



An Roinn Iompair
Department of Transport



Cumann Lucht Bainistíochta Contae agus Cathrach
County and City Management Association



ROADS Services Training Group

LOCAL AUTHORITY ROADS CONFERENCE and EXHIBITION - 2022

Radisson Blu Hotel & Spa, Sligo May 2022



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Roads Projects and The Habitats Directive Lessons Learned and Key Principles

Bernadette Guest
Heritage Officer
Waterford City and County Council

Habitats Directive- Legislation

- Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora adopted on 21st May 1992
- EC (Natural Habitats) Regulations 1997, amended in 1998, 2005 and 2011.
- Birds and Habitats Regulations 2011.
- Part XAB Planning and Development Regulations 2001 (as amended) clarified the obligations of planning authorities under the Birds and Habitats Directives.

What is Appropriate Assessment ?

- Article 6 of the Habitats Directive provides a strict assessment procedure for any plan or project not directly connected with or necessary to the management of a designated European site but which has the potential to have implications for the site in view of the site's conservation objectives.

Natura 2000 Network

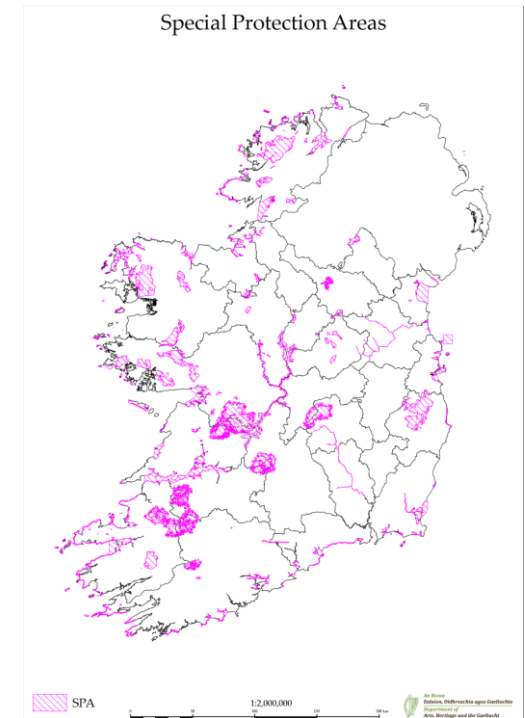
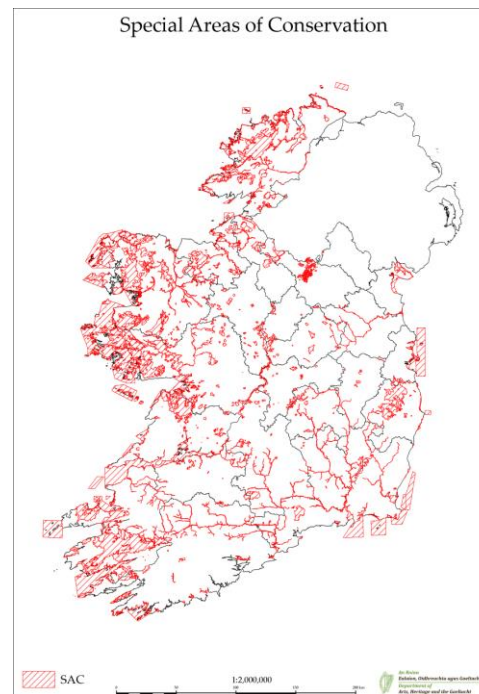
European Sites

Natura 2000
Network

SCIs

SACs (439)

SPAs (154)



AA decision making process

- ❑ Is very precautionary
- ❑ Screening concludes with a yes/no statement. Is there a likelihood of significant effects on the conservation objectives of a SAC/SPA?
- ❑ Must be no reasonable scientific doubt
- ❑ Hierarchy: avoidance- mitigation- compensation
- ❑ AA has clear and binding legal consequences
- ❑ Screening out the need for AA may be open for legal challenge
- ❑ AA process must have precise and definitive findings and conclusions and examination, analysis, evaluation and a complete decision
- ❑ Record your determination on file
- ❑ 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

13 years of AA –Where are we now ?

- ❑ Policy Rich, Process Compliant but Work Practice Poor ?
- ❑ Extensive case law and legal challenges
- ❑ High profile cases- Pollardstown Fen & Kildare Bypass, Lough Corrib & N6 Galway Outer Ring Road, Lough Talt & IROPI Regional Water Supply Scheme
- ❑ Screen now or pay later – remediation is costly

Q. What needs AA Screening ?

A. Everything !

❑ **Planning and Development (No.3) Regulations SI 476 2011 Chapter 4- Local Authority Development**

With regard to Councils own development, our responsibilities are set out in section 177 AE of the Act.

- ❑ **All works** (e.g. modifications to roads or development of new roads; installation / upgrades of waste water treatment plants; water abstraction coastal protection works; public realm works, active travel, development of parks, walks, cycleways; drainage works; works in river beds or along river banks; flood protection, development of piers, jetties, slips, pontoons; site maintenance work etc) carried out by or on behalf of the Local Authority must be screened by the Local Authority in accordance with Article 6 of the Habitats Directive to determine whether these would be likely to have a significant impact on European Sites. **This is regardless of their proximity to any Natura 2000 site, or whether they must go through the Part 8 process.**

- ❑ Where it is certain that potentially significant effects on any European site can be ruled out, the proposed works may be authorised and can proceed.

Section 177 AE Applications

- Where it is **not certain** that potentially significant impacts on any European site can be ruled out, the proposed works must be subject to Appropriate Assessment, (regardless of size or scale of works), and **must be assessed by An Bord Pleanála** to determine whether they would be likely to affect the overall integrity of any European site. Where this is the case, the Local Authority must prepare a Natura Impact Statement which will set out information about the proposed works, the European sites that might be affected, the potential impacts on same, and any mitigation to be undertaken to offset impacts.

Where AA is required

Exempted development status is lost (Section 4(4) of the Act);
Part XI does not apply (Section 179(6)(e) of the Act). **Project requires consent from an Bord Pleanála (Section 177AE of the Act).**

Section 177 AE Applications

- ❑ Three copies of plans and particulars
- ❑ Natura Impact Statement
- ❑ Copy of Newspaper Notice
- ❑ Copy of referral letter to prescribed bodies
- ❑ Cover Letter

Case Examples-www.pleanala.ie

- ❑ ABP-302848 and 302885-Strategic Infrastructure Development Galway City Ring Road.
- ❑ JP0038-Provision of a Pedestrian and Cycleway between the Sports Centre and Youghal Road, Dungarvan along Dungarvan Harbour SPA.
- ❑ JP93.309721- Extension by 46 car parking spaces and resurfacing of existing car park and modification of existing and provision of additional lay-bys within the Comeragh Mountains SAC.

AA and Local Authority Development

- Competent Authority in respect of Local Authority development carried out under Parts X, XAB, XI and works on the foreshore is ABP;
- Screening requirements– 177U;
- AA requirements - 177V;
- LA Development requiring AA – 177AE;
- Chapter 4 P&D Regs – further procedural arrangements for LA development requiring AA – press notices, numbers of copies of NIS to be submitted to ABP etc;
- Screening determination for Part 8 projects must be published with public consultation documents (250(6)) Regs;
- Local Authorities and members of the public may apply to ABP for AA determination for projects (250(3)(b));

Annex IV Species



Bat roosts can be found in crevices



Bats & Bridges

- ❑ If a bat roost is discovered in a bridge that is to be repaired, mitigation measures are usually possible to maintain the roost while carrying out essential repairs.
- ❑ **Timing of repair work is important-** summer and winter are sensitive times for bats due to breeding and hibernation. Therefore, repairs should ideally be carried out in spring or autumn.
- ❑ As all of the above can take time, it important to plan repairs to bridges well in advance **bat survey in advance** of proposed works.
- ❑ Contact NPWS Conservation Ranger and notify of repair works and ask for advice. Ideally, a licensed bat worker should also be contacted to carry out several inspections of the bridge in question at different times to ensure that no bat roost is present.
- ❑ Bats & Lighting Schemes
- ❑ Carry out wildlife survey and use appropriate lighting spec as per guidelines on Artificial Lighting & Bats.

Key points

Project planning- a Part 8 in or near a SAC/SPA will go to ABP- consider at least an additional 4-6 months to your project timeline.

Requires input and collaboration of ecologists, engineers, architects and planners to assist with the design of the project; development of appropriate mitigation measures; compilation of Natura Impact Statement & management of the application.

Compilation of the NIS is not a separate process.

Involvement of ecologists at early stages of project design can help to achieve successful outcomes.

Key points

Record your AA Screening and clear reasons why- no potential for habitat/species disturbance, deterioration, loss or pollution.

Mitigation measures vs project design measures. Are the measures tacked on to avoid or reduce direct adverse effects or are they integral to the design and delivery of the project ?

I don't know where the SACs are ! Print off the maps and have available on the GSS Office Walls, know the links on your GIS maps.

Be aware of the hydrological pathways- watercourses leading to SACs/SPAs downstream.

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Thank You