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Environmental Planning of National Road and Greenway Projects

RE-ENV-07008
February 2023

RE Research

Technical

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TII Publication Title	*Environmental Planning of National Road and Greenway Projects*
TII Publication Number	*RE-ENV-07008*

Activity	*Research (RE)*		**Document Set**	*Technical*
Stream	*Environment (ENV)*		**Publication Date**	*February 2023*
Document Number	*07008*		**Historical Reference**	**N/A**

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TII Publications

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1. Introduction

The purpose of this Technical Document is to assist those involved in the planning of national road and greenway projects to navigate some of the complex environmental and planning law that they will commonly encounter in their work. It presents the results of research carried out by TII's Environmental Policy and Compliance Section. This document constitutes a non-exhaustive and non-definitive guide to relevant legislation. Where any doubt remains as to the applicability and interpretation of relevant legislation, it is recommended that professional legal advice be obtained.

1.1 National Road Projects and their Developers

Section 2(1) of the Roads Act, 1993,[1] states:

> *""national road" means a public road or a proposed public road which is classified as a national road under section 10;"*

A national road project is a project that relates to a national road.

Section 13(1) of the Roads Act, 1993, as amended,[2] states:

> *"*[T]*he maintenance and construction of all national and regional roads in a county or city is a function of the council of that county or city."*

It is, therefore, the default position under the Roads Act that the maintenance and construction of all national roads within a county and/or a city is the function of the council of that county and/or city.

It should be noted that pursuant to Section 85 of the Local Government Act, 2001, as amended, a number of local authorities may agree that one of the local authorities perform certain functions. It should be noted further that where such agreements relate to national roads, such agreements shall not have force or effect until approved (with or without modifications) by TII.[3] It is important that approval from TII is sought for, and obtained, formally in writing before purporting to rely on a Section 85 agreement relating to national roads. It should be noted, however, that TII approval is not required in respect of Section 85 agreements relating to greenways.

Whilst it is the default position under the Roads Act that local authorities maintain and construct all national roads within their functional area, Section 19(2) of the Roads Act, 1993, as amended, states:

> *"*[…][W]*here the Authority considers that it would be more convenient, more expeditious, more effective or more economical that the function concerned should be performed by it, it may decide accordingly."*

Thus, TII may decide to perform certain functions relating to national roads, where it considers it to be more convenient, more expeditious, more effective or more economical.

1.2 Greenway Projects and their Developers

A 'greenway' has been defined as (Department of Transport, Tourism and Sport, 2018, p. 6) '[…] *a recreational or pedestrian corridor reserved exclusively for non-motorised journeys* […].'

[1] Section 2(1) of the Roads Act, 1993.
[2] Section 13(1) of the Roads Act, 1993, as substituted by Section 6 of the Roads Act, 2007.
[3] See Section 14(8)(a) of the Roads Act, 1993. Also, see Section 88 of the Local Government Act, 2001.

Section 68(1) of the Roads Act, 1993,[4] defines 'cycleway' in the following manner:

> *"In this section "cycleway" means a public road or proposed public road reserved for the exclusive use of pedal cyclists or pedal cyclists and pedestrians."*

Section 68(2)(a) of the Roads Act, 1993,[5] states:

> *"A road authority may construct (or otherwise provide) and maintain a cycleway."*

Section 68(2)(b) of the Roads Act, 1993,[6] states:

> *"(b) Where a road authority constructs or otherwise provides a cycleway it shall by order declare either—*
>
> *(i) that the cycleway is for the exclusive use of pedal cyclists, or*
>
> *(ii) that the cycleway is for the exclusive use of pedal cyclists and pedestrians."*

Having regard to the above, it appears that road authorities have the power to provide greenway projects as cycleways. [They may also have the power to provide greenways in alternative manners.] Where a road authority provides a cycleway, it must declare that the cycleway is for the exclusive use of pedal cyclists, or pedal cyclists and pedestrians.

Section 10(1)(c) of the Roads Act, 1993,[7] further provides:

> *"A public road, other than a national road or a regional road, shall be a local road."*

As a cycleway constitutes a public road, a cycleway, by default, constitutes a local road.

It should be noted that TII's remit as Approving Authority for greenways was directed by the Minister for Transport in 2021 (Transport Infrastructure Ireland, 2021)

1.3 European Environmental Law

Environmental regulatory challenges will be encountered in the planning of national road and greenway projects. The source of much environmental regulatory burden is European environmental legislation. The following are examples of pieces of European environmental legislation that will be relevant in the planning of national road and greenway projects:

- Noise
  - Directive 2002/49/EC relating to the assessment and management of environmental noise.
- Air Quality
  - Directive 2008/50/EC on ambient air quality and cleaner air for Europe.
- Water Quality
  - Directive 2000/60/EC establishing a framework for Community action in the field of water policy.

[4] Section 68(1) of the Roads Act, 1993.
[5] Section 68(2)(a) of the Roads Act, 1993.
[6] Section 68(2)(b) of the Roads Act, 1993.
[7] Section 10(1)(c) of the Roads Act, 1993.

  - Directive 2008/105/EC on environmental quality standards in the field of water policy.
  - Directive 2006/118/EC on the protection of groundwater against pollution and deterioration.
  - Directive 2007/60/EC on the assessment and management of flood risks.
  - Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy.
  - Directive (EU) 2020/2184 on the quality of water intended for human consumption.
  - Directive 2006/7/EC concerning the management of bathing water quality.
- Biodiversity
  - Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.
  - Directive 2009/147/EC on the conservation of wild birds.
  - Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species.
- Climate Change and Carbon
  - Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants.
  - Regulation (EU) 2021/1110 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law').
- Waste
  - Directive 2008/98/EC on waste.
  - Directive 1999/31/EC on the landfill of waste.
  - Directive 2006/21/EC on the management of waste from extractive industries.
- Environmental Liability
  - Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage.
- Major Accident Hazards/Seveso
  - Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances.
- Strategic Environmental Assessment
  - Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment.
- Pesticide and Plant Protection Product Usage
  - Regulation (EC) No. 1107/2009 concerning the placing of plant protection products on the market.
  - Directive 2009/128/EC establishing a framework for Community action to achieve the sustainable use of pesticides.
- Environmental Impact Assessment

- Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.
- Directive 2014/52/EU amending Directive 2011/92/EU.

1.4 Irish Environmental Law

Irish legislation, such as that indicated below, is, naturally, a principal source of environmental regulatory burden. However, in many cases this Irish legislation is simply transposing European legislation. Irish environmental legislation of relevance in the planning of national road and greenway projects includes the following:

- Roads Acts 1993 to 2015;
- Planning and Development Acts 2000 to 2022;
- Planning and Development Regulations 2001 to 2022;
- European Communities (Birds and Natural Habitats) Regulations 2011 to 2021;
- Wildlife Acts 1976 to 2022;
- European Communities (Environmental Liability) Regulations 2008 to 2015;
- Local Government (Water Pollution) Acts 1977 to 2007;
- Inland Fisheries Acts 1959 to 2017; and,
- Waste Management Acts 1996 to 2011.
- Climate Action and Low Carbon Development Acts 2015 to 2021.

Please note that the Law Reform Commission produces extremely useful administrative consolidations of a number of relevant Acts. These may be accessed at the following location:

https://revisedacts.lawreform.ie/revacts/intro

1.5 Environmental Impact Assessment Directive – The Fundamentals

The EIA Directive requires, amongst other things, that:

- development consent for certain projects can only be granted after an assessment of the likely significant effects on the environment; and,
- the public must be allowed to participate in the environmental decision making.

Environmental Impact Assessment means the process consisting of:

- The preparation of an EIAR by the Developer;
- The carrying out of consultations;
- The examination by the Competent Authority of the EIAR and other relevant information;
- A reasoned conclusion on significant effects; and,
- The integration of the reasoned conclusion into the consent decision.

1.6 Environmental Impact Assessment Directive – Guidance Documents

There are a number of guidance documents dealing with the topic of the Environmental Impact Assessment Directive, including:

- *Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment* (Department of Housing, Planning and Local Government, 2018)
- *Draft Guidelines on the Information to be contained in Environmental Impact Assessment Reports* (Environmental Protection Agency, 2017)
- *Environmental Impact Assessment of Projects - Guidance on the preparation of the Environmental Impact Assessment Report* (European Commission, 2017)
- *Environmental Impact Assessment of Projects Guidance on Scoping* (European Commission, 2017)
- *Environmental Impact Assessment of Projects Guidance on Screening* (European Commission, 2017)
- *Guidelines on the information to be contained in Environmental Impact Assessment Reports* (Environmental Protection Agency, 2022)

1.7 Birds and Habitats Directives – The Fundamentals

As can be seen from Figure 1.2, in addition to the Environmental Impact Assessment Directive, the Birds and Habitats Directives have the potential to significantly impact the planning of national road and greenway projects.

The aim of the Habitats Directive is expressed in its Article 2(1), which states:

> *"The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies."*[8]

The aim of the Directive, thus, is to contribute towards the diversity of biology in Europe and it seeks to achieve this through the conservation of natural habitats and of wild fauna and flora. At the heart of the Directive is the concept of 'conservation status.' Article 2(2) states:

> *"Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest."*[9]

In relation to species, '[t]*he conservation status will be taken as favourable when*:

- *population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and*
- *the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and*

[8] Article 2(1) of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7
[9] Article 2(2) of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7

- *there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis* […].'[10]

In relation to habitats, '[t]*he conservative status of a natural habitat will be taken as "favourable" when*:

- *its natural range and areas it covers within that range are stable or increasing, and*
- *the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and*
- *the conservation status of its typical species is favourable* […].'[11]

In essence, there are two ways in which the Habitats Directive seeks to conserve habitats and wildlife:

- through the establishment, management and protection of the Natura 2000 ecological network of sites; and,
- through the establishment of a system of strict protection for the animal and plant species listed in Annex IV to the Directive.

In relation to the establishment of the Natura 2000 network, Article 3(1) of the Habitats Directive states:

> *"A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.*
>
> *The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to Directive 79/409/EEC."*[12]

Ireland's designated sites are illustrated in Figure 1.1.

[10] Article 1(i) of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7
[11] Article 1(e) of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7
[12] Article 3(1) of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7

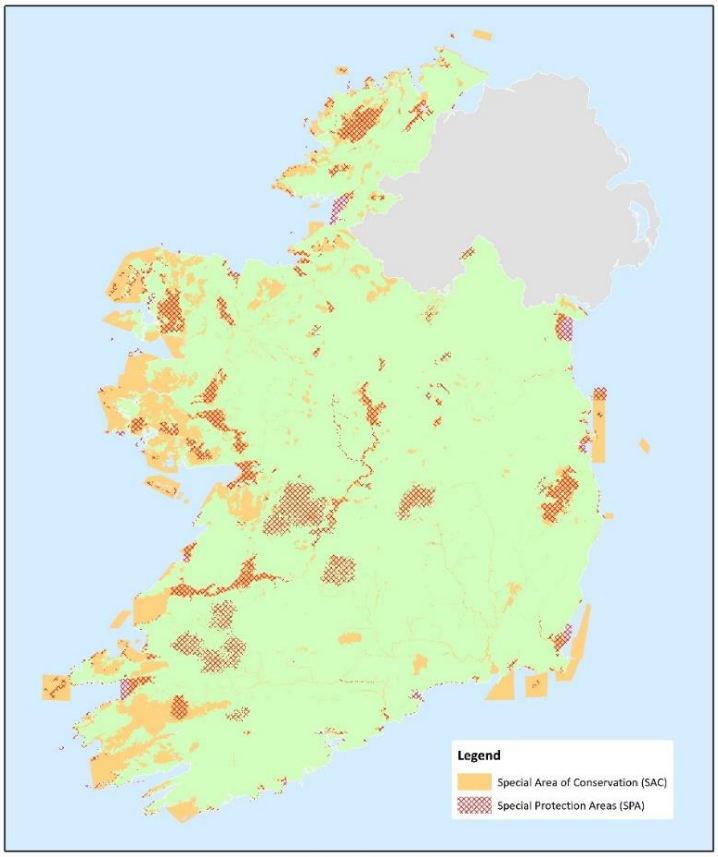

Figure 1.1 Ireland's European sites

The second way in which the Directive seeks to contribute to ensuring bio-diversity is through the establishment of a system of strict protection for the animal and plant species listed in Annex IV to the Directive. In relation to specified animal species, Member States must establish a system prohibiting, *inter alia*:

- deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; and,
- deterioration or destruction of breeding sites or resting places.[13]

In relation to specified plant species, Member States must establish a system prohibiting, *inter alia, 'the deliberate picking, colleting, cutting, uprooting or destruction of such plants* […].'[14]

Article 16(1) of the Habitats Directive provides further that:

- *'provided that there is no satisfactory alternative'; and,*
- *'the derogation is not detrimental to the maintenance of the populations of species concerned at a favourable conservation status in their natural range',*

Member States may derogate from these provisions for a number of reasons, including:

[13] Article 12(1) of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7
[14] Article 13(1) of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7

> *"in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment* […]."[15]

This system is laid down in Articles 12-16 of the Habitats Directive and has been transposed into Irish law by means of Regulations 51, 52 and 54 of the Birds and Natural Habitats Regulations 2011.

Animal species listed in Annex IV that may be of relevance in the planning of national road projects include:

- European otter (*Lutra lutra*);
- Natterjack toad (Bufo *(Epidalea) calamita*);
- Kerry slug (*Geomalacus maculosus*); and,
- All species of bat

Plant species listed in Annex IV of relevance include Killarney fern (*Trichomanes speciosum*) and marsh saxifrage (*Saxifraga hirculus*).

[15] Article 16(1) of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7

Figure 1.2 Newspaper headlines relating to national road and greenway projects and the Habitats, Birds and EIA Directives

1.8 Birds and Habitats Directives – Guidance Documents

There are a number of relevant guidance documents relevant to the Birds and Habitats Directives:

- *Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities* (Department of Environment, Heritage and Local Government, 2010)
- *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC* (European Commission, 2018)
- *Assessment of plans and projects significantly affecting Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC* (European Commission, 2021)
- *Article 6 of the Habitats Directive – Rulings of the European Court of Justice* (European Commission, 2014)
- *Nature and biodiversity cases ruling of the European Court of Justice* (European Commission, 2006)
- *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC* (European Commission, 2007)
- *Applications for Approval for Local Authority Developments made to An Bord Pleanála under 177AE of the Planning and Development Act, 2000, as amended (Appropriate Assessment) - Guidelines for Local Authorities* (An Bord Pleanála, n.d.)
- *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive* (European Commission, 2021)
- *Guidance on the Strict Protection of Certain Animal and Plant Species under the Habitats Directive in Ireland* (National Parks and Wildlife Service, 2021)

2. Phase 0 – Scope and Pre-Appraisal and Phase 1 – Concept and Feasibility

2.1 Project Objectives

In relation to setting Project Objectives, readers should consult TII's Project Appraisal Guidelines.

2.2 Project Splitting

The issue of 'project splitting' is one which needs to be considered early in the development of a national road and greenway project. Decisions made during Phase 0 – Scope and Pre-Appraisal and Phase 1 – Concept and Feasibility, if made not having regard to the issue of 'project splitting' and associated law, can lead to national road and greenway projects being progressed which will ultimately fail.

Classically, the terms 'project splitting' and 'salami slicing' are used to describe the act of splitting long-distance projects into successive shorter sections in order to exclude from the requirements of the current Environmental Impact Assessment Directive[16] both the project as a whole and the sections resulting from that division.[17] 'Project splitting' has been deemed contrary to EU law[18] and, consequently, consents for 'split' projects are vulnerable to successful legal challenge.

Where projects:

- *'are carried out at the same time and in adjoining areas';*[19]
- *'contemplate* [...] *similar works on the same road';*[20]
- *'are connected, follow on from one another, or their environmental effects overlap';*[21] *and/or,*
- *'have an objective and chronological link between them';*[22]

and, where these projects *'taken together, may have significant effects on the environment,'*[23] *Advocate Kokott opines that '**their environmental impact should be assessed as a whole'*** [Emphasis added].[24] Advocate General Kokott has stated further:

> *"Even if the subprojects are not the subject of a joint decision on development consent, this does not mean that the subprojects can be considered in isolation.*

[16] DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.
[17] C-227/01*Commission v. Spain* [2004] ECR I-8253 [53]
[18] C-227/01*Commission v. Spain* [2004] ECR I-8253 [53]
[19] Opinion of Advocate General La Pergola in Case C-392/96 *Commission v. Ireland* [1998] ECR I-5904 [9]
[20] Opinion of Advocate General Kokott in Case C-142/07 *Ecologistas en Acciòn v. Ayuntamiento de Madrid* [2008] ECR I-06097 [17]
[21] Opinion of Advocate General Kokott in Case C-142/07 *Ecologistas en Acciòn v. Ayuntamiento de Madrid* [2008] ECR I-06097 [51]
[22] C-244/12 *Salzburger Flughafen GmbH v. Umweltsenat* [2013] ECR 000 [21]
[23] Opinion of Advocate General Kokott in Case C-142/07 *Ecologistas en Acciòn v. Ayuntamiento de Madrid* [2008] ECR I-06097 [51]
[24] Opinion of Advocate General Kokott in Case C-142/07 *Ecologistas en Acciòn v. Ayuntamiento de Madrid* [2008] ECR I-06097 [51]

> *In each decision regard must be had and due consideration given to the cumulative effects of the subprojects in the context of the overall project."*[25]

Where one is dealing with potential project splitting issues, it will be appropriate to seek legal advice, which will also involve considering other areas of the law, including those related to the compulsory acquisition of land.

2.3 Definition of the Study Area

In environmental terms, the study area may be defined as the area encompassing all reasonable alternatives and their respective zones of influence. In this context, the zone of influence may be considered the 'effects area' over which changes to the receiving environment are likely to result from a project (see (National Roads Authority, 2009, p. 14)). Study areas should be frequently reviewed as national road and greenway projects progress through the project management phases.

2.4 Development of Options

Where options (reasonable alternatives) are being developed during Phase 1 (see, for example, Paragraph 1.1.8 of *Project Manager's Manual for Greenway Projects* (Transport Infrastructure Ireland, 2022, p. 18)) regard should be had to Section 3 of this document.

[25] Opinion of Advocate General Kokott in Case C-2/07 *Abraham v. Wallonia* [2008] ECR I-01197 [83]

3. Phase 2 – Option Selection

The *Project Management Guidelines* (Transport Infrastructure Ireland, 2022) indicate that 'option selection' is the '[e]*xamination of alternative options to determine a Preferred Option*.'

The *Project Manager's Manual for Major National Road Projects* (Transport Infrastructure Ireland, 2019) states the following in relation to Phase 2 – Option Selection:

> *"During this phase all reasonable / feasible options are examined (Option Selection Process) and their costs, benefits and effects on the environment are interrogated to identify a preferred option, if any, that will progress to Phase 3 Design and Environmental Evaluation."*

During Phase 2 (and, equally importantly, during earlier and later phases where alternatives are being considered) it is of the utmost importance that relevant environmental law is fully understood and complied with. In particular, one needs to be cognisant of the requirements of Article 5(1)(d) and related aspects of the amended EIA Directive (see Section 3.1) (particularly where the project is likely to be a project requiring EIA) and, potentially, Article 6(4) of the Habitats Directive (see Section 3.2). Other potentially relevant pieces of environmental law are also dealt with in Section 3.3.

Please note that the 'consideration of alternatives' progresses into Phase 3 and Phase 4 and regard to the law outlined below is also required during those Phases.

3.1 Article 5(1)(d) of the amended EIA Directive

In assessing alternatives in respect of projects requiring EIA it is essential that Article 5(1)(d) of the EIA Directive is fully understood and complied with. Article 5(1)(d) of the EIA Directive states:

> "[The information to be provided by the developer shall include at least:] *a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment* […]."[26]

This requirement is developed further in Annex IV to the amended EIA Directive (relating to *'Information for the Environmental Impact Assessment Report'*), which states:

> *"A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects."*[27]

Thus, the EIA Directive requires that the EIAR include (at least) the following in terms of the assessment of alternatives:

- a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics (see Section 3.1.2); and,

[26] Article 5(1)(d) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as substituted by Article 1(5) of Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

[27] Annex IV of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as inserted by Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

- an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment/an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects (see Section 3.1.3).

Recital 31 of the Preamble to the EIA Directive provides useful information when interpreting the aforementioned provisions:

> *"The environmental impact assessment report to be provided by the developer for a project should include a description of reasonable alternatives studied by the developer which are relevant to that project, including, as appropriate, an outline of the likely evolution of the current state of the environment without implementation of the project (baseline scenario), as a means of improving the quality of the environmental impact assessment process and of allowing environmental considerations to be integrated at an early stage in the project's design."*[28]

3.1.1.1 Public Consultation

Whilst the 'legal' impetus to engage in public consultation in the assessment of alternatives might be considered relatively weak (e.g., under the EIA Directive or the Aarhus Convention), public consultation has the potential to deliver significant benefits in the identification and assessment of alternatives. The benefits in relation to 'Identifying Alternatives' is discussed by the European Commission (2017, p. 53), which states:

> *"The identification of Alternatives can be facilitated on the basis of* […] *information received through the public consultation.* […] *Public consultations can* […] *help to identify reasonable Alternatives. Not only do the public concerned have local knowledge, which should be utilised, they may also give an indication of the reasonableness of an Alternative. Moving a bridge 15km downstream may increase environmental benefits, but if Developers have to fight or compensate commuters upset about an increased journey to work, then the Alternative may be deemed unreasonable."*

In relation to 'Mandatory assessment of Alternatives: In a nutshell' the European Commission (2017, p. 55) states:

> *"Consultation with the public is usually very important both for identifying and assessing Alternatives. A clear presentation of Alternatives, and how they have been assessed, also lends transparency to the process and can improve public acceptance and support for Projects."*

Where appropriate, the public should be consulted when assessing alternatives.

3.1.2 A description of the Reasonable Alternatives Studied by the Developer, which are Relevant to the Project and its Specific Characteristics

Article 5(1)(d) of the EIA Directive provides, inter alia, that the EIAR should contain '[…] *a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics* […].'[29] It is useful to parse this sentence to draw out its meaning.

[28] Recital 31 of the Preamble to DIRECTIVE 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (Text with EEA relevance).
[29] Article 5(1)(d) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as substituted by Article 1(5) of Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

3.1.2.1 Description

Article 5(1)(d) of the EIA Directive provides, inter alia, that the EIAR should contain '[…] *a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics* […] [Emphasis added.].'[30] The nature of this description has been elucidated by the European Commission and others. The European Commission (2017, p. 52) indicate that the description must be 'detailed': '*The final set of reasonable Alternatives identified will then undergo a detailed description and assessment in the EIA Report.* [Emphasis added.]' Whilst the Commission indicate that description must be detailed, both the EPA and the Department of Housing, Planning and Local Government indicate that a 'mini-EIA' of each reasonable alternative is not required.

The EPA (Environmental Protection Agency, 2022, p. 33) states:

> *"The presentation and consideration of the various reasonable alternatives investigated by the developer is an important requirement of the EIA process.*
>
> […] *It is generally sufficient to provide a broad description of each main alternative and the key issues associated with each, showing how environmental considerations were taken into account is deciding on the selected option. A detailed assessment (or 'mini-EIA') of each alternative is not required."*

The Department of Housing, Planning and Local Government (2018, p. 4) states:

> *"It is generally sufficient for the developer to provide a broad description of each main alternative studied and the key environmental issues associated with each. A 'mini- EIA' is not required for each alternative studied."*

Whilst a mini-EIA of each reasonable alternative may not be required, the description must be detailed.

3.1.2.2 Reasonable Alternatives

Article 5(1)(d) of the EIA Directive provides, inter alia, that the EIAR should contain '[…] *a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics* […] [Emphasis added.].'[31] The question arises: what are 'reasonable alternatives'? Whilst the Court of Justice of the European Union has yet to interpret the phrase, the European Commission has provided useful advice in this regard. The European Commission (2017) defines 'alternatives' as '*Different ways of carrying out the Project in order to meet the agreed objective*.' The European Commission (2017, p. 52) states further: '*Ultimately, Alternatives have to be able to accomplish the objectives of the Project in a satisfactory manner, and should also be feasible in terms of technical, economic, political and other relevant criteria.*' The European Commission (2017, p. 55) also states: '*Alternatives have to be 'reasonable', meaning that feasible Project options meet the Project's objectives*.' The European Commission, thus, indicates that an alternative is reasonable where it: is feasible; and, meets the project's objectives. The preceding highlights the importance of setting the project's objectives appropriately.

[30] Article 5(1)(d) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as substituted by Article 1(5) of Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

[31] Article 5(1)(d) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as substituted by Article 1(5) of Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

An alternative is reasonable where it:

- **is feasible; and,**
- **meets the project's objectives.**

3.1.2.2.1 Types of Alternatives

The nature or types of the reasonable alternatives which must be described requires careful thought. This is particularly the case in the planning of national road and greenway projects, where the primary focus is often on the determination of a preferred route.

The amended EIA Directive requires that the EIAR contain '*A description of the reasonable alternatives* (*for example in terms of project design, technology, location, size and scale*) […]. [Emphasis added.]'[32] This requirement is reiterated by the European Commission (2017, p. 53), which, in relation to 'Types of Alternatives to be considered', states:

> *Annex IV to the Directive gives some examples of the types of Alternatives to be considered and which include:*
>
> - *Project design;*
> - *technology;*
> - *location;*
> - *size;*
> - *scale.*

Again, it is noteworthy that the concept of reasonable alternative relates more than just to location (or route in the context of a national road and greenway projects) and can relate to alternative sizes, scales, designs and/or technologies.

As the European Commission (2017) notes, the nature or types of alternatives can range significantly in scale: '*Alternatives can take diverse forms and may range from minor adjustments to the Project, to a complete reimagining of the Project*.' In relation to 'Identifying Alternatives' the European Commission (2017, p. 53) states further:

> *"*[…] *Alternatives that should be considered may refer to the fundamental design of the Project itself, or may concern finer details, such as the technical specifications of the Project. In some cases, Alternatives to the type of Project should also be considered."*

Furthermore, the types or nature of the alternatives being assessed may change as the planning of a project progresses. This fact has been discussed by the EPA (2022, p. 33):

> *"In an effective EIA process, different types of alternatives may be considered at several key stages during the process. As environmental issues emerge during the preparation of the EIAR, alternative designs may need to be considered early on in the process or alternative mitigation options may need to be considered towards the end of the process."*

[32] Annex IV of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as inserted by Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

In relation to 'Types of Alternatives to be considered' the European Commission (2017, p. 54) states:

> *"This list serves as inspiration for a multitude of other Alternatives. These roughly relate to the categories above. Some such Alternatives are listed below:*
>
> - *the nature of Project;*
> - *timeframes for construction or the lifespan of the Project;*
> - *process by which the Project is constructed;*
> - *equipment used either in the construction or running of the Project;*
> - *site layout (e.g. location of buildings, waste disposal, access roads);*
> - *operating conditions (e.g. working schedule, timing of emissions);*
> - *physical appearance and design of buildings, including the materials to be used;*
> - *means of access, including principal mode of transport to be used to gain access to the Project."*

Highways England (2019, p. 17) provide the following useful summary:

> *"EIA must report on the following alternatives, in accordance with the EIA Directive* […]
>
> 1. *technology alternatives: temporary and permanent traffic control measures;*
> 2. *design alternatives: of physical elements including structures, and landscaping;*
> 3. *size and scale alternatives: seeking opportunities to reduce the size and scale of the development where the project objectives would not be compromised;*
> 4. *demand alternatives: to meet the need through demand management techniques;*
> 5. *activity alternatives such as provision of traffic calming instead of a new road;*
> 6. *location alternatives: selection of different corridors or access routes; and as a sub-set of these main alternatives;*
> 7. *delivery alternatives: alternatives that reflect different means of delivering the desired end point in production terms, (for example, a clear span bridge or one with piers and abutments in the river);*
> 8. *scheduling alternatives: programming the activities to avoid periods of enhanced environmental sensitivity, e.g. the consideration of alternative temporary land-take during construction;*
> 9. *input alternatives: use of different materials, lighting strategies or different designs;*
> 10. *mitigation alternatives: the variety of solutions available to mitigate the adverse consequences of a proposal;*
> 11. *The 'do minimum' and 'do nothing' scenarios."*

Alternative locations

In relation to 'Alternative Locations', the EPA states (2022, p. 35):

> *"Some locations have more inherent environmental sensitivities than others. Depending on the type of project and the range of alternatives which the developer can realistically consider, it may be possible to avoid such sites in favour of sites which have fewer constraints and more capacity to sustainably assimilate the project. It can be useful to ensure that a range of options, that may reasonably be available, are included in the evaluation."*

Alternative layouts

In relation to 'Alternative Layouts', the EPA states (2022, p. 35):

> *"Alternative layouts can often be devised to consider how different elements of a proposal can be arranged on a site, typically with different environmental, as well as design implications."*

Alternative designs

In relation to 'Alternative Designs', the EPA states (2022, p. 35):

> *"Many environmental issues can be resolved by design solutions that vary key aspects such as the shape of buildings or the location of facilities. Where designers are briefed at an early stage on environmental factors, these can be considered during the design development process, along with other design parameters."*

Alternative processes

In relation to 'Alternative Processes', the EPA states (2022, p. 35):

> *"Within each design solution there can be several different options as to how the processes or activities of the project can be carried out, e.g. the management of processes that affect the volumes and characteristics of emissions, residues, traffic and the use of natural resources."*

Alternative mitigation measures

The European Commission (2017, pp. 103-104) states:

> *"Are Mitigation Measures considered in the assessment of Alternatives?"*

Mitigation measures must be considered in the assessment of alternatives.

In relation to 'Alternative Mitigation Measures', the EPA states (2022, p. 35):

> *"It may be possible to mitigate effects in a few different ways. In these circumstances the EIAR can describe the various options and provide an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects."*

The Department of Housing, Planning and Local Government (2018, p. 3) state:

> *"Scoping should consider information on "reasonable alternatives" provided by the developer. These may include options for project design, technology, locations, size and scale, etc. Alternatives may end up becoming part of the project's final design, or its method of construction or operation, in order to avoid, reduce, prevent or remedy environmental effects."*

3.1.2.2.2 The 'Do-Nothing' Alternative and Baseline Scenario

Recital 31 of the Preamble to the EIA Directive, which may be used to interpret the EIA Directive, states:

> *"The environmental impact assessment report to be provided by the developer for a project should include a description of reasonable alternatives studied by the developer which are relevant to that project, including, as appropriate, an outline of the likely evolution of the current state of the environment without implementation of the project (baseline scenario)* […]. [Emphasis added.]"[33]

The Preamble to the amending EIA Directive expressly notes the need to include, as appropriate, in the description of reasonable alternatives, '*an outline of the likely evolution of the current state of the environment without implementation of the project (baseline scenario).*' On this point, the European Commission (2017, p. 55) states '*The 'do-nothing' scenario or 'no Project' Alternative describes what would happen should the Project not be implemented at all*.'

The EPA (2022, p. 35) provide greater detail in relation to the 'do-nothing' alternative:

> *"The range of alternatives can include a 'do-nothing' alternative where appropriate. This examines trends currently occurring at the site, for example likely land use changes or other interventions, the likely effects of climate change, and the significance of these changing conditions. It can be particularly useful when assessing effects caused by projects which themselves are designed to alleviate environmental or infrastructural problems, e.g. waste treatment facilities, flood relief projects, road building, etc. The do-nothing alternative is a general description of the evolution of the key environmental factors of the site and environs if the proposed project did not proceed. It is similar to but typically less detailed than the 'likely future receiving environment' description discussed in section 3.6 Describing the Baseline. It should consider the effects of projects which already have consent but are not yet implemented. It may also be appropriate to consider other projects that are planned but not yet permitted. For example, it would be prudent to consider a significant project for which a planning application has been lodged even if the consent decision has not been issued. The do-nothing alternative should describe consequences that are reasonably likely to occur. It ought not be used to exaggerate or catastrophize environmental consequences that may occur without the proposed project."*

The European Commission (2017, p. 55) notes, however, that in some instances the 'do-nothing' scenario cannot be considered a feasible policy option:

> *"In some cases, however, the 'do-nothing' scenario cannot be considered a feasible policy option, as a Project is very clearly needed: for example, if another policy dictates an action, such as a waste management plan, which requires improved waste management, then a new plant must be built."*

The European Commission (2017, p. 55) provide further information in relation to this issue:

> *"The 'do-nothing' scenario is heavily based on the Baseline. Therefore, the section of this Guidance Document on developing the Baseline should be consulted, in order to ensure a solid foundation for the 'do-nothing' scenario."*

[33] Recital 31 of the Preamble to DIRECTIVE 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (Text with EEA relevance).

3.1.2.3 Studied by the Developer

Article 5(1)(d) of the EIA Directive provides, inter alia, that the EIAR should contain '[…] *a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics* […] [Emphasis added.].'[34] In *Holohan*, Advocate General Kokott opined on the significance of the inclusion of the highlighted phrase, albeit in the context of the unamended EIA Directive. She stated '[…] *the information to be provided by the developer is to include at least an outline of the main alternatives* ***studied by him*** […].'[35] She stated further:

> *"The drafting history relating to Article 5(3)(d) of the EIA Directive thus confirms the conclusion to be drawn from its wording that the developer must provide information only on the alternatives which he has studied, but not on alternatives which might be feasible but which he did not consider."*[36]

Whilst this might provide a degree of comfort to developers that have failed to study certain reasonable alternatives, it is important to note that this is an opinion, and not a judgment of the Court of Justice of the European Union. Furthermore, it is unlikely that a court would look favourably on those seeking to rely on this provision when they have improperly restricted the range of reasonable alternatives in their study. In the context of the use of the phrase 'reasonable alternatives' in the SEA Directive, Hickinbottom J noted in R *(on the application of Friends of the Earth) v. Welsh Minsters*:

> *"*[…] *However, whilst allowing the authority a due margin of discretion, the court will scrutinise the authority's choice of alternatives considered in the SEA process to ensure that it is not seeking to avoid its obligation to evaluate reasonable alternatives by improperly restricting the range options it has identified as such."*[37]

It is also worth noting that the EPA (2022, p. 33) have suggested that in respect of public sector projects *'it is often appropriate to consider a wider range of alternatives than for private sector projects*.'

Whilst the EIA Directive only requires that the EIAR contain '*a description of the reasonable alternatives studied by the developer*', it is important that every effort is made to study all reasonable alternatives.

3.1.2.4 Relevant to the Project and its Specific Characteristics

Article 5(1)(d) of the EIA Directive provides, inter alia, that the EIAR should contain '[…] *a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics* […] [Emphasis added.].'[38] The inclusion of the phrase 'which are relevant to the projects and its specific characteristics' in Article 5(1)(d) of the EIA Directive would appear to limit the reasonable alternatives studied that must be described by the developer. The EPA (2017, p. 35) indicate the noteworthiness of this phrase: '*It should be borne in mind that the amended Directive refers to 'reasonable alternatives… which are relevant to the proposed project and its specific characteristics*'.' In relation to 'The notion of Alternatives' the European Commission (2017, p. 52) states:

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[34] Article 5(1)(d) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as substituted by Article 1(5) of Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.
[35] Opinion of AG Kokott in Case C-461/17 *Holohan v An Bord Pleanála* [2018] ECLI:EU:C:2018:883 [100]
[36] Opinion of AG Kokott in Case C-461/17 *Holohan v An Bord Pleanála* [2018] ECLI:EU:C:2018:883 [104]
[37] *R (on the application of Friends of the Earth) v. Welsh Ministers* [2015] EWHC 776 (Admin) [88]
[38] Article 5(1)(d) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as substituted by Article 1(5) of Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

> *"'Reasonable Alternatives' must be relevant to the proposed Project and its specific characteristics, and resources should only be spent assessing these Alternatives."*

The EIAR must contain a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics.

3.1.3 Indication of the main Reasons for the Option Chosen, Taking into Account the Environmental Effects

Article 5(1)(d) of the EIA Directive states:

> *"*[The information to be provided by the developer shall include at least:] […] *an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment* […]*."*[39]

This requirement is developed further in Annex IV to the amended EIA Directive (relating to *'Information for the Environmental Impact Assessment Report'*), which states that the EIAR must contain:

> "[…] *an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects*."[40]

Whilst there is limited caselaw to help us better understand this requirement, in *Holohan* the Court of Justice of the European Union stated, in the context of the unamended EIA Directive:

> "[…] [T]*he developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage*."[41]

Whilst there is a dearth of caselaw on this issue, the European Commission have helpfully provided the following advice. In relation to 'Assessment of Alternatives' the European Commission (2017, p. 24) states:

> *"Alternatives to the Project must be described and compared, with an indication of the main reasons for the selection of the option chosen being provided (Article 5(1)(d) and Annex IV point 2)."*

In relation to 'Mandatory assessment of Alternatives: In a nutshell' the European Commission (2017, p. 55) states further:

> *"The environmental assessment of Alternatives should be targeted and focused on the comparison of impacts between several options and presented as such in the EIA Report."*

[39] Article 5(1)(d) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as substituted by Article 1(5) of Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.
[40] Annex IV of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as inserted by Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.
[41] Case C-461/17 *Holohan v An Bord Pleanála* [2018] ECLI:EU:C:2018:883 [69]

In relation to 'Mandatory assessment of Alternatives: In a nutshell' the European Commission (2017, p. 55) also states:

> *"The EIA Directive requires Developers to describe the reasonable Alternatives that have been identified and studied and to compare their environmental impacts against the Project option chosen."*

Based partly on the above, it is possible to surmise the following good practice:

1. All reasonable alternatives should be:
    a) identified;
    b) studied; and,
    c) described in the EIAR in detail.
2. The environmental impacts of all the reasonable alternatives should be compared:
    a) All of the environmental impact types listed in the EIA Directive (e.g., population and human health, biodiversity, land, soil, water, air and climate, material assets, cultural heritage and the landscape) should be considered in the comparison;
    b) Objective impact assessment methodologies (e.g., such as ecological impact assessment methodology presented *in Guidelines for Ecological Impact Assessment in the UK and Ireland - Terrestrial, Freshwater, Coastal and Marine* (Chartered Institute of Ecology and Environmental Management, 2019)) should be applied to examine the likely significant effects on the environment of each reasonable alternative;
    c) The objectively determined likely significant effects on the environment of the reasonable alternatives should be compared (in the context of a wider multi-criteria analysis (MCA), which will also consider other factors);
3. The comparison of the likely significant effects on the environment and of other factors by means of MCA should be considered in choosing an option. [It is important to note, however, that MCA may indicate a preferred option that is not legally permissible (e.g., pursuant to Article 6(4) of the Habitats Directive).]
4. The EIAR must be written to contain:
    a) *"an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment* […]"[42]; and,
    b) "[…] *an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects*."[43]

[42] Article 5(1)(d) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as substituted by Article 1(5) of Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.
[43] Annex IV of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as inserted by Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

3.2 Article 6(4) of the Habitats Directive

Article 6(4) of the Habitats Directive provides:

> *"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."*[44]

Thus, if a project is being progressed that adversely affects the integrity of a European site, it will be necessary, amongst other things, to pass the 'absence of alternative solutions' test.

3.3 Other Potentially Relevant Environmental Law

It is also important to be mindful of other aspects of environmental law, which could influence the selection of alternatives. Examples of such aspects are provided below.

3.3.1 Article 4(7) of the Water Framework Directive

Article 4(7) of the Water Framework Directive states:

> *"Member States will not be in breach of this Directive when:*
>
> - *failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or*
> - *failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities*
>
> *and all the following conditions are met:*
>
> *a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;*
>
> *b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;*
>
> *c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and*

[44] Article 6(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7

d) *the beneficial objectives served by those modifications or alterations of the water body* ***cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option****."*[45] [Emphasis added.]

3.3.2 Article 16(1) of the Habitats Directive

Article 16(1) of the Habitats Directive states, inter alia, that Member States may derogate from Articles 12 and 13, which relate to the establishment of a system of strict protection for the animal and plants species listed in Annex IV to the Directive, '*provided that there is no satisfactory alternative'*.[46]

3.3.3 Section 12(2)(b) of the Wildlife Act 1976

Section 12(2)(b) of the Wildlife Act 1976 requires, amongst other things, relevant authorities or bodies to '*take all practicable steps to avoid or minimise* [emphasis added]' effects on or interference with Nature Reserves, Nature Refuges or Natural Heritage Areas.[47]

[45] Article 4(7) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [2000] OJ L327/1
[46] Article 16(1) of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7
[47] Section 12(2)(b) of the Wildlife Act 1976. See, also, Section 24(1) of the Wildlife (Amendment) Act 2000.

4. Phase 3 – Design and Environmental Evaluation

As the 'assessment of alternatives' continues from Phase 2 into Phases 3 and 4, regard should be had to Section 3.

Section 4.1 deals with 'Screening and determining the appropriate consent procedure.' Cognisance of this topic is required in Phases 0, 1 and 2, but detailed consideration and action is essential during Phase 3 when the project is being designed and evaluated. Sections 4.2, 4.3 and 4.4 deal with the production of documentation associated with the various consent procedures.

4.1 Screening and Determining the Appropriate Consent Procedure

One of the most important things to do when starting Phase 3 and 4 is to determine the appropriate consent procedure. [The likely consent procedure should also be considered at earlier phases in the project management process.] Screening decisions need to be made to determine the appropriate consent procedure (see Figure 4.1). Firstly, one must determine if EIA is required. If EIA is required, then one must apply to the Board under Section 51 of the Roads Act, 1993, as amended. If EIA is not required, then one must determine if Appropriate Assessment is required. If EIA is not required, but AA is, then one must apply to the Board under Section 177AE of the Planning and Development Act, 2000, as amended. If EIA and AA are not required, one must determine if Part 8 is required. If Part 8 is not required, consideration should be given to other potentially relevant consent processes. This sequence of screening decisions is illustrated in Figure 4.1.

[Please note that where an application is made to the Board under Section 51 of the Roads Act, 1993, as amended, the Board may still perform an Appropriate Assessment pursuant to Part XAB of the Planning and Development Act, 2000, as amended, i.e., both an EIA and AA may be required.]

[Please note that when a project (e.g., active travel or greenway) has non-road related aspects (e.g., carparks and bus garages), particularly in urban areas, it is possible that screening for EIA and potentially EIA itself may be regulated by alternative legislation (e.g., see Section 175 of the Planning and Development Act, 2000, as amended, which relates to '*Environmental impact assessment of certain development carried out by or on behalf of local authorities.*').]

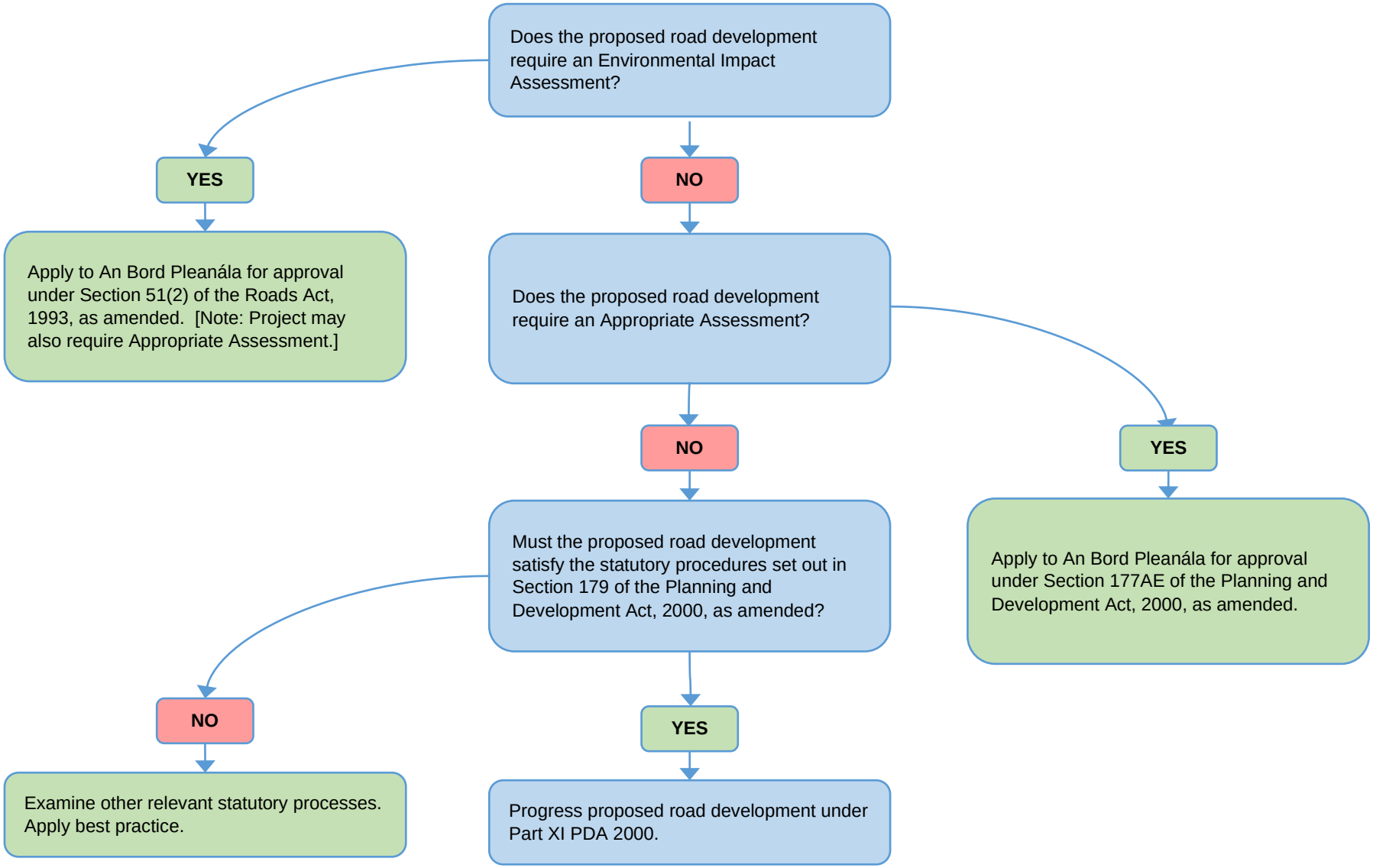

Figure 4.1 Screening and determining the appropriate consent procedure

4.1.1 Screening – General Principles

A number of general principles can be derived from the caselaw, legislation, guidance and academic literature concerning screening decisions. Screening decisions should be:

- Made in writing;
- Reasoned, e.g.:
  - *'include the main reasons and considerations on which the decision is based'; and,*
  - *'contain or be accompanied by all the information that makes it possible to check that is based on adequate screening'.*
- Made available to the public, e.g.:
  - May be inspected; and,
  - Placed on the authority's website.
- Made formally via properly delegated authority or Chief Executive's Order.

It is important to note that screening decisions cannot be made by an environmental or ecological consultant or are not an ecological or environmental report.

In relation to screening decisions regard should be had to relevant legislation, caselaw, guidance, etc., including the recent Opinion of Advocate Kokott in *Eco Advocacy CLG*.[48]

4.1.2 Screening for Environmental Impact Assessment

As can be seen from Figure 4.1, the first screening decision that must be made is whether or not EIA is required.

4.1.2.1 Road Development Mandatorily Subject to EIA

Certain proposed road developments mandatorily require EIA. Figure 4.2 and Figure 4.3 depict the classes of proposed road development automatically subject to EIA.

[48] Opinion of Advocate General Kokott in Case C-721/21 *Eco Advocacy CLG* ECLI:EU:C:2023:39. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CC0721

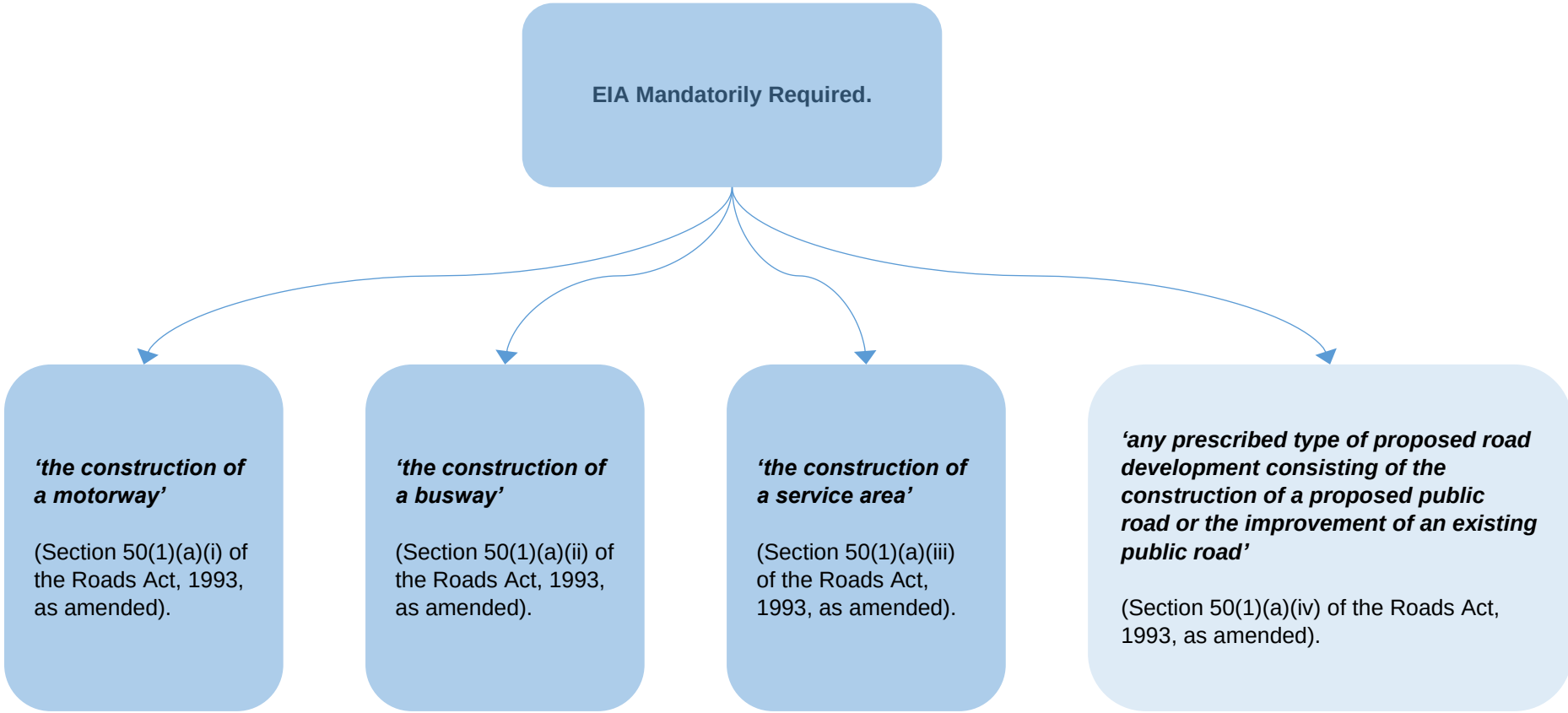

Figure 4.2 Road development mandatorily subject to environmental impact assessment

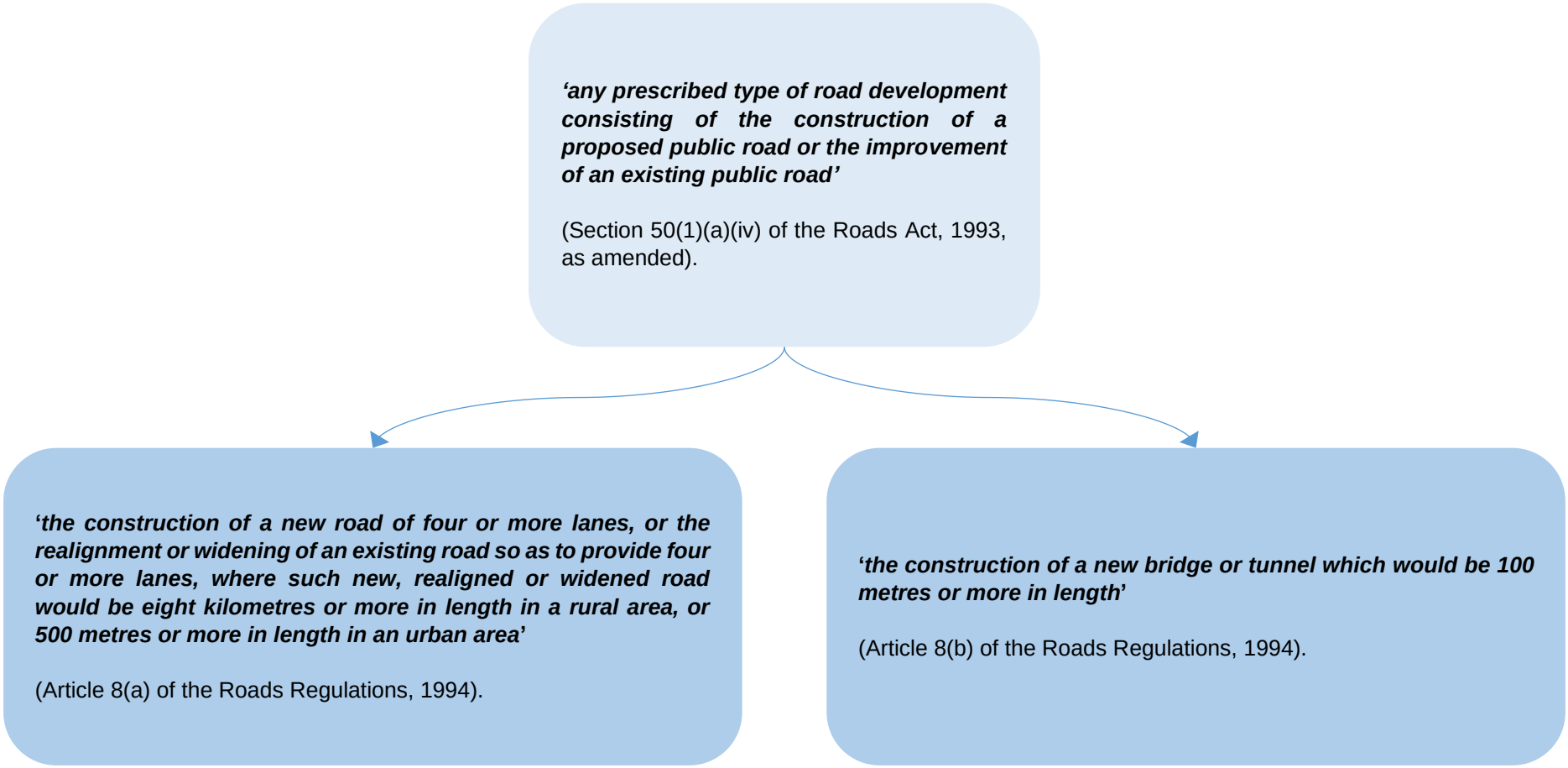

Figure 4.3 Prescribed type of road development mandatorily subject to environmental impact assessment

4.1.2.2 'Sub-threshold' Screening for EIA

Under the regime created by the Roads Act 1993, as amended, road and greenway projects falling below the thresholds created (i.e., 'sub-threshold' development) still need to be screened for EIA on a case-by-case basis. This regime is illustrated in Figure 4.4 and Figure 4.5.

4.1.2.2.1 Consideration by the Road Authority

The Roads Act 1993, as amended, requires that the road authority or, as the case may be, TII, consider whether the road project would be likely to have significant effects on the environment.

Section 50(1)(c) of the Roads Act 1993, as amended,[49] states:

> *"Where a road authority or, as the case may be, the Authority considers that a road development that it proposes (other than development to which paragraph (a) applies* [paragraph (a) relates to development mandatorily requiring EIA]*) consisting of the construction of a proposed public road or the improvement of an existing public road would be likely to have significant effects on the environment, it shall inform An Bord Pleanála in writing prior to making any application to the Bord for an approval referred to in section 51(1) in respect of the development."*

A few issues are notable in respect of this provision:

- it relates to both '*the construction of a proposed public road' and 'the improvement of an existing public road'*;
- it applies to road development proposed by either TII or a road authority; and,
- where it is considered that a project is likely to have significant effects on the environment, An Bord Pleanála must be informed in writing before an application for approval is made [note this is a significant change from the previous regime where a direction by the Board, once it concurred, to prepare an Environmental Impact Statement would have been required.].

It is notable that Section 50(1)(d) of the Roads Act 1993, as amended,[50] 'reiterates' the need to screen 'sub-threshold' road projects where the project would be located on a:

- European site,
- nature reserve,
- refuge for fauna or flora, or
- natural heritage area.

Section 50(1)(d) of the Roads Act, 1993, as amended,[51] states:

> *"In particular, where a proposed development (other than development to which paragraph (a) applies) consisting of the construction of a proposed public road or the improvement of an existing public road would be located on -*
>
> i. a European Site within the meaning of Regulation 2 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011),

[49] Section 50(1)(c) of the Roads Act, 1993, as substituted by Regulation 5 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[50] Section 50(1)(d) of the Roads Act, 1993, as substituted by Regulation 5 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[51] Section 50(1)(d) of the Roads Act, 1993, as substituted by Regulation 5 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.

ii. land established or recognised as a nature reserve within the meaning of section 15 or 16 of the Wildlife Act 1976 (No. 39 of 1976),

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

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

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

As noted in Section 4.1.1, it is advisable to make all screening decisions available to the public, i.e., allow decisions to be inspected at the offices of the public authority in question; and, place them on the authority's website. It is notable, however, that Section 50(1)(f) of the Roads Act, 1993, as amended,[52] only appears to mandate this in respect of decisions made pursuant to Section 50(1)(d).

Section 50(1)(f) of the Roads Act, 1993, as amended,[53] states:

"Where a road authority or the Authority, as the case may be, makes a decision under paragraph (d) it shall -

i. make the decision available for inspection by members of the public, and

ii. make an electronic version of the decision available on its website."

Notwithstanding this it is ***strongly*** advised to make all screening decisions available to the public.

[52] Section 50(1)(f) of the Roads Act, 1993, as substituted by Regulation 5 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[53] Section 50(1)(f) of the Roads Act, 1993, as substituted by Regulation 5 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.

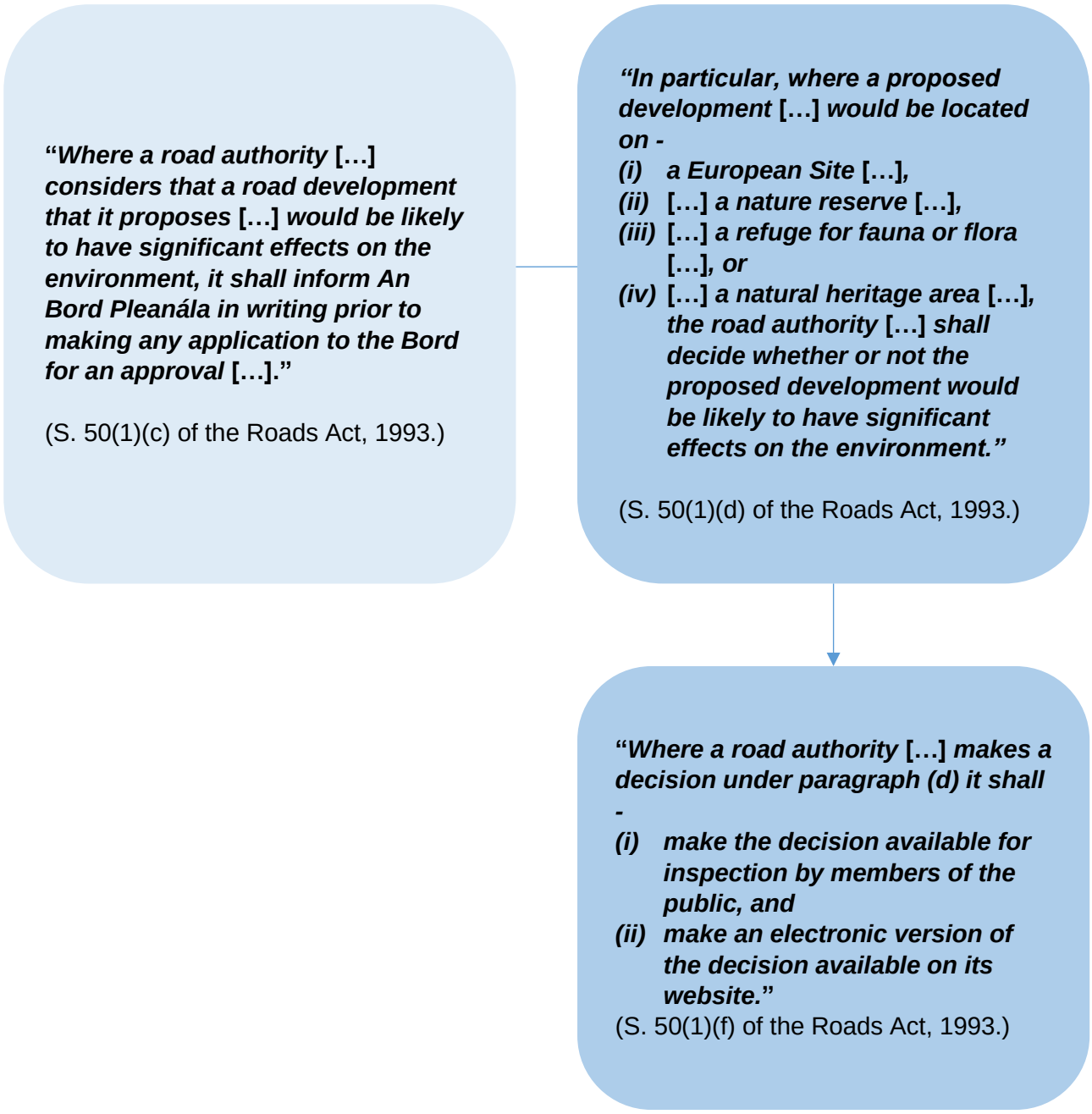

Figure 4.4 'Sub-threshold' Screening for EIA - Consideration by a road authority

4.1.2.2.2 Consideration by An Bord Pleanála

An Bord Pleanála also has a potential role in respect of screening for EIA, which is illustrated in Figure 4.5.

Having regard to Articles 120(3)(b)[54] and (c)[55] of the Planning and Development Regulations, 2001, as amended, it may be 'surmised' that any person who considers that a national road or greenway development would be likely to have significant effects on the environment may apply to the Board for a screening determination as to whether the development would be likely to have such effects.

Article 120(3)(b) indicates that this may occur '*at any time before the expiration of 4 weeks beginning on the date of publication of the* [Part 8 newspaper and site notices of proposed development]*.'* The fact that any person may so apply should be indicated in the Part 8 notices of proposed development. [Note that there are idiosyncrasies in relation to relationship between Article 120 and proposed national road and greenway projects. It may be appropriate to seek legal advice in respect of same.]

[54] Article 120(3)(b) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as substituted by Article, Article 75(c)(ii) of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations, 2018. (S.I. No. 296 of 2018)
[55] Article 120(3)(c) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as amended by Article, Article 75(c)(iii) of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations, 2018. (S.I. No. 296 of 2018)

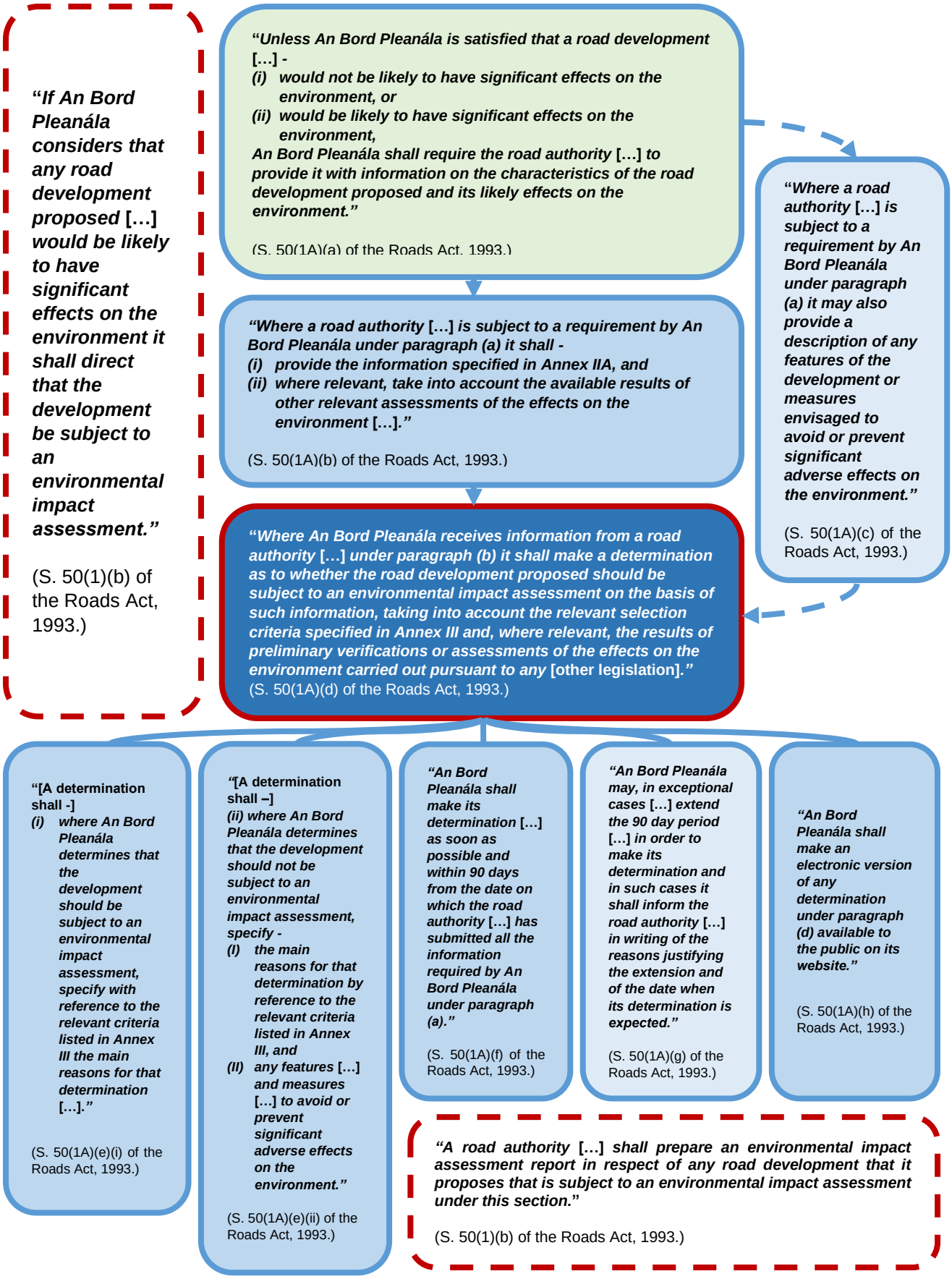

Figure 4.5 'Sub-threshold' Screening for EIA - Consideration by An Bord Pleanála

4.1.2.2.3 Screening Criteria

Section 50(1)(e) of the Roads Act, 1993, as amended,[56] states:

> *"Where a decision is being made pursuant to this subsection on whether a road development that is proposed would or would not be likely to have significant effects on the environment, An Bord Pleanála, or the road authority or the Authority concerned (as the case may be), shall take into account the relevant selection criteria specified in Annex III."*

The relevant selection criteria specified in Annex III to the Amended EIA Directive are as follows:

- Characteristics of projects, e.g.:
  - the size and design of the whole project; and,
  - cumulation with other existing and/or approved projects.
- Location of projects, e.g.:
  - wetlands, riparian areas, river mouths, coastal zones, marine environment, mountain and forest parks, nature reserves and parks, European sites; and,
  - densely populated areas.
- Type and characteristic of the potential impact, e.g.:
  - magnitude, spatial extent, intensity, complexity, nature and probability of the impact;
  - cumulation with impacts of other existing and/or approved projects; and,
  - the possibility of effectively reducing the impact.

4.1.3 Screening for Appropriate Assessment

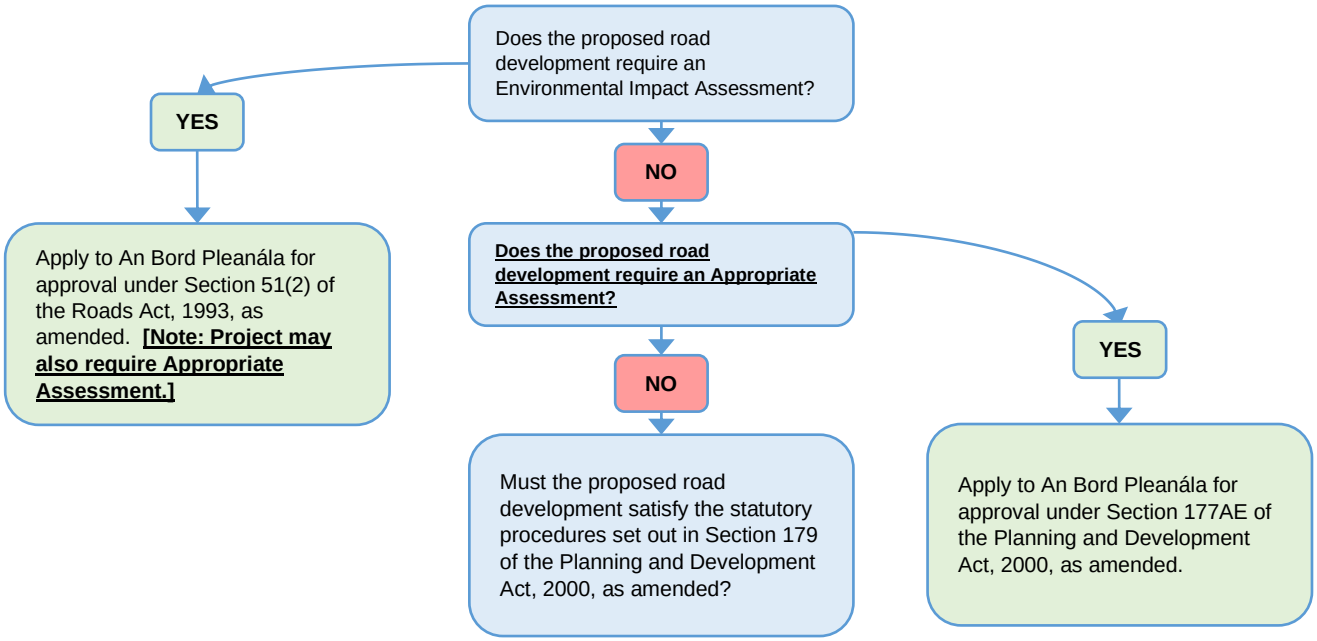

Figure 4.6 Screening for Appropriate Assessment

[56] Section 50(1)(e) of the Roads Act, 1993, as substituted by Regulation 5 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.

The law regulating screening for Appropriate Assessment in respect of national road and greenway projects is extremely complex and contains several anomalies. Furthermore, the law regulating screening for Appropriate Assessment will differ depending on the nature of the project, e.g., the law is different depending on whether the project screened in or out for EIA. It is often appropriate to seek legal advice when dealing with this difficult issue.

Section 4.1.3.2 below is primarily written in the context of national road and greenway projects where the need for EIA has been screened out and an application to An Bord Pleanála under Section 51(2) of the Roads Act, 1993, as amended, is, therefore, not required. For information on screening for Appropriate Assessment and Appropriate Assessment in the context of an application to An Bord Pleanála under Section 51(2) of the Roads Act, 1993, as amended, please see Section 5.1.7.

4.1.3.1 Effect of People Over Wind

In *People Over Wind*,[57] the Court of Justice of the European Union held:

> *"Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site."* [Emphasis added.]

Whilst this ruling is nuanced and has spawned a significant amount of subsequent caselaw,[58] in simplified terms, it states that one cannot consider mitigation measures when screening for Appropriate Assessment. This position is to be contrasted with the position when carrying out sub-threshold screening for EIA, where, as per Annex III to the amended EIA Directive, one may consider 'the possibility of effectively reducing the impact.' This contrast means that sub-threshold national road and greenway projects are now more likely to screen out for EIA and screen in for AA, which may lead to a slight decrease in projects requiring EIA, but an increase in projects requiring AA.

4.1.3.2 Screening for Appropriate Assessment in respect of Local Authority Development

An Bord Pleanála provide a very useful overview of screening for Appropriate Assessment in respect of local authority development (n.d.), which is worthwhile reading from the start:

> *"Appendix*
>
> *Screening*
>
> *A.1 An application to An Bord Pleanála will be made under s.177AE where a local authority has screened a proposed development and determined that individually or in combination with others it will likely have a significant effect on a European site in view of the site's conservation objectives.*

[57] Case C-323/17 *People Over Wind* [2018] ECR I-244. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62017CJ0323

[58] See, for example, the Opinion of Advocate General Kokott in Case C-721/21 *Eco Advocacy CLG* ECLI:EU:C:2023:39. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CC0721

A.2 Local authorities are reminded that, where such screening is completed and consequently a decision is made that appropriate assessment and an application under s. 177AE is not required for a development proposed to be carried out, that a formal review of this decision can be requested of An Bord Pleanála by another party (Art 250(3)(b) of the Regulations). Local authorities themselves can also avail of this procedure should they wish to seek a determination from An Bord Pleanála on their proposed project.

A.3 Where a local authority makes a determination that a proposed development would not be likely to have a significant effect on a European site, the determination including the main reasons and considerations on which it was based should be made available for inspection or purchase.

A.4 Article 120(3)(a) of the Regulations provides that where An Bord Pleanála considers that a sub-threshold development proposed to be carried out by a local authority would be likely to have significant effects on the environment, it shall require the local authority to prepare, or cause to be prepared, an EIS [EIAR] *in respect of the development. It is open to a local authority to make an application to An Bord Pleanála for such a determination (EIS) and an appropriate assessment determination (NIS) in respect of a development that it proposes to carry out. Such applications may be made simultaneously. No fee is required for such applications."*

4.1.3.2.1 Screening by the Local Authority

Please see Figure 4.7.

For local authority development, the local authority must carry out a screening of the proposed development to assess if it would be likely to have a significant effect on a European site.[59] Where it cannot be excluded, on the basis of objective information, that the proposed development would have a significant effect on a European site, the local authority shall determine that an appropriate assessment is required and shall prepare an NIS and shall submit the proposed development to the Board for approval under Section 177AE (where the need for EIA has been 'screened out') (see Section 5.2 for details on the Section 177AE procedure).[60]

The term 'local authority development' is not defined in the PDA 2000. It might be reasonably argued that the term 'local authority development' must be understood to mean 'development' carried out by or on behalf of a local authority. It should be noted that, under the PDA 2000, the definition of '*development' includes '*[…] *the carrying out of any works on, in, over, or under land* […]'[61] and the definition of 'works' includes '[…] *any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal* […].'[62]

Where the local authority determines that a proposed development would not be likely to have a significant effect on a European site, it appears that the proposed development should be progressed as per the previous regime, e.g. under Part XI/Section 179/'Part 8.'[63]

[59] Regulation 250(1) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[60] Regulation 250(2) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[61] Section 3(1) of the Planning and Development Act, 2000.
[62] Section 2(1) of the Planning and Development Act, 2000.
[63] This is indicated by Regulation 250(6) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).

Where the local authority so determines that a proposed development would not be likely to have a significant effect on a European site, it is required to make the determination, including the main reasons and consideration on which the determination is based, in addition to the documents specified in Regulation 83 of the PDR 2001, available for inspection or purchase, in accordance with that Regulation.[64] It should be noted that Regulation 83, which concerns the 'availability for inspection of documents, particulars and plans,' relates to 'Part 8 development'/local authority development under Part XI.

The procedure to be followed for local authority development being progressed under Part XI, and the implications of recent environmental legislation on this procedure, is outlined further in Section 5.3.2.

4.1.3.2.2 Screening by the Board

Please see Figure 4.8.

It is open to any person, who considers that a local authority development proposal would be likely to have a significant effect on a European site, to apply to the Board for a determination as to whether the development would be likely to have such a significant effect.[65] The local authority is required to provide any information requested by the Board.[66] The Board is required to make a determination on the matter as soon as possible.[67] Where the Board makes a determination that a development would be likely to have a significant effect on a European site it shall require the local authority to prepare an NIS in respect thereof.[68] The local authority is then required to apply to the Board for approval,[69] the application being deemed to be application for approval under Section 177AE with the provisions of that Section applying.[70]

It is assumed that where the Board makes a determination that a development would not be likely to have a significant effect on a European site, the local authority may proceed to progress the proposed development under the previous regime, e.g., under Part XI/Section 179/'Part 8.'

It has been suggested that as the term 'person' is defined to include a local authority,[71] a local authority could apply for such a determination.

[64] Regulation 250(6) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[65] Regulation 250(3)(b) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[66] Regulation 250(3)(e) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[67] Regulation 250(3)(b) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[68] Regulation 250(3)(d) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[69] Regulation 250(4) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[70] Regulation 250(5) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[71] See Section 18(c) of the Interpretation Act, 2005.

However, strictly speaking, a local authority could only make such an application where it considered that the development proposed would be likely to have a significant effect on a European site,[72] in which case it is already obliged to apply under Section 177AE.[73] However, seeking such a determination from the Board would have the advantage of putting the matter of whether or not an appropriate assessment was required beyond challenge (other than by way of judicial review). Notably, An Bord Pleanála (n.d.) advises '*Local authorities themselves can also avail of this procedure should they wish to seek a determination from An Bord Pleanála on their proposed project.*'

It is worth noting that where the local authority determines that a proposed development would not be likely to have a significant effect on a European site, it would appear to be still open to any person to apply to the Board for a determination as to whether the development would be likely to have such a significant effect.[74]

[72] Regulation 250(3)(b) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[73] Regulation 250(2) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[74] Regulation 250(3)(b) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).

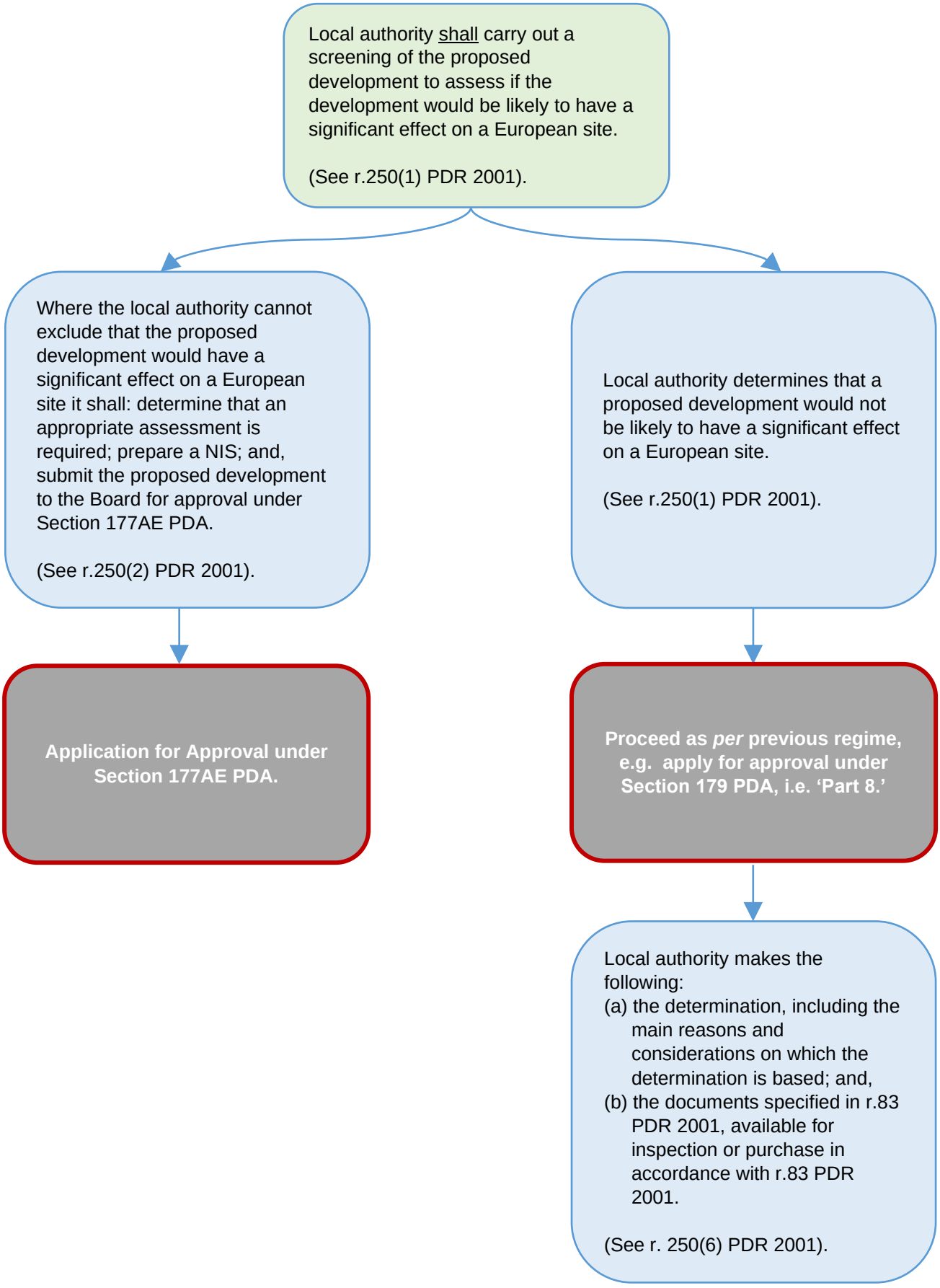

Figure 4.7 Screening for Appropriate Assessment - Local authority development under Part XI and Part XAB

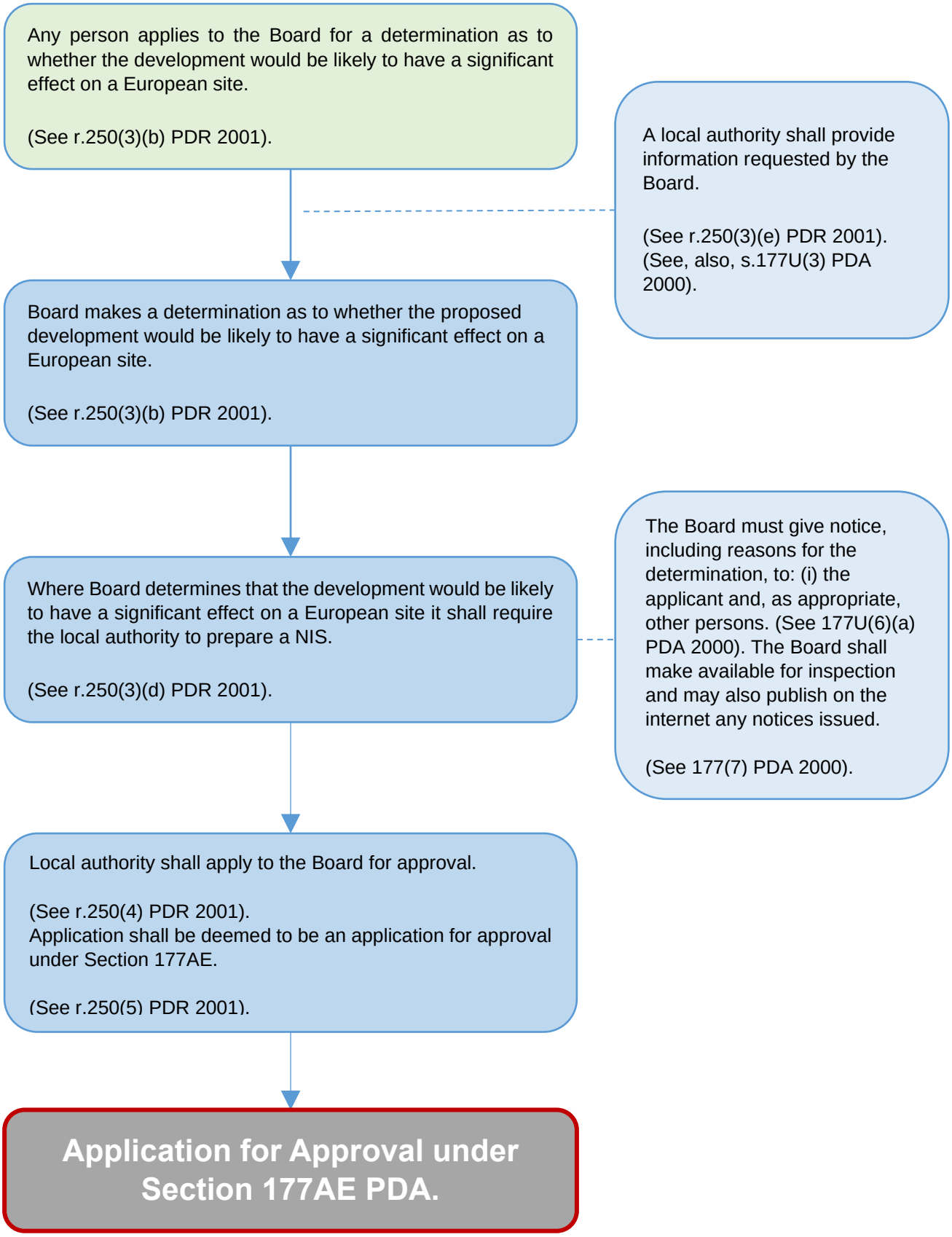

Figure 4.8 Screening for Appropriate Assessment - Local authority development under Part XI and Part XAB

4.1.4 Is the Development 'Part 8' Development?

The 'Part 8' procedure, which is dealt with further in Sections 4.4 and 5.3 is regulated by, *inter alia*:

- Part XI of the Planning and Development Act, 2000, as amended; and,
- Part 8 of the Planning and Development Regulations, 2001, as amended.

Regulation 80(1) of the Planning and Development Regulations, 2001,[75] lists, subject to other provisions, classes of development prescribed for the purposes of Section 179 of the Planning and Development Act 2000, as amended. Prescribed classes of development of relevance include:

- construction of a new road or the widening of an existing road of 100m or more in length in an urban area or 1km or more in length in any other area is a prescribed class of development;[76]
- construction of a bridge or a tunnel;[77] and,
- certain development, other, *inter alia*, than that specified elsewhere in Regulation 80(1), the estimated cost of which exceeds €126,000.[78]

Section 179(6) of the Planning and Development Act 2000, as amended, provides that Section 179 shall not apply to certain proposed development, including:

- Maintenance or repair works, other than certain works to a protected/proposed protected structure;[79]
- Development the Chief Executive considers necessary to deal urgently with an emergency situation calling for immediate action;[80] and,
- *"consists of works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided under section 95* […] *of the Road Traffic Act 1961 or under section 38 of the Road Traffic Act 1994"*.[81]

Understandably, proposed development subject to Appropriate Assessment or EIA is not simultaneously subject to Section 179.[82]

4.1.5 Is the Development Subject to Section 38 of the Road Traffic Act 1994?

See Section 5.4.1 on the procedural requirements of Section 38 of the Road Traffic Act, 1994, as amended.[83]

Where the project in question consists of or incorporates the provision or removal of traffic calming measures by a road authority regard must be had to Section 38 of the Road Traffic Act, 1994, as amended.[84]

[75] Article 80(1) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001)
[76] Article 80(1)(b) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001)
[77] Article 80(1)(c) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001)
[78] Article 80(1)(k) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001)
[79] Section 179(6)(a) of the Planning and Development Act 2000, as substituted by Section 58(a) of the Planning and Development (Amendment) Act 2010.
[80] Section 179(6)(b) of the Planning and Development Act 2000, as amended by Section 6(1) of and Schedule 2 to the Planning and Development (Amendment) Act 2018.
[81] Section 179(6)(bb) of the Planning and Development Act 2000, as inserted by Section 46(2) of the Public Transport Regulations Act 2009.
[82] Sections 179(6)(d) and (e) of the Planning and Development Act 2000, as amended.
[83] Section 38 of the Road Traffic Act, 1994, as amended.
[84] Section 38 of the Road Traffic Act, 1994, as amended.

Sections 38(1) and (2) of the Road Traffic Act, 1994,[85] confers on road authorities the power to provide and remove traffic calming measures. Section 38(1) of the Road Traffic Act, 1994,[86] states:

> *"A road authority may, in the interest of the safety and convenience of road users, provide such traffic calming measures as they consider desirable in respect of public roads in their charge."*

Section 38(2) of the Road Traffic Act, 1994,[87] states:

> *"A road authority may remove any traffic calming measures provided by them under this section."*

Section 38(9) of the Road Traffic Act, 1994, as amended,[88] *inter alia*, defines 'traffic calming measures' to mean measures which:

> *"(a) enhance the provision of public bus services, including measures which restrict or control access to all or part of a public road by mechanically propelled vehicles (whether generally or of a particular class) for the purpose of enhancing public bus services, or*
>
> *(b) restrict or control the speed or movement of, or which prevent, restrict or control access to a public road or roads by, mechanically propelled vehicles (whether generally or of a particular class) and measures which facilitate the safe use of public roads by different classes of traffic (including pedestrians and cyclists),*
>
> *and includes for the purposes of the above the provision of traffic signs, road markings, bollards, posts, poles, chicanes, rumble areas, raised, lowered or modified road surfaces, ramps, speed cushions, speed tables or other similar works or devices, islands or central reservations, roundabouts, modified junctions, works to reduce or modify the width of the roadway and landscaping, planting or other similar works."*

Section 38(9) of the Road Traffic Act, 1994, as amended,[89] inter alia, defines 'public bus service' in the following manner:

> *"public bus service" means the use of a bus or buses travelling wholly or mainly on public roads for the carriage of passengers in such a manner that —*
>
> *a) the service is provided on a regular and scheduled basis,*
>
> *b) each journey is open to use by members of the public,*
>
> *c) carriage is provided for passengers between specified terminal points or along a specified route or otherwise in accordance with a published timetable, and*
>
> *d) a charge or charges are paid in respect of each passenger;*

[85] Sections 38(1) and (2) of the Road Traffic Act, 1994.
[86] Section 38(1) of the Road Traffic Act, 1994.
[87] Section 38(2) of the Road Traffic Act, 1994.
[88] Section 38(9) of the Road Traffic Act, 1994, as substituted by Section 46(1) of the Public Transport Regulation Act 2009.
[89] Section 38(9) of the Road Traffic Act, 1994, as substituted by Section 46(1) of the Public Transport Regulation Act 2009.

Section 38(9) of the Road Traffic Act, 1994, as amended,[90] *inter alia*, defines 'provide' in the following manner:

> *"provide" includes erect or place, maintain and (in the case of an instrument for giving signals by mechanical means) operate;*

So, in summary, where the project in question consists of or incorporates the provision or removal of traffic calming measures by a road authority regard must be had to Section 38 of the Road Traffic Act, 1994, as amended.[91]

It should be noted that Section 179(6) of the Planning and Development Act 2000, as amended, provides, inter alia, that Section 179 ('Part 8') shall not apply to proposed development which "*consists of works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided* […] *under section 38 of the Road Traffic Act 1994"*.[92] It would appear from this provision that where the proposed development consists of works to enhance bus services or improve facilities for cyclists and do involve road widening, Section 179 of Planning and Development Act 2000, as amended, ('Part 8') may (also) apply. Part 8 would certainly appear to apply where the widening consists of the widening of an existing road of 100m or more in length in an urban area or 1km or more in length in any other area[93] or, possibly, where the works to enhance public bus services or improve facilities for cyclists provided under Section 38 that involve widening have an estimated cost that exceeds €126,000.[94]

Section 38(5) of the Road Traffic Act, 1994,[95] states:

> *"Traffic calming measures shall not be provided or removed in respect of a national road without the prior consent of the National Roads Authority."*

4.1.6 Is the Development Subject to Section 95 of the Road Traffic Act 1961?

Further information on Section 95 of the Road Traffic Act, 1961, as amended, is provided in Section 5.4.2. Where the project involves the provision of 'traffic signs', regard should be had to Section 95 of the Road Traffic Act, 1961, as amended. Section 95(1) of the Road Traffic Act, 1961, as amended,[96] defines 'traffic sign' in the following manner:

> *""traffic sign" means any sign, device, notice or road marking, or any instrument for giving signals by mechanical means, which does one or more of the following in relation to a public road or public roads:*
>
> *(a) gives information (such a sign being referred to in this section as 'an information sign'),*
>
> *(b) warns persons of danger or advises persons of the precautions to be taken against such danger, or both (such a sign being referred to in this section as 'a warning sign'),*
>
> *(c) indicates the existence of a road regulation or implements such a regulation, or both, or indicates the existence of a provision in an enactment relating to road traffic (such a sign being referred to in this section as 'a regulatory sign')."*

[90] Section 38(9) of the Road Traffic Act, 1994, as substituted by Section 46(1) of the Public Transport Regulation Act 2009.
[91] Section 38 of the Road Traffic Act, 1994, as amended.
[92] Section 179(6)(bb) of the Planning and Development Act 2000, as inserted by Section 46(2) of the Public Transport Regulations Act 2009.
[93] Article 80(1)(b) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001).
[94] Article 80(1)(k) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001).
[95] Section 38(5) of the Road Traffic Act, 1994.
[96] Section 95(1) of the Road Traffic Act, 1961, as substituted by Section 37(a)(ii) of the Road Traffic Act, 1994.

The requirements in respect of 'regulatory signs' (see Figure 4.10 - Example of a 'Regulatory Sign') differs from those in respect of 'information signs' (see Figure 4.9 - Example of an 'Information Sign') and 'warning signs' (see Figure 4.11 - Example of a 'Warning Sign').

Section 95(3)(a) of the Road Traffic Act, 1961, as amended,[97] states:

> *"A road authority may provide in respect of public roads in their charge such information signs and warning signs as they consider desirable."*

Section 95(3)(b) of the Road Traffic Act, 1961, as amended,[98] states:

> *"A road authority may, after consultation with the Commissioner, provide in respect of public roads in their charge such regulatory signs as they consider desirable."*

It should be noted that projects may involve the use of certain powers simultaneously (e.g., powers under both Section 38 of the Road Traffic Act, 1994, as amended, and Section 95 of the Road Traffic Act, 1961, as amended) and in conjunction with other statutory requirements.

[97] Section 95(3)(a) of the Road Traffic Act, 1961, as substituted by Section 78(1)(a) of the Road Traffic Act, 2010.
[98] Section 95(3)(b) of the Road Traffic Act, 1961, as substituted by Section 78(1)(a) of the Road Traffic Act, 2010.

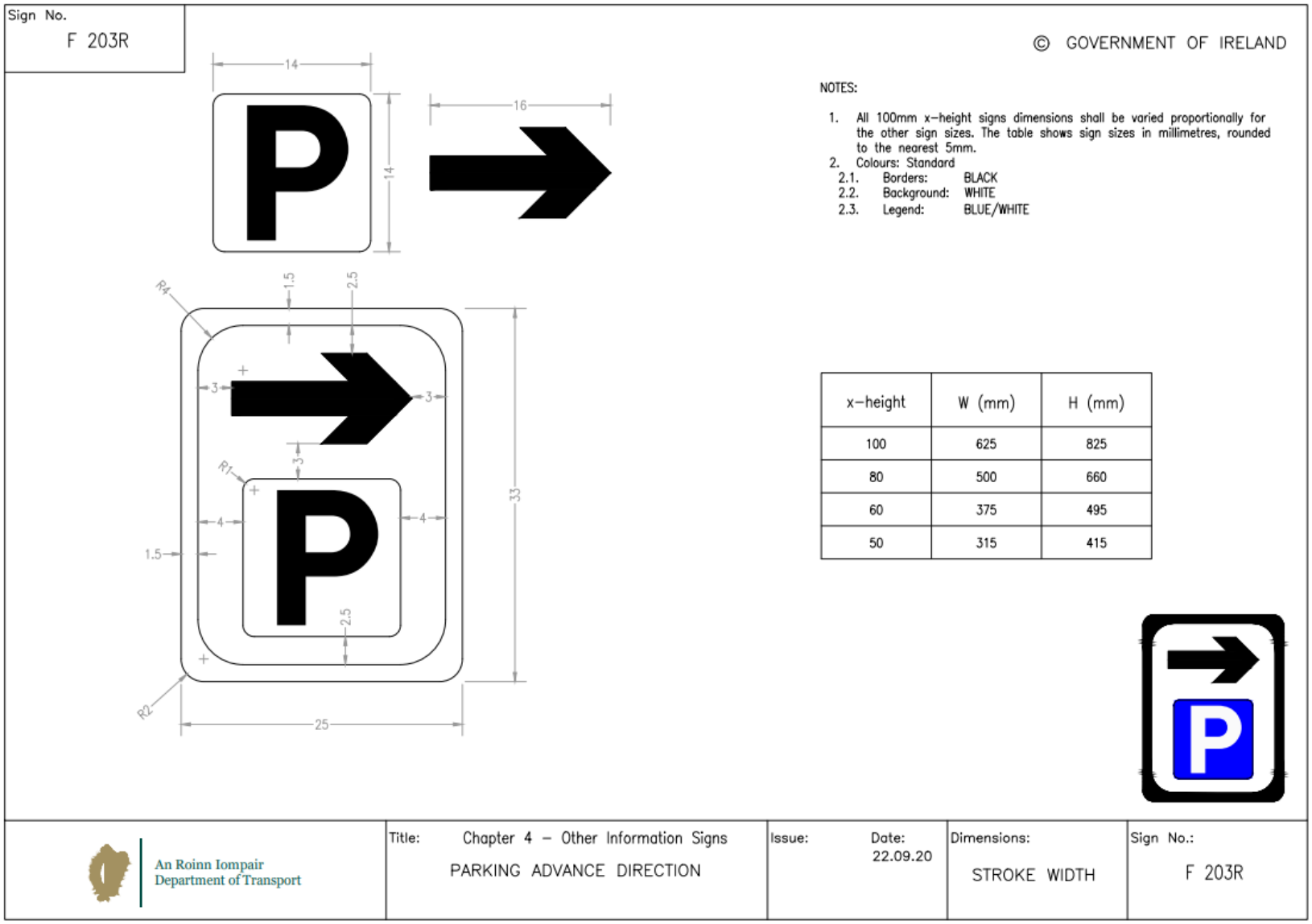

Figure 4.9 Example of an 'Information Sign'

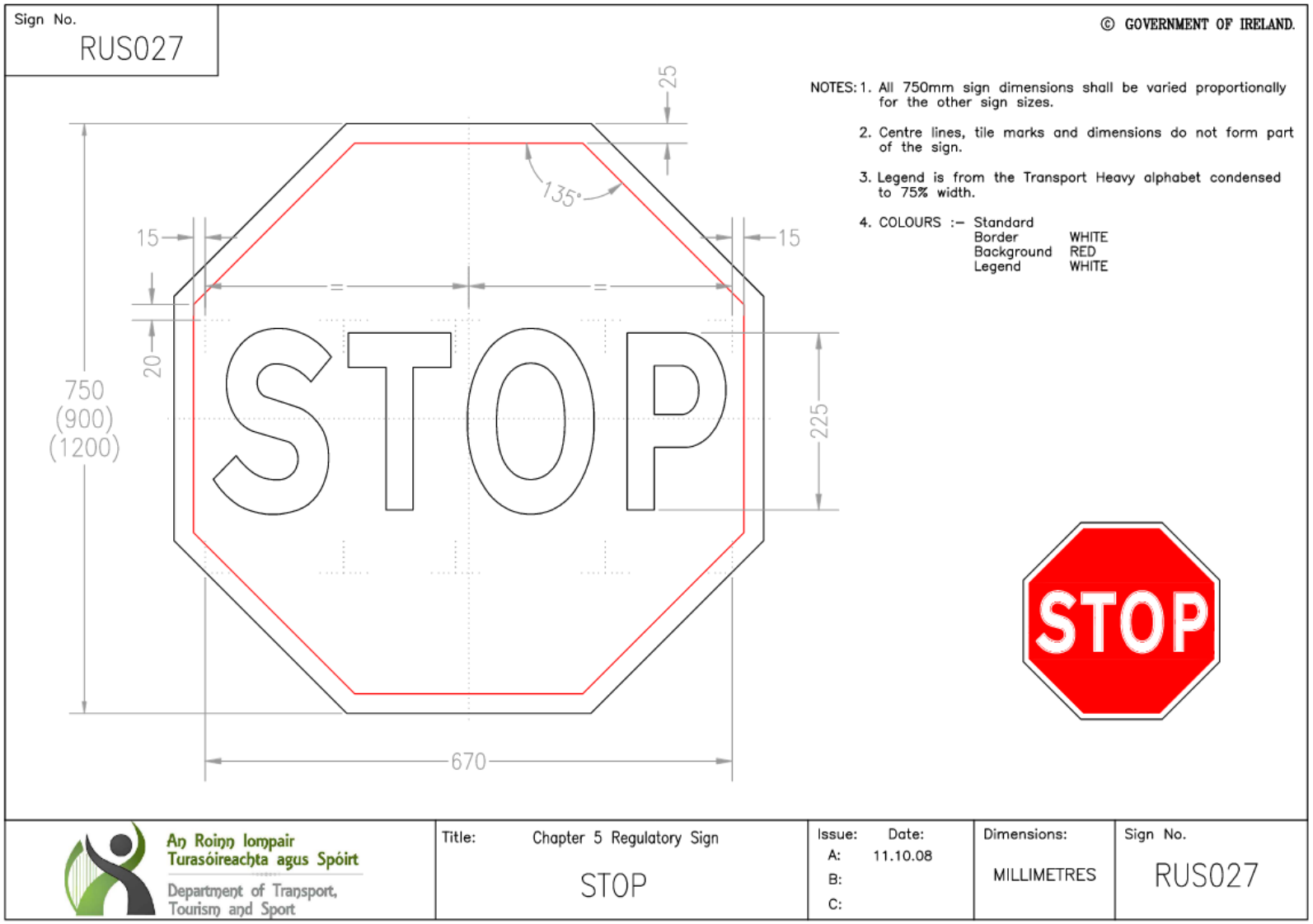

Figure 4.10 Example of a 'Regulatory Sign'

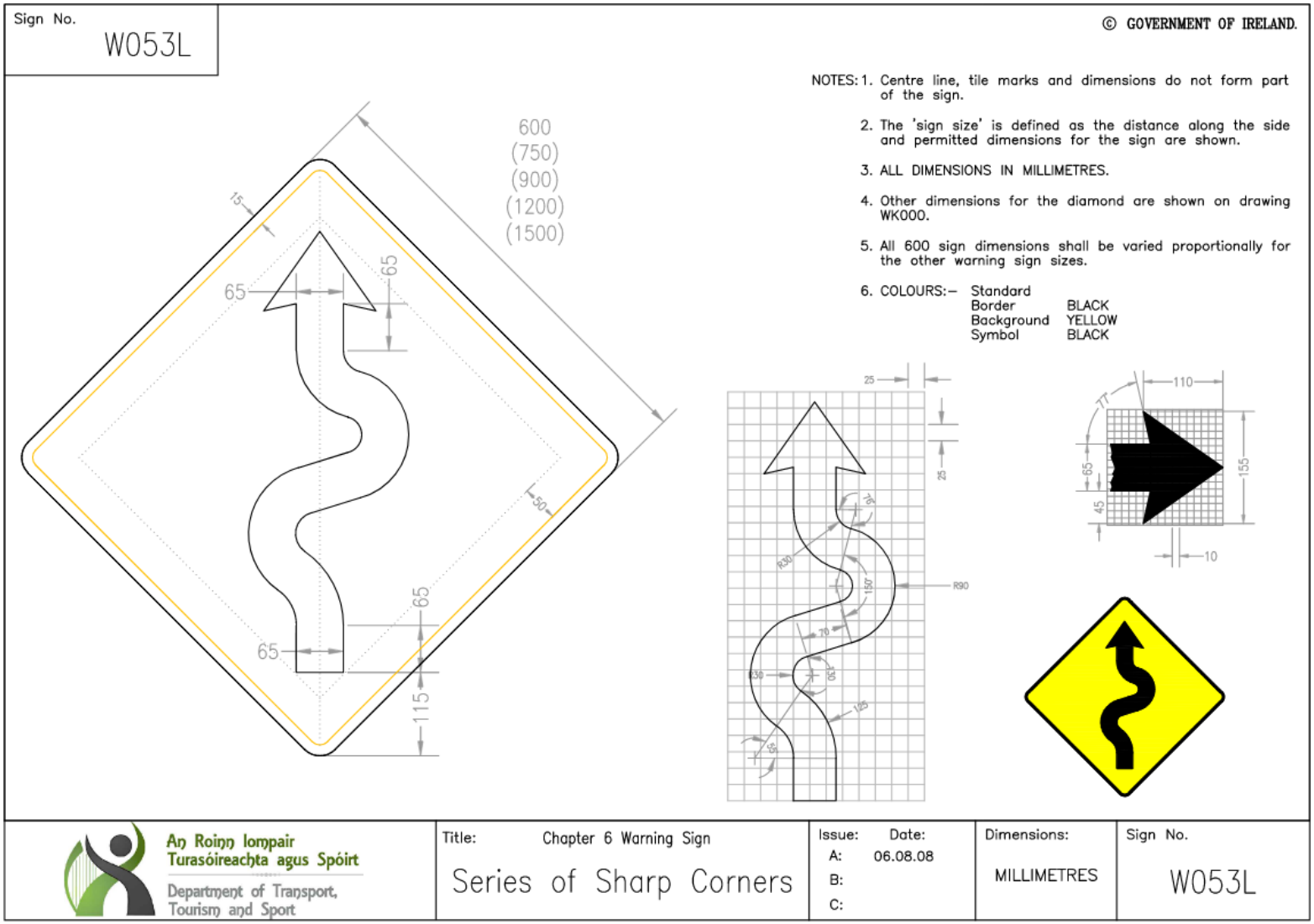

Figure 4.11 Example of a 'Warning Sign'

4.1.7 Section 138 of the Local Government Act 2001

Further information on Section 138 of the Local Government Act, 2001, as amended, is provided in 5.4.3. Section 138 of the Local Government Act, 2001, as amended, concerns 'Prior information to elected council.' Section 138(1) of the Local Government Act, 2001, as amended,[99] requires that "*The chief executive shall inform the elected council* […] –

> *(a) before any works (other than works of maintenance or repair) of the local authority* […] *are undertaken, or*
>
> *(b) before committing the local authority* […] *to any expenditure in connection with proposed works (other than works of maintenance or repair)."*

Section 138(1) of the Local Government Act, 2001, as amended,[100] requires the chief executive to inform the elected council before undertaking, or committing to any expenditure in connection with, proposed works (other than works of maintenance or repair).

Section 138(2) of the Local Government Act, 2001, as amended,[101] states:

> *"Subject to this section, an elected council* […] *may by resolution direct that, before the chief executive performs any specified executive function of the local authority* […], *he or she shall inform the elected council* […] *of the manner in which he or she proposes to perform that function, and the chief executive shall comply with the resolution."*

Section 138(3) of the Local Government Act, 2001, as amended,[102] states:

> *"A resolution under subsection (2) may relate to any particular case or occasion or to every case or occasion of the performance of the specified executive function and may define what information is to be given and how and when it is to be given and the chief executive shall comply with the resolution."*

Section 138(4) of the Local Government Act, 2001, as amended,[103] states:

> *"Nothing in this section prevents the chief executive from dealing immediately with any situation which he or she considers is an emergency situation calling for immediate action without regard to subsections (1) to (3)."*

[99] Section 138(1) of the Local Government Act, 2001, as amended by Section 5(1) of the Local Government Reform Act, 2014.
[100] Section 138(1) of the Local Government Act, 2001, as amended by Section 5(1) of the Local Government Reform Act, 2014.
[101] Section 138(2) of the Local Government Act, 2001, as amended by Section 5(1) of the Local Government Reform Act, 2014.
[102] Section 138(3) of the Local Government Act, 2001, as amended by Section 5(1) of the Local Government Reform Act, 2014.
[103] Section 138(4) of the Local Government Act, 2001, as amended by Section 5(1) of the Local Government Reform Act, 2014.

Section 138(5) of the Local Government Act, 2001, as amended,[104] states:

> *"Without prejudice to the generality of subsection (4), an emergency situation for the purpose of that subsection shall be deemed to include a situation where, in the opinion of the chief executive, the works concerned are urgent and necessary (having regard to personal health, public health or safety considerations) in order to provide a reasonable standard of accommodation for any person."*

Section 139(1) of the Local Government Act, 2001,[105] states:

> *"Where the elected council* […] *is informed in accordance with section 138 of any works (not being any works which the local authority* […] *are required by or under statute or by order of a court to undertake), the elected council* […]*, as the case may be, may by resolution, direct that those works shall not proceed."*

Section 139(2) of the Local Government Act, 2001, as amended,[106] states:

> *"The chief executive shall comply with a resolution of an elected council* […] *duly and lawfully passed under this section."*

4.2 Preparation of the Environmental Impact Assessment Report

There are numerous guidelines dealing with how Environmental Impact Assessment Reports should be prepared which should be consulted. These include:

- *Guidelines on the information to be contained in Environmental Impact Assessment Reports* (Environmental Protection Agency, 2022)
- *Environmental Impact Assessment of Projects – Guidance on the preparation of the Environmental Impact Assessment Report* (European Commission, 2017)

Section 50(2)(b) of the Roads Act, 1993, as amended,[107] provides, *inter alia*, that the road authority shall ensure that an environmental impact assessment report contains the following information:

> *"(i) a description of the proposed road development comprising information on the site, design, size and other relevant features of the development;*
>
> *(ii) a description of the likely significant effects of the proposed road development on the environment;*
>
> *(iii) a description of any features of the proposed road development and of any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;*

[104] Section 138(5) of the Local Government Act, 2001, as amended by Section 5(1) of the Local Government Reform Act, 2014.
[105] Section 139(1) of the Local Government Act, 2001.
[106] Section 139(2) of the Local Government Act, 2001, as amended by Section 5(1) of the Local Government Reform Act, 2014.
[107] Section 50(2)(b) of the Roads Act, 1993, as substituted by Regulation 5 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019 (S.I. No. 279 of 2019).

> *(iv) a description of the reasonable alternatives studied by the road authority or the Authority, as the case may be, which are relevant to the proposed road development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the proposed road development on the environment;*
>
> *(v) a non-technical summary of the information referred to in subparagraphs (i) to (iv);*
>
> *(vi) any additional information specified in Annex IV that is relevant to the specific characteristics of the particular proposed road development or type of proposed road development and to the environmental features likely to be affected* […]*."*

Annex IV to the amended EIA Directive, which is entitled 'INFORMATION REFERRED TO IN ARTICLE 5(1) - (INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT)' should also be consulted.

Whilst there is plenty of guidance on how Environmental Impact Assessment Reports should be prepared, there are a number of particular issues that are dealt with below:

- Preparation of the EIAR by qualified and competent experts
- Scoping

4.2.1 Preparation of the EIAR by Qualified and Competent Experts

Article 5(3)(a) provides '[In order to ensure the completeness and quality of the environmental impact assessment report] *the developer shall ensure that the environmental impact assessment report is prepared by competent experts*.' The first noteworthy aspect of this provision is that it implies that Environmental Impact Assessment Reports should be complete and of high quality. The second aspect is that the developer, which in the case of national road and greenway projects is generally the local authority, must ensure that the Environmental Impact Assessment Report is prepared by competent experts. This point is expanded on in Recital 33 of the Preamble to the 2014 EIA Directive, where it is stated '*Experts involved in the preparation of environmental impact assessment reports should be qualified and competent*.'

The local authority must, in respect of national road and greenway projects, ensure that those writing Environmental Impact Assessment Reports are expert, qualified and competent and that the Environmental Impact Assessment Reports produced are complete and of high quality.

4.2.2 Scoping

According to the Environmental Protection Agency (2022, p. 23):

> *"'Scoping' is a process of deciding what information should be contained in an EIAR and what methods should be used to gather and assess that information."*

A distinction should be made between formal and informal scoping. In respect of formal scoping, An Bord Pleanála shall, on the request of the road authority, after having consulted with the road authority and prescribed bodies, '*issue an opinion on the scope, and level of detail, of the information to be included by the road authority* […] *in the environmental impact assessment report* […].'[108]

[108] Section 50(4)(a) of the Roads Act, 1993, as substituted by Regulation 5 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations 2019 (S.I. No. 279 of 2019).

Where An Bord Pleanála issues such an opinion, the road authority must prepare the EIAR based on that opinion.[109] Informal scoping is a non-statutory process carried out by the developer involving, amongst several other things, consultation with relevant stakeholders.

Regard should be had, *inter alia*, to relevant guidance and recent EIARs for similar/proximate projects when conducting scoping.

4.3 Preparation of the Natura Impact Statement

A Natura impact statement ('NIS') is defined in Part XAB as a statement of the implications of a proposed development, in combination with other plans or projects, for one or more European sites, in view of the sites' conservation objectives.[110] A NIS must include a report of a scientific examination of evidence and data, carried out by competent persons, to identify and classify any implications for one or more than one European site in view of the conservation objectives of the site or sites.[111] A NIS must include all information or data as the Board considers necessary to enable it to ascertain if the proposed development will not affect the integrity of the site.[112]

It is worth noting in this context the Minister's power to make regulations under Section 177AD.[113] Such regulations may, inter alia, make provision for: '*information or classes of information to be contained in a Natura impact statement* […];'[114] and, '*qualifications of persons or classes of persons who shall furnish* [such] *information.*'[115] Whilst, to date, the Minister appears not to have exercised this power in this regard, project proponents should check for the enactment of such regulations in advance of applying for consent.

4.3.1 Preparation of Documents Associated with a Section 177AE Application

In relation to applications under Section 177AE of the Planning and Development Act 2000, as amended, An Bord Pleanála (n.d.) states:

> *"Expectations in relation to the plans/particulars to be lodged and the level of detail to be provided with the plans/particulars will be proportionate to the scale and complexity of the proposed development and characteristics of the receiving environment. For all cases, An Bord Pleanála expects that the project is accurately described in drawing and written form and its full implications relating to all relevant considerations including any mitigation measures proposed are clearly set out in the documentation."*

[109] Section 50(3)(a) of the Roads Act, 1993, as substituted by Regulation 5 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations 2019 (S.I. No. 279 of 2019).
[110] Section 177T(1)(b) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010, as amended by Regulation 10(a) of the European Union (Environmental Impact Assessment and Habitats) Regulations, 2011 (S.I. No. 473 of 2011)
[111] Section 177T(2) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010, as amended by Regulation 10(b) of the European Union (Environmental Impact Assessment and Habitats) Regulations, 2011 (S.I. No. 473 of 2011).
[112] Section 177T(7)(b) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[113] Section 177AD(1) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010. See, also, Section 177T(7)(a) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[114] Section 177AD(3)(c)(vi) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[115] Section 177AD(3)(c)(vii) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.

In relation to '*Plans, Particulars and Other Considerations*', An Bord Pleanála states (n.d.):

> *"This section sets out the 'in general' information required by An Bord Pleanála under plans, particulars and other considerations. Dependent on the nature, scale and complexity of the proposed development and the receiving environment, not all of the information described under the headings below may be applicable. Local authorities should use their knowledge of the area and expertise to decide which might be relevant in a particular case."*

In relation to 'Plans, Particulars and Other Considerations', An Bord Pleanála states (n.d.):

> *"The local authority may wish to combine the various reports as may be required from the matters highlighted into a single volume. This would include the Natura Impact Statement itself and additional commentary in regard to relevant planning matters and the likely effects on the environment."*

4.3.1.1 Plans

In relation to 'Plans', An Bord Pleanála states (n.d.):

> *"* The nature and extent of the proposed development should be fully described in drawing form including provision of*
>
> - *site location plan*
> - *scaled site layout plan,*
> - *plans, elevations and sections of all aspects of the proposed development for which approval is sought:*
>
> ** Insofar as is relevant to the application for approval being made and having regard to the specific requirements as set out in s. 177AE, note should be taken of the provisions of articles 23 and 83 of the Planning and Development Regulations, 2001 (as amended) concerning plans, drawings and maps lodged.*
>
> ** Where the application relates to proposed development remote from a recognised settlement, the site location map should identify the location of the proposed development site relative to the nearest identifiable settlement.*
>
> ** Details in relation to proposed plant, infrastructure or equipment (for example proposals for waste water treatment facilities or water pipelines) should be provided as far as possible. This should include plans and elevations (including in the context of the structures to which they may be affixed), sections and technical specifications.*
>
> ** Construction methodology statements describing the full extent of all aspects of the proposed development including location of any site compounds, car parking, materials storage areas, lagoons etc. and mitigation measures where proposed."*

4.3.1.2 Particulars

4.3.1.2.1 Effects on the Environment

In relation to 'Particulars' and relating to 'Effects on the environment of the proposed development', An Bord Pleanála states (n.d.):

> *"* full description of proposed development including details of construction and operational phases and impacts, likely emissions and/or discharges, phasing, and any mitigation measures proposed;*

** protected Structures, Architectural Conservation Area (ACA), archaeological sites or ancient monuments or other built heritage etc. immediately impacted upon or in vicinity whose setting might be affected;*

** impact on other designated sites such as Natural Heritage Areas;*

** adequacy of the public or other water supply;*

** public sewerage facilities and capacity to facilitate the proposed development;*

** availability and capacity of surface water drainage facilities and any history of flooding relevant to the site;*

** flood risk assessment in accordance with The Planning System and Flood Risk Management – Guidelines for Planning Authorities (November 2009);*

** hydrological/hydrogeological assessment of project;*

** assessment under the Water Framework Directive and associated regulations including any capacity of receiving waters to assimilate any additional discharge loadings in accordance with water quality standards and objectives;*

** assessment of landscape status and visual impact, as appropriate;*

** carrying capacity and safety of road network serving the proposed development;*

** the likely significant impact arising from the proposed development, if carried out including impacts on amenities of properties in vicinity;*

** air, odour and noise emission assessments; and*

** any Special Amenity Area Order (SAAO) which may be affected by the proposed development."*

4.3.1.2.2 Proper Planning and Sustainable Development

In relation to 'Particulars' and relating to '*The likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the development*', An Bord Pleanála states (n.d.):

" justification for the project;*

** main Development Plan provisions relating to the subject site and surrounding area including any relevant Core Strategy provisions;*

** relevant planning history relating to the subject site and the surrounding area;*

** relevant national, regional and local policies; and*

** description of use of adjoining, abutting or adjacent lands."*

4.3.1.2.3 The Natura Impact Statement

In relation to 'Particulars' and relating to 'The likely significant effects of the proposed development on a European site (the Natura Impact Statement - NIS)' the Board (n.d.) states:

" As defined under s. 177T of the 2000 Act (as amended) an NIS constitutes a*

> *" …statement for the purposes of Article 6 of the Habitats Directive, of the implications of a proposed development, on its own or in combination with other plans or projects for one or more than one European site, in view of the conservation objectives of the site or sites" and shall include " .. a report of a scientific examination of evidence and data, carried out by competent persons to identify and classify any implications for one or more than one European site in view of the conservation objectives of the site or sites".*

An Bord Pleanála as the Competent Authority carrying out the appropriate assessment on these cases should be provided with documentation based on the appropriate information. This would include any survey work results, baseline studies and further analysis and assessment of the effects of the proposed development on a European site(s). In absence of such An Bord Pleanála may have to consider refusing to approve the proposed development, to use its powers under s. 177AE(5)(a)(i) to seek further information, to make alterations to the proposed development or to invite a revised NIS.

It is considered that a thorough and complete NIS and its inclusion into a single comprehensive report should provide the necessary information required to facilitate An Bord Pleanála in its timely determination of the case."

4.4 Preparation of the 'Part 8' Documents

Further detail on the 'Part 8' process is provided in Sections 4.1.4 and 5.3. Furthermore, many local authorities provide their own guidance in relation to this procedure (see, for example, *Local Authority Works - Part 8 - Procedure* (Dublin City Council, 2017)).

4.4.1 Plans and Particulars

4.4.1.1 Description Document

Article 83(1)(a) of the Planning and Development Regulations 2001 provides, inter alia, that the local authority must make available for inspection 'a document describing the nature and extent of the proposed development and the principal features thereof.'[116]

4.4.1.2 Location Map

Article 83(1)(b) provides the local authority must also make available for inspection:

> *"a location map, drawn to a scale of not less than 1:1000 in built up areas and 1:2500 in all other areas (which shall be identified thereon) and marked or coloured so as to identify clearly the land on which it is proposed to carry out the proposed development."*[117]

4.4.1.3 Descriptive Plans and Drawings

Article 83(1)(d) of the Planning and Development Regulations 2001 states that the 'local authority shall make available for inspection':

[116] Article 83(1)(a) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001).
[117] Article 83(1)(b) of the Planning and Development Regulations 2001, as amended by Article 3(1) of the Planning and Development Regulations 2002 (S.I. No. 70 of 2002).

> *"in the case of development of a class specified in article 80(1)(b), such plans and drawings drawn to a scale of not less than 1:2500, as are necessary to describe the proposed development* […]."[118]

Development of a class specified in Article 80(1)(b) relates to the construction of a new road or the widening of an existing road of 100m or more in length in an urban area or 1km or more in length in any other area is a prescribed class of development.[119]

Article 83(1)(e) of the Planning and Development Regulations 2001 states that the 'local authority shall make available for inspection':

> *"in the case of development of a class specified in article 80(1) (c), such plans and drawings drawn to a scale of not less than 1:200, as are necessary to describe the proposed development* [...]."[120]

Development of a class specified in Article 80(1)(c) relates to the construction of a bridge or a tunnel.[121]

Article 83(1)(c) contains requirements in respect of a site layout plan and descriptive plans and drawings where the development is of a class other than that specified in Articles 80(1)(b) and (c).[122]

4.4.1.4 Screening for EIA and AA Documentation

Article 83(1)(f) of the Planning and Development Regulations 2001 states that the '*local authority shall make available for inspection*':

> *"the conclusion under article 120(1)(b)(i) or the screening determination under article 120(1B)(b)(i), as the case may be (and, in the latter case, including, or referring to, the description, if any, provided under article 120(1A)(b) or 120(3)(cb)(ii), as the case may be)* […]."

The local authority shall make plans and particulars available for inspection or purchase for a specified period (not less than four weeks from day of publication).

(See r. 81(2)(d)(i), 83(1) and 83(2) PDR 2001 and s. 179(2)(c) PDA 2000).

The local authority shall make the determination (including the main reasons and consideration on which the determination is based) that the proposed development would not be likely to have a significant effect on a European site available for inspection or purchase with the plans and particulars.

(See Regulation 250(6) PDR 2001)

The local authority shall make available for inspection the conclusion or screening determination of the local authority that there is no real likelihood of significant effects on the environment arising from the proposed (subthreshold) development. (See r. 83(1)(f), 120(1)(b)(i) and 120(1B)(b)(i) PDR 2001).

[118] Article 83(1)(d) of the Planning and Development Regulations 2001 (SI. No. 600 of 2001)
[119] Article 80(1)(b) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001)
[120] Article 83(1)(e) of the Planning and Development Regulations 2001 (SI. No. 600 of 2001)
[121] Article 80(1)(c) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001)
[122] Article 83(1)(c) of the Planning and Development Regulations 2001 (SI. No. 600 of 2001)

4.4.2 Chief Executive's Report

Section 179(3)(a) of the Planning and Development Act 2000 provides, inter alia, '*The chief executive of a local authority shall* […] *prepare a report in writing in relation to the proposed development and submit the report to the members of the authority*.'[123] Pursuant to Section 179(3)(b) of the Planning and Development Act 2000,[124] the report shall:

- describe the nature and extent of the proposed development and the principal features thereof, and shall include an appropriate plan of the development and appropriate map of the relevant area,[125]
- evaluate whether or not the proposed development would be consistent with the proper planning and sustainable development of the area to which the development relates, having regard to the provisions of the development plan and giving the reasons and the considerations for the evaluation,[126]
- include the screening determination on why an environmental impact assessment is not required and specify the features, if any, of the proposed development and the measures, if any, envisaged to avoid or prevent what might have otherwise been significant adverse effects on the environment of the development,[127]
- list the persons or bodies who made submissions or observations with respect to the proposed development,[128]
- summarise the issues, with respect to the proper planning and sustainable development of the area in which the proposed development would be situated, raised in any such submissions or observations, and give the response of the chief executive thereto,[129] and
- recommend whether or not the proposed development should be proceeded with as proposed, or as varied or modified as recommended in the report, or should not be proceeded with, as the case may be.[130]

[123] Section 179(3)(a) of the Planning and Development Act 2000, as substituted by Regulation 27(a) of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018)
[124] Section 179(3)(b) of the Planning and Development Act 2000, as amended
[125] Section 179(3)(b)(i) of the Planning and Development Act 2000
[126] Section 179(3)(b)(ii) of the Planning and Development Act 2000
[127] Section 179(3)(b)(iia) of the Planning and Development Act 2000, as substituted by Regulation 27(b) of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018)
[128] Section 179(3)(b)(iii) of the Planning and Development Act 2000
[129] Section 179(3)(b)(iv) of the Planning and Development Act 2000, as amended by Section 6(1) of and Schedule 2 to the Planning and Development (Amendment) Act 2018
[130] Section 179(3)(b)(v) of the Planning and Development Act 2000

5. Phase 4 – Statutory Processes

5.1 Application under Section 51(2) of the Roads Act, 1993, as amended

5.1.1 Strategic Infrastructure Development

It should be noted that national road projects that require EIA are included in the definition of 'strategic infrastructure development' under the Planning and Development Act 2000, as amended. Section 2(1) of the Planning and Development Act 2000, as amended, defines '*strategic infrastructure development*' to include: '*any scheme or proposed road development referred to in section 215*'.[131] An Bord Pleanála (2021, p. 40) state that this definition '*generally covers major road proposals by road authorities* […] *including motorways and other road developments which require environmental impact assessment*.' The definition of 'strategic infrastructure development' also covers any compulsory acquisition of land referred to in specified legislation, including the Housing Act, 1966, and the Roads Acts, 1993 and 1998, where the acquisition concerned relates to road development proposals of the types set out in Section 215.[132] The Board provides very useful guidance in *Strategic Infrastructure Development* (2021).

5.1.2 Procedure under Section 51(3) of the Roads Act, 1993

The procedure under Section 51(3) of the Roads Act, 1993, as amended, is outlined in Figure 5.1. Given, amongst other things, the complexity of the legislation and its interaction with other legislation, it is important that such applications are guided by legal advisors.

[131] Section 2(1) of the Planning and Development Act, 2000, as inserted by Section 6(c) of the Planning and Development (Strategic Infrastructure) Act, 2006.
[132] Section 2(1) of the Planning and Development Act, 2000, as substituted by Section 7(2)(a) of the Harbours (Amendment) Act, 2009.

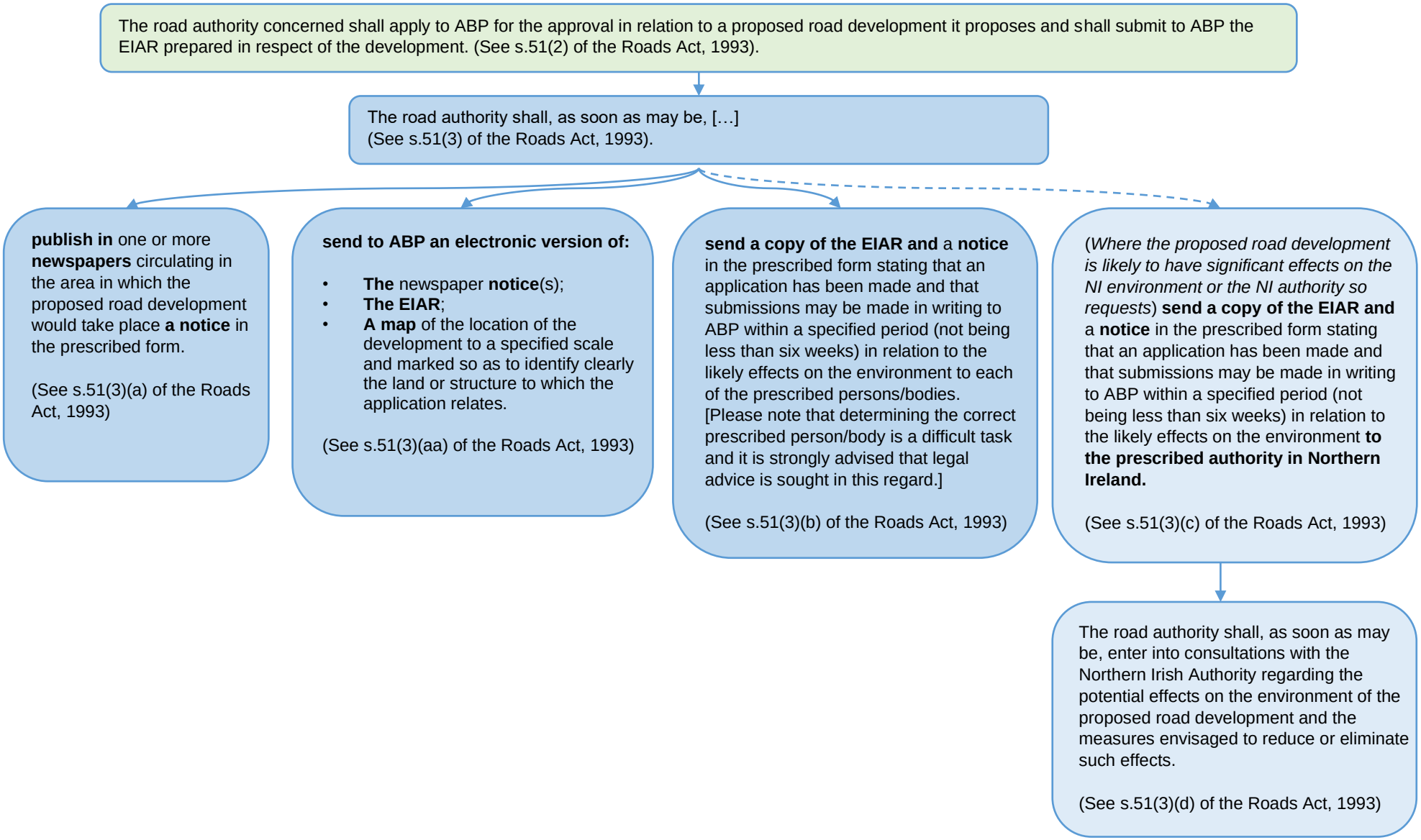

Figure 5.1 Procedure under Section 51(3) of the Roads Act, 1993

5.1.3 Additional Information

The procedure relating to additional information is illustrated in Figure 5.2.

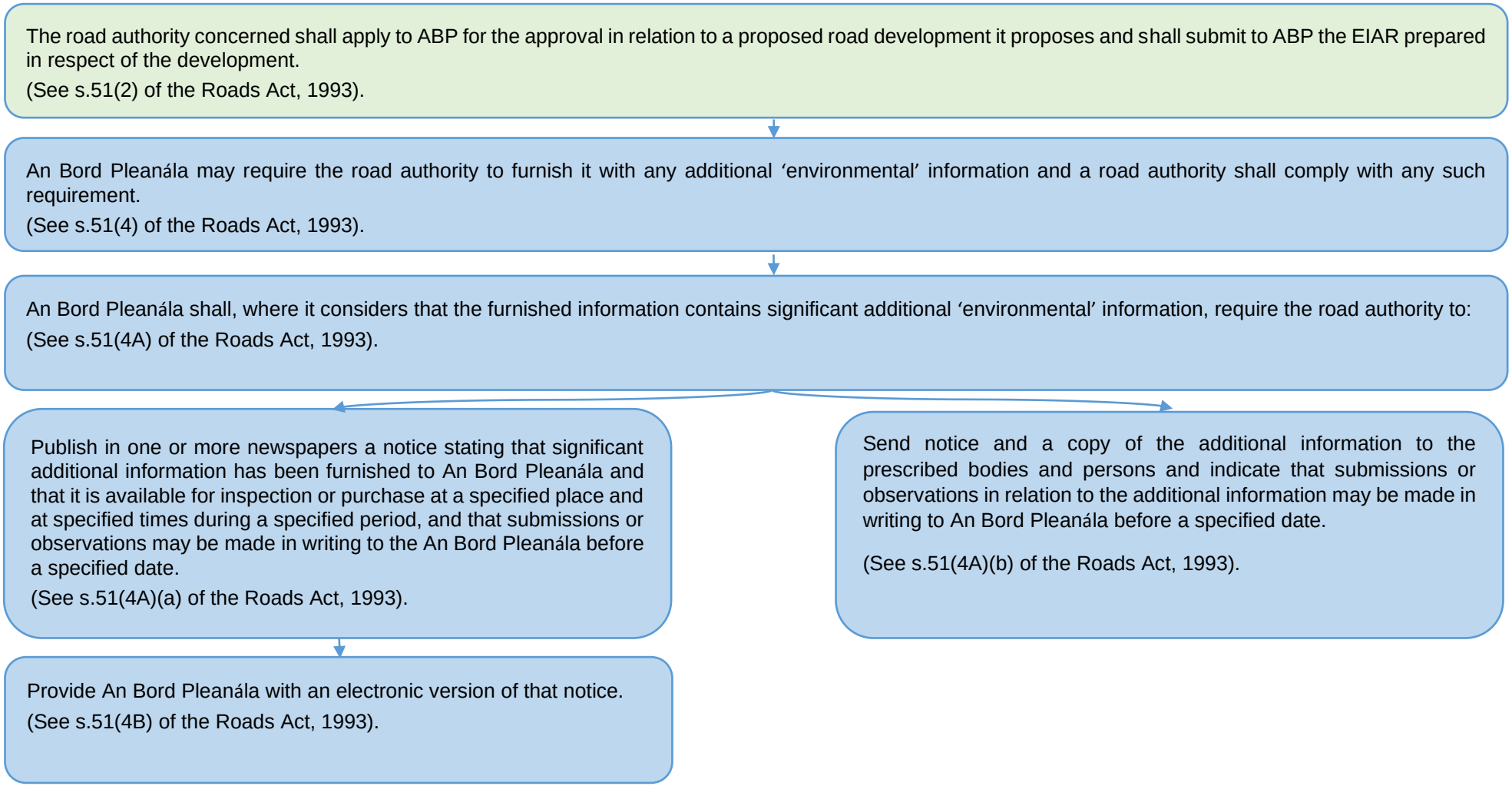

Figure 5.2 Additional Information procedure

5.1.4 Prior to Approval

Prior to approving a proposed road development, An Bord Pleanála must duly take into account:

- the Environmental Impact Assessment Report;
- any additional information furnished by the road authority;
- any submissions made in relation to the likely effects on the environment; and,
- where relevant, the results of consultations, etc., with the prescribed authority in Northern Ireland.[133]

Where relevant, An Bord Pleanála must also consider the report and any recommendations of the of the person who conducted the oral hearing/public inquiry.[134] Taking into account the results of these examinations, An Bord Pleanála must reach a reasoned conclusion on the significant effects of the proposed road development on the environment.[135]

5.1.5 Approval with or without Modification or Refusal to Approve

Having reached a reasoned conclusion, An Bord Pleanála may, by order:

- Approve a proposed road development, with or without modification and subject to whatever environmental conditions (including conditions regarding monitoring measures, parameters to be monitored and duration of monitoring) it considers appropriate; or,
- Refuse to approve such development.[136]

This decision must be made within a reasonable period of time following receipt of the EIAR or, where relevant, additional information.[137] Note that as of the 13th of January, 2023, the Government proposes the following (Government of Ireland, 2022, pp. 1-2):

> *"Statutory mandatory timelines for all consent processes, including An Bord Pleanála (ABP) decisions, to bring certainty to the planning consent process: timelines are being introduced for appeals and consents applications made to ABP (including Strategic Infrastructure Developments)."*

5.1.6 Implementation, Monitoring and Penalties

The amending EIA Directive enhanced requirements in respect of implementation, monitoring and penalties. The combination of these provisions arguably has the effect of significantly strengthening the European Union's EIA regime. The amended EIA Directive charges Member States with responsibility for ensuring that mitigation and compensation measures are implemented.[138]

[133] Section 51(5)(a) of the Roads Act, 1993, as substituted by Regulation 6 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019 (S.I. No. 279 of 2019).
[134] Section 51(5)(b) of the Roads Act, 1993, as substituted by Regulation 6 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019 (S.I. No. 279 of 2019).
[135] Section 51(5)(c) of the Roads Act, 1993, as substituted by Regulation 6 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019 (S.I. No. 279 of 2019).
[136] Section 51(6) of the Roads Act, 1993, as substituted by Regulation 6 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019 (S.I. No. 279 of 2019).
[137] Section 51(5A) of the Roads Act, 1993, as substituted by Regulation 6 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019 (S.I. No. 279 of 2019).
[138] Recital 35 of the Preamble to DIRECTIVE 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (Text with EEA relevance). Article 8a(4) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the

Member States are further charged with responsibility for determining the procedures regarding the monitoring of significant adverse effects on the environment.[139] The Preamble to the amending EIA Directive indicates that this is in order '*to identify unforeseen significant adverse effects, in order to be able to undertake appropriate remedial action*.'[140] Further on the subject of monitoring, the amended EIA Directive requires that the EIAR must describe '*where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis)*.'[141] This indicates that it is for the developer, in the first instance, to describe any proposed monitoring arrangements. The amended EIA Directive further requires that the decision to grant development consent shall incorporate certain minimal information, which is to include, where appropriate, information on monitoring measures.[142] Thus, competent authorities, such as ABP, can impose environmental conditions relating to monitoring on applicants. On the topic of penalties, the amending EIA Directive also now explicitly requires the following:[143]

> *"Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive."*

This combination of provisions relating to implementation, monitoring and penalties considerably bolsters the European Union's EIA regime. Ireland has transposed these 'implementation, monitoring and penalties' requirements in respect of proposed road development largely through the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.

5.1.6.1 General Supervision of Monitoring Activities of Local Authorities by the EPA

Whilst the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019, gives TII a responsibility for ensuring that road authorities comply with conditions (including those related to monitoring) associated with national road projects (see Section 5.1.6.2), readers should also be mindful of the pre-existing regime created by Section 68 of the Environmental Protection Agency Act, 1992.

effects of certain public and private projects on the environment as inserted by Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

[139] Recital 35 of the Preamble to DIRECTIVE 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (Text with EEA relevance). Article 8a(4) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as inserted by Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

[140] Recital 35 of the Preamble to DIRECTIVE 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (Text with EEA relevance).

[141] Point 7 of Annex IV to DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

[142] Article 8a(1)(b) of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as inserted by Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014.

[143] Article 10a of DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as inserted by Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014. See, also, Recital 38 of the Preamble to DIRECTIVE 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (Text with EEA relevance).

Section 68 of the Environmental Protection Agency Act, 1992, relates to '*Monitoring activities of public authorities.*' Section 68(1) of the Act provides that the Environmental Protection Agency shall exercise general supervision over monitoring carried out by local authorities.

This general supervision would, it is assumed, extend to cover the supervision of monitoring adverse effects on the environment by a road authority, which has been conditioned by ABP when granting consent for a proposed road development. The Agency is bound to 'keep itself informed of the nature and extent of the monitoring carried out by *each local authority*.'[144] In this regard, the Agency may require a local authority to provide information in a specified period on:

> *"(a) the number and location of places within an area at which monitoring is being carried out and the frequency of such monitoring,*
>
> *(b) the manner in which samples and measurements are taken and analyses are carried out,*
>
> *(c) the equipment being used for the purposes of taking such samples and measurements or of carrying out such analyses,*
>
> *(d) the results of such monitoring."*[145]

The local authority shall not unreasonably withhold the information sought.[146]

The EPA Act states further that the EPA may provide such services (e.g., advice and assistance) as it considers necessary for the discharge by a local authority of its monitoring operations.[147] The Agency may make arrangements with a local authority on such terms and conditions as may be agreed for the provision of such services.[148]

5.1.6.2 TII as an Environmental Condition Enforcement Authority

The European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019, creates a regulatory regime, which disputably makes TII an environmental condition enforcement authority in respect of national roads (which require EIA) proposed by road authorities. This regime is summarised directly below and illustrated in flowchart form in Figure 5.3.

Section 51C(1) of the Roads Act, 1993, provides:

> *"Where An Bord Pleanála makes an order in respect of a national road proposed by a road authority, the road authority shall –*
>
> *(a) comply with, and*
>
> *(b) notify the Authority* [i.e. TII] *of,*
>
> *the modification and conditions specified in the order."*[149]

[144] Section 68(2) of the Environmental Protection Agency Act, 1992.
[145] Section 68(3) of the Environmental Protection Agency Act, 1992.
[146] Section 68(3) of the Environmental Protection Agency Act, 1992.
[147] Section 68(5) of the Environmental Protection Agency Act, 1992.
[148] Section 68(6) of the Environmental Protection Agency Act, 1992.
[149] Section 51C(1) of the Roads Act, 1993, as inserted by Regulation 7 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.

The Roads Act provides further that '*without prejudice to section 68 of the Environmental Protection Agency Act 1992*,' (see Section 5.1.6.1) where TII is notified it shall take reasonable steps to ensure that the road authority complies with the specified modifications and conditions.[150] The Act provides further that TII may request the road authority to furnish, within a specified period, specified information in relation to compliance, and that the road authority shall comply with such a request.[151] The Act proceeds to state that TII may, having notified the road authority of its intention to do so, carry out an assessment of compliance with the modification or condition.[152] During the course of an assessment the road authority must comply with any request made by TII to furnish relevant information, records or reports or the results of any monitoring by the developer, or afford TII access to any relevant land, premises or structure occupied by the developer.[153] TII may, subsequent to a request for information or an assessment, and having considered relevant information, issue to the road authority a 'proposed direction', which would indicate the action required to be carried out, within a specified period, that TII considers necessary to ensure compliance.[154] The road authority may make observations to TII in relation to the 'proposed direction' within a specified period.[155] After expiration of the specified period and having considered the observations made by the road authority, TII may confirm, with or without modification, or decide not to confirm the proposed direction.[156] Where the 'proposed direction' is confirmed, TII shall issue the direction to the road authority and the road authority must comply with the direction within the specified period.[157]

A number of offences are created under this regulatory regime, all of which carry the following penalties:

- on summary conviction, to a class A fine or to imprisonment for any term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
- on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or, at the discretion of the court, to both such fine and such imprisonment.

In relation to a roads authority's failure to comply with a TII direction, the Roads Act states further:

> *"In imposing any penalty* […] *the court shall, in particular, have regard to the risk or extent of damage to the environment and any remediation required arising from the act or omission constituting the offence."*[158]

[150] Section 51D of the Roads Act, 1993, as inserted by Regulation 7 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[151] Section 51E(1) of the Roads Act, 1993, as inserted by Regulation 7 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[152] Section 51F(1) of the Roads Act, 1993, as inserted by Regulation 7 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[153] Section 51F(2) of the Roads Act, 1993, as inserted by Regulation 7 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[154] Section 51G(1) of the Roads Act, 1993, as inserted by Regulation 7 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[155] Section 51G(2) of the Roads Act, 1993, as inserted by Regulation 7 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[156] Section 51G(3) of the Roads Act, 1993, as inserted by Regulation 7 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[157] Section 51G(3) of the Roads Act, 1993, as inserted by Regulation 7 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.
[158] Section 51G(1) of the Roads Act, 1993, as inserted by Regulation 7 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019.

Given that greenways may be considered public roads and local roads, the Minister for Transport may have the role of 'environmental condition enforcement authority' in respect of greenways (see, generally, the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019 (S.I. No. 279 of 2019)).

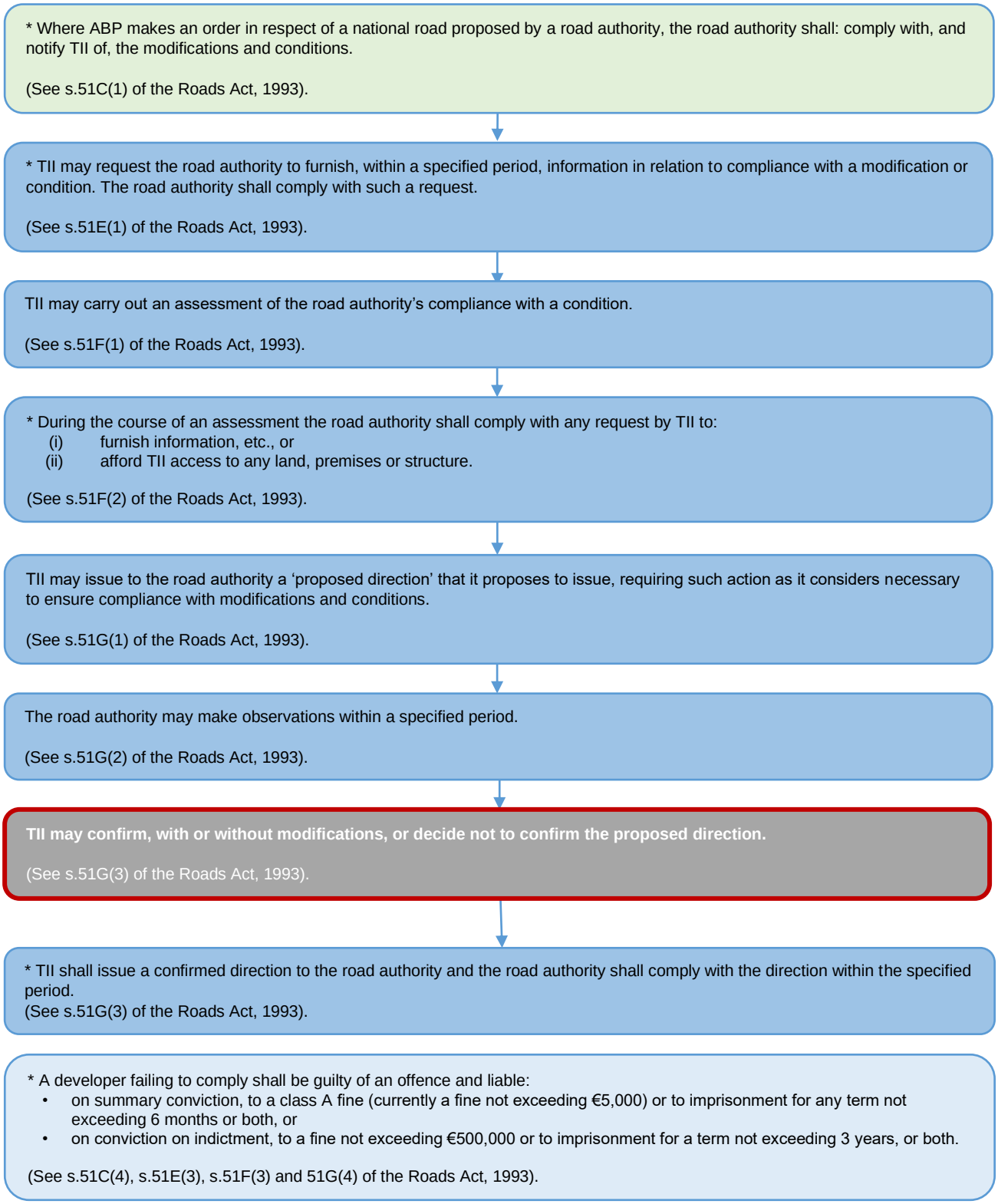

Figure 5.3 TII as an environmental condition enforcement authority in respect of national roads proposed by road authorities

5.1.7 Appropriate Assessment

The Appropriate Assessment process associated with an application under Section 51(2) of the Roads Act, 1993, as amended,[159] and as regulated by Part XAB of the Planning and Development Act, 2000, as amended, is illustrated in Figure 5.4 and Figure 5.5.

[159] Section 51(2) of the Roads Act, 1993, as substituted by Section 9(1)(e) of the Roads Act, 2007, as amended by Regulation 4 of the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019 (S.I. No. 279 of 2019).

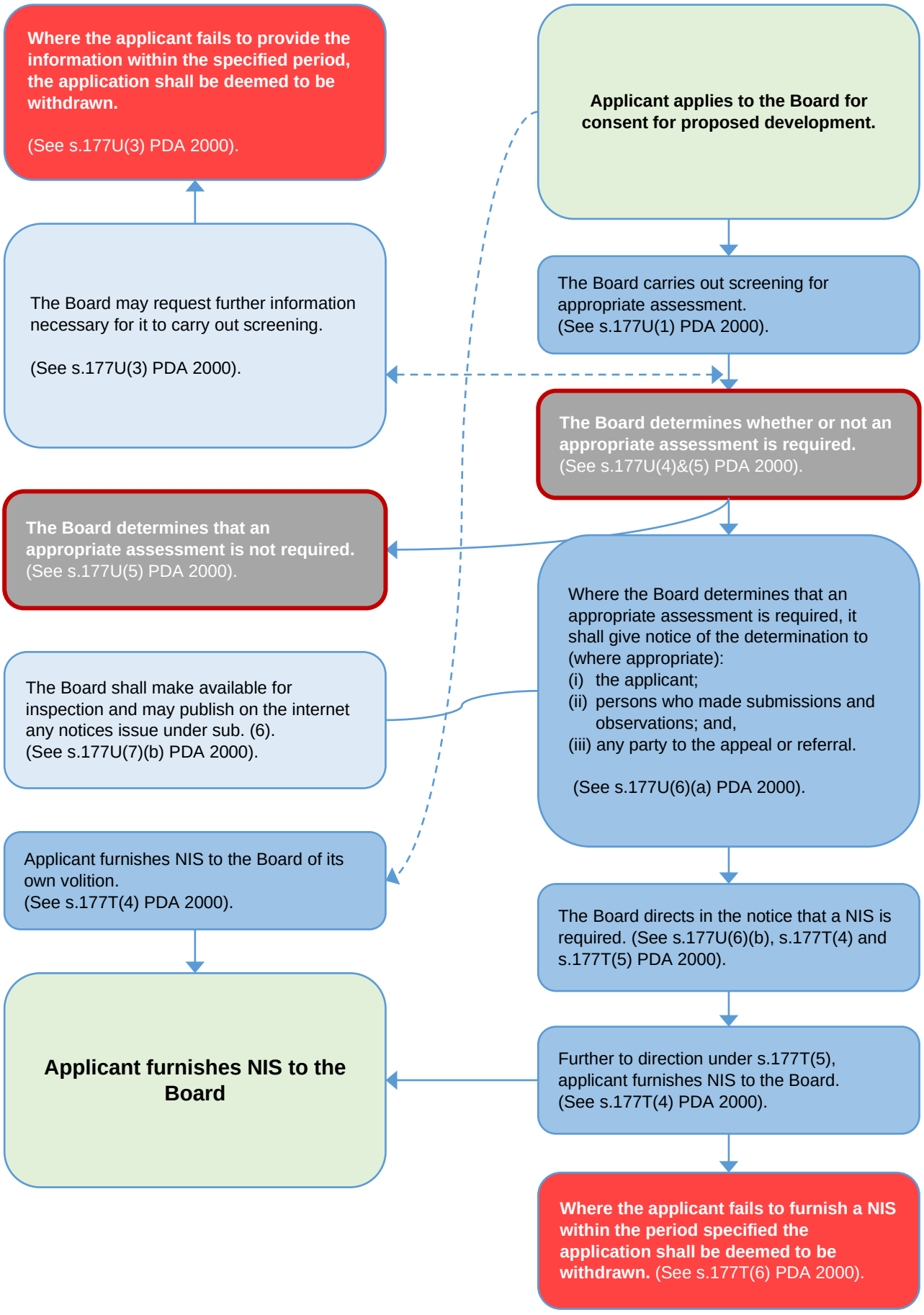

Figure 5.4 Screening for Appropriate Assessment for proposed road development

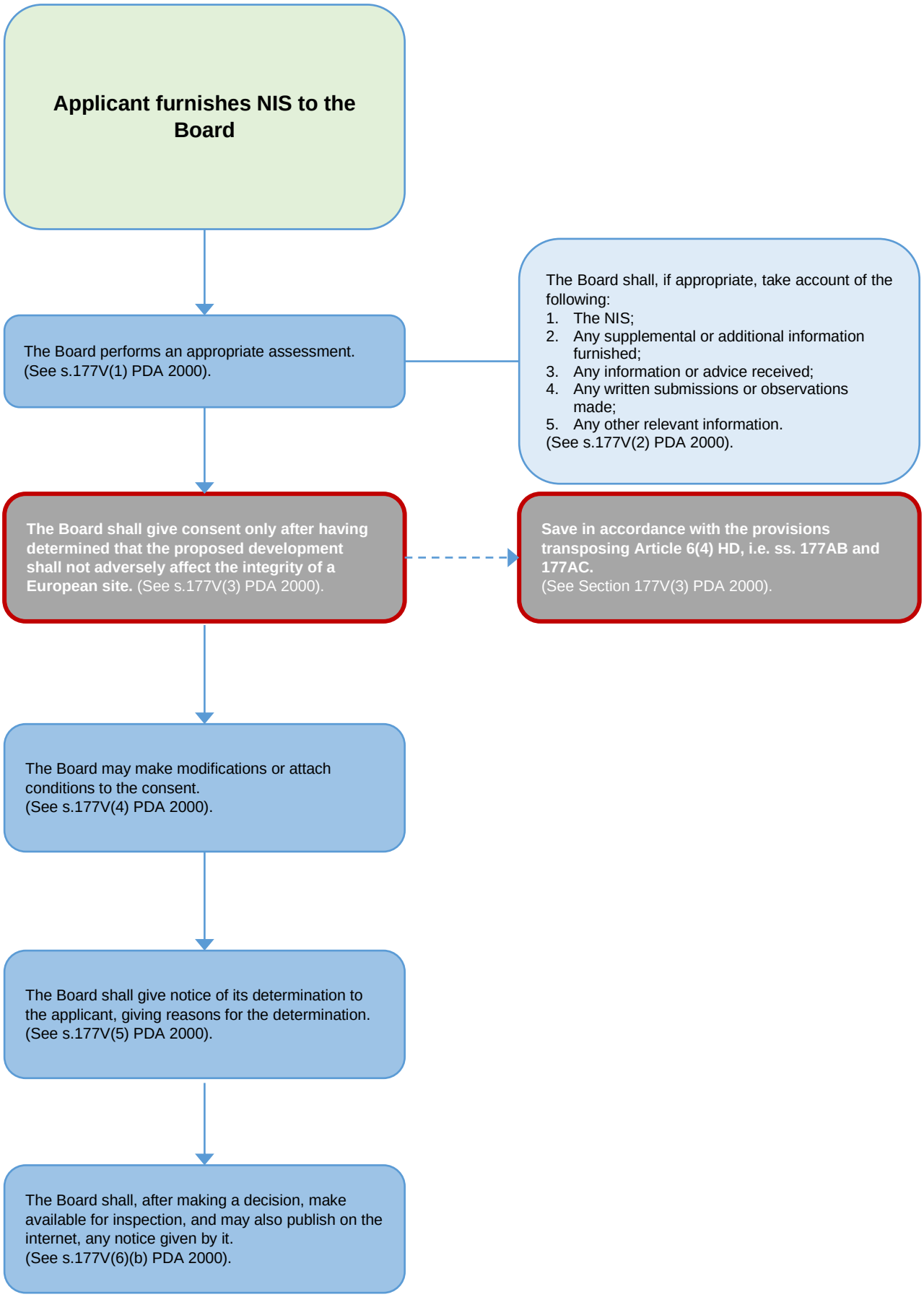

Figure 5.5 Appropriate Assessment procedure for proposed road development

5.2 Application under Section 177AE of the Planning and Development Act, 2000, as Amended

Figure 5.6, Figure 5.7 and Figure 5.8 illustrate the Appropriate Assessment process relating to local authority development under Part XAB.

An Bord Pleanála has published guidance entitled *Applications for Approval for Local Authority Developments made to An Bord Pleanála under 177AE of the Planning and Development Act, 2000, as amended (Appropriate Assessment)* (n.d.), which should be consulted.

Following the preparation of the NIS,[160] the local authority must publish the development notice,[161] and send a copy of the application, NIS and notice to the prescribed authorities.[162] The prescribed authorities are those set out in Regulation 121 of the PDR 2001, as amended.[163]

In relation to 'Prescribed Authorities/Notices', the Board (n.d.) has stated:

> *"The notice to each prescribed authority should contain a copy of the application and the NIS; electronic format should suffice unless a prescribed authority requests a hard copy. The notice should state that submissions or observations may be made to An Bord Pleanála and the period given for submissions or observations should be the same period for submissions or observations as given in the newspaper notices (not being less than 6 weeks).*
>
> *The notice should also state that submissions or observations may be made in relation to all the relevant considerations referred to in section 3(1) above.* [This reference appears to be erroneous]"

The local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment.[164] When making an application to the Board under Section 177AE, a local authority shall send to the Board:

a) 3 copies of the plans and particulars,

b) 3 copies of the NIS,

c) a copy of the notice published under Section 177AE(4)(a), and

d) a list of the bodies to which a notice was sent under Section 177AE(4)(b), a copy of each notice and an indication of the date on which the notice was sent.[165]

[160] Section 177AE(1) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010, as amended by Regulation 15(a) of the European Union (Environmental Impact Assessment and Habitats) Regulations, 2011 (S.I. No. 473 of 2011).
[161] Section 177AE(4)(a) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[162] Section 177AE(4)(b) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[163] Regulation 251 of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[164] Section 177AE(3) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[165] Regulation 249 of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).

It should be noted that the Board has stated (n.d.):

> *"In all cases one of the three copies as required above must be a soft copy (e.g. CD pdf format). Plans and particulars which contain colour in the hard copy format must also be provided in colour in electronic format. Similarly all those provided in colour in electronic format must be provided in colour in hard copy format."*

There should be a period of not less than 6 weeks for purchase and inspection of the NIS and the making of submissions and observations to the Board.[166]

It should be noted that the Board may require the local authority to furnish further information.[167] The Board may also, where appropriate, invite the local authority to make specified alterations to the terms of the proposed development and, where necessary, furnish the Board with specified information and a revised NIS.[168] In such cases, the local authority may be required to fulfil the requirements of Section 177AE(5)(d), including:

i. the publication of a newspaper notice;
ii. sending notice and information to the prescribed authorities;
iii. the provision of a period of not less than 3 weeks during which a copy of the information or altered/revised NIS may be inspected or purchased and submissions or observations may be made to the Board.[169]

Where an oral hearing in relation to the compulsory purchase of land is held, the person conducting the oral hearing shall be entitled to hear evidence relating to:

i. the likely effects on the environment;
ii. the likely consequences for proper planning and sustainable development;
iii. the likely significant effects on a European site, of the proposed development.[170]

In relation to 'Oral Hearings', the Board has stated (n.d.):

> *"An Bord Pleanála may decide to hold an oral hearing to assist it in the determination of applications (although in most cases this may not be deemed necessary). A need for an oral hearing will be dependent on the scale, nature, extent and complexity of the case and nature of submissions received and is entirely at the discretion of the Board. An Bord Pleanála will generally hold an oral hearing where an application for approval in whole or part is associated with a compulsory purchase order for the compulsory acquisition of land where objections have been received and confirmation of the compulsory purchase order therefore falls to the Board."*

[166] Section 177AE(4)(a) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[167] Section 177AE(5)(a)(i) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[168] Section 177AE(5)(a)(ii) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[169] Section 177AE(5)(c) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[170] Section 177AE(7) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.

In making its decision in respect of a proposed development, the Board must consider, *inter alia*:

i. the NIS;[171]

ii. any submissions and observations made or any other information furnished relating to:

   a) the likely effects on the environment;

   b) the likely consequences for proper planning and sustainable development;

   c) the likely significant effects on a European site; and,[172]

iii. the report and recommendations of the person conducting an oral hearing in relation to the compulsory purchase of land where evidence is heard relating to the same categories of effects and consequences.[173]

The Board may: (i) approve; (ii) modify and approve; (iii) approve in part; or, (iv) refuse to approve, the proposed development.[174] The Board may also attach conditions,[175] including the financing or construction/provision of a facility/service.[176]

The Board may direct the payment of a sum towards its costs and expenses.[177] In relation to 'Costs and Expenses', the Board has stated (n.d.):

> *"An Bord Pleanála will direct payment be made by the local authority to the Board towards reasonable costs and expenses it has incurred (section 177AE(9)). Clear and comprehensive application documentation will however facilitate efficient examination of the case by An Bord Pleanála."*

A decision by the Board on an application for approval under Section 177AE shall state the main reasons and considerations on which the decision is based.[178] The Board shall, following the making of its decision on an application for approval under Section 177AE, notify the local authority and any person or body who made a submission or observation of its decision.[179] The local authority shall, following receipt of notification from the Board, make a copy of the decisions and the relevant NIS available for inspection or purchase during office hours at the offices of the local authority.[180]

[171] Section 177AE(6)(a) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[172] Section 177AE(6)(a) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[173] Section 177AE(6)(b) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[174] Section 177AE(8)(a) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[175] Section 177AE(8)(a) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[176] Section 177AE(8)(b) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[177] Section 177AE(9)(a) of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010.
[178] Regulation 252 of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[179] Regulation 253(1) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[180] Regulation 253(2) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).

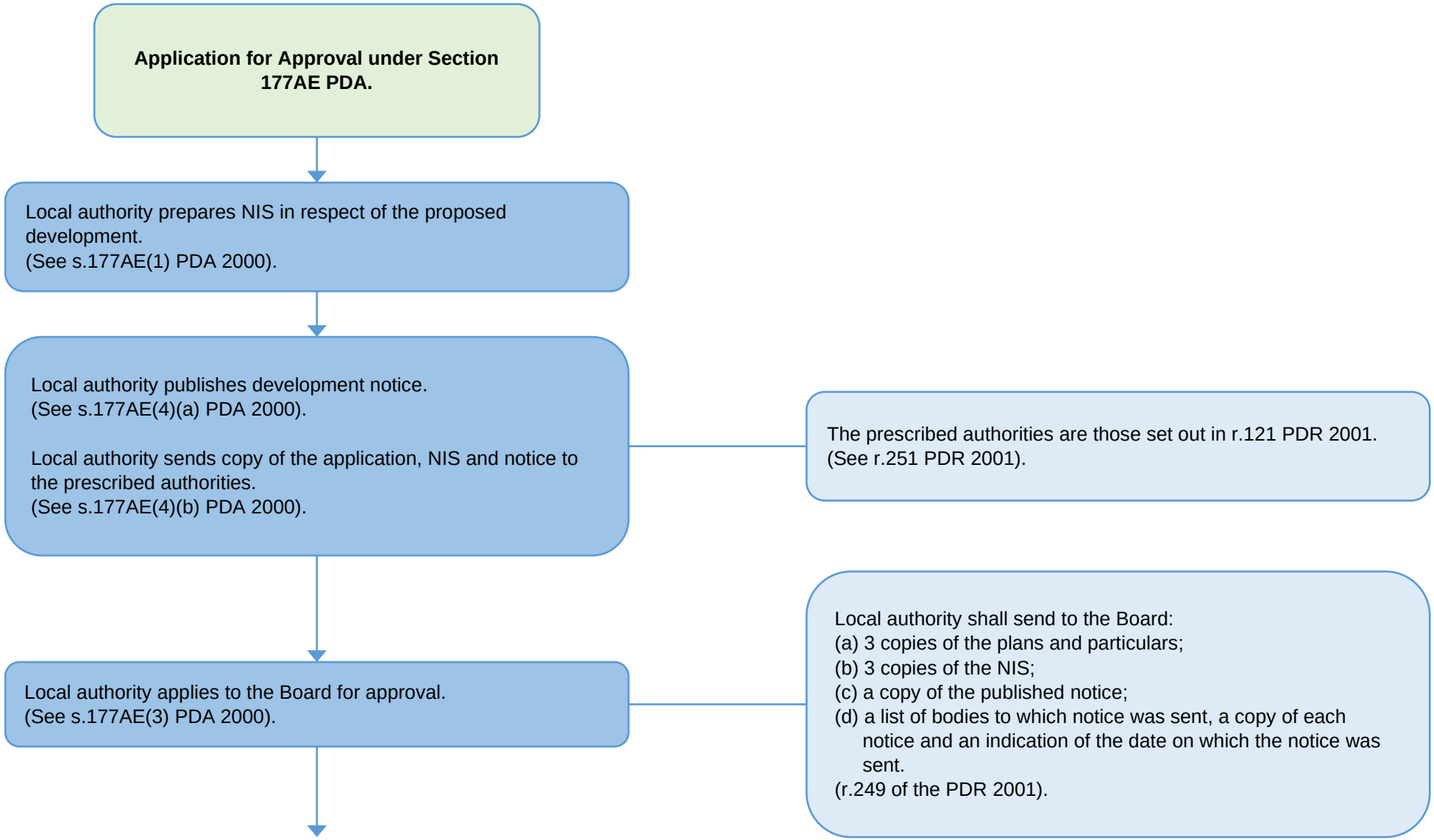

Figure 5.6 Appropriate Assessment of local authority development (first part)

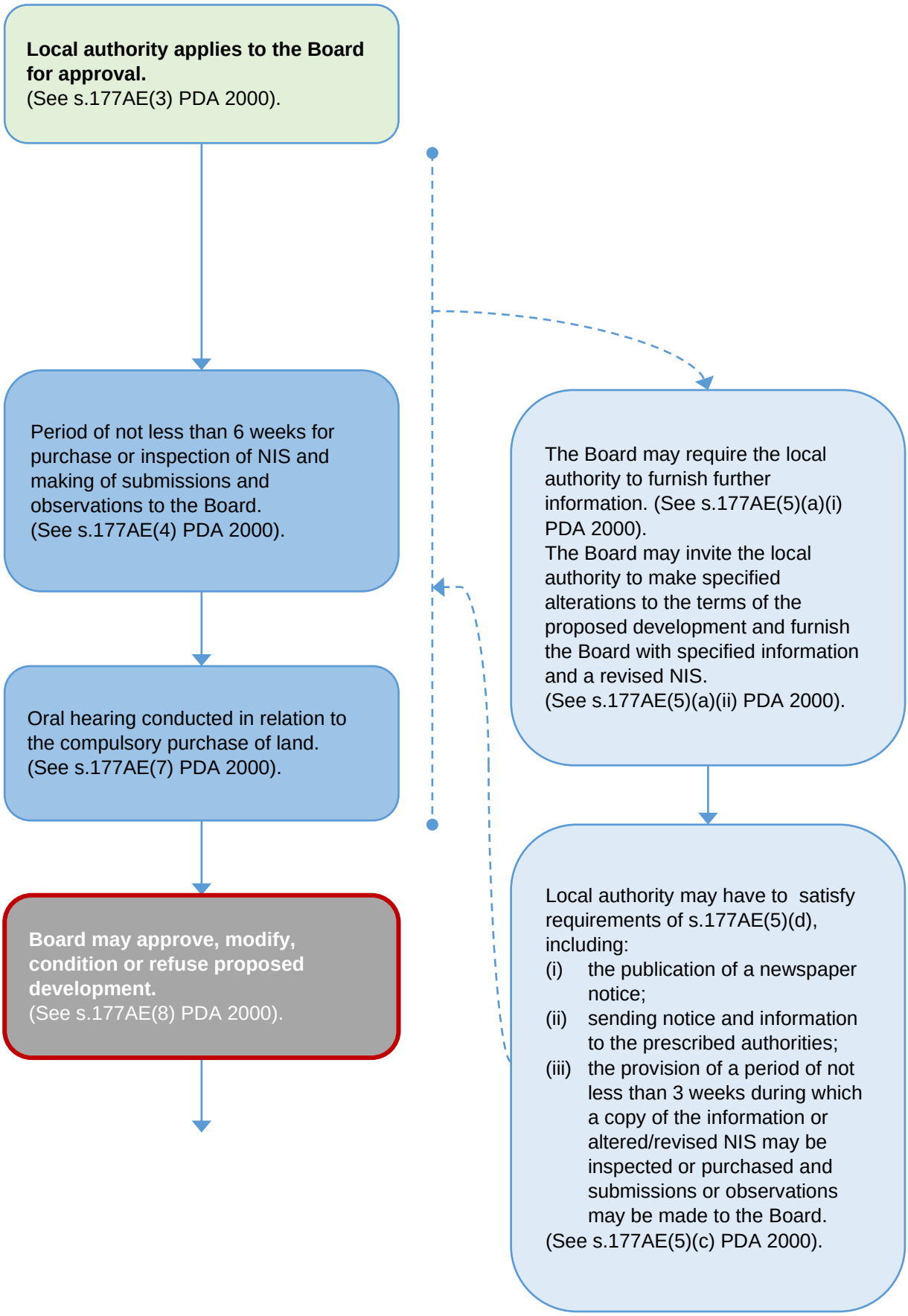

Figure 5.7 Appropriate Assessment of local authority development (continued) (second part)

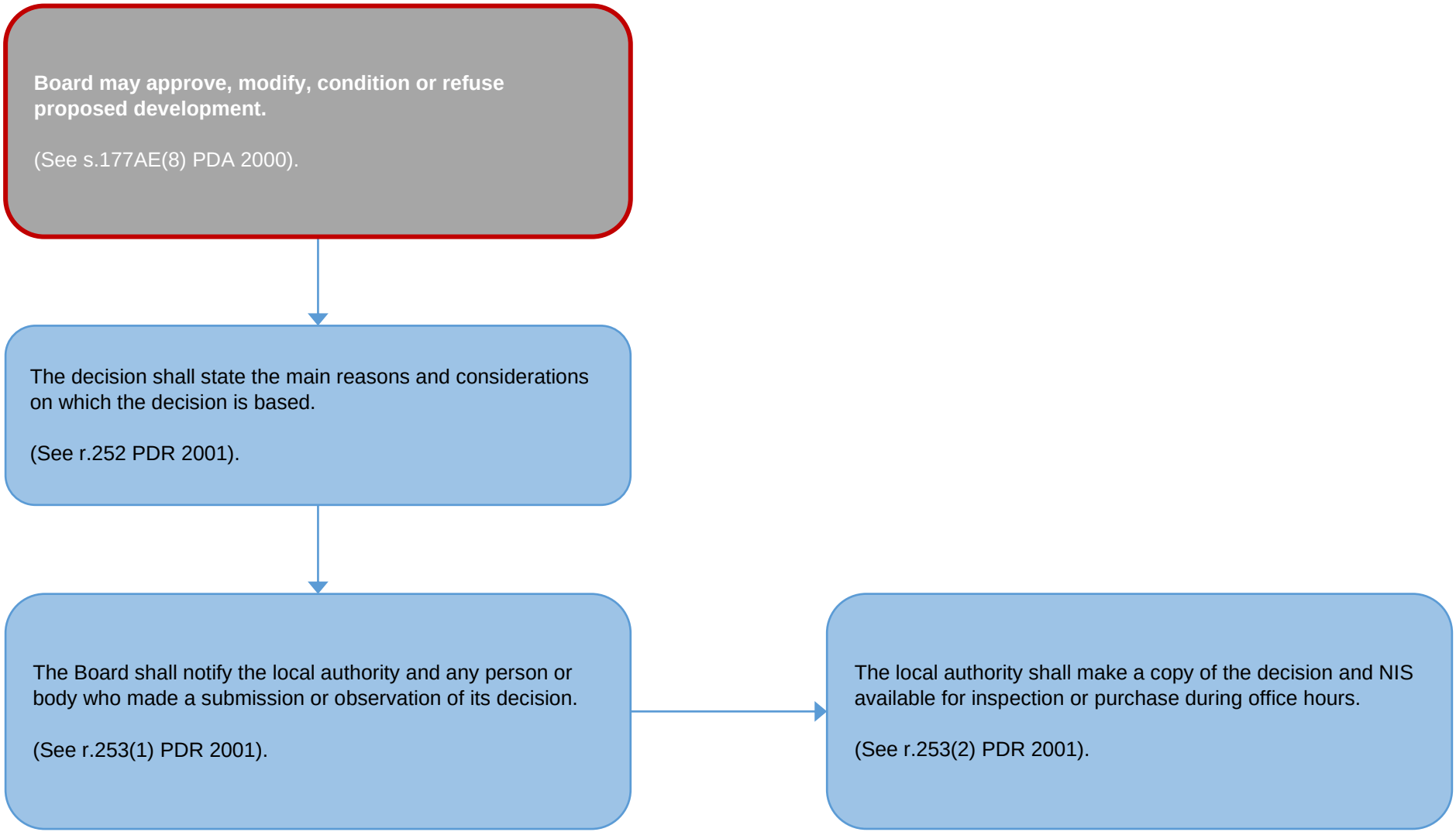

Figure 5.8 Appropriate Assessment of local authority development (continued) (third part)

5.3 Project Subject to Section 179 of the Planning and Development Act, 2000, as Amended

5.3.1 Legacy 'Part 8' Projects

Section 57A(2) of the 2010 Act states that Section 177AE of the PDA 2000 shall not apply to development in respect of which the procedures under Part 8 of the PDR 2001 have been completed prior to the coming into operation of Section 57 (i.e. the 21st of September, 2011)[181] provided that the development is commenced not later than 12 months after such coming into operation.[182]

Along similar lines, Regulation 28(5) indicates that the provisions of Regulation 250 shall not apply in the case of local authority development which has been approved under Part XI of the Act prior to the coming into operation of these Regulations, provided that it is commenced within one year of coming into operation of the Regulations, i.e. within one year of the 21st of September, 2011.[183]

From these transitional arrangements it appears that where 'Part 8' procedures have not been completed prior to the 21st of September, 2011, Section 177AE of the PDA 2000 and Regulation 250 of the PDR 2001 apply. Where the 'Part 8' procedures have been completed prior to this date, Section 177AE and Regulation 250 don't apply, provided that the local authority development has been commenced before the 21st of September, 2012.

These transitional arrangements have significant implications for proposed local authority development with existing 'Part 8' consent. It appears that if these developments have not been commenced by the 21st of September, 2012, it will be necessary for local authorities to carry out screening for appropriate assessment.[184] Additionally, it will be open to any person to apply to the Board for a determination as to whether the development would require an appropriate assessment.[185] Where an appropriate assessment is required, the local authority would appear to have to reapply for consent under Section 177AE.[186]

5.3.2 The Part 8 Procedure

The 'Part 8' procedure is illustrated in Figure 5.9, Figure 5.10 and Figure 5.11. Whilst this figure provides a useful overview of the 'Part 8' statutory process, it is essential that those progressing national road proposed development through the statutory process consult the relevant legislation directly. Given the difficulty in ascertaining the prescribed bodies to which a local authority must send notice of the proposed development under Regulation 82(1) PDR 2001,[187] it is advised that particular care is taken in determining same.

[181] Article 2 of the Planning and Development (Amendment) Act 2010 (Commencement) (No. 2) Order, 2011 (S.I. No. 475 of 2011).
[182] Section 57A(2) of the Planning and Development (Amendment) Act, 2010, as inserted by Regulation 17(3) of the European Union (Environmental Impact Assessment and Habitats) Regulations, 2011 (S.I. No. 473 of 2011).
[183] Regulation 28(5) of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[184] Regulation 250(1) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[185] Regulation 250(3)(b) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[186] See Regulations 250(2), 250(3)(d), 250(4) and 250(5) of the Planning and Development Regulations, 2001, (S.I. No. 600 of 2001) as inserted by Regulation 26 of the Planning and Development (Amendment) (No. 3) Regulations, 2011 (S.I. No. 476 of 2011).
[187] Regulations 82(1) of the Planning and Development Regulations, 2001.

It is further advised that it may be appropriate to seek legal advice on this issue. It is suggested that a precautionary approach should be adopted in determining the prescribed bodies.

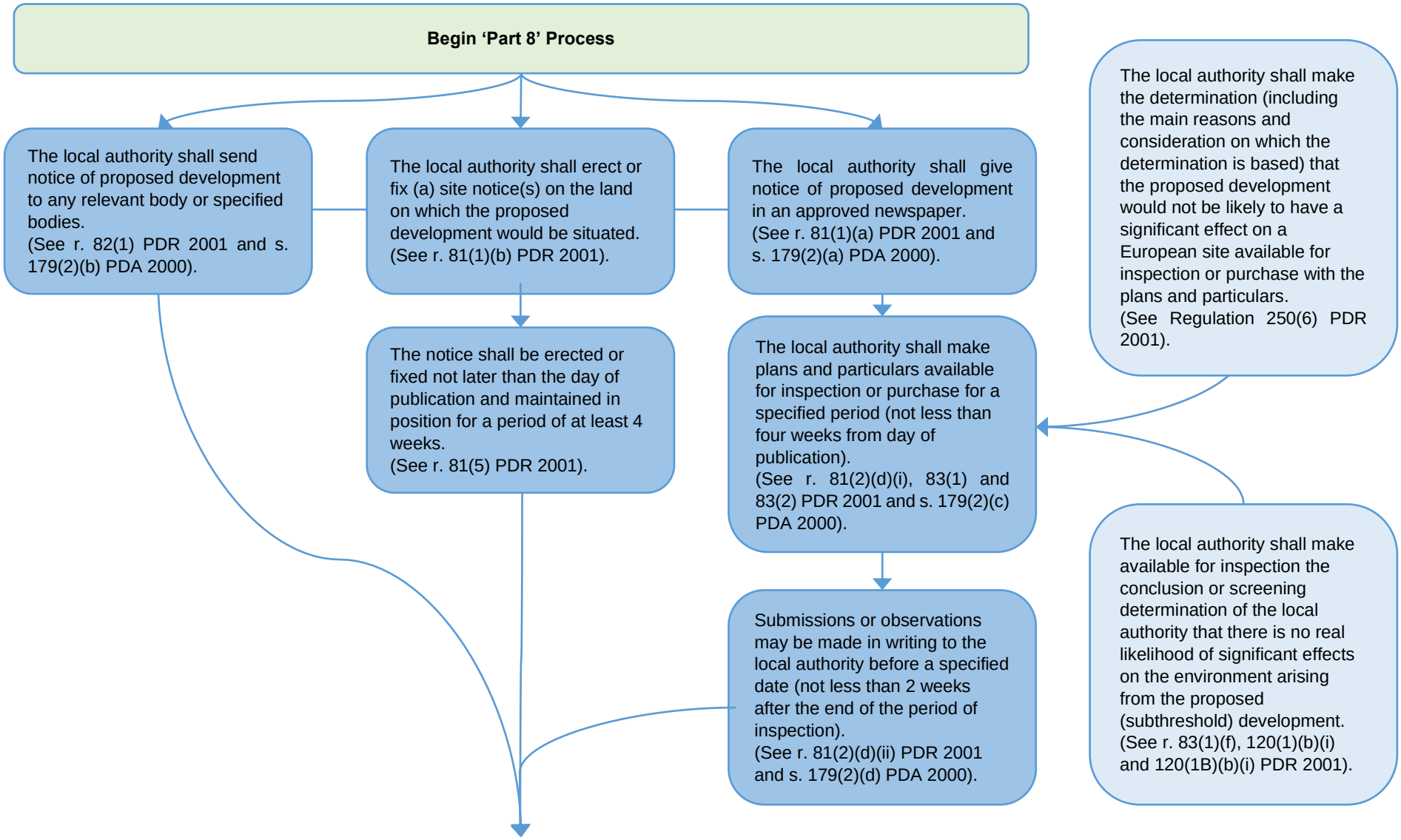

Figure 5.9 Summary of the 'Part 8' process (first part)

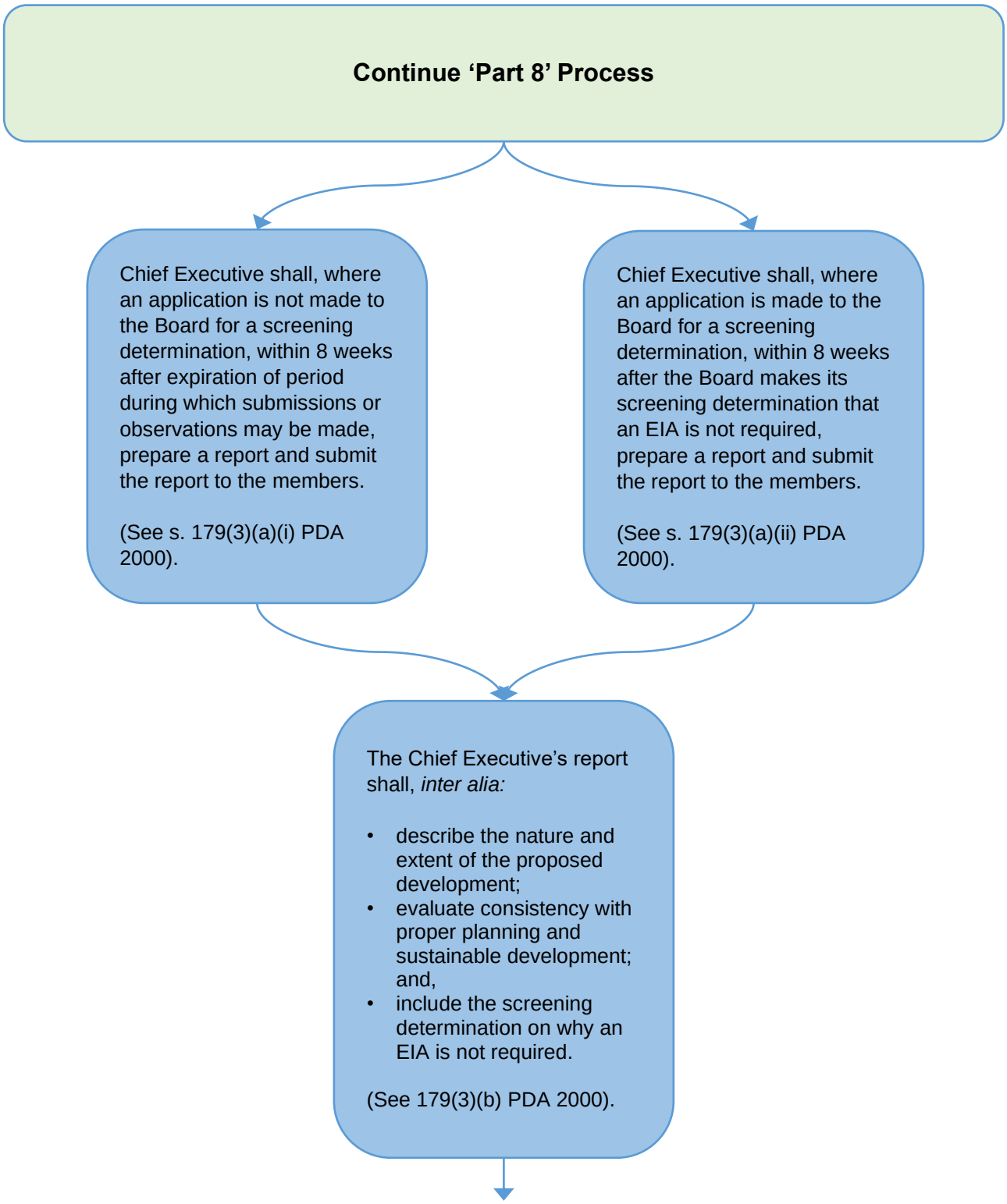

Figure 5.10 Summary of the 'Part 8' process (continued) (second part)

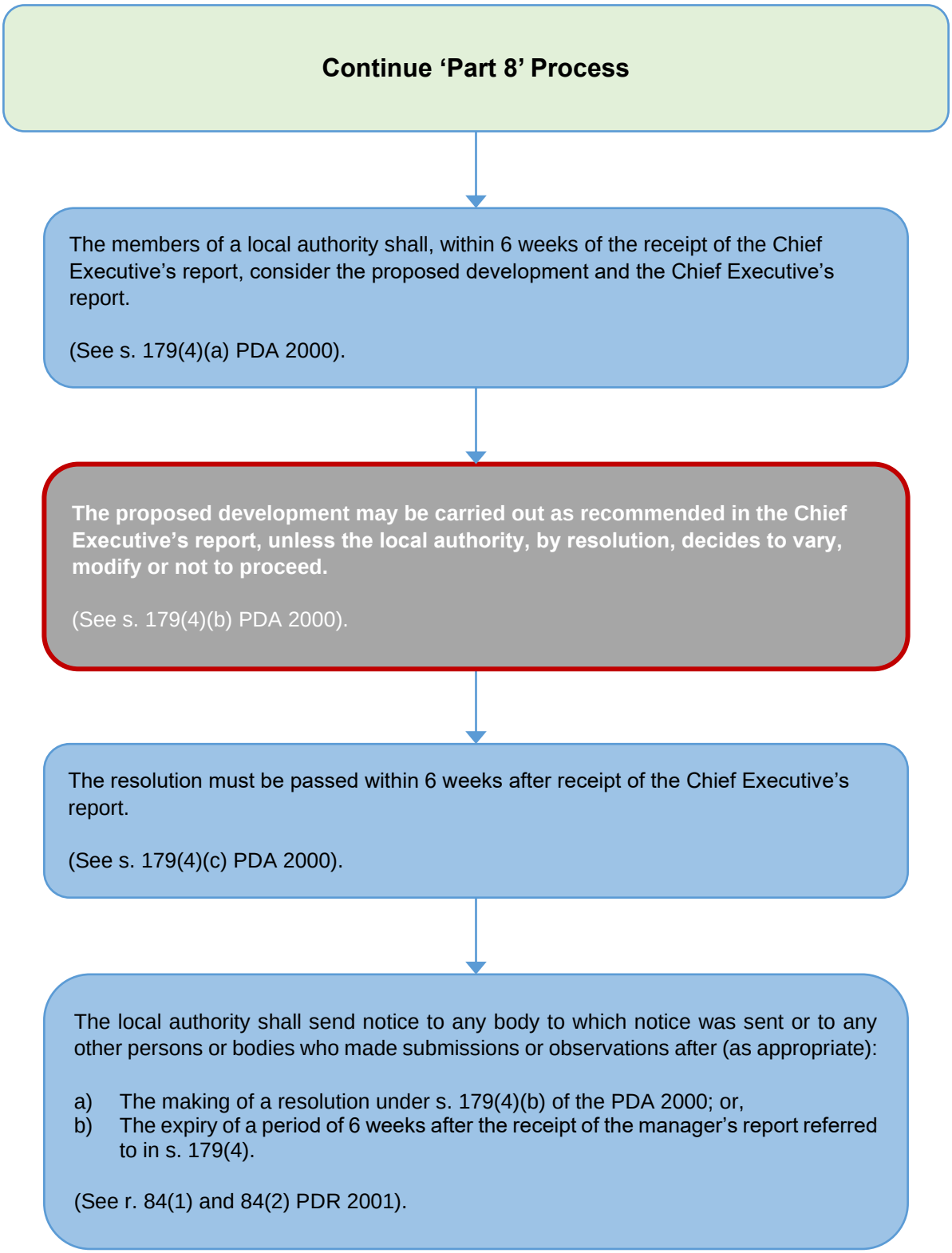

Figure 5.11 Summary of the 'Part 8' process (continued) (third part)

5.4 Other Relevant Statutory Processes

5.4.1 Section 38 of the Road Traffic Act 1994

5.4.1.1 Road Authorities

See Section 4.1.5 in relation to the question '*Is the development subject to Section 38 of the Road Traffic Act 1994?*'

Sections 38(1) and (2) of the Road Traffic Act, 1994,[188] confer the power on road authorities to provide and remove traffic calming measures. Section 38(1) of the Road Traffic Act, 1994,[189] states:

> *"A road authority may, in the interest of the safety and convenience of road users, provide such traffic calming measures as they consider desirable in respect of public roads in their charge."*

Section 38(2) of the Road Traffic Act, 1994,[190] states:

> *"A road authority may remove any traffic calming measures provided by them under this section."*

Prior to using such powers, road authorities should assess and document:

- that the traffic calming measures are in the interest of the safety and convenience of road users;
- that the provision of such measures is desirable; and,
- that the road is a public road in their charge.

Section 38(3) of the Road Traffic Act, 1994,[191] stipulates the procedure that must be followed by road authorities before providing or removing traffic calming measures of such class or classes as may be prescribed. This procedure is illustrated in Figure 5.12. Section 38(3) of the Road Traffic Act, 1994,[192] states:

> *"Before providing or removing traffic calming measures under this section of such class or classes as may be prescribed, a road authority shall—*
>
> *(a) consult with the Commissioner;*
>
> *(b) publish a notice in one or more newspapers circulating in the functional area of the authority—*
>
> *(i) indicating that it is proposed to provide or remove the measures, and*
>
> *(ii) stating that representations in relation to the proposal may be made in writing to the road authority before a specified date (which shall be not less than one month after the publication of the notice);*
>
> *(c) consider any observations made by the Commissioner or any representations made pursuant to paragraph (b) (ii)."*

[188] Sections 38(1) and (2) of the Road Traffic Act, 1994.
[189] Section 38(1) of the Road Traffic Act, 1994.
[190] Section 38(2) of the Road Traffic Act, 1994.
[191] Section 38(3) of the Road Traffic Act, 1994.
[192] Section 38(3) of the Road Traffic Act, 1994.

Section 38(4) of the Road Traffic Act, 1994,[193] states:

> *"The making of a decision to provide or remove traffic calming measures of a class prescribed under subsection (3) and the consideration of observations or representations under paragraph (c) of that subsection shall be reserved functions."*

It is important to note that no class or classes have been prescribed by the Minister and, as such, the procedure outlined directly above and in Figure 5.12 is technically extraneous. Notwithstanding this, it would be appropriate, where a road authority is progressing a project which consists of or incorporates the provision or removal of traffic calming measures, to follow a procedure consistent with above and in Figure 5.12 as best practice, ensuring that adequate notice is provided to the public and consultation with the public and the Garda Commissioner[194] takes place. It is also important to note that given that the Minister has not prescribed such class or classes, the making of decisions and the consideration of observations or representations are not reserved functions and, thus, constitute executive functions.

Section 38(5) of the Road Traffic Act, 1994,[195] provides that traffic calming measures shall not be provided or removed in respect of a national road without the prior consent of Transport Infrastructure Ireland. This provision does not relate solely to such class or classes or traffic calming measures as may be prescribed by the Minister and, as such, must be complied with in respect of all traffic calming measures on national roads. Such consent should be sought for and received formally in writing from TII.

Readers are reminded of the importance of correctly carrying out the necessary screenings and determining the appropriate consent procedure as alluded to in Section 4.1. In *Carvill & Anor. v. Dublin City Council & Anor,*[196] Dublin City Council relied on the provisions of Section 38 of the Road Traffic Act, 1994, as amended, in progressing its proposal for a Strand Road Cycleway. However, Meenan J. ultimately held that the applicants succeeded in their application, with the judge stating:

> *"I found that both an EIA and an AA is required for the proposed cycleway and that the screening reports commissioned by the City Council are fundamentally flawed. It follows that if the cycleway is to proceed, the requirements of the EIA Directive and the Habitats Directive must be addressed and complied with."*[197]

[193] Section 38(4) of the Road Traffic Act, 1994.
[194] Section 83 of the Road Traffic Act, 2010, states:
"Any reference to the Commissioner in the Road Traffic Acts 1961 to 2010 or the Roads Acts 1993 to 2007 is to be read as a reference to the Commissioner or another member of the Garda Síochána not below the rank of Chief Superintendent authorised by the Commissioner to act or carry out a function or requirement on his or her behalf."
[195] Section 38(5) of the Road Traffic Act, 1994.
[196] *Peter Carvill & Mannix Flynn v. Dublin City Council, Ireland & the Attorney General* [2021] IEHC 544.
[197] *Peter Carvill & Mannix Flynn v. Dublin City Council, Ireland & the Attorney General* [2021] IEHC 544 [41].

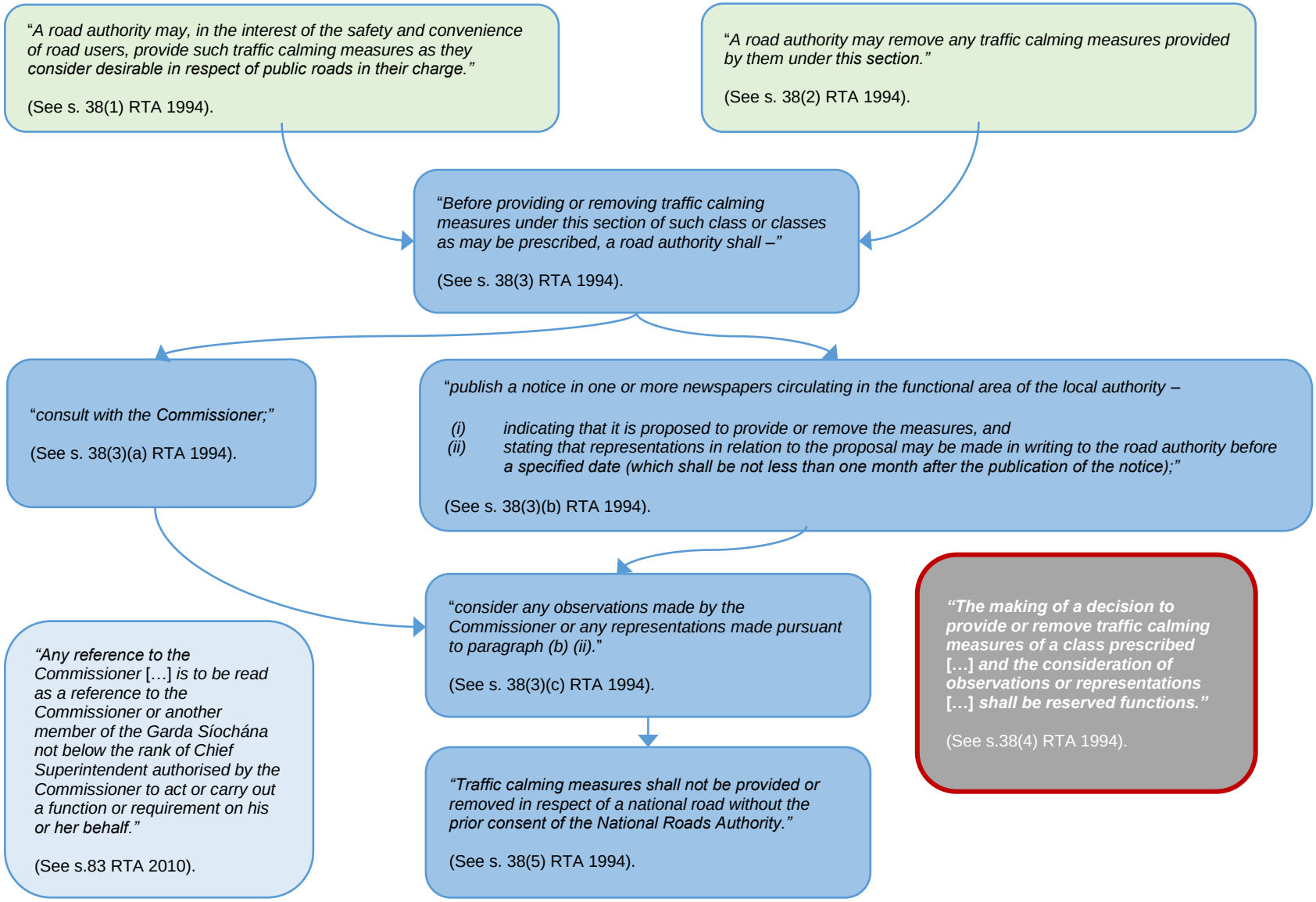

Figure 5.12 Summary of the 'Section 38' process carried out by road authorities

5.4.2 Section 95 of the Road Traffic Act 1961

Further information on Section 95 of the Road Traffic Act, 1961, as amended, is provided in Section 4.1.6. In terms of statutory processes during Phase 4 it is important to note that Section 95(3)(b) of the Road Traffic Act, 1961, as amended,[198] provides:

> *"A road authority may, after consultation with the Commissioner, provide in respect of public roads in their charge such regulatory signs as they consider desirable."*

5.4.2.1 National Transport Authority

The National Transport Authority may also provide traffic signs and traffic calming measures.

Section 46(3) of the Public Transport Regulation Act, 2009,[199] states:

> *"Where the Authority considers it more convenient, more expeditious, more effective or more economic that the functions of a road authority to provide traffic signs under section 95 (as amended by section 37 of the Act of 1994) of the Act of 1961 or to provide traffic calming measures under section 38 of the Act of 1994 should be performed by it to enhance public bus services or improve facilities for cyclists, it shall following consultation with the relevant road authority decide to provide traffic signs or traffic calming measures."*

Section 46(4) of the Public Transport Regulation Act, 2009,[200] states:

> *"Where the Authority decides to perform functions under subsection (3) it has the powers of a road authority to provide traffic signs under section 95 (as amended by section 37 of the Act of 1994) of the Act of 1961 or to provide traffic calming measures under section 38 of the Act of 1994."*

Section 46(5) of the Public Transport Regulation Act, 2009,[201] states:

> *"Before carrying out works arising from a decision under subsection (3) the Authority shall consult with and consider the views of the relevant road authority."*

5.4.3 Section 138 of the Local Government Act 2001

Further information on Section 138 and 139 of the Local Government Act, 2001, as amended, is provided in Section 4.1.7. According to Section 138(1) of the Local Government Act, 2001, as amended,[202] the chief executive of a local authority is required to inform the elected council before undertaking, or committing to any expenditure in connection with, any works (other than works of maintenance or repair). Section 139(1) of the Local Government Act, 2001,[203] provides further that where the elected council is so informed, and where the works are not those which the local authority is required by or under statute or by order of a court to undertake, the elected council may by resolution direct that those works shall not proceed.

[198] Section 95(3)(b) of the Road Traffic Act, 1961, as substituted by Section 78(1)(a) of the Road Traffic Act, 2010.
[199] Section 46(3) of the Public Transport Regulation Act, 2009.
[200] Section 46(4) of the Public Transport Regulation Act, 2009.
[201] Section 46(5) of the Public Transport Regulation Act, 2009.
[202] Section 138(1) of the Local Government Act, 2001, as amended by Section 5(1) of the Local Government Reform Act, 2014.
[203] Section 139(1) of the Local Government Act, 2001.

Furthermore, pursuant to Section 139(2) of the Local Government Act, 2001, as amended,[204] the chief executive is required to comply with such a resolution lawfully passed.

[204] Section 139(2) of the Local Government Act, 2001, as amended by Section 5(1) of the Local Government Reform Act, 2014.

6. Phase 5 – Enabling and Procurement

Whilst this document is concerned with navigating environmental and planning law in the planning national road and greenway projects, there are certain related issues that should be considered during Phase 5.

6.1 Advance Works

Environmental advance/enabling works, including those related to the management of invasive alien plant species (IAPS), may be required during Phase 5. In specific relation to IAPS management please see:

- *The Management of Invasive Alien Plant Species on National Roads – Standard* (Transport Infrastructure Ireland, 2020); and,
- *The Management of Invasive Alien Plant Species on National Roads – Technical Guidance* (Transport Infrastructure Ireland, 2020).

6.2 'Lifespan' of Consents

It is very important at the start of Phase 5 to review the 'validity' of the consent that is intended to be relied upon. This is particularly important where the consent was received several years in the past and/or there has been a material change in circumstances. Given the complexities of the law in this area, it may be appropriate to seek legal advice on this matter. This issue has seen increased litigation in recent times. The following sections outline possible relevant aspects of this issue.

6.2.1 Legacy 'Part 8' Projects

Regard should be had to Section 5.3.1 in relation to "Legacy 'Part 8' Projects". This Section highlights, amongst other things, potential difficulties in progressing 'Part 8' projects where the procedures under Part 8 of the PDR 2001 were completed prior to the 21st of September, 2011.

6.2.2 Screening for EIA

In *R (Mageean) v. SSCLG*,[205] the High Court of England of Wales held that it is not the lapse of time, but a material change in circumstances, that could lead to a need for an EIA screening decision to be reconsidered. Thus, a material change in circumstances might mean that an EIA screening decision is out-of-date in a short period of time but, on the other hand, might remain valid for many years in the absence of any such a change.

6.2.3 Article 6(2) of the Habitats Directive

Article 6(2) of the Habitats Directive states:[206]

> *"Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive."*

[205] *R (Mageean) v. SSCLG* [2010] EWHC 2652
[206] Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7

Article 6(2) of the Habitats Directive has been transposed into Irish law primarily through Article 27 of the Habitats Regulations of 2011,[207] which relates to "*Duties of public authorities relating to nature conservation*." Article 27(3) of the Habitats Regulations states:[208]

> *"Public authorities, in the exercise of their functions, including consent functions, insofar as the requirements of the Habitats Directive are relevant to those functions, shall take the appropriate steps to avoid, in European Sites, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive."*

Article 27 imposes ongoing duties on public authorities relating to nature conservation. They must ensure that they exercise their functions in compliance with the requirements of the Birds and Habitats Directives.[209] Furthermore, in exercising their functions, public authorities must take the appropriate steps to avoid, in European sites, the deterioration of habitats and the significant disturbance of species.[210] Article 6(2) and Article 27 are particularly relevant where road authorities are deciding to implement a national road project for which consent has been obtained at some point in the past. In *Ballyboden Tidy Towns Group v. An Bord Pleanála,*[211] the Supreme Court held that *"Article 6(3) of the Habitats Directive does not require a competent authority to impose a temporal limitation on a grant of development consent*."[212] Notably, Woulfe J. stated:

> *"The appellant's concern as to some unanticipated change in environmental conditions at some unknown future point in time is addressed by Article 6(2) of the Habitats Directive, as given effect to in Irish law by the 2011 Regulations.* […] *This concern would appear to be addressed far more effectively by the 2011 Regulations than by the implication of an automatic requirement for an unspecified time limit on all such approvals."*[213]

Whilst these duties imposed on public authorities are ongoing, it is suggested that, prior to implementing a national road or greenway project for which consent has been obtained a number of years ago, the road authority should carry out and document an exercise to determine whether implementation could lead to the deterioration of habitats and the significant disturbance of species in European sites. Legal advice should be sought in relation to the possibility, manner and extent of this exercise. There is significant caselaw which might inform such advice, including:

- *Ballyboden Tidy Towns Group v. An Bord Pleanála*;[214]
- *Grüne Liga Sachsen & Ors v. Freistat Sachsen;*[215]
- *Commission v. Ireland;*[216]

[207] Article 27 of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011).
[208] Article 27(3) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011).
[209] Article 27(2) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011).
[210] Article 27(3) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011).
[211] *Ballyboden Tidy Towns Group v. An Bord Pleanála, Ireland, the Attorney General and South Dublin County Council* [2022] IESC 47.
[212] *Ballyboden Tidy Towns Group v. An Bord Pleanála, Ireland, the Attorney General and South Dublin County Council* [2022] IESC 47 [64].
[213] *Ballyboden Tidy Towns Group v. An Bord Pleanála, Ireland, the Attorney General and South Dublin County Council* [2022] IESC 47 [64].
[214] *Ballyboden Tidy Towns Group v. An Bord Pleanála, Ireland, the Attorney General and South Dublin County Council* [2022] IESC 47.
[215] Case C-399/14 *Grüne Liga Sachsen & Ors v. Freistat Sachsen [2016]* ECLI:EU:C:2016:10.
[216] *Case C-418/04 Commission v Ireland* [2007] ECR I-10947.

- *Friends of the Irish Environment Ltd. v. An Bord Pleanála*;[217]
- *Friends of the Irish Environment Ltd. v. An Bord Pleanála*;[218]
- *Murphy, Re. Judicial Review*.[219]

6.3 Environmental Condition Enforcement

As described in Section 5.1.6.2, the European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations, 2019, creates a regulatory regime, which disputably makes TII an environmental condition enforcement authority in respect of national roads (which require EIA) proposed by road authorities. It is also suggested that the Minister for Transport may have the same role in respect of greenways. Cognisance of these facts is required in Phase 5 and further phases.

[217] *Friends of the Irish Environment Ltd. v. An Bord Pleanála* [2019] IEHC 80.
[218] Case C-254/19 *Friends of the Irish Environment Ltd. v. An Bord Pleanála* [2020] ECLI:EU:C:2020:680.
[219] *In the matter of an application by Mr. Chris Murphy to apply for Judicial Review in the matter of a decision by the Department of Infrastructure on 17 August 2016 to proceed with the Castledawson to Toome Dualling Scheme* [2017] NIQB 35.

7. References

An Bord Pleanála. (2021). *Strategic Infrastructure Development.* Dublin: An Bord Pleanála. Retrieved from https://www.pleanala.ie/getmedia/26521b24-c3e9-4784-8452-8df15d0d607f/Strategic-Infrastructure-Development-EN.pdf

An Bord Pleanála. (n.d.). *Applications for Approval for Local Authority Developments made to An Bord Pleanála under 177AE of the Planning and Development Act, 2000, as amended (Appropriate Assessment) - Guidelines for Local Authorities.* Dublin: An Bord Pleanála. Retrieved from https://www.pleanala.ie/getmedia/0f385f48-7e84-43e3-b405-1201e490740a/Applications-for-approval-for-LA-Developments-S177AE-EN.pdf

Chartered Institute of Ecology and Environmental Management. (2019). *Guidelines for Ecological Impact Assessment in the UK and Ireland - Terrestrial, Freshwater, Coastal and Marine.* Chartered Institute of Ecology and Environmental Management. Retrieved from https://cieem.net/wp-content/uploads/2018/08/ECIA-Guidelines-2018-Terrestrial-Freshwater-Coastal-and-Marine-V1.1.pdf

Commission v. Spain, C-227/01 (European Court of Justice September 16, 2004).

Department of Environment, Heritage and Local Government. (2010). *Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities.* Dublin: Department of Environment, Heritage and Local Government. Retrieved from https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2009_AA_Guidance.pdf

Department of Housing, Planning and Local Government. (2018). *Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment.* Dublin: Government of Ireland. Retrieved from https://www.housing.gov.ie/sites/default/files/publications/files/guidelines_for_planning_authorities_and_an_bord_pleanala_on_carrying_out_eia_-_august_2018.pdf

Department of Transport, Tourism and Sport. (2018). *Greenways and Cycle Route Ancillary Infrastructure Guidelines.* Dublin: Department of Transport, Tourism and Sport. Retrieved from https://assets.gov.ie/19551/74bbca7b1273434791e473d2e226ba46.pdf

Dublin City Council. (2017). *Local Authority Works - Part 8 - Procedure.* Planning and Property Development Department. Dublin: Dublin City Council. Retrieved from https://councilmeetings.dublincity.ie/documents/s14416/PART%208%20PROCEDURE.pdf

Environmental Protection Agency. (2017). *Draft Guidelines on the Information to be contained in Environmental Impact Assessment Reports.* Wexford: Environmental Protection Agency. Retrieved from https://www.epa.ie/pubs/advice/ea/EPA%20EIAR%20Guidelines.pdf

Environmental Protection Agency. (2022). *Guidelines on the information to be contained in Environmental Impact Assessment Reports.* Wexford: Environmental Protection Agency. Retrieved from https://www.epa.ie/publications/monitoring--assessment/assessment/EIAR_Guidelines_2022_Web.pdf

European Commission. (2006). *Nature and biodiversity cases ruling of the European Court of Justice.* Luxembourg: European Commission. Retrieved from https://ec.europa.eu/environment/nature/info/pubs/docs/others/ecj_rulings_en.pdf

European Commission. (2007). *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC.* Brussels: European Commission. Retrieved from https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/guidance_art6_4_en.pdf

European Commission. (2014). *Article 6 of the Habitats Directive – Rulings of the European Court of Justice.* Brussels: European Commission. Retrieved from

https://ec.europa.eu/environment/nature/info/pubs/docs/others/ECJ_rulings%20Art_%206%20-%20Final%20Sept%202014-2.pdf

European Commission. (2017). *Environmental Impact Assessment of Projects - Guidance on the preparation of the Environmental Impact Assessment Report.* Luxembourg: European Commission. Retrieved from https://ec.europa.eu/environment/eia/pdf/EIA_guidance_EIA_report_final.pdf

European Commission. (2017). *Environmental Impact Assessment of Projects Guidance on Scoping.* Luxembourg: European Commission. Retrieved from https://ec.europa.eu/environment/eia/pdf/EIA_guidance_Scoping_final.pdf

European Commission. (2017). *Environmental Impact Assessment of Projects Guidance on Screening.* Luxembourg: European Commission. Retrieved from https://ec.europa.eu/environment/eia/pdf/EIA_guidance_Screening_final.pdf

European Commission. (2018). *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC.* Brussels: European Commission. Retrieved from https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/Provisions_Art_6_nov_2018_en.pdf

European Commission. (2021). *Assessment of plans and projects significantly affecting Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.* Brussels: European Commission. Retrieved from https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf

European Commission. (2021). *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive.* Brussels: European Commission. Retrieved from https://op.europa.eu/en/publication-detail/-/publication/a17dbc76-2b51-11ec-bd8e-01aa75ed71a1/language-en/format-PDF/source-search

European Union. (2011, December 13). Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification). Brussels: European Union.

Government of Ireland. (2022). *Outline of the proposed Planning and Development Bill.* Dublin: Government of Ireland. Retrieved from https://www.gov.ie/en/publication/1b115-outline-of-the-proposed-planning-and-development-bill/

Highways England. (2019). *Environmental assessment and monitoring.* Highways England. Retrieved from https://www.standardsforhighways.co.uk/dmrb/

National Parks and Wildlife Service. (2021). *Guidance on the Strict Protection of Certain Animal and Plant Species under the Habitats Directive in Ireland.* Dublin: National Parks and Wildlife Service. Retrieved from https://www.npws.ie/sites/default/files/files/strict-protection-of-certain-animal-and-plant-species.pdf

National Roads Authority. (2009). *Guidelines for Assessment of Ecological Impacts of National Road Schemes.* Dublin: National Roads Authority. Retrieved from https://www.tii.ie/technical-services/environment/planning/Guidelines-for-Assessment-of-Ecological-Impacts-of-National-Road-Schemes.pdf

Opinion of Advocate General Kokott in Case C-142/07 Ecologistas en Acciòn v. Ayuntamiento de Madrid, Case C-142/07 (April 30, 2008).

Opinion of Advocate General Kokott in Case C-2/07 Abraham v. Wallonia, Case C-2/07 (European Court of Justice November 29, 2007).

Opinion of Advocate General La Pergola in Case C-392/96 Commission v. Ireland, C-392/96 (European Court of Justice 1998).

R (Mageean) v. SSCLG, [2010] EWHC 2652 (High Court of England and Wales 2010).

Salzburger Flughafen GmbH v. Umweltsenat, C-244/12 (European Court of Justice March 21, 2013).

Transport Infrastructure Ireland. (2017). *Project Management Guidelines.* Dublin: Transport Infrastructure Ireland. Retrieved from https://www.tiipublications.ie/library/PE-PMG-02041-01.pdf

Transport Infrastructure Ireland. (2019). *Project Manager's Manual for Major National Road Projects.* Dublin: Transport Infrastructure Ireland. Retrieved from https://www.tiipublications.ie/library/PE-PMG-02042-01.pdf

Transport Infrastructure Ireland. (2020). *The Management of Invasive Alien Plant Species on National Roads - Standard.* Dublin: Transport Infrastructure Ireland. Retrieved from https://www.tiipublications.ie/library/GE-ENV-01104-01.pdf

Transport Infrastructure Ireland. (2020). *The Management of Invasive Alien Plant Species on National Roads – Technical Guidance.* Dublin: Transport Infrastructure Ireland. Retrieved from https://www.tiipublications.ie/library/GE-ENV-01105-01.pdf

Transport Infrastructure Ireland. (2021). *Minutes 67th Meeting of TII Board.* Dublin: Transport Infrastructure Ireland. Retrieved from https://www.tii.ie/tii-library/reports-accounts/tii-board-minutes/67thmeetingseptember21-redacted-minutes.pdf

Transport Infrastructure Ireland. (2022). *Project Management Guidelines.* Dublin: Transport Infrastructure Ireland. Retrieved from https://www.tiipublications.ie/library/PE-PMG-02041-04.pdf

Transport Infrastructure Ireland. (2022). *Project Manager's Manual for Greenway Projects.* Dublin: Transport Infrastructure Ireland. Retrieved from https://www.tiipublications.ie/library/PE-PMG-02047-01.pdf

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