

DfI Roads Environmental Impact Assessment – Review Procedure

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Document Control Sheet

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Scope

This document applies to roads projects where the Department for Infrastructure (DfI) is the consenting authority under the Roads (Northern Ireland) Order 1993, i.e. when Direction or Designation Orders apply. For other schemes progressed under Planning Legislation, e.g. Park & Ride projects or minor works, the planning authority is the consenting body.

Background

The Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 2017, hereafter referred to as the 'EIA Regulations', came into operation on 16 May 2017. These Regulations transpose Directive 2011/92/EU, as amended by Directive 2014/52/EU, into Northern Ireland (NI) legislation.

It is a requirement of the EIA Regulations that the Department has, or has access to, sufficient expertise to examine Environmental Impact Assessment (EIA) Reports. The Department has engaged, through a Service Level Agreement, the Mid and East Antrim Borough Council's Shared Environmental Service (SES) to provide sufficient expertise to examine EIA Reports carried out under the EIA Regulations and Habitats Regulations Assessments (HRA) carried out under the Habitats Regulations¹.

The EIA Regulations also introduce requirements for proportionate monitoring of the implementation and effectiveness of mitigation measures and for reporting to the European Commission. This is not overseen by SES or SRI HQ, nor is it covered by the review procedure set out in this document. It is the Department's responsibility, through its Divisional SRI Project Management (PM) teams, to ensure such measures are implemented, where required, and for transferring the ongoing management/monitoring for the in-service phase (to Network Maintenance/other) at certification of completion.

¹ The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 as amended which implements the Habitats Directive 92/43/EEC and Wild Birds Directive 2009/147/EC.

When developing designs due consideration should be given to whole life costs, including operation and maintenance and mitigation measures.

Integrated Assessment Procedure

As required by the EIA Directive 2014/52/EU, a co-ordinated approach with both the Habitats and Wild Birds Directives shall be adopted when carrying out EIAs where the Habitats/Wild Birds Directives are applicable.

Roles and responsibilities

The PM as the project owner has responsibility for commissioning and overseeing the EIA and HRA processes. This includes ensuring that the procedures set out in this document are followed and that EIAs and HRAs are carried out in accordance with this guidance and meet the requirements of the relevant directives and regulations.

The PM is responsible for undertaking a contextual review, including the consideration of potential engineering features and difficulties which may arise from undertakings/commitments included the EIA Report and HRA. It is important that, in achieving the desired results, unnecessary constraints are not placed on the engineering design.

Reports shall only be issued to SES for review once the PM is satisfied with their content.

The Consultant is responsible for demonstrating that it has competent experts to ensure the completeness and quality of both the EIA and HRA. The Consultant is also responsible for the findings, accuracy and technical content of all reports and appendices and for demonstrating how all reports and recommendations meet the requirements of the relevant directives and regulations. The Consultant is responsible for the presentational accuracy of all reports and appendices and for ensuring that the desired results can be achieved without putting unnecessary constraints on the design.

The Consultant must adhere to all internal oversight and control measures required by the PM.

SRI HQ and Lands HQ are responsible for putting in place procedures to assist the PM to comply with the requirements of the relevant directives and regulations. They are also responsible for ensuring the Department has sufficient expertise to examine EIAs and HRAs, and ensuring that the findings are recorded.

SES will advise the Department on EIA and HRA procedures and provide guidance and checklists to inform consultants and to assist the PM. SES will examine EIA/HRA Reports at appropriate stages and provide independent advice on whether the reports meet the requirements of the relevant directives and regulations.

Environmental Review Procedure for Major Roads Schemes

Once a scheme is registered and the formal determination made, all documentation/reports to be reviewed by SES shall be submitted by the PM, or by the Consultant through the PM, directly to SES. SRI HQ and Lands HQ must be copied into all formal exchanges between the PM and SES.

The procedure for engaging with SES regarding the oversight of EIA preparation, and HRA where appropriate, the preparation of EIA/HRA Reports and the examination of these reports is outlined below and summarised in the flowchart in Appendix A. This procedure will be reviewed and updated as necessary, therefore it is incumbent on the PM to ensure the most up to date version of this procedure is being followed.

Any significant areas of disagreement, doubt or deficiency identified during the review process must be highlighted to SRI HQ and Lands HQ by the PM. Only once a way forward has been agreed with SES and the matters addressed by the Consultant can progression to the next stage go ahead.

1. Registration

- a. The PM registers the scheme by submitting a general scheme overview, including location plans, and an outline programme for the development of the scheme's EIA (and HRA if appropriate) through to publication for public consultation to SRI HQ.
- b. This outline programme is subject to review and agreement by SRI HQ and Lands HQ taking account of SES's available resources.
- c. The Consultant shall advise of potential transboundary impacts of the scheme at this stage.
- d. If potential transboundary impacts have been identified, Lands HQ will advise on requirements and procedures for the PM to notify the relevant authorities in Ireland.

2. EIA Screening and Determination

- a. The Consultant undertakes a screening exercise to the requirements of the EIA Regulations and Directives and prepares a brief EIA Record of Determination report, detailing the findings, which is submitted to SRI HQ.
- b. The Record of Determination report shall include a statement on the need for a Habitats Regulations Assessment.
- c. SRI HQ considers the Record of Determination report and either makes the determination decision or forwards the report to SES for direction.
- d. All negative determinations, i.e. that an EIA is not required, will be referred to SES by SRI HQ to confirm procedure, presentation and conclusion are compliant with regulations.
- e. At the request of the PM, Lands HQ arranges the publication of the determination decision through a formal Notice of Determination. At the same time the PM makes available on the scheme website the signed Record of Determination report, including any accompanying statement of reasons.
- f. A template Record of Determination report can be found in Appendix B.

3. EIA Scoping

- a. When a determination establishes that an EIA is required, the Consultant prepares an EIA Scoping Report, commensurate with the scale of the project, and submits this to SES. This report must identify the direct and indirect significant effects as set out under Article 67 of the Regulations.
- b. The EIA Scoping Report will be informed by guidance issued by SES to the Consultant. The PM is responsible for ensuring that the Consultant addresses the guidance and for maintaining a record of how this has been done.
- c. The EIA Scoping Report will include a Test of Likely Significance (ToLS)/screening report² to determine whether an HRA will be required and detailing how the HRA, if required, will be coordinated with the EIA Report.
- d. SES undertakes a review of the EIA Scoping Report and provides feedback to the PM, copying to SRI HQ and Lands HQ where appropriate.
- e. The Consultant engages with SES, keeping the PM informed, to close out any comments.
- f. There is generally no need for a final EIA Scoping Report to be prepared, however the Consultant must formally document, for record and audit purposes and to assist SES, how each review comment has been agreed/closed out.

4. EIA/HRA Report Development and Review

- a. The Consultant undertakes the EIA and produces a draft EIA Report, draft Non-Technical Summary and draft HRA (if required).
- b. The Consultant produces full auditable records of consultation with statutory and non-statutory stakeholders. Non-responses must be followed up and formal “nil returns” included.
- c. The PM checks the draft EIA Report, draft Non-Technical Summary and draft HRA against the checklist provided by SES to ensure completeness and compliance with the relevant directives and regulations.

² In accordance with the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 as amended.

- d. Once the PM is satisfied with the draft EIA Report, draft Non-Technical Summary and draft HRA (if required), these are submitted through the PM to SES for review. This may be on a chapter by chapter basis.
- e. SES examines the draft EIA Report, draft Non-Technical Summary and draft HRA (when required) and provides advice whether they comply with the requirements of the relevant directives and regulations.
- f. Issues identified by SES are reported to the Consultant through the PM. The Consultant must address these issues or provide an explanation where not done so.
- g. SES reviews and comments on all responses to confirm that they are satisfied. Only once it is confirmed that the requirements of the relevant directives and regulations have been addressed can progression to the next stage go ahead.
- h. Once satisfied with the EIA Report and HRA, SES provides a compliance report to SRI HQ and Lands HQ and agrees the statement, on behalf of the Department (Departmental Statement), for inclusion in the EIA Report.
- i. This Departmental Statement is incorporated in the final EIA Report. A template for it is included in Appendix C.

5. Publication of EIA for Consultation

- a. On satisfactory conclusion of the EIA and HRA review the PM shall request Lands HQ to arrange for the publication of the EIA Report, the Non-Technical Summary, any accompanying HRA and the associated scheme draft orders.
- b. On completion of a review to ensure all legal references are correct, Lands HQ arranges the necessary publication for consultation.
- c. It is recommended that the Northern Ireland Environmental Agency (NIEA) is explicitly invited to make representations on the HRA during the consultation period. In addition, where projects may affect sites in Ireland, the National Parks and Wildlife Service (NPWS) should be invited to make representations.
- d. Following public consultation, the PM with the Consultant will identify any required modifications/changes to the EIA Report. The PM draws any relevant findings or issues to the attention of SRI HQ and Lands HQ.

- e. These are referred to SES for scrutiny and for consideration of how the modifications/ changes can be incorporated, or otherwise addressed and to ensure that the requirements of the relevant directives and regulations have been addressed.

6. Public Inquiry

- a. Depending on the level of objection the Department may consider holding a Public Inquiry (PI).
- b. The PM organises the PI with the Consultant.
- c. After due consideration of the Inspector's Report into the PI the PM prepares a draft Departmental Statement in response to the Inspector's Report.

7. Reasoned Conclusion

- a. SES reviews consultee responses and the Inspector's Report on the PI and considers whether the EIA Report and HRA remain adequate and up to date, in order to inform its recommendation on the Reasoned Conclusion in relation to the EIA and Appropriate Assessment of the HRA.
- b. Depending on the length of time since the production of the EIA Report and HRA, it may be necessary to refresh aspects of EIA and HRA.
- c. SES will provide a signed recommendation to inform the Department's Statement of Reasoned Conclusion³, confirming that the EIA has properly assessed the environmental impacts of the scheme. This will include the arguments on which it relies, a summary of the key measures of the EIA, confirmation that the scheme has been properly examined in accordance with the EIA Regulations and that the EIA Report, taking account of the outcome of the consultation, is considered sufficient to inform this conclusion. This shall include the examination of the defined programme to mitigate and monitor⁴ the effects of the scheme as detailed in the EIA Report or as modified (in case significant adverse effect would be caused).

³ The Reasoned Conclusion is used to inform the formal decision-making process (Notice of Intention to Proceed) undertaken by the Department.

⁴ The monitoring programme to be initially developed by the PM's environmental adviser and reviewed/ finalised by the contractor (as part of detailed design process).

- d. SES will provide a signed recommendation to confirm the HRA has properly assessed, using a coordinated procedure where applicable, the likely significant effects on European sites (to include Ramsar sites) either alone or in combination with other plans or projects and that, where necessary, an Appropriate Assessment has been carried out to ascertain that the subject scheme will not adversely affect the integrity of the European site.

8. Notice of Intention to Proceed

- a. The Department makes its Reasoned Conclusion on the significant effects of the project on the environment.
- b. The Department makes its Appropriate Assessment on the likely significant effects of the scheme on European sites in line with the Habitats Regulations².
- c. On the recommendation of the Department, the Minister considers and, subject to being satisfied, accepts the Reasoned Conclusion and Appropriate Assessment and announces the Notice of Intention to Proceed with the scheme and the making of the associated scheme orders.

Glossary/Acronyms

Consultant – DfI Roads’ project consultant

DfI – Department for Infrastructure

EIA – Environmental Impact Assessment

EU – European Union

HQ – DfI Headquarters

HRA – Habitats Regulations Assessment

Lands HQ – DfI Roads Lands HQ team

NI – Northern Ireland

NIEA – Northern Ireland Environmental Agency (Executive Agency within the Department of Agriculture, Environment and Rural Affairs)

NIP – Notice of intention to proceed

NPWS – National Parks and Wildlife Service (Ireland)

PI – Public Inquiries

PM – Divisional SRI Project Management team

SES – Shared Environmental Service

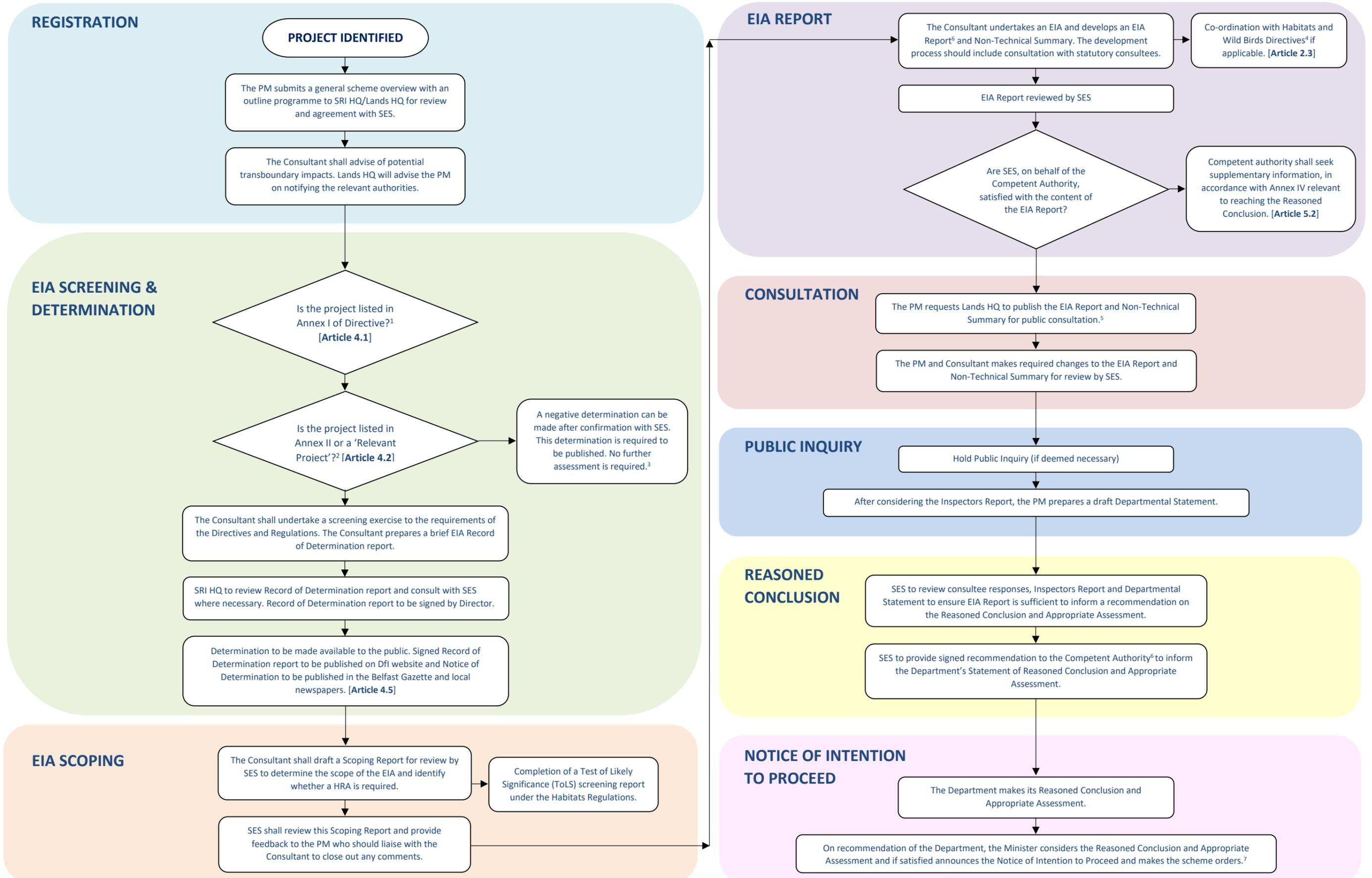
SRI HQ – Strategic Road Improvement HQ team

ToLS – Test of Likely Significance

Appendix A – Environmental Impact Assessment Procedure Flowchart

DfI Roads Environmental Impact Assessment

Procedure Flowchart



Environmental Impact Assessment Procedure Flowchart – Notes

1. Either a motorway or express road or the construction of a new road with 4 or more lanes or the widening of an existing road to provide 4 or more lanes where the new road or realignment section is greater than 10km in length. An express road is defined as, “a road reserved for automobile traffic, accessible only from interchanges or controlled junctions and on which, in particular, stopping and parking are prohibited”.
2. Threshold set in Roads Order as being road construction or improvement where the area of proposed works exceeds 1 hectare, or the works area is situated in whole or in part in a sensitive area.
3. There may be occasions where a project which is not a Relevant Project is required to complete a statutory EIA. For example, where it has significant negative environmental effects but is outside a sensitive area.
4. Ideally this co-ordination would take the form of a single report with chapters relating to each Directive.
5. Consultation may be waived if the project is adopted by national legislation, although the EU must be notified every two years of such exemptions [Article 2.5].
6. The SES recommendation shall detail the factors to be monitored (both pre-construction conditions and construction monitoring).
7. The decision to grant development consent shall incorporate at least, the Reasoned Conclusion [Article 1.2] and appropriate assessment if applicable, and any environmental conditions attached to the decision including a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures [Article 8a.1]. It is anticipated that at this stage the Notice of Intention to Proceed/Making Direction Order will be made.

Appendix B – Template Record of Determination

Record of Determination Annex II relevant projects

Name of project:

Location: (National (Irish) Grid Reference):

Qualifying criteria for Annex II relevant project:

Improvement element
of project is >1ha

Project is located
within or partially
within 'sensitive' area

Other with potential for
significant effect (e.g.
adjacent to sensitive
site)

A. Description of project:

B. Description of local environment, including statutory and non-statutory designations:

C. Summary of main environmental effects of the projects:

D. Details of extent of environmental impact assessment work undertaken and summary of any consultation undertaken with the statutory consultation bodies:

E. Determination decision, statement of case in support if this decision:

File references of supporting documentation for future reference:

I have determined that a statutory Environmental Impact Assessment Report is required for this project.

Signature of Project Sponsor:

Dated:

Authorisation to publish Notice of Determination

Signature of Director of Major Projects and Procurement:

Dated:

Appendix C – Template Departmental Statement for inclusion in the Environmental Impact Assessment Report

In accordance with Article 67 (6) of The Roads (NI) Order 1993, as amended by the 2017 Roads (EIA) Regulations, the Department engaged Consultant xxx to undertake the EIA and prepare this EIA Report. Consultant xxx has demonstrated that the EIA Report has been prepared by competent experts to ensure its completeness and quality. This is demonstrated by the experience and professional membership of its authors as evidenced in Appendix x. To meet the requirements of Article 67 (10) the Department has further engaged Mid and East Antrim Council's Shared Environmental Service to provide sufficient expertise to examine this EIA Report.