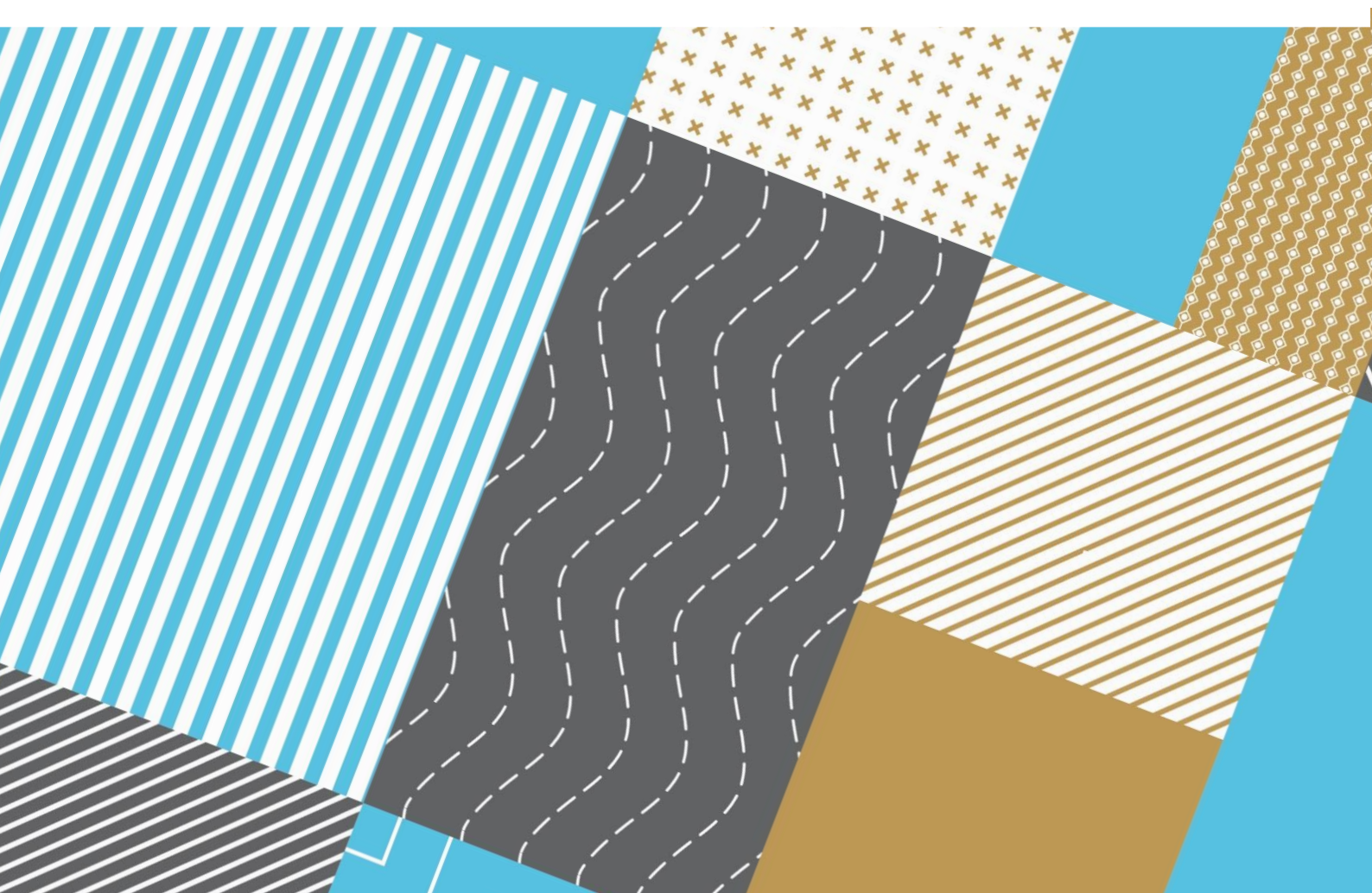


An
Bord
Pleanála

Strategic Housing Development

Section 7 Requests for Environmental Impact Assessment (EIA)
and / or an Appropriate Assessment (AA) screening determination
and / or scoping opinion

Guidance for Prospective Applicants



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Strategic Housing Development

Section 7 Requests for EIA / AA screening / scoping determinations / opinions Guidance for Prospective Applicants

Planning and Development (Housing) and Residential Tenancies Act 2016 Planning and Development (Strategic Housing Development) Regulations 2017

Section 7 of the Act of 2016 allows for a prospective applicant to make a request to An Bord Pleanála for an Environmental Impact Assessment (EIA) and / or an Appropriate Assessment (AA) screening determination and / or scoping opinion in regard to a proposed Strategic Housing Development (SHD).

Such requests are entirely discretionary and are not a mandatory part of the SHD Pre-Application Consultation process.

The new arrangements will become operational on Monday, 3 July 2017 and will apply for the period up to 31 December 2019, at which time the period may be extended to 31 December 2021, subject to a review process.

An Bord Pleanála has published general guidance in respect of the various new procedures introduced in the Act of 2016. This document is one of a suite of documents relating to section 7 requests for EIA / AA screening / scoping determinations / opinions to An Bord Pleanála for SHD proposals.

Further guidance is available in respect of pre-application consultations for SHD to An Bord Pleanála and of SHD applications direct to An Bord Pleanála.

What is Strategic Housing Development (SHD)?

SHD is defined under section 3 of the Planning and Development (Housing) and Residential Tenancies Act of 2016 as:

- (a) the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses,
- (b) the development of student accommodation units which, when combined, contain 200 or more bed spaces, on land the zoning of which facilitates the provision of student accommodation or a mixture of student accommodation and other uses thereon,
- (c) development that includes developments of the type referred to in paragraph (a) and of the type referred to in paragraph (b), or containing a mix of houses and student accommodation or
- (d) the alteration of an existing planning permission granted under section 34 (other than under subsection (3A)) where the proposed alteration relates to development specified in paragraph (a), (b), or (c).

Legislative Basis for Screening and Scoping for SHD

Section 7 of the Act of 2016 allows for **although does not require** a prospective applicant to make a request to An Bord Pleanála for an Environmental Impact Assessment (EIA) and / or an Appropriate Assessment (AA) screening determination and / or scoping opinion in regard to a proposed Strategic Housing Development (SHD).

Section 7 requests may be made in writing to An Bord Pleanála any time after the SHD Pre-Application Consultation meeting has been held pursuant to section 6(5). Section 7 along with articles 286 to 291 (inclusive) of the Regulations of 2017 provide the legislative basis for these requests.

The timelines for An Bord Pleanála to respond to such requests will run separately from those of the Pre-Application Consultation itself. Responses to requests for determinations and opinions will be provided by An Bord Pleanála after the closure of the Pre-Application Consultation process.

Although not mandatory, where a request is made under section 7, a planning application for SHD development cannot be lodged until An Bord Pleanála has provided its determination and / or opinion under section 7.

What is a Section 7 request?

A section 7 request relates to the provision by An Bord Pleanála (in relation to SHD) of screening determinations and scoping opinions. Such requests for determinations and / or opinions can be made in relation to environmental impact assessment or appropriate assessment or both.

Screening for EIA and AA

An Bord Pleanála, if so requested, is required to determine whether the proposed SHD planning application will need to be accompanied by an Environmental Impact Statement (EIS) / Environmental Impact Assessment Report (EIAR)¹ or a Natura Impact Statement (NIS) based on the respective consideration of the SHD's likely significant effect on the environment (EIA) or likely effects on a European site(s) alone or in combination with other plans or projects in view of the site(s) conservation objectives (AA).

¹ EIAR, refer to subsection below on the provisions of the amending European Union Directive 2014/52/EU

EIA screening, in particular, under section 7(1)(a)(i)(I) of the Act of 2016, provides for a request to be made in regard to a class of development that does not exceed the relevant quantity, area, or other limit specified in the classes specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). Typically for purposes of SHD this might include (dependent on nature / mix of development proposed) sub threshold consideration for one or more of the classes of development set out in section 10 (Infrastructure Projects) of Part 2 including:

- Construction of more than 500 dwelling units
- construction of a shopping centre with a gross floorspace exceeding 10,000 square metres
- Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built up area and 20 hectares elsewhere.

There may however also be other categories / classes of development in Part 2 that could be relevant for purposes of sub threshold screening if incorporated as part of a proposed SHD, and the prospective applicant should satisfy him or herself in respect of other categories.

Scoping for an EIS and NIS

Section 7 of the Act of 2016, requires An Bord Pleanála to provide a written opinion as to the key information required to be contained in an EIS / EIAR or a NIS having regard to matters including:

- The nature and scale of the proposed SHD,
- Receiving environment,
- European site(s) concerned and their conservation objectives,
- Submissions of statutory bodies and other bodies / persons,

- Relevant European Directives,
- Other matters including those prescribed in Regulations (see further guidance below).

Requirements for Prospective Applicants in making a request

The legislation requires certain procedural and informational requirements to be met when making a section 7 request to An Bord Pleanála. These include the following:

1. Request to be made in writing
2. Provision of fee (€1,000 screening / €5,000 scoping)
3. Screening and scoping requests should be made at the same time where both are sought, unless otherwise agreed with An Bord Pleanála
4. Details of name, address, telephone number and email address of prospective applicant
5. Written consent of owner to make a section 4 application where prospective owner not owner of land
6. Location, townland or postal address of lands / building subject of request and to include a location map marking in red the boundaries of the land or structure, in blue any adjoining, abutting or adjacent lands in the prospective applicants control or person who owns the land and in yellow any wayleaves
7. Brief description of the nature of the proposed SHD and its possible effects on the environment
8. An Bord Pleanála reference number for the section 6(5) consultations, date(s) of consultation(s), and any changes in the proposed development from the proposals the subject of these consultation(s)

9. Indication if the proposed development includes an activity for which an IPPC licence or waste licence is required
10. Indication if the proposed development relates to the provision of, or modification to an 'establishment'
11. Where EIA screening is requested the prospective applicant's opinion as to whether the proposed development is likely to have significant effects on the environment and the grounds for that opinion (see further guidance below)
12. Where AA screening is requested, the prospective applicant's opinion as to whether the proposed development individually or in combination with another project is likely to have significant effects on a European site and the grounds for that opinion (see further guidance below)
13. 2 printed copies of the request and 3 copies in machine readable form on digital devices shall be provided.

Procedural Requirements following a Request under Section 7

- No application for the SHD can be made until the request(s) has been complied with
- The screening determination and / or scoping opinion (including the main reasons and considerations on which they are based) are to be placed and kept with the documents relating to the application, when lodged.

An Bord Pleanála's processing of Section 7 requests

An Bord Pleanála procedures in respect of such requests for EIA / AA screening determination / scoping opinions are set out below:

1. **Timelines:** An Bord Pleanála has eight weeks to make its screening determination or 16 weeks to provide its scoping opinion.
2. Where both a screening determination and a scoping opinion is sought, both must be sought at the same time. An Bord Pleanála has up to 8 weeks to make the screening determination and then must provide a scoping opinion within 16 weeks of receipt of the request(s).
3. **Refusing a request:** An Bord Pleanála may refuse to deal with a request if the details accompanying a request as set out above are not provided by the prospective applicant or the appropriate fee is not submitted. In such circumstances An Bord Pleanála must give reasons for this decision to refuse to consider the request and return copies of the request and any part of the fee that accompanied it within 2 weeks of receipt of the request.
4. Where refusing to consider a request An Bord Pleanála may make a copy of the documents, retain an electronic copy of the documents or by agreement with the prospective applicant retain the documents subject of the request(s).
5. **Consultations with prescribed bodies:** An Bord Pleanála will consult with prescribed bodies (or other persons or bodies it considers appropriate) on receipt of an EIA scoping opinion request. The prospective applicant will be notified of any such person or body consulted. The person or body consulted have 3 weeks to respond to the notice and will be notified of An Bord Pleanála's screening determination / scoping opinion on the SHD.

6. **Further information:** An Bord Pleanála may seek further information from a prospective applicant in regard to a request for a screening determination or scoping opinion. The prospective applicant has 2 weeks to respond to such a notice.

Prescribed bodies for the purpose of Scoping

Prescribed bodies for purposes of EIA scoping are:

- The Minister for Housing, Planning, Community and Local Government,
- The Minister for Agriculture, Food and the Marine,
- The Minister for Arts, Heritage, Regional Development and Gaeltacht Affairs,
- The Minister for Communications, Climate Action and the Environment,
- The Environmental Protection Agency (EPA), and
- Relevant planning authority(s).

The Regulations only formally prescribe bodies for purposes of scoping SHD for EIA however An Bord Pleanála will use its discretion to consider whether to consult in cases relating to screening and scoping for AA.

Screening and scoping for EIA - Considerations for An Bord Pleanála

Screening Determination for EIA

An Bord Pleanála will have regard to the criteria in Schedule 7 of the Planning and Development Regulations 2001 (as amended) in making its EIA screening determination and deciding on whether the proposed SHD would be likely to have significant effects on the environment.

Where the SHD would be located on, in or have potential to impact on the sites / areas referred to in Article 289(2) of the Regulations of 2017 it shall also have regard to the likely significant effects on such sites or areas in making that determination.

Where An Bord Pleanála concludes that the proposed SHD is likely to have a significant effect on the environment it will notify the applicant that an EIS / EIAR is required to be submitted as part of the application for the development.

In making any such screening request the prospective applicants must provide an opinion as to whether the proposed SHD is likely to have significant effects on the environment and the grounds for such. In this regard the prospective applicant should note the provisions and implications of the amending European Union Directive 2014/52/EU in forming their opinion (see further note below on this Directive).

Scoping opinion for information to be contained in an EIS / EIAR

An Bord Pleanála, in respect of a scoping opinion for EIA shall have regard to article 94 of the Planning and Development Regulations 2001 (as amended) and its opinion will indicate the extent to which the information in paragraph 2 of Schedule 6 of the Planning and Development Regulations 2001 (as amended) should be contained in the EIS / EIAR.

The prospective applicant should also note the provisions and implications of the amending European Union Directive 2014/52/EU in any request submitted to An Bord Pleanála (see further note below on this Directive).

Screening Determination for AA

In making a request for an AA screening determination the prospective applicant must provide an opinion as to whether the proposed development individually or in combination with another plan or project, is likely to have a significant effect on a European site(s) in view of the site(s) conservation objectives and the grounds for that opinion.

There is an onus on the prospective applicant to ensure that adequate and relevant information is submitted to enable screening to be carried out. This information must be scientific and relevant to the likely effects on the site(s) concerned in view of their conservation objectives.

A significant effect is any effect that may affect the conservation objectives for which the site was designated but excluding trivial, or inconsequential effects and includes direct, indirect, in combination, short and long term effects. For a likely significant effect to arise the effect has to be significant, relevant to the conservation objectives and the possibility of effects cannot reasonably be excluded under the precautionary principle.

Note that mitigation measures cannot be used to screen out a project from the requirement for submission of an NIS and an appropriate assessment at the SHD application stage. However, some mitigation factors such as adherence to best construction practice and use of drainage or settlement ponds may be considered to be an intrinsic part of the work to be carried out and may be taken into account in screening. This will be a matter of judgement for An Bord Pleanála dependent on the nature and extent of the development, site's conservation objectives and degree of certainty of outcome.

An Bord Pleanála may consult relevant persons or bodies such as the National Parks and Wildlife Service (NPWS) in regard to requests received for AA screening determinations.

Scoping opinion for information to be contained in an NIS

The appropriate assessment process is not a general ecological assessment, but is a focused and detailed impact assessment of the implications of the SHD project, alone or in combination with other plans and projects, on the integrity of a European site(s) in view of its conservation objectives. An Bord Pleanála's opinion will be focused on the site's conservation objectives. Should the prospective applicant wish to seek an opinion on ecological factors not relevant to the conservation objectives of the European site(s) concerned then this would need to be the subject of a separate EIA scoping request.

To assist An Bord Pleanála in providing its opinion, in addition to the matters set out above (requirements for prospective applicant in making a request), An Bord Pleanála would expect a request for a scoping opinion on information to be contained in an NIS to be accompanied by:

- Details of any report, information and advice obtained from competent persons (eg ecologists) in regard to any matter that may be relevant to An Bord Pleanála's scoping opinion.
- Details of any information and advice obtained or consultations with relevant persons or bodies (eg NPWS, IFI, planning authority) in regard to any matter that may be relevant to An Bord Pleanála's scoping opinion.

An Bord Pleanála may consult relevant persons or bodies such as the NPWS in regard to requests received for AA scoping opinions.

Amending EU Directive 2014/52/EU: Implications for EIA screening determinations / scoping opinions

This Directive came into force on 15th May 2016. Although not yet transposed into Irish legislation, Circular letter 1/2017 issued by the Department of Housing, Planning, Community and Local Government (DHPCLG) sets out the transitional arrangements in advance of the commencement of the transposing legislation.

As any section 7 EIA screening determination / scoping opinion request will be lodged after the coming into effect of the new amending Directive, An Bord Pleanála will, notwithstanding the current absence of transposing Irish Regulations, seek to implement the 2014 Directive within its existing administrative / legislative powers. This will have implications for both screening and scoping in terms of information provided by the prospective applicant and An Bord Pleanála's conclusions (see bullet points below describing a number of the changes).

Prospective applicants should have regard to, and incorporate the amended provisions relating to EIA as set out in Directive 2014/52/EU insofar as relevant to any EIA related request made pursuant to section 7.

Some of the key changes are set out below (in brief). **However, the list below is not intended to be a complete analysis of the changes made by the Directive to the EIA process.**

- Reference to EIS should read 'EIAR'
- Articles 4(4), 5 and 6 amend the procedure for screening determinations in regard to information to be provided by the developer. This is set out in Annex IIA. Proposed mitigation measures to avoid or prevent what might otherwise have been significant adverse effects on the environment from the proposed development can be provided.
- In making the screening determination the criteria to consider are set out in Annex III. (Note changes / references for example to risk of major

accidents or disasters and risk to human health). The Board will state the main reasons and considerations in regard to this determination having regard to the criteria in Annex III

- Under Article 3(1) the factors to be identified, described and assessed in the EIA have been amended with 'population and human health' replacing 'human beings', 'biodiversity' replacing 'flora and fauna' and a new factor 'land' alongside 'soil, water, air and climate'. Article 3(2) also refers to effects deriving from vulnerability of the project to risks of major accidents and / or disasters.

Consultations by the prospective applicant prior to making a Section 7 request

Prospective applicants are strongly advised to carry out consultations with relevant prescribed and other bodies, planning authorities, the public and any other relevant persons who may have information relevant for the purposes of EIA / AA screening / scoping prior to making a section 7 request.

The mandatory section 247 meeting between the prospective applicants and the planning authority required before entering the SHD Pre-Application Consultation process and the consultation meeting held during the formal Pre-Application Consultation process under section 6(5) of the Act of 2016 may assist in this regard and in identifying such bodies or persons.

For all queries in relation to this Guidance, you can:

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Visit our website at:	www.pleanala.ie/shd/general/index.htm
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