

# **Appropriate Assessment of Plans and Projects in Ireland**

## **Guidance for Planning Authorities**



Comhshaol, Oidhreachta agus Rialtas Áitiúil  
**Environment, Heritage and Local Government**

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- EPA
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- Heritage Council
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### **REVISION NOTES**

**11 February 2010:** “Statement for Appropriate Assessment” replaced by “Natura Impact Statement” or NIS.

## Executive summary

With the introduction of the **Birds Directive** in 1979 and the **Habitats Directive** in 1992 came the obligation to establish the **Natura 2000** network of sites of highest biodiversity importance for rare and threatened habitats and species across the EU. In Ireland, the Natura 2000 network of **European sites** comprises Special Areas of Conservation (**SACs**, including candidate SACs), and Special Protection Areas (**SPAs**, including proposed SPAs). SACs are selected for the conservation of **Annex I habitats** (including **priority** types which are in danger of disappearance) and **Annex II species** (other than birds). SPAs are selected for the conservation of **Annex I birds** and other regularly occurring migratory birds and their habitats. The annexed habitats and species for which each site is selected correspond to the **qualifying interests** of the sites; from these the **conservation objectives** of the site are derived.

The Birds and Habitats Directives set out various procedures and obligations in relation to nature conservation management in Member States in general, and of the Natura 2000 sites and their habitats and species in particular. A key protection mechanism, and the subject of this guidance, is the requirement to consider the possible nature conservation implications of any **plan or project** on the Natura 2000 site network **before any decision is made** to allow that plan or project to proceed. Not only is every new plan or project captured by this requirement but each plan or project, when being considered for approval at any stage, must take into consideration the possible effects it may have in combination with other plans and projects when going through the process known as **appropriate assessment** (abbreviated in this document to **AA**). The concept of plan and project is extremely broad and is not limited to **development planning** and **development management**, covered by the Planning and Development Acts 2000-2006, and given specific attention in this document.

The obligation to undertake appropriate assessment derives from **Article 6(3) and 6(4)** of the Habitats Directive, and both involve a number of steps and tests that need to be applied in sequential order. Article 6(3) is concerned with the **strict protection** of sites, while Article 6(4) is the procedure for allowing **derogation** from this strict protection in certain restricted circumstances. Each step in the assessment process precedes and

provides a basis for other steps. The results at each step must be documented and recorded carefully so there is full traceability and transparency of the decisions made. They also determine the decisions that ultimately may be made in relation to approval or refusal of a plan or project. AA is not a prohibition on new development or activities but involves a case-by-case examination of the implications for the Natura 2000 site and its conservation objectives. In general terms, implicit in Article 6(3) is an obligation to put concern for potential effects on Natura 2000 sites at the forefront of every decision made in relation to plans and projects at all stages, including decisions to provide funding or other support.

The first test is to establish whether, in relation to a particular plan or project, appropriate assessment is required<sup>1</sup>. This is termed **AA screening**. 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. The need to apply the **precautionary principle** in making any key decisions in relation to the tests of AA has been confirmed by **European Court of Justice** case law. Therefore, where significant effects are likely, uncertain or unknown at screening stage, AA will be required.

AA is a focused and detailed impact assessment of the implications of the plan or project, alone and in combination with other plans and projects, on the integrity of a Natura 2000 site in view of its conservation objectives. There is no prescribed method for undertaking AA, or form or content for reporting. Case law has established that assessments should be undertaken on the basis of the best scientific evidence and methods. Accordingly, data and information on the project and on the site and an analysis of potential effects on the site must be obtained and presented in a **Natura Impact Statement (NIS)**. Ecological specialists will be required to undertake the surveys, research and analysis, with input from other experts (e.g. hydrologists or engineers) as necessary to prepare the NIS. It is the responsibility of the proponent of the plan or project to have the NIS prepared for submission to the competent authority, i.e. the consent authority. Having satisfied itself

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<sup>1</sup> 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.

that the Statement is complete and objective, the competent authority carries out the AA on the basis of the Statement and any other necessary information.

If it can be concluded on the basis of AA that there will be no adverse effects on the integrity of a Natura 2000 site, the plan or project can proceed to authorisation, where the normal planning or other requirements will apply in reaching a decision to approve or refuse. If adverse effects are likely, or in cases of doubt, the derogation steps of Article 6(4) will apply, but only in a case in which there are **imperative reasons of overriding public interest (IROPI) requiring a project to proceed, there are no less damaging alternative solutions, and compensatory measures have been identified that can be put in place**. The IROPI test is more rigorous and restrictive in relation to adverse effects on Annex I priority habitats and species. The Habitats Directive requires Member States to inform the Commission of the compensatory measures; this enables the Commission to review whether the compensatory measures are sufficient to ensure that the coherence of the network is maintained. If the Commission is not satisfied it may take steps against the Member State up to and including litigation in the European Court of Justice. Recourse to derogation to allow a plan or project to proceed should be pursued in exceptional circumstances only, and the Minister must be informed at an early stage of any possible IROPI case.

The duty to undertake AA, having considered the NIS, and to ensure that the stringent evaluation and decision-making procedure is applied correctly, lies with the competent authority, i.e. the national, regional or local authority charged with decision-making.

This guidance is presented in five chapters followed by various appendices. Chapter 1 is the introduction, and provides background information about the nature conservation directives, the Natura 2000 sites in Ireland and their protection through the application of Articles 6(3) and 6(4) of the Habitats Directive, and the role of the European Commission. Chapter 2 gives the full text of Article 6(3) and 6(4) followed by an explanation of the terminology, concepts and tests that these provisions of the Directive introduce, based on current understanding and case law. Chapters 4 and 5 illustrate how Article 6(3) and 6(4) should be applied by planning authorities in the case of development planning (plans) and

development management (projects) covered by the Planning and Development Acts 2000-2006.

This guidance is not a legal interpretation. Experience is defining and clarifying boundaries, procedures and concepts, and consequently law and policy in this area will undoubtedly evolve and change over time. This guidance represents the current situation and understanding, and should be regarded as a work in progress. Comments, feedback, suggestions and relevant case studies are invited from users of this guidance and these may be sent to the address below. Ultimately it is envisaged that this guidance will form the basis for statutory guidelines for planning authorities under the Planning Acts.

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This guidance is available on the Department's website at: [www.npws.ie](http://www.npws.ie)



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## 1. Introduction

### 1.1. General

This guidance is intended to assist and guide local and planning authorities in the application of **Article 6(3)** and **6(4)** of the **Habitats Directive**<sup>2</sup> as it relates to their roles, functions and responsibilities in undertaking **Appropriate Assessment (AA)** of **plans** and **projects**. It explains the concepts, tests and steps involved in the assessment procedure, the provisions of which are the primary mechanism for ensuring the protection of **Natura 2000 sites** and their conservation objectives when considering whether to authorise or adopt a plan or project. Natura 2000 sites in Ireland are **European sites**, including **Special Protection Areas (SPAs)**, and **Special Areas of Conservation (SACs)**.

AA has been a legal requirement in Ireland since the Habitats Regulations<sup>3</sup> were made in 1997. On 15 February 2008, and in response to the judgement of the European Court of Justice (ECJ) in case C-418/04, the Department of Environment, Heritage and Local Government (DEHLG) issued Circular Letter SEA 1/08 and NPWS 1/08<sup>4</sup>, to all County and City Managers, Directors of Services for Planning, Town Clerks and Engineers. It informed them of the necessity to undertake AA of land use plans in accordance with the obligations of Article 6 of the Habitats Directive. The ECJ ruling had, among other things, clarified that Ireland has not correctly transposed Article 6(3) by not providing explicitly for AA of land use plans, as opposed to projects.

Article 6(3) requires that any plan or project that is not directly connected with or necessary to the management of the Natura 2000 site concerned but is likely to have a

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<sup>2</sup> Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 97/62/EC. See [http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm)

<sup>3</sup> European Communities (Natural Habitats) Regulations, 1997

<sup>4</sup> Circular Letter SEA 1/08 and NPWS 1/08: *Appropriate Assessment of Land Use Plans*

significant effect on it, on its own or in combination with other plans and projects, **is to be authorised only** if it will not adversely affect the integrity of that site. Screening for AA and, if screening indicates the need, AA itself, must be carried out and the assessment and conclusions recorded to ensure that existing and future plans or projects are not authorised if they are likely to adversely affect the integrity of a site. These safeguards are designed to ensure the conservation of Natura 2000 sites.

The requirements of the Habitats Directive in respect of plans and projects are similar in many respects to Environmental Impact Assessment (EIA) of projects, and Strategic Environmental Assessment (SEA) of plans and programmes. However, the focus of AA is targeted specifically on Natura 2000 sites and their conservation objectives. Article 6(3) and 6(4) of the Habitats Directive place strict legal obligations on Member States, **with the outcomes of AA fundamentally affecting the decisions that may lawfully be made.**

**It is a basic responsibility of all agencies of the state, including planning authorities, to act diligently to ensure that their decisions in the exercise of their functions, as well as their actions, comply fully with the obligations of the Habitats Directive.**

## 1.2. EU Directives

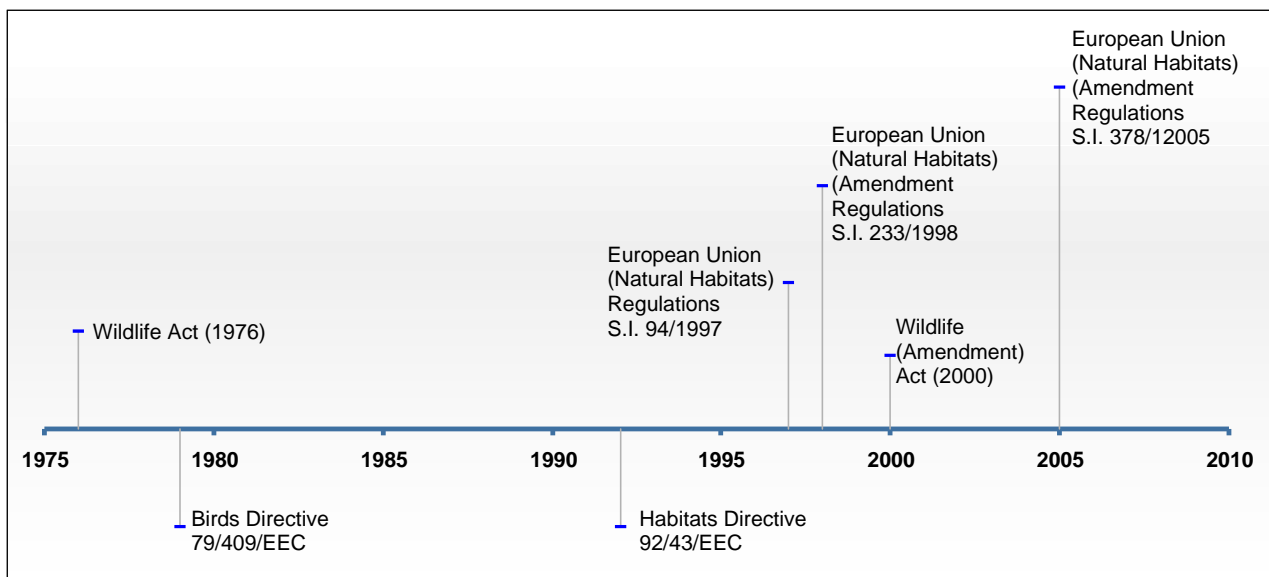
The EU introduced the Birds Directive<sup>5</sup> in 1979 and the Habitats Directive in 1992 to tackle the long-term declines in European biodiversity that were attributed to habitat destruction and degradation, the persecution of some species, and the unsustainable exploitation of wildlife resources. The essential aim of both directives is to maintain, and where necessary restore, the favourable conservation status of natural habitats and species across Europe, thereby contributing to sustainable development and promoting the maintenance of Europe's biodiversity. The establishment of Europe's most important wildlife sites as Natura 2000 sites and strong measures to protect those sites is a key policy in meeting those aims.

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<sup>5</sup> Council Directive 79/409/EEC on the conservation of wild birds. See [http://ec.europa.eu/environment/nature/legislation/birdsdirective/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm)

The Habitats Directive was initially transposed into Irish law in 1997 by the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997)<sup>6</sup>, with later amendment regulations (S.I. No. 233 of 1998; S.I. No. 378 of 2005). The Birds Directive was anticipated by the Wildlife Act (1976) and its provisions covered many of the requirements of the Birds Directive. Article 7 of the Habitats Directive makes the provisions of Article 6(3) and 6(4) applicable to SPAs.

Work to amend, update and consolidate the Habitats Regulations in new comprehensive Birds and Habitats Regulations is at an advanced stage. Among other things, the new regulations will address the transposition issues raised in recent judgements of the ECJ against Ireland.



**Figure 1: Legislation timeline**

<sup>6</sup> See <http://www.npws.ie/en/WildlifePlanningtheLaw/Legislation/EURegulations/> for further details

### 1.3. Natura 2000 Network

The Natura 2000 network provides an ecological infrastructure for the protection of sites that are of particular importance for rare, endangered or vulnerable habitats and species within the EU. The Natura 2000 network in Ireland is made up of European Sites which include:

- Special Areas of Conservation (**SAC**)
- Special Protection Areas (**SPA**)
- candidate Special Areas of Conservation (**cSAC**)
- proposed Special Protection Areas (**pSPA**).

SACs and SPAs are fully protected by law in Ireland from when the Minister gives notice of his intention to designate the sites<sup>7</sup>. At present, all SACs are candidate SACs. Candidate and proposed sites are included as part of the Natura 2000 network. Indeed, potential SPAs enjoy protection from the time when they are identified as meriting consideration for designation. It should be noted that in some areas, SAC and SPA designations overlap.

SACs (see Figure 2) are selected for the conservation and protection of habitats listed on Annex I and species (other than birds) listed on Annex II of the Habitats Directive, and their habitats. The habitats on Annex I require special conservation measures because they are under threat in the EU and because much of the global resource of the habitat occurs within the EU. A subset of these, Annex I priority habitats, are threatened with disappearance and, accordingly, merit special conservation measures. Ireland has examples of 59 Annex I habitat types and 16 of these are or may be priority types. Appendix 1 contains a list of these habitats; summary descriptions are available in EC (2007b) and NPWS (2008). Ireland supports 26 Annex II species: 6 mammals, 8 fish, 7 invertebrates, and 5 plants (NPWS, 2008). These are species that are threatened in the EU and for which SACs must be designated. **There are at present no priority species in Ireland.** Other species are listed for protection measures on Annex IV and V, and some species (such as the otter) are included on more than one annex.

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<sup>7</sup> Technically, the term “designation” applies to SACs only. The terms “classification” or “recognition” apply to SPAs. In general parlance, the term “designation” is used to cover all of these.

SPAs (see Figure 3) are sites that have been selected and notified for the conservation and protection of bird species listed on Annex I of the Birds Directive and regularly occurring migratory species, and their habitats, particularly wetlands<sup>8</sup>. Annex I birds are those that require special conservation measures because they are rare, in danger of extinction, or vulnerable to habitat changes in the EU. Ireland supports populations of 33 Annex I bird species. The SPA network includes important seabird colonies, wintering waterfowl sites, and sites supporting rare species (e.g. the corncrake).

It is important to note that Natura 2000 network is not static but varies. The Department is currently examining the requirements under the Birds Directive for additional designations or re-designations of SPAs. The possibility also exists that additional SACs may require to be designated. Another consideration is that the use of new Ordnance Survey Ireland (OSi) base mapping and the re-digitising of site boundaries are also likely to result in minor cartographic corrections to sites.

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<sup>8</sup> For further information, see <http://www.npws.ie/en/ProtectedSites/SpecialProtectionAreasSPAs/SPASpecies/>

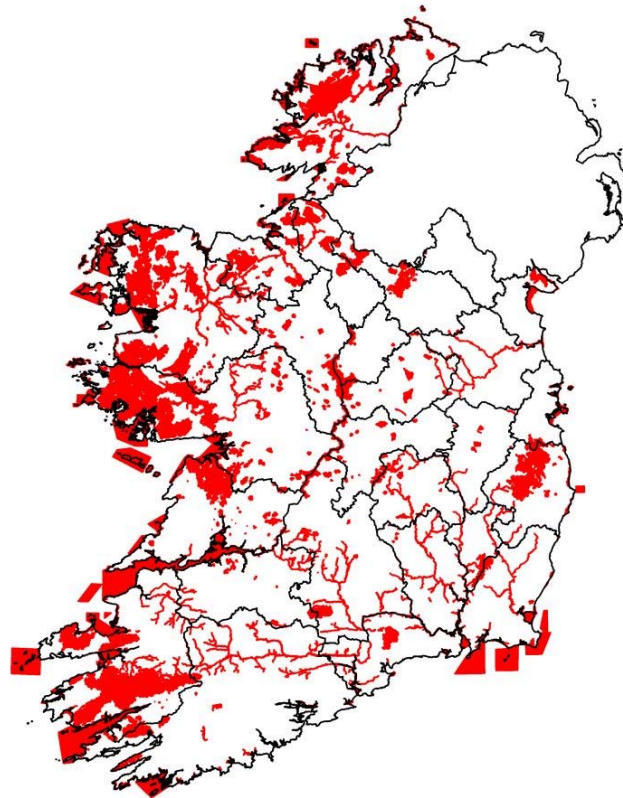


Figure 2 : Indicative SAC map (2009)

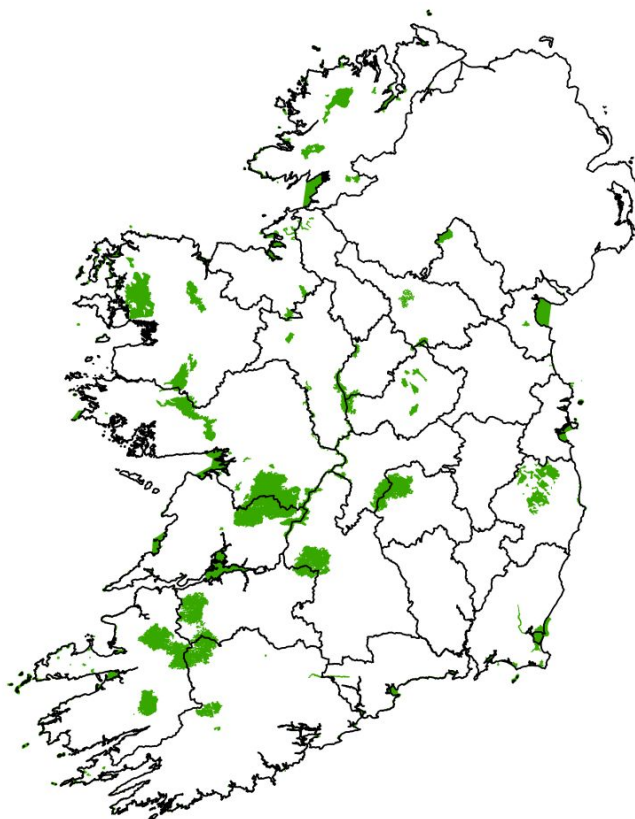


Figure 3: Indicative SPA map

### 1.4. The Role of the EU Commission

As the Birds and Habitats Directives are European Directives, the European Commission monitors their implementation by individual Member States. Where the Commission is not satisfied with progress or compliance, it is likely to initiate infringement proceedings against the Member State concerned; the main categories of concern are inadequate transposition of the Directives and breaches of their requirements, including failure to implement and enforce the directives on the ground.

The progress of each Member State is monitored by:

- Examining the completeness of the transposition by each Member State of the Habitats Directive into national law, having regard to the case law of the ECJ.
- Monitoring progress made in the establishment and protection of the Natura 2000 network by each Member State.
- Examining the effectiveness of the enforcement policies implemented by each Member State.
- Examining the submissions of each Member State every six years under Article 17 of the Habitats Directive on the status of listed habitats and species, as summarised in NPWS (2008).

Areas of concern for the Commission are pursued actively with each Member State by direct communication (i.e. letter of Formal Notice, Reasoned Opinion, and referral of case to the ECJ). Persistent failure by a Member State to comply with the requirements of the directives is likely to lead to **substantial financial penalties** being imposed on the Member State by the ECJ. Once fines have been imposed, daily fines are likely until the infringement is fully rectified. The potential fines are very substantial, running to tens of millions of Euro.





### 1.4.1. Legal Proceedings against Ireland at the European Court of Justice

The European Commission has taken, and continues to pursue, legal action at the ECJ against Ireland for failure to implement and comply with the requirements of the Habitats Directive. In its judgement of 13 December 2007 (C-418/04), the Court found that Ireland had failed, among other things, to meet its obligations under the Habitats Directive by not requiring AA in the case of land use plans.

Furthermore, on 27 March 2007, in relation to the same case, the Commission decided to refer Ireland to the ECJ for general failures in the implementation of the Habitats Directive, in particular Article 6. Failure to rectify this will result in the imposition of fines.

## 2. Articles 6(3) and 6(4) – Clarification of Concepts and Terminology

Articles 6(3) and 6(4) of the Habitats Directive introduce new concepts and terminology that are explained in Commission guidance (EC, 2000, 2002, 2007a), with some refinements introduced by case law (EC, 2006). What is meant by the key terms that are outlined in bold in Box 1 (with emphasis added) is summarised below.

### Box 1: Full text of Article 6(3) and 6(4) of the Habitats Directive

6(3) – 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.

6(4) – If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for **imperative reasons of overriding public interest**, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

## 2.1. Definition of Plan and Project

‘Plan’ and ‘project’ are not defined in the Habitats Directive but European Commission guidance and ECJ case law indicate that both should be given a very broad interpretation. The Waddenzee judgement<sup>9</sup> has been critical in defining the concept of plan or project so that, in addition to new plans and projects, existing plans and projects that are modified or undergo new or periodic consents or authorisations, are captured by AA requirements. For example, an existing operational wastewater treatment plant requires AA when applying for a wastewater discharge licence under the Waste Water Discharge (Authorisation) Regulations, 2007<sup>10</sup>. In addition, where projects require more than one authorisation (e.g. planning permission, waste permit and foreshore lease/licence), each consent authority must treat the separate applications as projects. It should be noted also that an assessment made at plan level does not exempt specific projects from AA requirements.

In cases of doubt as to whether a proposal constitutes a plan or project for the purposes of Article 6(3), it is recommended that contact should be made with the Department for advice.

### 2.1.1. Plans

Plans include all statutory and non-statutory land use, framework and sectoral plans and strategies to the extent that they have the potential to have significant effects on a Natura 2000 site. This incorporates ‘plans and programmes’ covered by the SEA Directive<sup>11</sup>, and other plans and strategies, including those that are designed or intended to benefit the environment or heritage, such as Heritage and Biodiversity plans, recreation/amenity plans or strategies, and River Basin Management Plans.

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<sup>9</sup> ECJ case C-127/02 – Waddenzee, Netherlands

<sup>10</sup> See EPA’s ‘*Note on Appropriate Assessments for the purposes of the Waste Water Discharge (Authorisation) Regulations, 2007 (S.I. No. 684 of 2007)*’

<sup>11</sup> Directive 2001/402/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment where ‘plans and programmes’ include those co-financed by the European Community, as well as any modifications to them which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and which are required by legislative, regulatory or administrative provisions

Chapter 4 of this guidance deals specifically with statutory plans covered by the Planning and Development Acts, 2000-2006 (as amended). These are plans that, with their associated strategies, set the framework for or influence development decisions, or determine or set the management framework, or programme the undertaking, timing or phasing of development. Other non-statutory plans made at local authority level and pertaining to urban and/or rural areas will fall within the definition of plan for the purposes of Article 6(3). Non-statutory plans may be used as advisory tools in the development management process. In some cases such plans are adopted by elected members and thereby given a status capable of implementation.

### 2.1.2. Projects

Current ECJ case law and Commission guidance gives a broad interpretation to the term 'project'. The Commission (EC, 2006) puts the position as follows:

*... “such a definition of project [i.e. definition of ‘project’ from the EIA Directive<sup>12</sup>] is relevant to defining the concept of plan or project as provided for in the Habitats Directive, which, seeks, as does Directive 85/337, to prevent activities which are likely to damage the environment from being authorised without prior assessment of their impact on the environment”, and goes on to say that “the fact that the activity has been carried on periodically for several years on the site concerned and that a licence has to be obtained for it every year ... does not in itself constitute an obstacle to considering it, at the time of each application, as a distinct plan or project within the meaning of the Habitats Directive”.*

Chapter 5 of this guidance deals specifically with public and private developments that are covered by the Planning and Development Acts, 2000-2006 (as amended), and that require a statutory planning consent. This includes classes of exempted development where restrictions on these exemptions apply. However, development or activities that

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<sup>12</sup> Directive 85/337/EEC defines project as 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 minerals

require waste permits or discharge licences, and other local authority projects, such as recreation and amenity projects, and road and bridge works, are also projects for the purposes of Article 6(3). All Departments within a local authority are advised to seek advice and guidance from their own Planning Department regarding such projects and their potential to impact on Natura 2000 sites.

An application for retention could fall within the definition of project but must be treated with particular caution to ensure that an unauthorised development that has damaged or is likely to damage the integrity of a Natura 2000 site will not be approved subsequently. Article 6(3) establishes a procedure whereby a plan or project may be authorised only to the extent that it will not adversely affect the integrity of the site. In the same way as the EIA Directive<sup>13</sup>, Article 6(3) seeks to prevent activities which would be likely to damage the environment from being authorised without prior consideration and assessment of their effects. This involves *prior* screening and AA. Retrospective assessments are not favoured by the case law of the ECJ, as they raise obvious questions regarding compliance.

### **2.2. Directly Connected with or Necessary to the Management of the Natura 2000 Site**

Plans or projects that are directly connected with or necessary to the management of a Natura 2000 site do not require AA. For this exception to apply, management should be interpreted narrowly as nature conservation management in the sense of Article 6(1) of the Habitats Directive. This refers to specific measures to address the ecological requirements of annexed habitats and species (and their habitats) present on a site. The relationship should be shown to be direct **and not a by-product** of the project or activity, even if this might result in positive or beneficial effects for a site. For example, a new or upgraded wastewater treatment plant may benefit water quality in a river but its **primary purpose** is not generally the nature conservation management of a Natura 2000 site, but to service development. Similarly, a project involving amenity and recreation provision in a Natura 2000 site is also unlikely to qualify.

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<sup>13</sup> ECJ case C-215/06 – see Departmental Circular PD 5/08: *European Court of Justice ruling on retention planning permission for development requiring environment impact assessment, and the specific case of a windfarm development at Derrybrien in Galway*

Examples of nature conservation management projects could include drain-blocking on a bog, riverbank restoration works, or removal of a barrier to species movement. However, in such cases the potential for associated negative effects would need to be considered in advance and mitigation measures developed as appropriate. If a plan or project is considered to be directly connected with or necessary to the management of the site, this should be addressed in consultation with and in agreement with the Department. All such cases should be supported by sufficient scientific and other necessary evidence and backing to show cause for the project and to address any questions that might be raised in relation to compliance, including any other possible impact.

### 2.3. Likely to Have Significant Effect Thereon

Any plan or project that is not directly connected with or necessary to the management of a site must be subject to AA of its implications for the Natura 2000 site in view of the site's conservation objectives "*if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects*" (EC, 2006). The **precautionary principle**, derived from the EU Treaty and developed in the case law of the ECJ<sup>14</sup>, is one of the foundations of the high level of protection pursued by EU Community policy on the environment, and underpins the Habitats Directive. **Where doubt exists about the risk of a significant effect, an AA must be carried out.** In assessing the risk of such effects, the significance must be established in the light of, among other things, the characteristics and specific environmental conditions of the site concerned, and the likely effects of the plan or project. If a plan or project is likely to undermine any of the site's conservation objectives (i.e. objectives that relate to the Birds or Habitats Directives), it must be considered likely to have a **significant effect** on that site (EC, 2006). Conversely, if a plan or project will have impacts on a site, but these impacts will clearly not affect or undermine those conservation objectives, it is not considered that it will have a significant effect on the site concerned. However, the level of information and assessment necessary to make this determination

may be substantial, and will need to be presented and recorded at screening and, if required, at AA stage.

**The requirement is not to prove what the impacts and effects will be, but rather to establish beyond reasonable scientific doubt that adverse effects on site integrity will not result.**

## 2.4. Appropriate Assessment

The requirements for AA derive directly from Article 6(3). No definition of the content or scope of AA is given in the Habitats Directive but the concept and approach are set out in Commission guidance (EC 2000, 2002, 2006). AA is an impact assessment process that fits within the decision-making framework and tests of Articles 6(3) and 6(4) and, for the purposes of this guidance, it comprises two main elements. Firstly a **Natura Impact Statement – i.e. a statement of the likely and possible impacts of the plan or project on a Natura 2000 site (abbreviated in the following guidance to “NIS”)** must be prepared. This comprises a comprehensive ecological impact assessment of a plan or project; it examines the direct and indirect impacts that the plan or project might have on its own or in combination with other plans and projects, on one or more Natura 2000 sites in view of the sites’ conservation objectives. Secondly, the competent authority carries out the AA, based on the NIS and any other information it may consider necessary. The AA process encompasses all of the processes covered by Article 6(3) of the Habitats Directive, i.e. the screening process, the NIS, the AA by the competent authority, and the record of decisions made by the competent authority at each stage of the process, up to the point at which Article 6(4) may come into play following a determination that a plan or project may adversely affect the integrity of a Natura 2000 site.

Case law of the ECJ has established that AA must be based on best scientific knowledge in the field. Accordingly, the **NIS** must be prepared by a person or persons **with the requisite ecological expertise and experience**, supplemented as necessary by

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<sup>14</sup> ECJ case C-127/02 – Waddenzee, Netherlands



additional expertise and experience (e.g. geology, hydrology, civil engineering or planning), and produced in a scientifically complete, professional and objective manner. While the NIS will generally be submitted by those seeking approval for a plan or project, competent authorities should satisfy themselves that it demonstrates sufficient expertise, scope and focus in relation to the ecological or other issues (e.g. hydrological) concerned, and competence and standards in scientific methodology and impact assessment<sup>15</sup>.

The timing of the AA is critical and it must precede the decision to authorise, adopt or proceed with a plan or project (i.e. the formal or legal consent stage where that exists) and must inform the overall decision made<sup>16</sup>. The NIS and the AA must be completed prior to any decision being made to authorise a plan or project. **It is entirely unacceptable for a planning authority to approve a plan or project conditioned on the undertaking or completion of surveys, research or data-gathering of relevance in assessing the likely effects.**

### 2.5. Conservation Objectives

When a Natura 2000 site is proposed, a statement of its conservation objectives is produced which identifies the qualifying interests or conservation features for which the site is designated. These are the Annex I habitats (and their species) and Annex II species (and their habitats) hosted by a site and for which that site has been selected in the case of SACs. The **conservation objectives for SACs** are determined under Article 4 of the Habitats Directive and are intended to ensure that the relevant Annex I habitats and Annex II species present on a site are maintained in a favourable condition. A full listing of the qualifying interests for SACs is available from the NPWS website: [www.npws.ie](http://www.npws.ie). Additional background information is available from the Natura 2000 standard data forms. The conservation objectives derive from the qualifying interests, the Natura 2000 standard data form, and the management plan for the site, with summary information also available in the site synopsis.

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<sup>15</sup> Departmental Circular Letter SEA 1/08 and NPWS 1/08

<sup>16</sup> Departmental Circular Letter PD 2/07 and NPWS 1/07



The **conservation objectives for SPAs** are in preparation at present and are determined from the Special Conservation Interests and additional Species Conservation Interests of these sites.

### 2.6. Competent National Authorities

The competent authorities in Ireland are the national, regional or local authorities that are charged with or responsible for consenting, authorising, adopting or deciding to proceed with a plan or project. A broad range of authorities is involved, and it is not uncommon for more than one authority to be the competent authority for aspects of an individual project. For the purposes of Chapters 4 and 5 of this guidance, and from a planning and land use perspective, the competent authorities are considered to be the regional authorities, the planning authorities and An Bord Pleanála.

It is the competent authority's responsibility to obtain (normally from the proponent of a plan or project) the information to enable it to screen a plan or project for AA and, if required, obtain from the proponent of the plan or project the NIS. Obviously if a plan or project is being proposed by a competent authority itself, the competent authority will be responsible for the production of the NIS. The competent authority is then responsible for carrying out AA and for maintaining a complete audit trail of the AA process. This will involve collation and consideration of the NIS and other pertinent information and data that are available or can be obtained. This may involve **requesting or otherwise obtaining whatever additional information and data are necessary**, from various sources, including stakeholders, and **particularly from project or plan proponents**, nature conservation authorities and NGOs.

The NIS should include information on the plan or project, its location, extent and receiving environment, the Natura 2000 sites, their conservation objectives and ecological and environmental sensitivities, and the likely or potential effects of the plan or project. If the NIS is deficient or incomplete those deficiencies must be remedied fully by the supply of

additional data, information or analysis before authorisation may be considered. All documentation needs to be retained so that if questions arise subsequently, evidence of the process followed will be to hand, i.e. an audit trail. Such material is crucial if litigation arises in the national courts or the ECJ, and for reporting to the Commission as required under the Directives.

### **2.7. Imperative Reasons of Overriding Public Interest – IROPI**

Where a plan or project is deemed to have an adverse effect on the integrity of a Natura 2000 site and no alternative solutions are available, the plan or project can only then proceed on the grounds of Imperative Reasons of Overriding Public Interest (IROPI), including, in general, those of a social or economic nature. The protection mechanism is stricter in the case of priority habitats (and priority species<sup>17</sup>), and in such cases the only reasons that may be raised are those relating to human health, public safety or beneficial consequences of primary importance to the environment. If other IROPI are to be invoked, the opinion of the Commission is necessary and should be obtained, by way of a request made through the Minister, before finalisation of the AA.

For more information on IROPI, and the process of derogation under Article 6(4), see Section 3.5 of this guidance and also Commission guidance (EC, 2000, 2007a).

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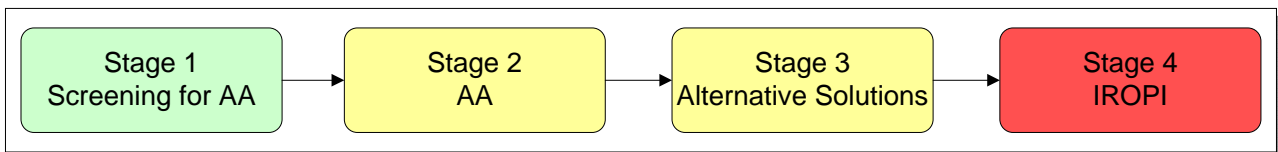
<sup>17</sup> Ireland does not at present host any priority species.

## 3. The AA Process

### 3.1. Stages in the Process

The Commission's methodological guidance (EC, 2002) promotes a four-stage process to complete the AA, and outlines the issues and tests at each stage. An important aspect of the process is that the outcome at each successive stage determines whether a further stage in the process is required.

The four stages are summarised diagrammatically below, and an outline of the steps and procedures involved in completing each stage follows. Stages 1-2 deal with the main requirements for assessment under Article 6(3). Stage 3 may be part of Article 6(3) or may be a necessary precursor to Stage 4. Stage 4 is the main derogation step of Article 6(4).



#### Stage 1. Screening for Appropriate Assessment

Screening is the process that addresses and records the reasoning and conclusions in relation to the first two tests of Article 6(3):

- i) whether a plan or project is directly connected to or necessary for the management of the site, and
- ii) whether a plan or project, alone or in combination with other plans and projects, is likely to have significant effects on a Natura 2000 site in view of its conservation objectives.

If the effects are deemed to be significant, potentially significant, or uncertain, or if the screening process becomes overly complicated, then the process must proceed to Stage 2 (AA). Screening should be undertaken without the inclusion of mitigation, unless potential impacts clearly can be avoided through the modification or redesign of the plan or project,

in which case the screening process is repeated on the altered plan. The greatest level of evidence and justification will be needed in circumstances when the process ends at screening stage on grounds of no impact.

### **Stage 2. Appropriate Assessment**

This stage considers whether the plan or project, alone or in combination with other projects or plans, will have adverse effects on the integrity of a Natura 2000 site, and includes any mitigation measures necessary to avoid, reduce or offset negative effects. The proponent of the plan or project will be required to submit a **Natura Impact Statement**, i.e. the report of a targeted professional scientific examination of the plan or project and the relevant Natura 2000 sites, to identify and characterise any possible implications for the site in view of the site's conservation objectives, taking account of in combination effects. This should provide information to enable the competent authority to carry out the appropriate assessment. If the assessment is negative, i.e. adverse effects on the integrity of a site cannot be excluded, then the process must proceed to Stage 4, or the plan or project should be abandoned. The AA is carried out by the competent authority, and is supported by the NIS.

### **Stage 3. Alternative Solutions**

This stage examines any alternative solutions or options that could enable the plan or project to proceed without adverse effects on the integrity of a Natura 2000 site. The process must return to Stage 2 as alternatives will require appropriate assessment in order to proceed. Demonstrating that all reasonable alternatives have been considered and assessed, and that the least damaging option has been selected, is necessary to progress to Stage 4.

### **Stage 4. Imperative Reasons of Overriding Public Interest (IROPI)/Derogation**

Stage 4 is the main derogation process of Article 6(4) which examines whether there are imperative reasons of overriding public interest (IROPI) for allowing a plan or project that will have adverse effects on the integrity of a Natura 2000 site to proceed in cases where it has been established that no less damaging alternative solution exists.

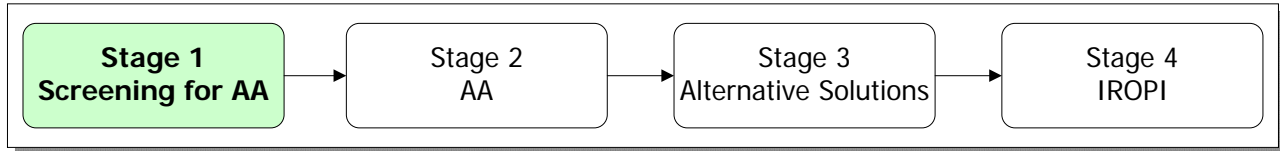


The extra protection measures for Annex I priority habitats come into effect when making the IROPI case<sup>18</sup>. Compensatory measures must be proposed and assessed. The Commission must be informed of the compensatory measures. Compensatory measures must be practical, implementable, likely to succeed, proportionate and enforceable, and they must be approved by the Minister.

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<sup>18</sup> IROPI reasons that may be raised for sites hosting priority habitats are those relating to human health, public safety or beneficial consequences of primary importance to the environment. In the case of other IROPI, the opinion of the Commission is necessary and should be included in the AA

## 3.2. Stage 1 - Appropriate Assessment Screening



### 3.2.1. Introduction

Screening determines whether appropriate assessment is necessary by examining:

- 1) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and
- 2) the potential effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives, and considering whether these effects will be significant.

Screening is an iterative process that involves consideration of the plan or project and its likely effects, and of the Natura 2000 sites and their ecological sensitivities, and the likely interaction between these. These and other ecological issues should always be taken into account at the earliest possible stage in the planning, design or preparation process so that any constraints are identified and can be taken into consideration, and delays and negative outcomes can be avoided insofar as is possible. Specialist ecological input and advice is recommended in undertaking the various elements of screening.

Departmental Circular L8/08<sup>19</sup> provides an outline of the screening and assessment processes for Water Services projects.

Screening involves the following:

1. Description of plan or project, and local site or plan area characteristics

2. Identification of relevant Natura 2000 sites, and compilation of information on their qualifying interests and conservation objectives
3. Assessment of likely effects – direct, indirect and cumulative – undertaken on the basis of available information as a desk study or field survey or primary research as necessary
4. Screening statement with conclusions

### 3.2.2. Description of Plan or Project

The first element is a description of the plan or project, including its nature, size and location, and possible or likely effects, and draft policies, objectives, land use zonings and associated strategies in the case of plans. See, for example, EPA (2002, 2003).

### 3.2.3. Natura 2000 Sites

The second element is an examination of what Natura 2000 sites might be affected. These sites should be identified and listed, bearing in mind the potential for a plan or project, whether it is within or outside a Natura 2000 site, to have direct, indirect or cumulative effects, and taking a precautionary approach so that a site is included if doubt exists. Plans or projects that are outside the boundaries of a site may still have effects on that site.

Site boundary information for Natura 2000 sites is available from the NPWS website, either as interactive mapping or downloadable data<sup>20</sup>. The data are also held by local authorities.

The approach to screening is likely to differ somewhat for plans and projects, depending on scale and on the likely effects, but the following should be included:

1. Any Natura 2000 sites within or adjacent to the plan or project area

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<sup>19</sup> *Water Services Investment and Rural Water: Protection of Natural Heritage and National Monuments Programmes*

<sup>20</sup> <http://www.npws.ie/en/MapsData/>

2. Any Natura 2000 sites within the likely zone of impact of the plan or project. A distance of 15km is currently recommended in the case of plans, and derives from UK guidance (Scott Wilson *et al.*, 2006). For projects, the distance could be much less than 15km, and in some cases less than 100m, but this must be evaluated on a case-by-case basis with reference to the nature, size and location of the project, and the sensitivities of the ecological receptors, and the potential for in combination effects
3. Natura 2000 sites that are more than 15km from the plan or project area depending on the likely impacts of the plan or project, and the sensitivities of the ecological receptors, bearing in mind the precautionary principle. In the case of sites with water dependent habitats or species, and a plan or project that could affect water quality or quantity, for example, it may be necessary to consider the full extent of the upstream and/or downstream catchment.

Site synopses, which are summary descriptions of the key conservation interests of sites, and SAC datasheets with lists of qualifying interests for these sites are available from the NPWS website: [www.npws.ie](http://www.npws.ie). Other information and data, such as Natura 2000 standard data forms and conservation objectives, can be requested from NPWS via the Data Request facility at <http://www.npws.ie/en/media/Media,6687,en.doc>. Listings of the Special Conservation Interests are currently in preparation for SPAs and will be available shortly.

Other information available from the NPWS website that may be of relevance includes Species Action Plans, Conservation Management Plans (for a limited number of sites only), Freshwater Pearl Mussel sub-basin management plans, and species reports.

### 3.2.4. Assessment of Likely Effects

The task of establishing whether the plan or project is likely to have an effect on a Natura 2000 site or sites is based on a preliminary impact assessment using available information and data, including that outlined above, and other available environmental information (e.g. water quality data), supplemented as necessary by local site information and ecological surveys. This is followed by a determination of whether there is a risk that the



effects identified could be significant. This need not be a lengthy exercise. A precautionary approach is fundamental and, in cases of uncertainty, it should be assumed the effects could be significant. Examples of significance indicators from Commission guidance (EC, 2002) are listed in Figure 4; this document also summarises four case study examples of assessment of significance outcomes for projects. As a guide, any element of a plan or project that has the potential to affect the conservation objectives of a Natura 2000 site, including its structure and function, should be considered significant (EC, 2006).

Impact type	Significance indicator
Loss of habitat area	Percentage of loss
Fragmentation	Duration or permanence, level in relation to original extent
Disturbance	Duration or permanence, distance from site
Species population density	Timescale for replacement
Water resource	Relative change
Water quality	Relative change in key indicative chemicals and other elements

**Figure 4: Examples of significance indicators (from EC (2002), Box 4)**

Some examples of effects that are likely to be significant are:

- Any impact on an Annex I habitat
- Causing reduction in the area of the habitat or Natura 2000 site
- Causing direct or indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site
- Causing serious or ongoing disturbance to species or habitats for which the Natura 2000 site is selected (e.g. increased noise, illumination and human activity)
- Causing direct or indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site
- Interfering with mitigation measures put in place for other plans or projects

As the underlying intention of the in-combination provision is to take account of cumulative effects, and as these effects often only occur over time, plans or projects that are

completed, approved but uncompleted, or proposed (but not yet approved) should be considered in this context (EC, 2002). All likely sources of effects arising from the plan or project under consideration should be considered together with other sources of effects in the existing environment and any other effects likely to arise from proposed or permitted plans or projects. These include *ex situ* as well as *in situ* plans or projects. The screening report should clearly state what in combination plans and projects have been considered in making the determination in relation to in combination effects. **Simply stating that “there are no cumulative impacts” is insufficient.**

### 3.2.5. Screening Conclusion and Statement

The findings and conclusions of the screening process should be documented, with the necessary 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 that no significant effects are likely.

Screening can result in the following possible conclusions or outcomes:

#### 1. **AA is not required**

Screening, followed by consultation and agreement with the NPWS, establishes that the plan or project is directly connected with or necessary to the nature conservation management of the site.

#### 2. **No potential for significant effects/AA is not required**

Screening establishes that there is no potential for significant effects and the project or plan can proceed as proposed. However, no changes may be made after this as this will invalidate the findings of screening. Documentation of the AA screening process, including conclusions reached and how decisions were made, must be kept on file.

#### 3. **Significant effects are certain, likely or uncertain**

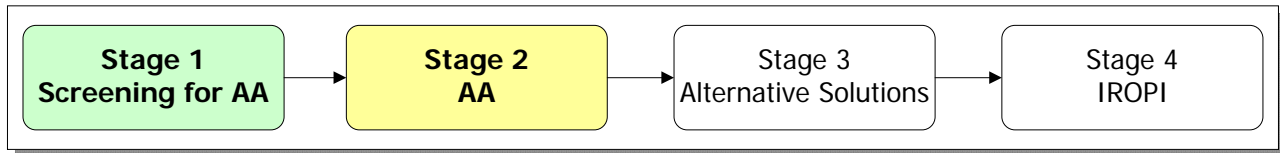
The plan or project **must either proceed to Stage 2 (AA), or be rejected.** Rejection of

a plan or project that is too potentially damaging and/or inappropriate ends the process and negates any need to proceed to Stage 2 (AA).

Another possible option is to recommence the screening process with a modified plan or project that removes or avoids elements that posed obvious risks. This highlights the iterative process of screening a plan or project when new alternatives that may not have any impact are being considered. However, repeated or complicated screening exercises are not recommended as they point to the risk of significant effects and the need for Stage 2 (AA).

The safeguards set out in Article 6(3) and (4) of the Habitats Directive are triggered not by certainty but by the possibility of significant effects. Thus, in line with the **precautionary principle, it is unacceptable to fail to undertake an appropriate assessment on the basis that it is not certain that there are significant effects.**

### 3.3. Stage 2 – Appropriate Assessment (AA)



#### 3.3.1. Introduction

It is the competent authority's responsibility to complete and record the AA. The overall assessment process includes the gathering and consideration of data and information relating to the plan or project and the site, the key elements of which should be contained in the NIS, data and information from other sources, and opinions from stakeholders such as nature conservation authorities and relevant NGOs.

In the case of a **plan**, both the NIS and the AA will normally be undertaken **by the plan-making authority** or consultants acting on its behalf. In the case of a **project**, as with the EIA process, the AA will usually involve the **submission of information by the project proponent (the NIS)** for consideration by the planning authority and, in some cases, is likely to involve requests for further information to be provided by the proponent.

The competent authority may use the NIS and other information collected for the AA as the basis for consultations with internal and external experts, statutory bodies, and other stakeholders. It may also need to seek specialist advice to ensure that the AA is as comprehensive, objective and robust as necessary to provide a valid basis for the AA.

At Stage 2, the impact of a project or plan alone and in combination with other projects or plans on the integrity of the Natura 2000 site is considered with respect to the conservation objectives of the site and to its structure and function.

### 3.3.2. Information Required

Adequate information must be available to complete the AA. The purpose of the NIS is to provide this information to the competent authority. Where the NIS is inadequate, further investigations, including surveys and/or research, may be necessary and, in this regard, further information may need to be sought from the proponent of the plan or project.

The first step in this assessment is to identify the conservation objectives of the Natura 2000 site and to identify those aspects of the plan or project (alone and in combination with other plans or projects) that will affect those objectives.

### 3.3.3. Impact Prediction

Prediction of impacts should be addressed in the NIS, but the competent authority, in considering the information submitted needs to carry out the AA within a structured and systematic framework that is evidence-based. Conclusions should be objective and scientifically grounded. This requires that the types of impact be identified, e.g. direct and indirect effects; short- and long-term effects; construction, operational and decommissioning effects; noise, light pollution and disturbance; hydrological effects; pollution, including diffuse pollution; habitat degradation and loss; and isolated, seasonal interactive and cumulative effects.

Examples of impact prediction methods are outlined in Figure 5 (from EC (2002)). In addition, GIS is important in assessing and considering in combination plans and projects and cumulative effects.

### Impact prediction methods for NIS and AA

**Direct measurements**, for example of areas of habitat lost or affected, can identify proportionate losses from species populations, habitats and communities.

**Flow charts, networks and systems** diagrams identify chains of impacts resulting from direct impacts; indirect impacts are termed secondary, tertiary, etc. impacts in line with how they are caused. Systems diagrams are more flexible than networks in illustrating interrelationships and process pathways.

**Quantitative predictive models** provide mathematically derived predictions based on data and assumptions about the force and direction of impacts. Models may extrapolate predictions that are consistent with past and present data (trend analysis, scenarios, analogies which transfer information from other relevant locations) and intuitive forecasting. Normative approaches to modelling work backwards from a desired outcome to assess whether the proposed project will achieve these. Some commonly used models predict the dispersal of pollutants in air, soil erosion, sediment loading of streams, and oxygen sag in polluted rivers.

**Geographical information systems (GIS)** can be used to produce models of spatial relationships, such as constraint overlays, or to map sensitive areas and locations of habitat loss or vulnerability. GIS are a combination of computerised cartography, storing map data, and a database management system, storing attributes such as land use and slope. GIS enable the variables stored to be displayed, combined, and analysed speedily.

**Information from previous similar projects** may be useful, especially if quantitative predictions were made initially and have been monitored in operation.

**Expert opinion** and judgment can be derived from previous experience and consultations.

Figure 5: Examples of impact prediction methods (from EC (2002), Box 8)

### 3.3.4. AA - Conservation Objectives

Once the effects of the project or plan have been identified and predicted, it will be necessary to assess whether there will be adverse effects on the integrity of the site as defined by the conservation objectives and status of the site.

It is important that the NIS applies the precautionary principle and the focus of the statement should be on demonstrating objectively, with supporting evidence, that there will be no adverse effects on the integrity of the Natura 2000 site. Where this cannot be demonstrated, adverse effects must be assumed and the Statement must reflect that.

From the information gathered and the predictions made about the changes that are likely to result from the construction, operation or decommissioning stages of a project or the implementation of a plan, it should now be possible to determine whether the integrity of a site will be affected. If at this stage information or evidence is lacking, then adverse effects must be assumed. This determination should be recorded and reported.

### 3.3.5. AA - Mitigation Measures

These are measures aimed at minimising, cancelling out or ideally avoiding the negative impact of a plan or project before, during or after its completion or implementation.

Mitigation measures may be an integral part of the specifications of a plan or project, or an add-on. They may be proposed by the plan or project proponent and/or required by the competent authorities. For example, they may cover:

- The dates and the timeframe of works (e.g. not to operate during the breeding season of a particular species)
- The type of tools and operation to be carried out (e.g., to use a specific dredge at a distance agreed upon from the shore in order not to affect a fragile habitat)
- The precise location or scale of a structure or works
- Protection of existing trees and other vegetation.

If mitigation is possible that enables a risk to be **avoided fully**, then, subject to other necessary approvals, the project or plan may proceed. If mitigation measures are insufficient, or are **not actually practicable and achievable to avoid the risk entirely**, then, in the light of a negative assessment, the plan or project may not proceed. A wider search for alternative solutions may need to be considered – Stage 3.

### 3.3.6. AA - Conclusion

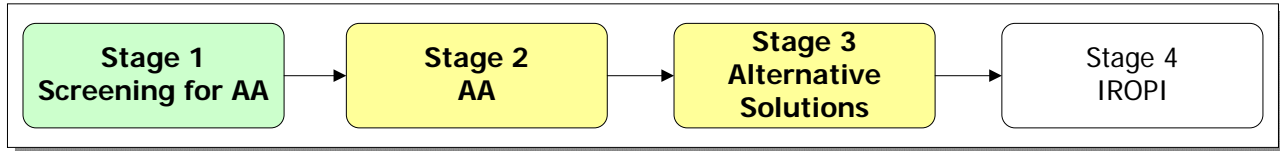
Following the completion of the AA, the competent authority must produce an **AA Conclusion Statement** which:

- Describes the plan or project in sufficient detail to make clear its size, scale and objectives.
- Describes the baseline conditions, conservation objectives, and relevant ecological and environmental issues in relation to the relevant Natura 2000 sites. (Generally, the NIS and any other data or information obtained will be appended to the AA Conclusion Statement).
- Identifies potential adverse impacts of the plan or project on the Natura 2000 sites.
- If possible, explains how those effects will be avoided through mitigation.
- Sets out a timescale and identifies the mechanisms through which the mitigation measures will be secured, implemented and monitored.

If the competent authority considers that residual adverse effects remain, then the plan or project **may not proceed** without continuing to stage 3 of the AA process: Alternative Solutions.



### 3.4. Stage 3 - Alternative Solutions



This stage examines alternative ways of implementing a project or plan that, where possible, avoids any adverse impacts on the integrity of a Natura 2000 site. Before a project or plan that either alone or in combination with other projects or plans has adverse effects on a Natura 2000 site can proceed for imperative reasons of overriding public interest, it must be objectively concluded that no less-damaging alternative solutions exist. Therefore, this stage becomes critical if it appears that derogation procedures may need to be pursued.

Alternative solutions should normally already have been identified within the framework of the screening, the NIS and the AA.

Possible alternative solutions may, for example include variants or combinations of:

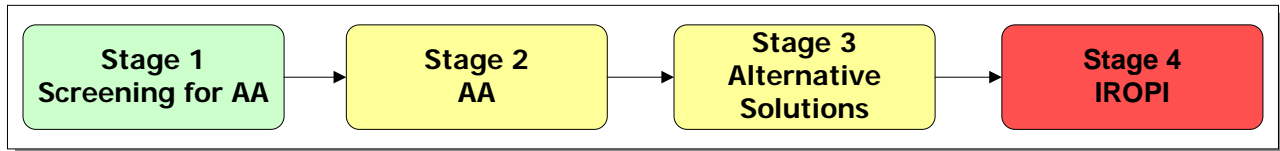
- locations or routes
- scale or size
- means of meeting objectives (e.g. demand management)
- methods of construction (e.g. 'silent piling')
- operational methods
- decommissioning methods at the end of a project's life
- scheduling and timescale proposals (e.g. seasonal working)
- mitigation
- the so-called 'zero-option', i.e. abandonment of a proposal

It rests with the competent authorities to make the necessary comparisons between these alternative solutions, based on each option being subject to Stage 2 AA. If the proponents



of a plan or project are not the competent authority itself, then it is to be expected at this stage that additional information will need to be sought from them. This may take the form of a NIS for each of the solutions considered, but will also need to incorporate a comparative dimension between the different solutions. Each solution should be put forward and assessed as a detailed proposal (e.g. specimen design for a new road scheme rather than just a route corridor). The alternatives must be compared with respect to the significance of their likely effects on the integrity of the site. In this phase, therefore, other assessment criteria, **such as economic criteria, cannot be seen as overruling ecological criteria.**

### 3.5. Stage 4 - Imperative Reasons of Overriding Public Interest ("IROPI")



In the absence of alternative solutions, or if alternative solutions are likely to have even more negative environmental effects on the site concerned with regard to its conservation objectives, or if a better solution is identified that will reduce but not avoid an impact on the site, the competent authority must establish whether or not the plan or project can be considered to be necessary for **imperative reasons of overriding public interest (IROPI)**. These include, as a general protection measure, the need to have reasons of a social or economic nature that critically require the realisation of the plan or project in question. In the case of sites where priority habitats (or species) are affected, the protection mechanism is stricter, and the only IROPI reasons that may be raised are those relating to human health, public safety or beneficial consequences of primary importance to the environment. In the case of other IROPI that may need to be raised, the opinion of the European Commission must first be obtained, thereby introducing the additional safeguard of independent appraisal by the Commission.

It is clear from the wording of Article 6(4) that only public interests can be balanced against the conservation aims of the Habitats Directive. Plans or projects that lie entirely in the interest of companies or individuals are not considered to be covered. Some private projects may have public interest importance but only in exceptional cases will it be possible to argue that imperative reasons of overriding public interest require the plan or project to proceed. Furthermore, as the public interest must be overriding, it is clear that not every kind of public interest of a social or economic nature is sufficient, in particular when seen against the particular weight of the interests protected by the Habitats Directive. In this context, it also seems reasonable to assume that the public interest will,

in general, only be overriding if it is a long-term interest. Short-term economic interests or other interests that only yield short-term benefits for society are very unlikely to be of sufficient weight to outweigh the long-term conservation interests protected by the Directive.

Every effort should be made to avoid recourse to IROPI, as this is a legally difficult, expensive, lengthy and complex process, with no guarantee of a successful outcome and with a serious risk of legal challenges. It is also important to emphasize that one cannot avoid recourse to IROPI by an interpretation of facts that is inconsistent with, or selective in its use of, scientific data and best advice. Adoption or permission also requires that provision has been made to provide compensatory measures, including, if required, providing compensatory habitat.

**If IROPI do not exist then a plan cannot be adopted nor can planning permission be granted for a project.**

### 3.5.1. Statement of IROPI Case

Where it is considered that there are no alternative solutions and that IROPI apply, it is necessary to prepare statement of case for the invocation of imperative reasons of overriding public interest to permit a plan to be adopted or a project to be approved. The statement should set out:

- a) the nature of the potential negative impacts on the site that led to the negative appropriate assessment;
- b) the grounds for the view that there are no alternatives, including a comprehensive examination of all options including the option of abandoning the plan or proposed development;
- c) the imperative reasons of overriding public interest that the authority considers necessitate adoption of the land use plan or approval of the proposed development, and its grounds for considering that they apply; and

- d) the compensatory measures that would need to be provided if the plan were to be adopted or the proposed development were to be approved, and a proposal of how this could be achieved.

This statement of case will serve as the basis for an IROPI decision and referral to the Minister and for informing or obtaining the opinion of the European Commission.

### **3.5.2. Compensatory Measures**

It is a strict obligation under Article 6(4) of the Habitats Directive that, where a plan or project is being permitted for imperative reasons of overriding public interest, all compensatory measures that are necessary to ensure the overall coherence of Natura 2000 is protected must be put in place. In many cases the measures to be taken will include the identification and securing of compensatory habitat and the necessary works to ensure that that habitat will be in good ecological condition. Compensatory measures must compensate for the expected impact on the site, e.g. providing substitute habitat of the same habitat type that will be damaged or lost.

Given the overreaching requirement regarding the coherence of Natura 2000 and the possibility that compensatory habitat outside of an existing designated area may have to be designated by the Minister, the Minister must be consulted regarding the proposed compensatory measures, so that he can satisfy himself that the proposed measures adequately meet the requirements of the Directive.

Until the Minister has agreed to the proposed compensatory measures, a plan or project cannot be adopted or approved on IROPI grounds. Finally, the approved compensatory measures must be incorporated in the plan or included in the conditions of the approval.



### 3.5.3. Prior Consultation with Minister Regarding IROPI

In every case in which a local authority envisages approving or proceeding with a plan or project on grounds of IROPI, the Minister must be consulted. This should happen as early as possible in the AA process, and certainly before a decision is taken to proceed on the grounds of IROPI.

## 4. Plans - AA and Development Planning

### 4.1. Overview

A key objective of the Planning and Development Acts 2000-2006 (as amended) is to ensure that plans are updated on a regular basis, and within specified timeframes. This section establishes the steps and procedures to be followed in undertaking the AA of statutory land use plans within the framework of current planning legislation. Land use plans and strategies establish the framework and policy context for all planning decisions.

### 4.2. Types of Plans

Section 2.1 of this document examines what is meant by the term 'plan' for the purposes of Article 6(3) of the Habitats Directive. Plans considered in this section include any land use or spatial plans, covered by the Planning and Development Acts 2000-2006 (as amended), that set the framework for or influence development decisions, or determine or set the management framework or programme the undertaking, timing or phasing of development.

All the following types of land use, spatial plans and guidelines require to be considered for AA:

- Regional Planning Guidelines (RPGs);
- City and County Development Plans (CDPs) and any material amendments/variations;
- Development Plans by Town Councils (TCDPs) and any amendments/variations;
- Local Area Plans (LAPs) and any amendments; and
- Planning Schemes in respect of Strategic Development Zones (SDZs).

There are, in addition, many examples of non-statutory plans which are usually made at local authority level and pertain generally to urban areas, and are used as advisory tools in the development management process but are not statutorily adopted. Planning authorities

should undertake screening for AA in such cases and, if necessary, consult with the Department.

In the interest of clarity, all references to ‘plan’ in this section of the document include the full hierarchy of statutory land use plans as defined within the framework of current planning legislation as mentioned above and established by the Planning and Development Acts 2000-2006 (as amended).

### 4.3. Hierarchy of Plans

A clear hierarchy of statutory spatial and land use plans has been established in Ireland under the Planning and Development Acts 2000-2006 (as amended). These include the following:

- The Regional Planning Guidelines (RPGs) which provide a long-term (12-year) strategic planning framework for the development of a region;
- City/County Development Plans, which set the 6-year framework and associated objectives for the sustainable development of the city, county or town; and
- Local Area Plans, based upon the detailed development plan objectives for specific areas.

The hierarchy of land use plans means that the level of detail will vary considerably between plans at the different levels in the hierarchy. Quite clearly this will influence the nature and detail of an AA and the extent to which relevant issues can be examined at any particular level. Consequently, as one moves down the hierarchy of land use plans from the RPGs to CDPs to LAPs, it is advised that the level of detail that will be required for the plan’s AA will become more defined and focused.

The greatest level of detail will normally be required at CDP and LAP level as it is at this level that policies, objectives and zonings that determine planning applications are adopted. Both CDPs and LAPs are required to contain sustainable planning policies and



objectives for the area that the development management process implements over the time period of the plan. The CDPs and LAPs will indicate the location of Natura 2000 sites. The site synopsis will give an indication of the site's conservation objective(s) and this will alert planning staff and the general public to both the Natura 2000 site location and also the precautionary areas outside the site where development will have to be carefully screened and managed to ensure that there are no significant effects on the Natura 2000 site.

#### 4.4. Plan Policies

Under Article 10 of the Habitats Directive, Member States are required to endeavour in their land use planning and development policies to improve the ecological coherence of the Natura 2000 network and to encourage the management of features such as rivers with their banks, traditional field boundaries and ponds or small woods which are essential for the migration, dispersal and genetic exchange of wild species which are of major importance for wild fauna and flora.

It is recommended that policies to reflect the requirements of Article 10 and the Habitats Directive in general, and the necessary measures, are included in regional planning guidelines, development plans and local area plans. Examples of such policies could include:

- It is the policy of the Regional Authority/Council that plans and projects which would be likely (either individually or in combination with other plans or projects) to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites having regard to their conservation objectives, shall not be permitted on the basis of this Plan unless imperative reasons of overriding public interest can be established and there are no feasible alternative solutions.
- It is a policy of the Regional Authority/Council to conserve and protect the ecological integrity of designated sites of international and national importance, and sites proposed for designation, in particular, European sites (including Natura 2000 sites), and Ramsar sites, NHAs and statutory nature reserves.

- It is a policy of the Regional Authority/Council to implement the National Biodiversity Plan, through the preparation and adoption of Local Biodiversity Action Plans as part of integrated Local Heritage Plans, as the conservation of biodiversity is an essential component of sustainable development.

Other policies will be necessary for the conservation of legally protected species, notably those listed on Annex IV of the Habitats Directive.

### 4.5. AA and SEA

There are clear links and analogies between AA of plans and SEA. They are parallel but separate processes that commonly overlap but also differ in some key respects. AA is narrower in focus and requires more rigorous tests, with the conservation and protection of Natura 2000 sites at its core. The findings and recommendations of AA are overriding and must be incorporated into and be part of a plan that is presented for adoption.

The focus of AA is on the impacts of a plan on the integrity of Natura 2000 sites and the Natura 2000 network. In contrast, SEA assists in formulating plan policies and objectives that provide for a more strategic level of protection of the environment. Nonetheless both SEA and AA contribute to the integration of environmental considerations in the adoption of a plan and promote sustainable development.

The three main inter-relationships between AA and SEA are:

- AA is a tool that assists in addressing environmental issues as part of the SEA in relation to Natura 2000 sites.
- AA assists the SEA process in the systematic and explicit appraisal of alternatives in relation to Natura 2000 sites.
- Undertaking AA in parallel with SEA provides for an efficient use of resources and expertise. Both processes benefit each other's findings.

In order to ensure that AA is properly integrated into the plan-making process and within the relevant timeframes, it will be essential to carry out AA screening in advance of the start of the statutory preparation/review process for the plan. As a plan is amended

through the review process it will be necessary to carry out AA screening at every stage of the planning process.

If it is determined in screening that the plan may have a significant effect on a Natura 2000 site, then the Planning Authority will need to prepare a NIS. This will examine in detail the plan and its potential effects on Natura 2000 sites. This process is likely to differ somewhat from the preparation of other Natura Impact Statements in relation to projects because the data and information being gathered for the Statement are themselves likely to influence the shape of the plan. As with other forms of impact assessment, the AA process is an iterative one and the information gathered in respect of Natura 2000 sites, their conservation objectives, environmental sensitivities and existing environmental problems, should be used to guide the policies and objectives of the plan and to avoid impacts on the sites.

In the interests of clarity, it is recommended that the findings of the SEA and AA processes should be compiled in separate reports. In the case of SEA these findings are documented in an Environmental Report. In the case of AA, it is recommended that the findings of this exercise are recorded in the Natura Impact Statement. An SEA will in many cases need to incorporate material from the AA; conversely, material from the SEA may help inform the AA.

#### **4.6. Approaches to Undertaking the AA of Plans**

Work on the NIS can be carried out by an in-house team preparing the plan, if they have the requisite ecological and other expertise at their disposal. Alternatively external specialists may be engaged for the purpose, or a combined approach involving in-house and external expertise may be adopted. If it is carried out in-house, the team will be best placed to quickly feed the results of the process back into the plan preparation process but it is essential that the team has at its disposal the necessary competencies to deal with the planning, ecological and other technical issues involved. Involvement in and knowledge of the Water Framework Directive may be particularly important when dealing with issues

around water dependent habitats and species. Consultants, on the other hand, may bring a degree of objectivity to the process, and may be required for their ecological or other expertise.

A combination of the two approaches may well offer the best solution, with specialists engaged to assist the team as required at different stages in the process, such as:

- Screening for likely significant effects
- Scoping and further information gathering
- Assessing the impacts
- Preparation of the NIS
- Preparation of the AA Conclusion Statement

### 4.7. Maintaining the AA File

It is recommended that a separate AA file is maintained throughout the entire process of preparing or reviewing a plan. The file should include copies of all documentation relevant to the AA. A separate AA file will be of considerable assistance as part of the audit trail and will record how environmental considerations were integrated into the plan.

What should be on the AA file:

- AA screening report that includes all relevant details in relation to all plan stages and changes including the manager's report as it pertains to each stage of the process. In a case where AA is not required (i.e. 'finding of no significant effects') this should be recorded and the evidence basis for this decision recorded and updated as necessary with every amendment or alteration during the plan review
- AA scoping issues paper
- NIS - which deals with mitigation/alternatives/IROPI and compensatory measures (as necessary)
- Competent authority decision

- AA Conclusion Statement
- All documentary evidence of consultation with and/or opinion of NPWS/DEHLG, EPA and other statutory bodies.

### 4.8. Screening of Plans

The screening for AA should commence with the preparation of the plan Issues Paper. A planning authority, in consultation with the Department if necessary, should determine and identify existing and potential effects of the plan on a Natura 2000 site or network. AA screening is required at every stage of the decision making process. Furthermore AA is an iterative process. The policies and objective of the plan must be formulated and the decision audited in the context of the various stages of the AA process (screening, NIS, mitigation, alternatives, IROPI and compensatory measures).

The key to deciding if an AA of a plan would be required is determined by an assessment of whether the plan and its policies and objectives are likely to have a significant affect on a Natura 2000 site. The decision should not be determined by the size of the plan area alone. It will also be influenced by the nature and extent of the development likely to be proposed in the plan, and the plan area's *in situ*, *ex situ* and in combination relationship to adjoining Natura 2000 sites and the wider Natura 2000 network.

When screening the plan and its policies and objectives there are two possible outcomes:

- the plan poses no risk of a significant effect and as such requires no further assessment; and
- the plan has potential to have a significant effect (or this is uncertain) and AA of the plan is necessary.

Screening can be used to establish which policies and objectives have potential to have significant effects, and therefore the ones that require further attention at the AA stage.

## 4.9. Scoping

Scoping follows a screening decision that AA is required, and is an extension of that process in that it identifies more precisely what AA must cover, including the data, information and level of detail required in the NIS. In this way, scoping helps at the early stages of plan preparation to reduce the possibility of relevant issues not being identified. Provision should be made to address new issues that emerge in the course of AA and preparation of the NIS.

Neither the Habitats Directive nor EU guidance provides explicit guidance in relation to the scope and the level of detail to be included in the AA conclusion report. The word ‘appropriate’ is key in that the assessment must be appropriate to the Natura 2000 site, its conservation objectives and sensitivities, and to the level of detail that the AA must be conducted at, having taken cognisance of the position of the plan within the hierarchy of plans, and its potential impacts on the conservation objectives of Natura 2000 sites, taking existing conditions and issues into account.

It is recommended that at the end of the scoping procedure, the plan-making authority should prepare a brief scoping report of its conclusions as to what information is to be included in the NIS, taking account of any recommendations from various statutory bodies.

Furthermore, as with the initial screening process, it is recommended, as part of the scoping process, that planning authorities should consult adjacent local authorities as appropriate.

## 4.10. AA of the Plan

It is the competent authority’s responsibility to carry out the AA of the plan. The NIS of plans should be based on best available information, objective criteria, best scientific knowledge and expert judgement in relation to its impact on the integrity of a Natura 2000 site with respect to the conservation objectives of the site and to its structure and function. There should be no reasonable scientific doubt as to the absence of effects.

In the event that the plan requires AA, mitigation measures may need to be formulated. If mitigation measures cannot offset the impact of the plan on the integrity of a Natura 2000 site and network, the competent authority must then proceed to identify and assess alternative solutions. Once the assessment of alternative solutions is complete and if it is concluded by the competent authority that no alternative solutions exist and that adverse impacts remain, the competent authority must decide to either abandon the plan or undertake to establish that the plan can be considered to be necessary for imperative reasons of overriding public interest. If valid IROPI considerations exist, the competent authority is required to assess what compensatory measures are necessary and whether these will effectively offset the damage to the Natura 2000 site and network, before the plan can proceed to the next decision making stage of the process (i.e. the pre-draft, draft and proposed amendments stages).

### **4.11. Consultations with the DEHLG**

It is recommended that the advice of the Department is taken on board by the competent authority in finalizing the process. In order to facilitate consultation, sufficient information should be provided in the NIS on the following:

- The geographic area involved (a map should be included);
- The nature of the plan, and its intended lifespan;
- The likely scale, nature and location of development within the area during the life of the plan (in broad terms), and its predicted significant environmental impact;
- Review of existing and potential environmental and infrastructural problems;
- Cumulative and in combination impacts;
- Associated relevant strategies (e.g. Wind Energy Strategy);
- The location of Natura 2000 sites and their conservation issues and sensitivities.

It is recommended that the Department be consulted by a planning authority at every stage of the plan making process (i.e. at the pre-draft, draft and proposed amendments stages).

The Department's comments, if any, on a draft plan and the associated AA should be taken into account by the planning authority before the plan is adopted. In each iteration of the plan, earlier observations from the Department should be carried forward. In addition, it is recommended that the Department be informed when the plan is adopted. The information made available in this notification should also include a statement as to how Departmental comments on the draft plan and the associated AA report were taken into account.

### **4.12. Transboundary Requirements**

It is recommended that the consultation procedures outlined in the SEA Guidelines (DEHLG, 2004) are followed in relation to AA in this regard including where a plan impacts on a Natura 2000 site.

### **4.13. Adoption of Plan**

When a plan is adopted it is recommended that, similar to SEA procedures, all parties who commented on the plan including government departments, members of the public, adjacent local authorities as appropriate, and any relevant transboundary state should be notified.

It is recommended that the following items be made available to those so informed:

- The plan as adopted;
- A statement summarising how ecological considerations in relation to Natura 2000 sites have been integrated into the plan. It is recommended that this outlines how the AA report reflects the outcome of the AA and consultations and the reasons for choosing the plan as adopted in the light of other reasonable alternatives considered;
- The NIS.
- The AA Conclusion Statement



- Monitoring measures to ensure that, in the implementation of the plan, all of the requirements (including mitigation and compensation measures) are met.

### **4.14. AA Conclusion Statement**

It is recommended that planning authorities include a clear and discrete AA Conclusion Statement as a distinct section in the written statement of the plan separate to the SEA statement.

#### **4.14.1. Recommended Format for Statement**

The following format for the AA statement is recommended:

- Summary of how the findings of the AA were factored into the plan;
- Reasons for choosing the plan as adopted, in the light of other reasonable alternatives considered as part of the AA process; and
- A declaration that the plan as adopted will not have an adverse effect on the integrity of a Natura 2000 site or sites.
- Copy of NIS.

### **4.15. Monitoring Through the AA Process**

While there is at present no explicit requirement for the monitoring the ongoing impact of the implementation of a development plan on the conservation objectives of Natura 2000 sites, it is best practice to do so. It is recommended that this includes a review of what has arisen in terms of impacts in the life of the preceding plan, e.g. deterioration or loss of habitats or species in a SAC or SPA, as a consequence of development and altered land use, increase in population, encroachment, disturbance, etc.



### 4.16. Additional Guidance

It will take a number of years of implementing AA of plans by Member States before a comprehensive base of experience is built up in undertaking AA of plans and monitoring the environmental effects on Natura 2000 sites resulting from the implementation of plans. There is considerable flexibility in tailoring monitoring arrangements to the nature of different types of plans, and it is to be expected that there will be a degree of refinement in the early years of carrying out AA. While there is a substantial amount of environmental data available at national level, it will not always be possible to link changes in the environment to the implementation of particular plans. The Department will liaise with planning authorities with regard to monitoring, and may issue additional guidance at a later date based on emerging best practice and experience. Reference should be made to EU Commission guidance and case law of the European Court of Justice.

## 5. Projects - AA and Development Management

### 5.1. Overview

This section gives guidance to planning authorities and An Bord Pleanála on implementing the Habitats Directive with regard to their role in granting permission for developments to be carried out either through the planning and development or strategic infrastructure processes. The Habitats Directive, as it relates to development management and the strategic infrastructure process, requires a robust, thorough and transparent application by all the consent authorities. The implication of this is the need to consider all proposed developments/projects for Appropriate Assessment.

### 5.2. The Development Plan, Natura 2000 Sites and Development Management

The development plan is required to include appropriate policies and objectives for the conservation and protection of European sites and to ensure that their integrity will not be adversely affected by development. The development plan and/or LAP will have established the sustainable planning policies and objectives for the area and the development management process implements these policies and objectives over the time period of the plan. It will have indicated the location of the Natura 2000 sites and the sites' conservation objective(s) will be available from the NPWS. This will alert planning staff and the general public to both the Natura 2000 site locations and also the sensitive *ex situ* areas, i.e. those areas outside the site where development will have to be carefully considered and managed to ensure that there are no significant effects on Natura 2000 sites.

### 5.3. Types of Projects

Section 2.1.2 outlines the types of projects and developments that will require consideration for AA. In summary this includes:

- All development that requires a planning permission process (either through the planning authorities or An Bord Pleanála), including those that require an EIS to be carried out (above- and sub-threshold);
- All public development carried out by planning authorities including development which goes through either the Part X or XI<sup>21</sup> processes, including those which require an EIS to be carried out (above- and sub-threshold);
- Exempted development either within a Natura 2000 site or which could potentially have a significant effect on Natura 2000 sites, including excavation of trial holes and other site/ground investigations (see 5.4 below);
- All material contravention proposals;
- All other local authority authorised 'projects' – waste permits, discharge licenses, recreation and amenity projects and road works.

If in doubt as to whether certain developments require AA, the Department may be contacted in such cases.

### 5.4. Exempted Development

Under the current Planning and Development Regulations 2001-2009, development which is normally exempted development will require planning permission if it consists of or comprises the excavation, alteration or demolition of places, or sites of ecological interest, the preservation of which is an objective of the development plan for the area in which the

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<sup>21</sup> Part X and Part XI Planning and Development Act, 2000 as amended

development is proposed. Consequently development which might, on a preliminary assessment, be considered exempted development, such as a small domestic extension, if it is located in a Natura 2000 site or if the proposed development could have significant effects on an adjacent Natura 2000 site, alone or in combination with other plans and projects, and where such an objective has been included in the development plan, the development requires planning permission and consideration for Appropriate Assessment. Planning authorities and An Bord Pleanála need to have regard to this when considering Section 5 declarations/referrals. It should also note that even exempted developments that are not de-exempted may be subject to screening for AA separate from the planning process under the Habitats Regulations

If in doubt as to whether certain developments require AA, the Department may be contacted for advice.

### **5.5. The AA Process and Development Management**

As previously described in Section 3, there are four stages in the overall AA process:

- Stage 1. Screening for Appropriate Assessment
- Stage 2. Statement for Appropriate Assessment and Appropriate Assessment
- Stage 3. Alternative Solutions
- Stage 4. IROPI/compensation measures.

While there are four procedural steps in the overall process, there are effectively two critical steps, firstly the screening stage and secondly, where necessary, undertaking an Appropriate Assessment.

#### **5.5.1. Screening for AA of a Proposed Development**

In general planning authorities will face one of the following situations when screening planning applications:

1. Applications for permission where, from the location, nature and size of the development it is clear that an AA is not required because it is located so far from any Natura 2000 site or precautionary area (e.g. either upstream or downstream) that it is certain that it will not have a significant effect on the Natura 2000 site.
2. Applications for permission where, from the description of the development, it is clear that an AA is not required whether or not the proposal is located within or without a Natura 2000 site. Examples of this would be involving changes to the external appearance of buildings, (such as shop fronts, change of house design/ appearance, domestic extensions) or changes of use that do not involve any extra loading on waste water, water systems or erosion of habitats.
3. Applications for permission where, from the nature, size and location of the development it is clear that an AA will be required. These are more likely to be located within or close to, or upstream of or in the catchment of a Natura 2000 site and have the clear potential to have a significant effect on a Natura 2000 site. Examples of these are developments, which require EIS (above or sub threshold), such as the construction of more than 500 dwelling units<sup>22</sup> and developments that have a major physical infrastructural need or impact.
4. Applications for permission, where from the nature, size and location of the development it is unclear if the proposal, will have a significant effect on a Natura 2000 site. This will need an AA if the effects are uncertain (precautionary principle).

### 5.5.2. Screening for AA: Steps for a Proposed Project

Section 3.2 of this guidance outlines the steps that are involved in Screening for Appropriate Assessment.

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<sup>22</sup> In some cases, smaller scale developments and even individual houses will require an AA (see situation 4).

**Steps One and Two** deals with the identification and compilation of the information required about the Natura 2000 sites, to ascertain the locations of the relevant Natura 2000 sites, the qualifying interests and conservation objectives for the sites.

**Step Three** looks at the assessment of likely significant effects. To ascertain this, a description of the project will be required which identifies the main features of the proposed project, this includes its scale and size, physical changes that will result from the project, e.g. excavation, the resource requirements e.g. water abstraction, emissions and waste, noise, light pollution and disturbance, etc. It should be remembered that for large projects it may be necessary to identify the parameters for the construction, the operation, and the decommission phases of the proposed project. This is then related to the sensitivities of the relevant Natura 2000 site(s). Impacts on the site (which would be measured through significance indicators) include loss of habitat, disturbance of species, changes in water resources or quality of the water resource etc. If the site is a priority habitat some indicators such as loss of habitat may be more critical. The assessment of significance may be quite apparent particularly after consultation with the Department, but in other instances further enquiries may be necessary.

**Step Four** requires ‘in combination effects’ to be considered. These include *ex situ* and *in situ* projects/developments and as such will change over time so it is important that each screening should clearly indicate what plans/projects have been taken into consideration.

**Step Five** is the conclusion that is drawn as to whether or not the project may give rise to significant effects.

In summary, the full details of the proposed development, of the local site characteristics and of the Natura 2000 site are collected. AA screening is undertaken. This may reveal opportunities for relocation, redesign or other avoidance measures that would avoid negative effects, in which case the development should be modified and the screening step repeated. If it is still likely or uncertain whether the proposed development will have a significant effect, AA is required and mitigation measures should be devised as necessary.

### 5.5.3. Carrying out AA of a Proposed Development

Section 3.3 of this guidance outlines this process in some detail. In addition, the guidance issued by the EU Commission is very helpful in describing the steps that are required in undertaking an AA (particularly EC, 2002).

The first step will be the preparation by the applicant of a NIS. The proposed development is then examined on the basis of the statement. If it still cannot be stated clearly that there will be no adverse effects on the integrity of the site, alternative solutions must then be considered. If the alternative solutions still do not clearly indicate that there will be no adverse effects, then the proposed development must either be rejected or considered under IROPI. This represents the derogation procedures of Article 6(4) and, as indicated earlier, private developments will very rarely fall for consideration as being required for imperative reasons of overriding public interest,

Section 3.4 outlines the different procedures that are required to be followed if it is proposed to go ahead with the development even though it adversely impacts on a Natura 2000 site and the different procedures to be followed if it is a priority habitat.

### 5.5.4. Pre-application Discussions

Given the potential complexity of dealing with AA, it is strongly advised that pre-application discussions are held for any developments where an EIS will be mandatory, for sub threshold developments that will require to be screened for EIS and AA, or for developments that may not require an EIS but that are located in, or close to, a Natura 2000 site or have the potential to impact such a site.

At the pre-application stage applicants or their agents should be informed of the location of the Natura 2000 sites and /or adjacent sites, and of the availability of information about the sites (e.g. site synopses), and of the implications this may have for the project. In addition



to the normal planning requirements, where possible, the applicant should be informed of the type and level of detail of information that will be required to be lodged with the application to screen the project for AA, and that such information may need to be prepared by an ecologist and, in certain circumstances, other specialists (e.g. hydrologist or hydrogeologist). The possible need for a NIS should also be explained.

In some cases it will be clear that planning authorities should consult the Department, or advise the prospective applicant to engage in pre-planning consultations or scoping requests with the Department, if they are unclear as to the type and nature of the information detail required.

In some instances it will be very clear that an AA will be required. The applicant should be informed of this and if it is clear that it is unlikely that the application will be successful on ecological grounds, the applicant should also be informed of this so that the applicant can make an informed decision as to whether or not to proceed with the proposal.

### **5.6. AA and EIA**

The mandatory requirements under the EIA Directives are that certain projects above a threshold automatically trigger the EIA process; those under the thresholds require consideration on a case-by-case basis in the context of nature, size and location criteria, or increase in size or capacity criteria. Chapter 4 of the Development Management Guidelines issued (DEHLG, 2007), details the process required for lodging a planning application in these circumstances. The EPA has also published two guidance documents that should be consulted by planning authorities when assessing an EIS (EPA, 2002, 2003).

The planning authority must now also screen the application to ascertain if the proposed development will require AA. The Screening for AA, NIS and AA may be carried out as

part of the EIS, as indicated in the Habitats Regulations<sup>23</sup> but, if so, the screening or AA results must be a distinct and discrete section within the EIS.

Where a development is proposed that is located within a Natura 2000 site it may be preferable that the AA element of the EIS is carried out initially as it will inform the decision making process, the possible mitigation measures, the use of reasonable alternatives and, ultimately, whether or not the project is acceptable in the location in question. In other situations it may only be during the EIS process, or during the consideration of the application that it becomes clear that AA will be necessary. Planning authorities will have to consider this on a case-by-case basis.

### 5.6.1. EIA Sub Threshold Development

When considering sub threshold developments using Schedule 7 criteria<sup>24</sup>, the planning authority will now also have to consider the project in relation to AA.

## 5.7. Referral of the Application

The Minister of DEHLG, the Heritage Council, and An Taisce, are required to be notified if an application for a proposed development is lodged that might affect or is unduly close to a site of ecological interest.

### 5.7.1. Assessment of the Application

In assessing an application, the planning authority and An Bord Pleanála will firstly have to screen the application and make a decision on whether or not AA is required. If it is clear that it is not required in the first instance, then the planning application can be assessed as normal. If it is decided that AA is required, then the application should be referred to in-

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<sup>23</sup> European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997)

<sup>24</sup> Schedule 7 Planning and Development Regulations 2001

house experts if available and to the Department<sup>25</sup>, to help the planning authority or the Board to assess the application and to ascertain, where necessary, the types of additional information that may be required, including a NIS if one was not already prepared.

In some cases where, for example, through pre-application discussions it is clear that AA would be required, the NIS may be lodged with the planning application. In this instance, the planning authority will refer the application to the Department (NPWS), their own in-house experts if available, and if necessary acquire expertise to help in considering the AA and its findings and conclusions, to enable a planning decision to be made.

### 5.7.2. Additional Information Requests

Planning authorities will have to screen requests for additional information to ensure that the request, in itself, does not give rise to a significant change to the development so that the development will now significantly impact on a Natura 2000 site, thereby requiring further screening and possibly, AA. If it is felt that the additional information request has the potential to give rise to this, the additional information request should indicate this and then request the appropriate information. Similarly, when additional information is received this must also be screened by the planning authority/An Bord Pleanála to see if an AA is now required, and the decision formally noted.

**Example 1** - An application for permission is lodged with a planning authority for an access onto a road at an unsafe location for a dwelling. When the application was lodged it was screened by the planning authority and found not to require appropriate assessment. The applicant has other road frontage which, from a policy or safety perspective, is more acceptable. If the alternative access is located in or near a Natura 2000 site, the planning authority will need to screen this alternative proposal to ascertain if an appropriate assessment is required, and, if necessary, so inform the applicant and also request the specialist information that is required in a NIS.

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<sup>25</sup> Note, for example, that assessing risks associated with types of on-site wastewater treatment systems, and determining the attenuation and treatment capacity of soils on a site, will require the expertise of specialists in the local authority's Environment section

**Example 2** - An application is lodged for a development on a site which is partly in or near a Natura 2000 site. When the application was lodged it was screened by the planning authority and found not to require appropriate assessment. For visual and amenity reasons it is proposed to move all the development to one part of the site. However, the proposed relocation of the development brings it within the Natura 2000 site or closer to it, the planning authority will need to screen this alternative proposal to ascertain if appropriate assessment is required, and if necessary so inform the applicant and also request the specialist information that is required in a NIS.

## 5.8. The Decision

The following are the probable scenarios that will face the planning authority when considering a decision for a proposed development.

### 1. No Adverse Affects on the integrity of the Natura 2000 site

If, after Screening for AA, or carrying out AA, it can be objectively concluded that the proposed development on its own and in combination with other plans and projects will not adversely affect the integrity of a Natura 2000 site, the development may proceed and permission may be granted, subject to all other planning considerations.

### 2. IROPI and Annex I habitats and species<sup>26</sup> and Annex II species - General

If it is determined that the proposed development will adversely affect the integrity of a Natura 2000 site (but will not affect priority habitats), and it can be demonstrated that it is the least damaging of all possible alternatives (irrespective of cost), and it is necessary for Imperative Reasons of Overriding Public Interest, (IROPI) including those of a social and economic nature, the proposal may be granted, subject to consultation with the Minister to agree the necessary compensatory measures to ensure that the overall coherence of the site is protected, and subject to all other planning issues being resolved. Compensatory

measures can be used only as a last resort and the Commission must be informed of the compensatory measures adopted.

### 3. IROPI - Annex I Priority Habitats

If the site hosts an Annex I priority habitat, and it is considered that the proposed development will adversely affect the integrity on the Natura 2000 site, additional criteria and procedures have to be followed. In this instance, the only Imperative Reasons of Overriding Public Interest (IROPI) that can be considered are those relating to human health and public safety, beneficial consequences of primary importance for the environment, or further to an opinion from the European Commission, other IROPI.. While the planning authority or the Board, as the case may be, makes the decision regarding whether IROPI apply, following, if required, an opinion from the European Commission, the Minister must be satisfied that appropriate compensatory measures have been identified and will be delivered. Approval for a project on IROPI grounds should, therefore, await the Minister's approval of the compensatory measures.

### 4. Adverse Affects on the integrity of a Natura 2000 Site but not IROPI

If the proposed development will adversely affect the integrity of a site, and if less damaging alternatives are not feasible or imperative reasons of overriding public interest do not exist, the development will require to be refused.

## 5.9. Conditions on Permissions

The Development Management guidelines (Chapter 7) provide guidance on drafting planning conditions. Circular letter PD 2/07 and NPWS 1/07 goes into some detail on where compliance conditions should not be used and where they may be appropriate. Conditions should never be seen as providing a means to avoid AA or circumvent provisions of the Habitats Directive or Regulations.

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<sup>26</sup> Ireland at present has no priority species.

### 5.10. Material Contraventions

Material contraventions must also undergo AA screening similar to any other planning application seeking permission.

### 5.11. Works carried out by the Local Authority

Screening for AA also applies to all works and activities carried out, undertaken or regulated by planning authorities, other sections of the local authority and other public bodies. Local authorities should formally screen all works and activities carried out by them or on their behalf (not just those carried out under Part X and XI) for AA and, where necessary, carry out AA.

As with development requiring planning permission, some works will clearly not require an AA, e.g. repaving an already surfaced area. In other areas this may not be so clear and, in line with the precautionary approach, further screening will be required. Some development will obviously require AA, e.g. waste water treatment works discharging into a Natura 2000 site. Where another Department of a local authority proposes to carry out any works or activities it should check with the local authority's Planning Department to determine whether screening or appropriate assessment will be required before they proceed with their proposal. It should be noted that the maintenance of a drain by the OPW was recently found by the European Court of Justice to have been in breach of the Habitats Directive because it had not been subject to appropriate assessment.

### 5.12. An Bord Pleanála

An Bord Pleanála will be the competent authority when fulfilling its functions under the Planning and Development Acts 2000-2006 (as amended). As with other planning authorities, An Bord Pleanála will have to undertake AA of projects and SDZ planning schemes.

### 5.13. Transboundary issues

Natura 2000 sites and their zones of impact associated with plans or projects may cross national boundaries. There is an established procedure when working with applications, which are covered by the EIA procedures, and planning authorities are advised to follow the EIA procedures in such instances. However, there may be instances where an EIA is not involved but AA has still to be undertaken. In this situation planning authorities are advised to follow a similar procedure to the EIS procedures.

### 5.14. Enforcement

In view of the environmental importance attached to Natura 2000 sites, planning authorities should give priority to enforcement cases where a development has had or may have a significant effect on a Natura 2000 site. In particular, if requested by NPWS to investigate any such case, this should be given priority.

## 6. References and Further Reading

### Relevant Departmental Circulars (available from [www.npws.ie](http://www.npws.ie))

- Circular Letter PD 2/07 and NPWS 1/07: *Compliance Conditions in respect of Developments requiring (1) Environmental Impact Assessment (EIA); or (2) having potential impacts on Natura 2000 sites*
- Circular Letter NPWS 2/07: *Guidance on Compliance with Regulation 23 of the Habitats Regulations 1997 – Strict Protection of Certain Species/Derogation Licenses*
- Circular Letter SEA 1/08 & NPWS 1/08: *Appropriate Assessment of Land Use Plans*
- Circular L8/08: *Water Services Investment and Rural Water: Protection of Natural Heritage and National Monuments Programmes*
- Circular Letter PD 5/08: *European Court of Justice ruling on retention planning permission for development requiring environment impact assessment, and the specific case of a wind farm development at Derrybrien in Galway*

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## Appendix 1: Annex I Habitats in Ireland

List of Annex I habitats that occur in Ireland, with habitat groupings and Natura 2000 habitat codes. Priority habitats are indicated by ‘\*’.

### Coastal and halophytic

- 1110 Sandbanks which are slightly covered by sea water all the time
- 1130 Estuaries
- 1140 Mudflats and sandflats not covered by sea water at low tide
- 1150 \*Coastal lagoons
- 1160 Large shallow inlets and bays
- 1170 Reefs
- 1210 Annual vegetation of drift lines
- 1220 Perennial vegetation of stony banks
- 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts
- 1310 *Salicornia* and other annuals colonising mud and sand
- 1320 *Spartina* swards (*Spartinion maritimae*)
- 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
- 1410 Mediterranean salt meadows (*Juncetalia maritimi*)
- 1420 Mediterranean and thermo-Atlantic halophilous scrubs (*Sarcocornetea fruticosi*)

### Coastal sand dunes and continental dunes

- 2110 Embryonic shifting dunes
- 2120 Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)
- 2130 \*Fixed coastal dunes with herbaceous vegetation (grey dunes)
- 2140 \*Decalcified fixed dunes with *Empetrum nigrum*
- 2150 \*Atlantic decalcified fixed dunes (*Calluno-Ulicetea*)
- 2170 Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*)
- 2190 Humid dune slacks
- 21A0 \*Machairs (\*in Ireland)

### Freshwater habitats

- 3110 Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*)
- 3130 Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or *Isoeto-Nanojuncetea*

- 3140 Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp.
- 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition-type vegetation
- 3160 Natural dystrophic lakes and ponds
- 3180 \*Turloughs
- 3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation
- 3270 Rivers with muddy banks with *Chenopodium rubri* p.p. and *Bidention* p.p. vegetation

#### **Temperate heath and scrub**

- 4010 Northern Atlantic wet heaths with *Erica tetralix*
- 4030 European dry heaths
- 4060 Alpine and Boreal heaths

#### **Sclerophyllous scrub (matorral)**

- 5130 *Juniperus communis* formations on heaths or calcareous grasslands

#### **Natural and semi-natural grassland formations**

- 6130 Calaminarian grasslands of the *Violetalia calaminariae*
- 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometea*) (\*important orchid sites)
- 6230 \*Species-rich *Nardus* grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe)
- 6410 *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*)
- 6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
- 6510 Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*)

#### **Raised bogs, mires and fens**

- 7110 \*Active raised bogs
- 7120 Degraded raised bogs still capable of natural regeneration
- 7130 Blanket bogs (\*if active bog)
- 7140 Transition mires and quaking bogs
- 7150 Depressions on peat substrates of the *Rhynchosporion*
- 7210 \*Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae*
- 7220 \*Petrifying springs of the tufa formation (*Cratoneurion*)
- 7230 Alkaline fens

#### **Rocky habitats and caves**

- 8110 Siliceous scree of the montane to snow levels (*Androsacetalia alpinae* and *Galeopsietalia ladani*)



- 8120 Calcareous and calschist screes of the montane to alpine levels (*Thlaspietea rotundifolii*)
- 8210 Calcareous rocky slopes with chasmophytic vegetation
- 8220 Siliceous rocky slopes with chasmophytic vegetation
- 8240 \*Limestone pavements
- 8310 Caves not open to the public
- 8330 Submerged or partially submerged sea caves

### **Forests**

- 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- 91D0 \*Bog woodland
- 91E0 \*Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-padion*, *Alnion incanae*, *Salicion albae*)
- 91J0 \**Taxus baccata* woods of the British Isles

## Appendix 2: Acronyms

<b>AA</b>	Appropriate Assessment
<b>CDP</b>	City or County Development Plan
<b>cSAC</b>	candidate Special Area of Conservation
<b>DEHLG</b>	Department of Environment, Heritage and Local Government
<b>ECJ</b>	European Court of Justice
<b>EIA</b>	Environmental Impact Assessment
<b>EIS</b>	Environmental Impact Statement
<b>EPA</b>	Environmental Protection Agency
<b>EC</b>	European Commission
<b>IROPI</b>	Imperative Reasons of Overriding Public Interest
<b>LAP</b>	Local Area Plan
<b>NGO</b>	Non Governmental Organisation
<b>NPWS</b>	National Parks and Wildlife Service
<b>OSi</b>	Ordnance Survey of Ireland
<b>RPG</b>	Regional Planning Guidelines
<b>SAC</b>	Special Area of Conservation
<b>SDZ</b>	Strategic Development Zones
<b>SEA</b>	Strategic Environmental Assessment
<b>S.I.</b>	Statutory Instrument
<b>SPA</b>	Special Protected Area

## Appendix 3: Glossary

**Annex I habitat:** A habitat listed in Annex I of the Habitats Directive.

**Appropriate Assessment:** An assessment carried out under Article 6(3) of the Habitats Directive of the implications of a plan or project, either individually or in combination with other plans and projects, on a Natura 2000 site in view of the site's conservation objectives.

**Appropriate Assessment Conclusion Statement:**

The statement of a competent authority of its decision on an appropriate assessment, and the reasons for its decision.

**Biodiversity:** The variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (UN Convention on Biological Diversity 1992).

**Birds Directive:** Council Directive 79/409/EEC on the conservation of wild birds

**European Commission:** The Commission of the European Communities.

**Ecology:** The study of the inter-relationships between living organisms and their environment.

**EC:** European Commission

**Ex situ:** Outside – usually in the context of *ex situ* effects (or outside effects) on a Natura 2000 site. For example, abstraction of water from a river upstream of a Natura 2000 site located on the river could have an *ex situ* effect on the site.

**Habitat:** A place in which a particular plant or animal lives. Often used in a wider sense, referring to major assemblages of plants and animals found together such as woodlands or grassland.

**Habitats Directive:** Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive).

**In situ:** Inside or within – usually in the context of *in situ* effects (or effects within) on a Natura 2000 site. For example, constructing a marina on the lakeshore in a Natura 2000 site could have an *in situ* effect.

**Natura 2000:** Network of Special Areas of Conservation and Special Protection Areas. For the purposes of this guidance, it includes candidate SACs and notified SPAs.

**NIS:** Natura Impact Statement. The report of a scientific examination of a plan or project and the relevant Natura 2000 sites, to identify and characterise any possible implications for the site in view of the site's conservation objectives, to enable a consent authority to carry out an appropriate assessment.

**Precautionary principle:** A principle underlying the concept of sustainable development which implies that **prudent action** be taken to protect the environment even in the **absence of scientific certainty**.

**Priority habitat:** Natural habitat types on Annex I of the Habitats Directive, and indicated by an asterisk (\*), which are in danger of disappearance, and for which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory.



**Priority species:** Species for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory, these priority species are indicated by an asterisk (\*) in Annex II of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. At present, Ireland does not have any priority species.

**Screening for appropriate assessment:** the screening of a plan or project to establish if an appropriate assessment of the plan or project is required. Unless the screening assessment can establish that there is no likelihood of any significant effect on a Natura 2000 site, then an AA must be carried out.

**Special Areas of Conservation (SACs):** are sites designated under European Communities Directive 92/43/EEC known as the ‘Habitats Directive’. This requires the conservation of important, rare or threatened habitats and species (not birds, which are protected by Special Protection Areas) across Europe.

**Special Protection Areas (SPAs):** are sites designated under the European Communities Directive 79/409/EEC, known as the ‘Birds Directive’, to conserve the habitats of certain migratory or rare birds.

**[Statement for Appropriate Assessment:** This term, used in the 10 December 2009 version of this Guidance, has, from 11 February 2010, been replaced by “**Natura Impact Statement**” (see below).]

**Natura Impact Statement (NIS):** The report of a scientific examination of a plan or project and the relevant Natura 2000 sites, to identify and characterise any possible implications for the site in view of the site’s conservation objectives, to enable a consent authority to carry out an appropriate assessment.

## Appendix 5: Checklists

### Information checklist for AA (after Box 6, EC (2002))

Information about the plan or project	Y/N
Full characteristics of the project or plan which may affect the site	
The total range or area the plan will cover	
Size and other specifications of the project	
The characteristics of existing, proposed or other approved projects or plans which may cause interactive or cumulative impacts with the project being assessed and which may affect the site	
Planned or contemplated nature conservation initiatives likely to affect the status of the site in the future	
The relationship (e.g. key distances etc.) between the project or plan and the Natura 2000 site	
The information requirements (e.g. EIA/SEA) of the authorisation body or agency	
Information about the Natura 2000 site	Y/N
The reasons for the designation of the Natura 2000 site.	
The conservation objectives/qualifying interests of the site and the factors that contributes to the conservation value of the site.	
The conservation status of the site (favourable or otherwise)	
The existing baseline condition of the site	
The key attributes of any Annex I habitats or Annex II species on the site	
The physical and chemical composition of the site	
The dynamics of the habitats, species and their ecology	
Those aspects of the site that is sensitive to change	
The key structural and functional relationships that create and maintain the site's integrity	
The seasonal influences on the key Annex I habitats or Annex II species on the site	
Other conservation issues relevant to the site, including likely future natural changes taking place	

### Integrity of Site Checklist (after Box 10, EC (2002))

Conservation objectives: does the project or plan have the potential to:	Y/N
Cause delays in progress towards achieving the conservation objectives of the site?	
Interrupt progress towards achieving the conservation objectives of the site?	
Disrupt those factors that help to maintain the favourable conditions of the site?	
Interfere with the balance, distribution and density of key species that are the indicators of the favourable condition of the site?	
Other objectives: does the project or plan have the potential to:	Y/N
Cause changes to the vital defining aspects (e.g. nutrient balance) that determine how the site functions as a habitat or ecosystem?	
Change the dynamics of the relationships (between, for example, soil and water or plants and animals) that define the structure and/or function of the site?	
Interfere with predicted or expected natural changes to the site (such as water dynamics or chemical composition)?	
Reduce the area of key habitats?	
Reduce the population of key species?	
Change the balance between key species?	
Reduce diversity of the site?	
Result in disturbance that could affect population size or density or the balance between key species?	
Result in fragmentation?	
Result in loss or reduction of key features (e.g. tree cover, tidal exposure, annual flooding, etc.)?	

Back Cover

