sites, including mapping site boundaries, has many stages and involves notifying landowners and an appeals process. The National Parks and Wildlife Service (NPWS) oversees this process. The sites are formally designated by the relevant minister under a statutory instrument. Candidate sites (i.e. a cSAC or cSPA) have the same level of protection as fully designated sites under Irish Law
Habitats Directive	Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended)
Mitigation Measures	Measures envisaged to avoid, prevent or reduce any identified significant adverse effects on the environment.
NIS	Natura Impact Statement
Natura 2000	A network of core breeding and resting sites for rare and threatened species, and some rare natural habitat types which are protected in their own right.
NPWS	National Parks and Wildlife Service
IROPI	Imperative Reasons of Overriding Public Interest
1993 Act	The Roads Act 1993 (as amended)
1994 Regulations	The Roads Regulations, 1994 (as amended)
2000 Act	The Planning and Development Act 2000 (as amended)
2001 Regulations	The Planning and Development Regulations, 2001 (as amended)
Habitats Regulations	The European Communities (Birds and Natural Habitats) Regulations, 2011 (as amended)
CJEU	Court of Justice of the European Union



Appendix L

Article 9a of the EIA Directive (as amended)

ARTICLE 9A

Member States shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.

Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.

Note: See also Recital 25 to the 2014 directive which amended the EIA Directive:

(25) The objectivity of the competent authorities should be ensured. Conflicts of interest could be prevented by, inter alia, a functional separation of the competent authority from the developer. In cases where the competent authority is also the developer, Member States should at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions of those authorities performing the duties arising from Directive 2011/92/EU.

