

Memorandum of Understanding

Environmental Protection Agency

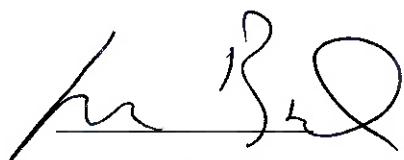
and

An Bord Pleanála

The objective of this Memorandum of Understanding (MoU) is to set out a framework for coordination on areas of mutual responsibility and shared interest between the Environmental Protection Agency and An Bord Pleanála, particularly in relation to certain provisions in the Planning and Development Act 2000 as amended, the Environmental Protection Agency Act 1992 as amended, the Waste Management Act 1996 as amended, the European Union (Waste Water Discharge) Regulations 2007 to 2020 and Regulation (EU) No. 347/2013 as amended by Regulation EU no 2022/869 of the European Parliament of the Council of 30th May 2022 for trans-European energy Infrastructure.

Signed:

Signed:



Laura Burke

Director General

Environmental Protection Agency



Peter Mullan

Chairperson

An Bord Pleanála

Date: 10/7/2024 .

Date: 10/7/2024.

1. Introduction

1.1 Background

This Memorandum of Understanding (MoU) is made between An Bord Pleanála (ABP) and the Environmental Protection Agency (EPA).

This MoU is intended to provide a framework to assist the joint working of the two organisations, to facilitate opportunities for co-operation and to ensure maximum effectiveness and efficiency when carrying out their statutory functions in relation to planning and sustainable development and to ensure appropriate protection of the environment.

Both parties to this MoU shall be bound by data protection legislation and confidentiality requirements.

This MoU does not override the statutory duties or powers of each organisation and is an indication of agreement rather than a legal commitment.

The Planning and Development Act 2000 as amended (the Planning Act), assigns various functions to ABP including deciding appeals against decisions of planning authorities on applications for permission for the development of land and the determination of applications for permission/approval for Strategic Infrastructure Development (SID) and maritime area applications, some of which require a licence or certification to operate from the EPA. ABP is also the designated competent authority for Projects of Common Interest¹.

The Environmental Protection Agency Act 1992 as amended (the EPA Act), and Waste Management Act 1996 as amended (the WM Act), assign the licensing function of certain types of activities or facilities to the EPA. The European Union (Waste Water Discharge) Regulations 2007 as amended (the WWDA Regulations) and the Water Environment (Abstractions and Associated Impoundments) Act 2022 (Abstractions Act) also provide for registration, licensing and appeals functions and are relevant to bodies.

1.2 Functions of the EPA and ABP Environmental Protection Agency

The EPA is an independent public body established under the EPA Act and has responsibilities for a wide range of licensing, enforcement, research, monitoring and assessment activities associated with environmental protection.

The EPA Act gives primary responsibility to the EPA for the protection of the environment and control of pollution in the State from certain licensable activities. The WM Act gives similar primary responsibility to the EPA in relation to waste management activities at licensable facilities. ABP is prohibited from imposing conditions in the grant of a permission/approval that are for the purpose of controlling emissions from the operation of the activity for which an Integrated Pollution Control (IPC), Industrial Emissions (IE) or Waste licence is required.

The WWDA Regulations require Uisce Éireann to apply to the EPA for a licence or a Certificate of Authorisation for waste water discharges from waste water works serving an agglomeration. Where such a licence or certification has been granted, ABP is prohibited from imposing conditions for the purpose of controlling the discharge from the waste water works. Where a

¹ Regulation (EU) No. 347/2013 as amended by Regulation EU no 2022/869 of the European Parliament of the Council of 30th May 2022 for trans-European energy Infrastructure.

licence or certification is required but has not yet been granted, ABP may impose conditions for the purpose of controlling the discharge from the waste water works, but such conditions cease to have effect once the licence or certificate is granted.

The EPA is the Competent Authority for registering and issuing licenses under the Abstractions Act.

The EPA is a competent authority for Environmental Impact Assessment (EIA). Section 83 of the EPA Act and Section 40 of the WM Act require that an EIA be carried out by the EPA in respect of certain applications for IPC, IE or waste licences. The EPA cannot issue its decision on an application for a licence or a revised licence where a relevant planning application is still under consideration by ABP. The WWDA Regulations also require that an EIA is carried out by the EPA in respect of certain WWDA applications. There are statutory and agreed provisions for consultations between the EPA and ABP for IE, IPC, Waste and Wastewater regimes. There are also EIA requirements in relation to abstractions under the Abstractions Act. See Section 3.3 Consultation provisions.

An Bord Pleanála

ABP was established in 1977 under the Local Government (Planning and Development) Act, 1976, and is responsible for the determination of appeals and certain other matters under the Planning Act and is also responsible for the determination of applications for strategic infrastructure development including major road and railway proposals and maritime area applications. It is also responsible for dealing with proposals for the compulsory acquisition of land by local authorities and others under various enactments. ABP also has functions to determine appeals under the Water Pollution Acts, the Building Control Act and under Part 6 of the Abstractions Act.

ABP is primarily responsible for spatial/land use planning and general environmental concerns. The EPA Act and WM Act provide that ABP may, notwithstanding the fact that a licence or revised licence has been granted, or is, or will be required under either of the Acts, refuse permission/approval for development requiring an IPC, IE or Waste licence where it considers that the development is unacceptable on environmental grounds. Similarly, ABP may refuse planning permission/approval or limit the scale of development where it considers that a waste water discharge would cause or exacerbate breaches of the combined approach² or otherwise cause serious water pollution.

Section 172 of the Planning Act requires that an EIA be carried out by a planning authority or ABP, as the case may be, in respect of certain applications for consent for proposed development. The requirement is that an EIA in relation to significant effects on the environment of a proposed development as required by Article 3 of the EIA Directive, including consideration of the interaction of all factors, must be carried out by the planning authority or ABP, as relevant.

ABP is the designated Competent Authority for granting permits for Projects of Common Interest (PCI) designated under the provisions of Regulation (EU) No. 347/2013 as amended by Regulation (EU) No. 2022/869 of the European Parliament of the Council of 30th May 2022 for trans-European energy Infrastructure.

² Defined in the European Union (Waste Water Discharge) Regulations 2007 to 2020.

1.3 Statutory Consultation Provisions

The principal legislation governing the consultation requirements between ABP and EPA are listed below. The legislation provides the procedures by which both bodies may seek or provide comments on developments or activities. The principal legislation is as follows:

- Environmental Protection Agency Act 1992 as amended
- Waste Management Act 1996 as amended
- Planning and Development Act 2000 as amended
- Planning and Development Regulations 2001 as amended
- European Union (Waste Water Discharge) Regulations 2007 as amended
- Water Environment (Abstractions and associated impoundments) Act 2022
- Industrial Emissions, Integrated Pollution Control and Waste Licensing Regulations as amended
- EC (Birds and Natural Habitats) Regulations 2011 as amended
- Water Framework Directive

2. Purpose of Memorandum of Understanding

The Memorandum of Understanding is intended to facilitate the efficient co-ordination of the statutory functions of ABP and the EPA in respect of environmental issues under the Planning Act and Regulations, EPA Act, WM Act, WWDA Regulations, Abstractions Act and related Regulations. Further, it will help to:

- i. provide an integrated approach to environmental issues which ABP and the EPA are statutorily required to consider;
- ii. facilitate a holistic approach to EIA as required under the EIA Directive;
- iii. provide an agreed approach between ABP and the EPA to the exchange of information;
- iv. eliminate, where practicable, avoidable delays in the delivery of services to stakeholders;
- v. provide and deliver a quality customer service for both organisations;
- vi. enable relevant environmental issues to be considered and addressed at an early stage in relation to proposed strategic infrastructure development applications with a view to achieving better quality applications, timely decisions and a holistic EIA;
- vii. facilitate liaison between the EPA and ABP in particular cases in assessing the acceptability or otherwise of proposed development in a locational context;
- viii. facilitate liaison between the EPA and ABP in the attachment of conditions to a consent from ABP designed to protect the environment, in relation to aspects of a proposed development not covered by a licence or certificate;
- ix. clarify that relevant issues including waste policy issues are dealt with by the appropriate organisation;
- x. facilitate implementation of the above provisions by establishing procedures between ABP and the EPA in accordance with the legislative requirements; and
- xi. clarify procedures and set out contact arrangements between the two agencies

3. Areas for Co-operation and Co-ordination

The EPA and ABP will co-operate and co-ordinate activities where there are shared areas of interest and responsibility. Both organisations will endeavour to liaise closely, and in particular in relation to the areas below.

3.1 Joint Review Group

Joint meetings will be held as considered necessary but not less frequently than once a year. The practical operation of the activities agreed under this MoU will be reviewed regularly and updated as required. Arrangements for these meetings shall be agreed between the Director of Planning and the Programme Manager in the Office of Environmental Sustainability (OES) of the EPA or agreed delegated officials.

3.2 Operational Liaison

The appropriate Senior Administrative Officer (SAO) or equivalent in the Appeals section and the SAO in the Strategic Infrastructure section in ABP and the OES Business Support Senior Manager in the EPA will handle administrative operational contacts between the EPA and ABP. The appropriate Director of Planning or delegate and the appropriate OES Programme Manager in the EPA will handle technical operational contacts between the EPA and ABP.

3.3 Consultation Provisions

Appendix 1 of this MoU sets out the main consultation provisions between the EPA and ABP. A Working Group established under this MoU shall agree consultation provisions in line with relevant legislation and Appendix 1. The provisions and protocols for consultation will be set out for the purposes of clarity and to facilitate ongoing co-operation between both bodies and kept under review by a Working Group established under the MoU (see Section 3.5 below). Arrangements will be agreed between both bodies for maintaining consultation provisions information and keeping it under review.

3.4 Guidelines for Observation Requests and Notification of Decisions

Both organisations will where relevant, issue guidelines to its staff outlining the issues which it may request the other organisation to address and the procedures and timeframes for responding. Any requests should be explicit as to the information or observations sought. These guidelines may be developed or reviewed as part of the work described in Section 3.3.

Responses to consultation requests between the two bodies shall be in accordance with the consultation protocols, insofar as possible. In accordance with statutory provisions, the provision of observations by the EPA will not prejudice any other function of the EPA under the EPA Act, WM Act, the WWDA Regulations and Abstractions Act and related Regulations.

ABP will inform the EPA of decisions taken in cases where observations from the EPA had been sought by ABP or the EPA was otherwise involved directly with ABP in the case. Reciprocal arrangements shall apply in the event of relevant EPA decisions.

3.5 Inter-agency working groups/meetings

The EPA and ABP may agree to establish working groups, convene meetings, or make other arrangements to examine matters of common interest. Such groups or meetings may examine matters of a technical, legal or administrative nature where co-operation may provide opportunities for more effective operations between both organisations.

Such working groups or meetings as may be established from time to time will operate under a Terms of Reference to be agreed by both agencies. Working groups may include:

- Environmental Impact Assessment and consultation provisions;
- Waste water discharges and consultation provisions;
- Abstractions and consultation provisions
- Consultations relating to particular planning processes e.g., SID, PCI or Water Framework Directive requirements;

- Appropriate Assessment and provisions under Article 42 of the EC (Birds and Natural Habitats) Regulations 2011 (as amended). Guidelines and procedures related to Article 42 of the Regulations may be agreed through a working group.

3.6 Sharing of Information

Each organisation will circulate all relevant guidance or information documents to the other body, or for comment where appropriate prior to publication, where such guidance and information relates to matters that fall within the general functions of the other body.

3.7 Communications

ABP will keep the EPA informed of any oral hearing it proposes to hold in cases where observations from the EPA had been sought directly by ABP. Reciprocal arrangements will apply where the EPA proposes to hold an oral hearing, as appropriate.

4. Planning and Licensing Consultation Arrangements and EIA

4.1 General

Any request by either body to enter into consultation in relation to cases involving a licensable activity will be in writing and be made under the relevant section of the EPA Act, WM Act, Planning Act, the WWDA Regulations, and Abstractions Act, and related Regulations as appropriate and, where relevant, in accordance with the protocols for consultation referred to in Section 3.3. Consultation provisions relating to the Water Framework Directive and any associated Regulations will be set out and agreed by the EPA and ABP under Appendix 1.

Where ABP seeks comments from the EPA in respect of licensable activities, and where the EPA is not required under statute to make a response, and where no response to a request has been received within the agreed time period, it is agreed that ABP can proceed on the basis that the EPA has no further comment in relation to the matter. Reciprocal arrangements will apply to EPA requests to ABP.

ABP will endeavour to give as much time as practicable to the EPA for the submission of its observations and in any event seek the comments of the EPA as early as possible after the case is received. Reciprocal arrangements will apply to EPA requests to ABP. The statutory and agreed timeframes for either body to respond to consultation requests in relation to licensable activities will be set out in the protocols for consultation.

Where ABP is required to seek observations or the opinion of the EPA on any matter prescribed by legislation, and where no time period for a response is specified in the legislation where the Agency is required to respond, it is agreed that the EPA will respond within 4 weeks. Reciprocal arrangements will apply to EPA requests to ABP.

A request to the EPA for observations may specify particular issues upon which ABP is seeking observations. In cases where observations are received by ABP from the EPA, these may be cross-circulated to the parties and other participants for their comments. Any comments received on foot of cross-circulation of material by ABP may be forwarded by ABP to the EPA for its further observations. Reciprocal arrangements will apply to EPA requests to ABP, as appropriate.

4.2 Planning Appeals

ABP will, where it considers it necessary to do so, seek the observations of the EPA in cases involving a licensable activity only where no observations have been submitted by the EPA to the planning authority that dealt with the planning application or where additional relevant material has been submitted at appeal stage. In cases where the EPA had made observations to the planning authority, ABP may seek additional information and/or clarification of the earlier observations where it is considered appropriate.

Submissions and observations received by ABP from other parties or observers would not normally be sent to the EPA for their observations except where the material concerned is directly related to earlier observations received.

4.3 Strategic Infrastructure Development (SID)

(i) Pre-application Consultation

Where pre-application consultations are held under SID, ABP may consult and/or request the prospective applicant to consult with the EPA if the case in question involves a licensable activity. The general purpose of the involvement of the EPA at this stage is to enable ABP to advise the prospective applicant of any environmental issues, including those within the competence of the EPA, in the preparation of the application for permission/approval to ABP including the EIAR. The purpose of this is to avoid deficiencies in the EIAR and potential delays at the application stage. ABP may also indicate to the prospective applicant that he/she must notify the EPA when making an application in the case of any development for the purposes of an activity requiring an IPC, IE or a Waste or Water Abstraction licence.

(ii) SID Applications

When an applicant is making an application for SID to ABP and which involves a licensable activity, he/she will be required to forward a copy of the application (with the EIAR) to the EPA. The copy of the application will be accompanied by a notice inviting the EPA to make submissions or observations to ABP. Additionally, ABP may request observations from the EPA in any particular case and in accordance with the EPA Act and the Waste Management Act, the EPA shall respond.

(iii) Alteration of SID

Where a person submits an EIAR to ABP in relation to a request to alter a SID proposal already permitted/approved by ABP and where a licensable activity is involved, ABP will request the observations of the EPA in accordance with the consultation protocols set out referred to in Section 3.3.

(iv) SID Meetings

In addition to oral hearings, the Planning Act makes provision for meetings to be held in some circumstances. This could involve the EPA in some circumstances. It is necessary that a record should be kept of any such meeting. The agenda for any such meeting will be notified to the EPA in advance.

4.4 Environmental Impact Assessment

In all cases involving appeals and applications to ABP, where an EIAR has been submitted and a licence is required from the EPA, the EPA and ABP will carry out an EIA in accordance with Article 3 of the EIA Directive³, and the relevant transposing legislation. As stated in Section

³ 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.

3.3 above protocols for consultation will be developed to elaborate on the consultation provisions between the EPA and ABP.

In relation to EIAR Scoping, ABP will request observations from the EPA where they have received a request for an opinion on the information to be contained in the EIAR where a licence is required from the EPA. For SID applications ABP is required to consult the Agency as a prescribed body where they receive a request for a scoping opinion (for licensable and non-licensable activities). There are also consultation provisions relating to EIA Screening in planning legislation, the EPA Act, WM Act and WWDA Regulations.

4.5 Projects of Common Interest (PCI)

ABP's role in the PCI permit granting process is to collate and co-ordinate the issuing of all the consents and decisions required from all relevant authorities in compliance with specific time limits. This approach may result in liaison taking place between ABP and the EPA. ABP's statutory planning role in determining any application lodged with it continues to be one of independent assessor. A Manual of Permit Granting Process Procedures for PCIs is available on www.pleanala.ie.

4.6 Non-licensable activity

Occasionally, cases may arise where an appeal or a SID application involves an activity that is not licensable but where ABP considers that the observations of the EPA should be sought. In seeking observations in such cases, ABP will specify the issues on which it is seeking observations.

5. MOU Review Period

The term and operation of this MoU shall be reviewed at least every 3 years by the competent authorities.

Appendix 1: Consultations

This Appendix sets out the main consultation provisions between ABP and the EPA, and in particular where both bodies are competent authorities for the purposes of EIA. The following legislative provisions are relevant:

Environmental Protection Agency Act 1992 as amended
Waste Management Act 1996 as amended
Planning and Development Act 2000 as amended
Waste Water Discharge (Authorisation) Regulations 2007 as amended
Water Environment (Abstractions and Associated Impoundments) Act 2022 (Abstractions Act)
Water Framework Directive and related regulations

Consultations regarding EIA where both a grant of permission from ABP and an IPC, IE or Waste Licence from the EPA are required:

- **Applications to EPA for a licence** where an EIAR is required and an application for permission is currently under consideration by ABP (S.87(1D) EPA Act and S.42(1D) WM Act)
 - requirements include the EPA notifying ABP of the licence application, requesting a response from ABP and consideration of any observations furnished.
- **Applications to EPA for a licence** where an EIAR is required and an application for permission has been granted by ABP (S.87(1E) EPA Act, S.42(1E) WM Act and S.173A and 173B Planning Act).
 - requirements include the EPA notifying ABP of the licence application, requesting a response from ABP and consideration of any observations furnished.
- **Applications to ABP** for permission that require a licence or review of a licence and are accompanied by an EIAR (S.87(1F) EPA Act and S.42(1F) WM Act).
 - where ABP notifies the EPA of an application for permission, provisions include requirements on requesting observations from the EPA and on consideration of any observations furnished. Relevant legislation: Planning and Development Act 2000 as amended S.37(F)(5), S.175(10), S.177AE(c) (1), S.292(2).

EIA Determination: Applications to ABP for permission that require a licence or review of a licence and are not accompanied by an EIAR but comprise sub-threshold development (S.87(1G) EPA Act and S.42(1G) WM Act).

- when requested by ABP, the EPA shall consult with or provide observations to assist in ABP's deliberations on the determination on the need for EIA and ABP shall take into account any such observations. Relevant legislation: Planning and Development Act 2000 as amended, S.173A and S.173B.

Consultations where both a grant of permission from ABP and Waste Water Discharge Licence from the EPA are required:

Regulation 44 of WWD Regulations: Where Regulation 41, 42 or 43 applies:

- ABP shall, where it considers that the proposed development is likely to have a significant impact on waste water discharges, request the Agency to make observations in relation to their assessment of the likely impact of the proposed development on waste water discharges. The EPA is obliged to comply with any such request.
- Reg 6(7) **Applications to ABP** for permission that require a waste water discharge licence or review of a licence and are accompanied by an EIAR.
 - where ABP notifies the EPA of such an application for permission these provisions include requirements on furnishing submissions/observations to ABP. Requirements on consideration by ABP of any submissions/observations furnished are set out in the relevant planning legislation.
- Reg 21(6) **Applications to EPA** for a WWD licence where an EIAR is required and an application for permission is currently under consideration by ABP.
 - requirements include the EPA notifying ABP of the licence application, requesting a response from ABP and consideration of any submissions/observations made.
- 21(7) **Applications to EPA** for a WWD licence where an EIAR is required and an application for permission has been granted by ABP.
 - requirements include the EPA notifying ABP of the licence application, requesting a response from ABP and consideration of any submissions/observations made.

Consultations between ABP and the EPA on Abstractions:

- Water Environment (Abstractions and Associated Impoundments) Act 2022 (Abstractions Act) and associated Regulations

Consultation provisions relating to the above Act and any associated Regulations will be set out and agreed by the EPA and ABP in Working Group.

Consultations between ABP and the EPA on Water Framework Directive matters:

Consultation provisions relating to the Water Framework Directive and any associated Regulations will be set out and agreed by the EPA and ABP in Working Group.