

# APPROPRIATE ASSESSMENT SCREENING FOR PROJECTS:

## KEY QUESTIONS THAT PLANNERS NEED TO ADDRESS

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# Outline

- Recap on Article 6 (3)
- **Why, What, Who?**
- **Stages** of Appropriate Assessment
- Focus on **AA Screening**
  - Zoom out
  - Its all about asking the right questions
  - Checklist and steps
- **Key learning points**
  - Project and Zone of Influence, ID of European Sites
  - Best Scientific knowledge in screening, uncertainty, best practice measures
  - Reporting and Determinations

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## Article 6(3) of the Habitats Directive

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

# Why

- To protect sites of high biodiversity value from adverse effects
- Only permit projects and plans that will not adversely affect European Sites
- Stage 1 is to Screen Project for AA

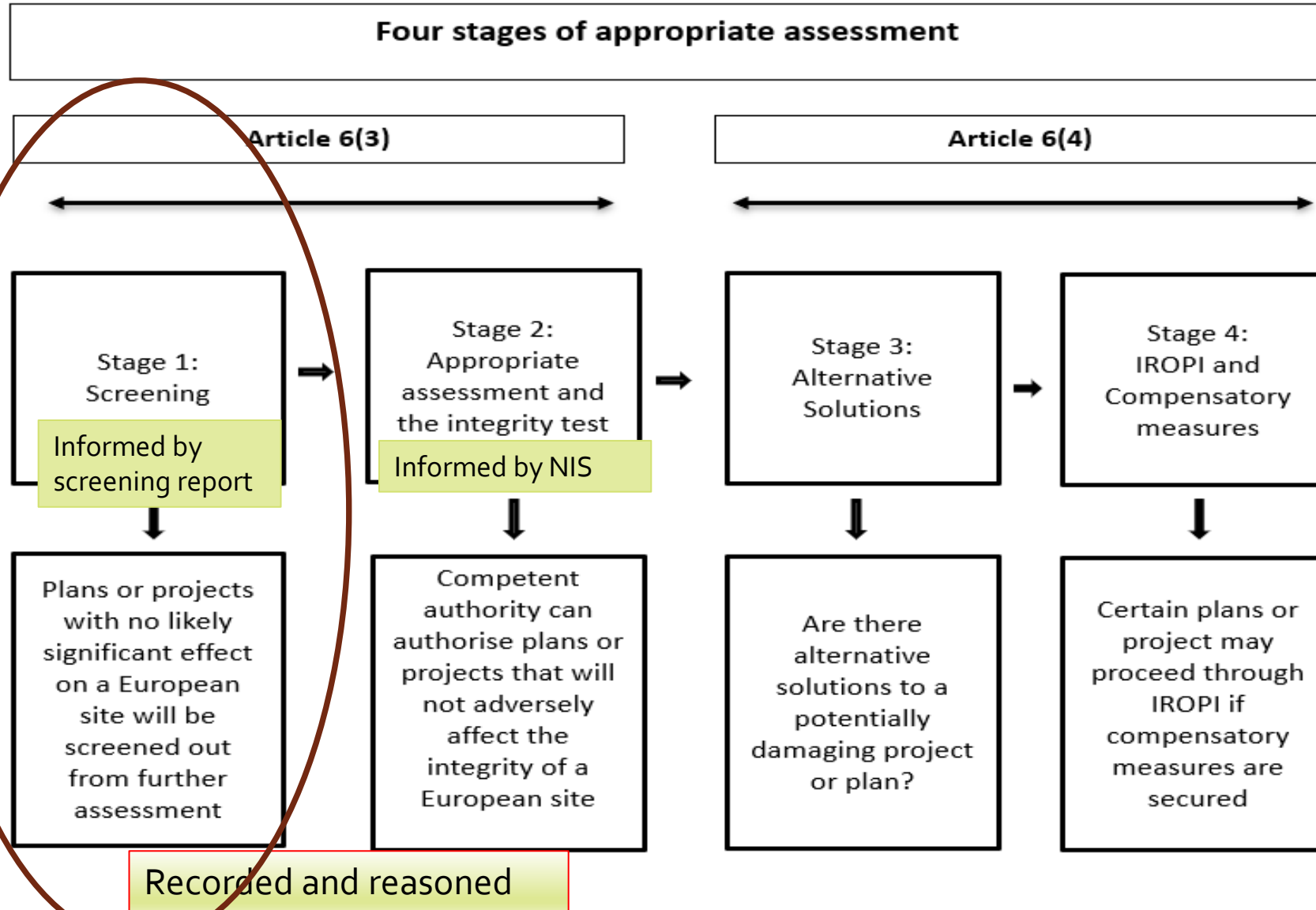
# What

- European Communities (Birds and Natural Habitats) Regulations – A42
- Part XAB Planning and Development (Amendment) Act
- 177U (inc. best sci knowledge)
- Definition of project wide

# Who

- Public Authorities
- Local Planning Authorities
- An Bord Pleanála
- De-novo or informed by AA screening report /NIS prepared by Ecologists
- Have to screen even if NIS submitted/AA required
- **Guidance**

# Re-cap on the Process



## AA Screening: Different focus for private planner v LA planner/ Inspector

| Private Planner  | Local Authority Planner/ Planning Inspector  |
|--|--|
| <u>Part</u> of application   | Determining aspect of planning approval/ refusal / need for planning   |
| Screening Report usually prepared by consultant  | Screening need for AA is undertaken by the Planner once application received (even if NIS has been prepared)                               |
| Quality of report  | Precautionary approach, adequate information?  |
| Application of correct test (likely significant effects)   | Requirements of P&D Act and Habitats Directive are met   |
| Integration with other application documents (e.g. EIAR, Environmental Report..) No measures <b>intended</b> to avoid or reduce negative effects | Apply correct test: is there a possibility of significant effects in SAC/SPA site(s)<br>Can they be ruled out using objective information? |
| Recommendation : project screened out /in for need for AA  | Reasoned conclusion of the screening test, recorded in the planning report   |

# Screening the need for AA

## Key considerations for planners: AA Screening – of the Project

### General principles

- » **Preliminary** examination- Not an assessment
- » Not just a list of European sites – whittled down. Use **Source- Pathway-Receptor** /Zone of influence
- » **Proportionate**, case by case, **precautionary**
- » **Likely= possibility ,but more than hypothetical**
- » **Significant effect** is one which may affect or undermine the **conservation objectives of the SAC /SPA**
- » **Focused** on Conservation Objectives (or features supporting them) :qualifying interests SAC, SPA (SCI)
- » **In combination** with other P&P
- » Objective information. Can not consider measures **intended** to avoid or reduce negative impacts on a European site i.e. **NO MITIGATION**
- » **Clear screening determination from Public Authority /Competent Authority (reasoned and recorded)**

Screening Likely  
**Precautionary**  
Scientific-information

Appropriate **Effect** Annex-II  
Ex-situ POW **Species**  
**Best** **Habitats**  
Annex-I

Mitigation SAC Practice  
SPA **Legal** Assessment  
**Conservation-Objectives**  
**Significant**



# Let's think of it another way...

Screening is like triage or going to the GP

Body as the  
baseline  
environment  
with sensitive  
receptors –e.g.  
major organs

Ailment/injury  
or disease =  
intrusion (like a  
development)



Hospital  
/Consultant = for  
more detailed and  
Appropriate  
**Assessment**

Detailed tests  
,analysis  
Surgical  
intervention  
Medication  
Monitoring

GP/ triage =  
**Screening** to rule  
out a more serious  
ailment or refer  
you on  
Precautionary /  
worst case



# Lets think of it another way...

Similar **process** to health screening, case by case and precautionary

- » GP sees v minor cases where prelim exam shows no intervention needed, visit is recorded
- » Bigger issue: GP is uncertain- objective information to rule out significant effects or need for medication
- » Needs more detailed assessment (precautionary)= Consultant
- » I know what this (evidence base) is and its not good (experience)= Consultant
- » Go straight to hospital!

**Do not linger in the GP waiting room** if you need to get assessed by Consultant

Full and detailed assessment

Medication / Mitigation

Likely effectiveness

Ensure no adverse effects on integrity of overall functioning of the body

# AA Screening outcomes

| Possible outcomes   | Screening determination  | Planning Implications  |
|---|--|--|
| The project will have no effect on the site(s) at all   | Screened out and no further assessment required  | Can grant  |
| Project alone will have no significant effect on the site- it might have <i>some effect</i> but none that would undermine the conservation objectives- Need to consider in-combination effects and significance | Screened out if no likely significant effects alone or in combination with other plans and projects- no further assessment required                | Can grant  |
| It cannot be ruled out that the project could or would have a significant (negative/adverse) effect on the site alone   | Likelihood of significant effects uncertainty as to significance of effects: <b>Project</b> is screened in for the need for appropriate assessment | NIS provided-undertake AA<br>No NIS- request under FI?<br>No NIS- No provision to request- Refusal |

Or  
rather than subjective opinion

|   | <b>Application</b><br><b>Test: is the project likely to have a significant effect, individually or in combination with other P&amp;P on a European Site(s).</b><br><b>Output: Screening Report (with matrix)</b> | <b>AA Screening Determination by competent authority</b><br><b>Same test</b><br><b>Output: Screening determination (reasoned and recorded)</b>   |
|---|--|--|
| 1 | Id the geographical scope of the project and main characteristics  | <b>Have all of the elements been described?</b>  |
| 2 | Id all the European sites that may be affected   | <b>Are all relevant SAC/SPA sites ID</b>   |
| 3 | Id all qualifying interests of the sites concerned and conservation objectives   | <b>Qualifying interests, conservation objectives, (maintain or restore FCS) current status, risks and threats</b>                                |
| 4 | Determine which could be affected by the planned activities (over life cycle of project) Ex situ?<br>Could this be significant?  | <b>Risks posed by the project?</b>   |
| 5 | Other P&P which together could act in combination and give rise to significant effects   | <b>In combination</b>  |
| 6 | In absence of mitigation, determine if the project alone or in combination could undermine the conservation objectives and give rise to likely significant effects   | <b>Can significant effects be excluded based on objective information taking into account best scientific information available on the site?</b> |



If none, screening examination can stop here



# Checklist: Screening for AA

|   | Review Criteria   | check |
|---|---|-------|
| 1 | <b>The need for screening:</b> i.e. the development falls under the heading of a 'project' and is not directly connected with or necessary to the management of a European site (note definition of a 'project' is v wide under Habitats Directive)   |       |
| 2 | Statement of authority- author, qualifications, competencies etc.   |       |
| 3 | Sources of information relied upon; methodologies followed; site/field visits undertaken  |       |
| 4 | Are all aspects of the proposed development described in detail?  |       |
|   | Development description including key attributes that are an essential or a required component of the proposal (e.g. SUDS) Location, size, scale, physical changes to environment, resource requirements, timescale of works, waste and disposal, any additional services required (e.g. Pipelines, electricity lines). |       |
|   | Have the <b>main elements of the project that could give rise to potential impacts</b> been described?  |       |
|   | Has the <b>baseline environment</b> been described in sufficient detail and methodologies provided?   |       |
| 5 | Have all relevant European Sites (SAC, SPA) been identified?  |       |
|   | Has an appropriate zone of influence been defined?<br>If 15km distance has been defined- is this excessive/ not sufficient? Has a <b>source, pathway receptor</b> model been followed?  |       |
|   | Have all European Sites within the defined zone/ connections been identified? Lists and maps should be provided indicating location in relation to proposed development.  |       |
|   | Have all of the qualifying interests and site-specific conservation objectives been identified?<br>(see <a href="http://www.npws.ie">www.npws.ie</a> )  |       |

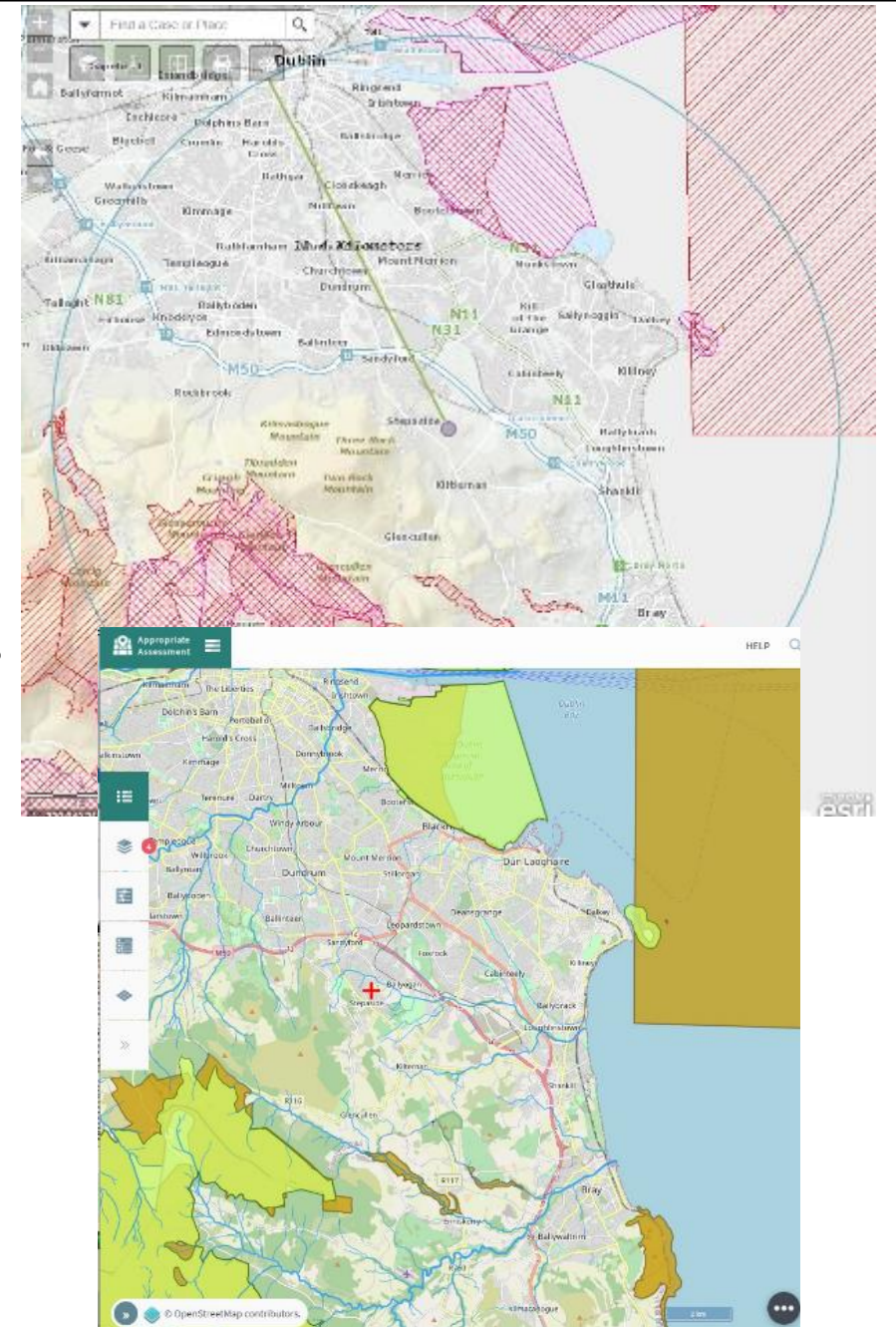
# Checklist: Screening for AA contd.

|    | Review Criteria   | check |
|----|---|-------|
| 6  | Have the potential impacts of the project (alone) been described  |       |
|    | Have all aspects of the proposed development which may result in <b>significant effects</b> on a European Site in view of its conservation objectives been described?   |       |
|    | Pathways identified, direct, indirect impacts identified, short and long-term effects, cumulative effects, effects at various stages of the of the life cycle? Ex-situ effects (species)?                           |       |
|    | Have nature conservation organisations (e.g. NPWS) been consulted?  |       |
|    | Have <b>submissions related to AA been considered</b> in the screening (from NPWS, Birdwatch Ireland, Inland Fisheries Ireland etc. or other scientific submissions also public submissions should be engaged with) |       |
| 7  | Have <b>in-combination effects</b> with other plans and projects been considered and described?   |       |
|    | Are the in-combination factors likely to give rise to potential impacts, and how?   |       |
| 8  | Could these factors to give rise to <b>significant effects</b> on the European site(s) in view of the site's Conservation Objectives  |       |
|    | Can potentially significant effects be ruled out through the application of <b>objective information</b> ?  |       |
| 9  | Does the screening rely on any <b>measures intended to avoid or reduce harmful effects</b> of the project on any European site?   |       |
|    | Mitigation measures cannot be considered in screening for AA  |       |
| 10 | Clear conclusion with no gaps or uncertainty  |       |

# Case study 1

Fictional

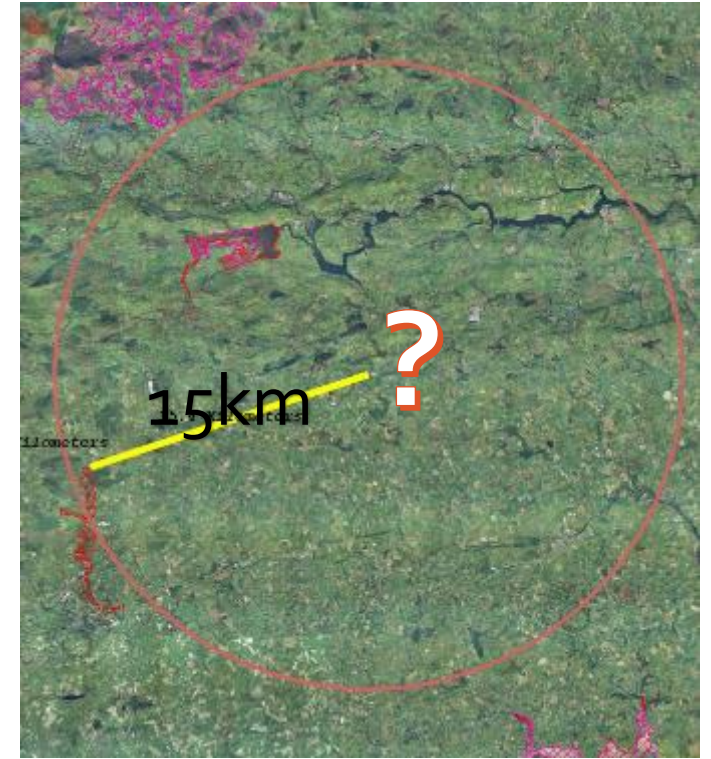
- » Housing and mixed development
- » Greenfield site, South County Dublin
- » Site clearance, excavations, best practice
- » Connections to existing services
- » No watercourses on site, no other direct connections
- » Nearest European Sites:
  - » Wicklow Mountains SAC, SPA
  - » Knocksink Wood SAC, Ballyman Glen SAC
  - » Rockabill to Dalkey Island SAC, Dalkey Island SPA
  - » South Dublin Bay and River Tolka Estuary SPA, South Dublin Bay SAC
- » Screen out for need for AA?
- » No likely significant effects on any European site



What sites to include in Screening for AA?

Case by case. **Scan, Collate, Consider** (DTA, 2018)

**15km** v Source-pathway-receptor model

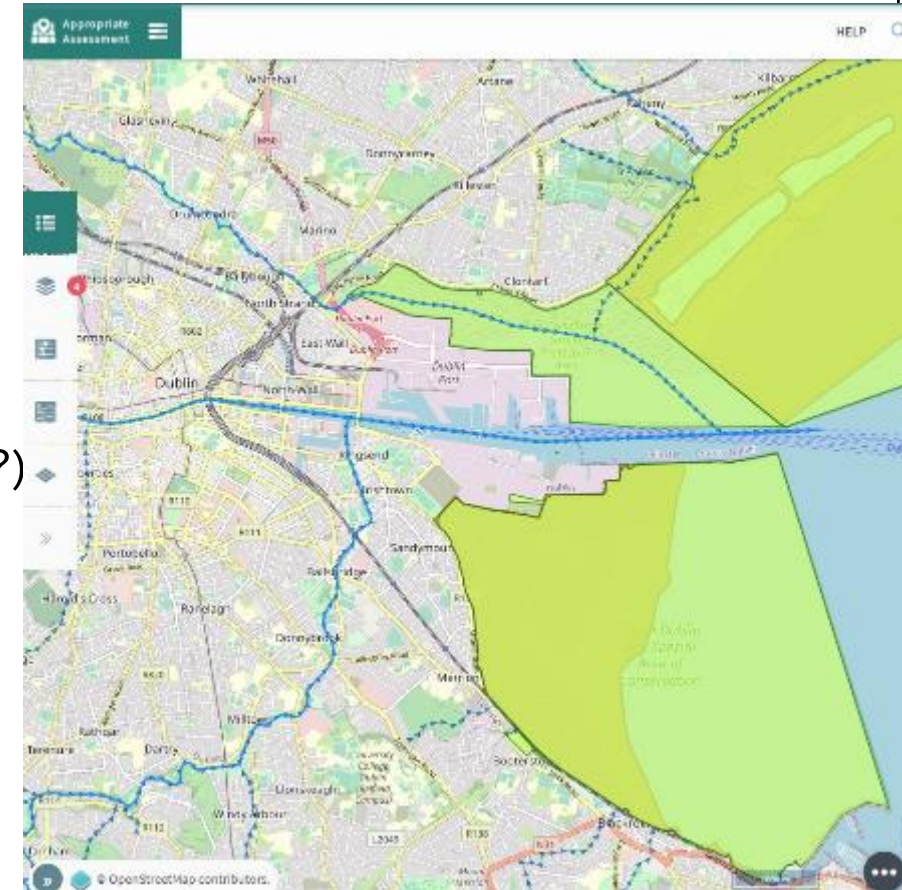




# Case study 2

Fictional

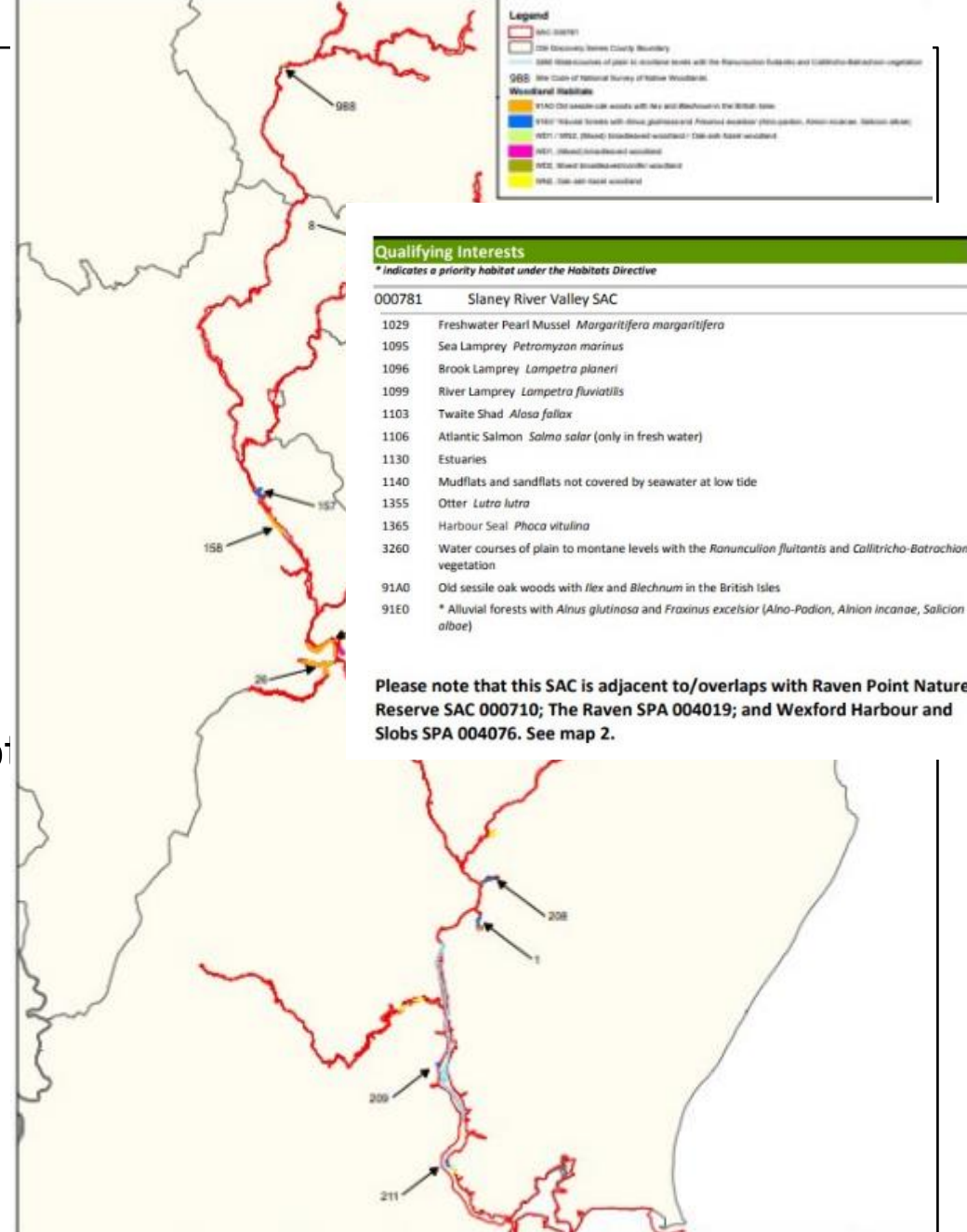
- » Apartment complex/ mixed development
- » Brownfield site, Dublin City Centre
- » Site clearance, excavations, noise, building height (collision risk?)
- » Connections to existing services
- » Nearest European Sites:
  - » South Dublin Bay and River Tolka Estuary SPA, South Dublin Bay SAC
  - » North Bull Island SPA, North Dublin Bay SAC
  - » Very limited potential for surface water/ ground water effects
  - » Best practice construction , small ingress – not significant (dilution, conservation objectives)
- » Screen out for need for AA?
- » **Questions to ask:** ecological connections? Reasonable likelihood of impact? Intent of any best practice measures? Best Scientific knowledge?



# Case study 3

Fictional

- » Homework!
- » Look at case study 2 in OPR Practice note 1
- » <https://www.opr.ie/planning-practice/>
- » Agricultural installation
- » Emissions to air and water (source, pathway, receptor)
- » Baseline conditions, sensitivities of European Sites
- » Uncertainty of effects
- » Project Screened in for AA



# Issues/ questions to raise

- » Ex-situ effects
  - » E.g. Use of a site by SCI bird species, Annex II and IV species
  - » Objective information or Certainty? Professional opinion?
  - » Is survey required to address uncertainty?
  
- » Best Scientific knowledge in AA Screening
  - » Challenge as screening is *preliminary* examination
  - » Best available scientific info on sites, known impacts, objective info
  
- » Best Construction Practice
  - » What is the *intention* of the measures? Can be more than one reason
  - » If any of reasons are to protect a European Site- requires assessment and therefore should not be considered in screening

## » Examples of relevant recent cases

- » *Protect East Meath Limited v. An Bord Pleanála* [2020] IEHC 294
  
- » Highlands residents association and PEML v. An Bord Pleanála 2020 No. 238JR
  
- » *Heather Hill Management Company clg v. An Bord Pleanála* [2019] IEHC 450
  
- » *Dublin Cycling Campaign CLG v. An Bord Pleanála* [2020] IEHC 587.

# Apply the correct test

## Ensure Screening Determination is unambiguous (CA)

» Recorded and Reasoned

Example of *no likely significant effects* determination

The [project] was considered in light of the assessment requirements of Article 6(3) of the EU Habitats Directive...

Having carried out screening for appropriate assessment, the [competent authority] has concluded that the project would not be likely to have a significant effect on any European site, either alone or in combination with other plans or projects in view of the sites conservation objectives and an appropriate assessment is not required.

## Recorded and Reasoned

In reaching this determination, the following were taken into account: the size, scale and location of the development.

Screening report submitted as part of the application and examination of same, distance from European sites and lack of connections etc...

Measures indented to avoid or reduce potentially harmful impacts on any European site were not relied upon in order to make this determination.



Planners may need to bridge any gap between scientific information and legal requirements

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**Thank you for your attention**  
**Please post questions for panel discussion**