

Environmental Impact Assessment

.....and the changing nature of Planning

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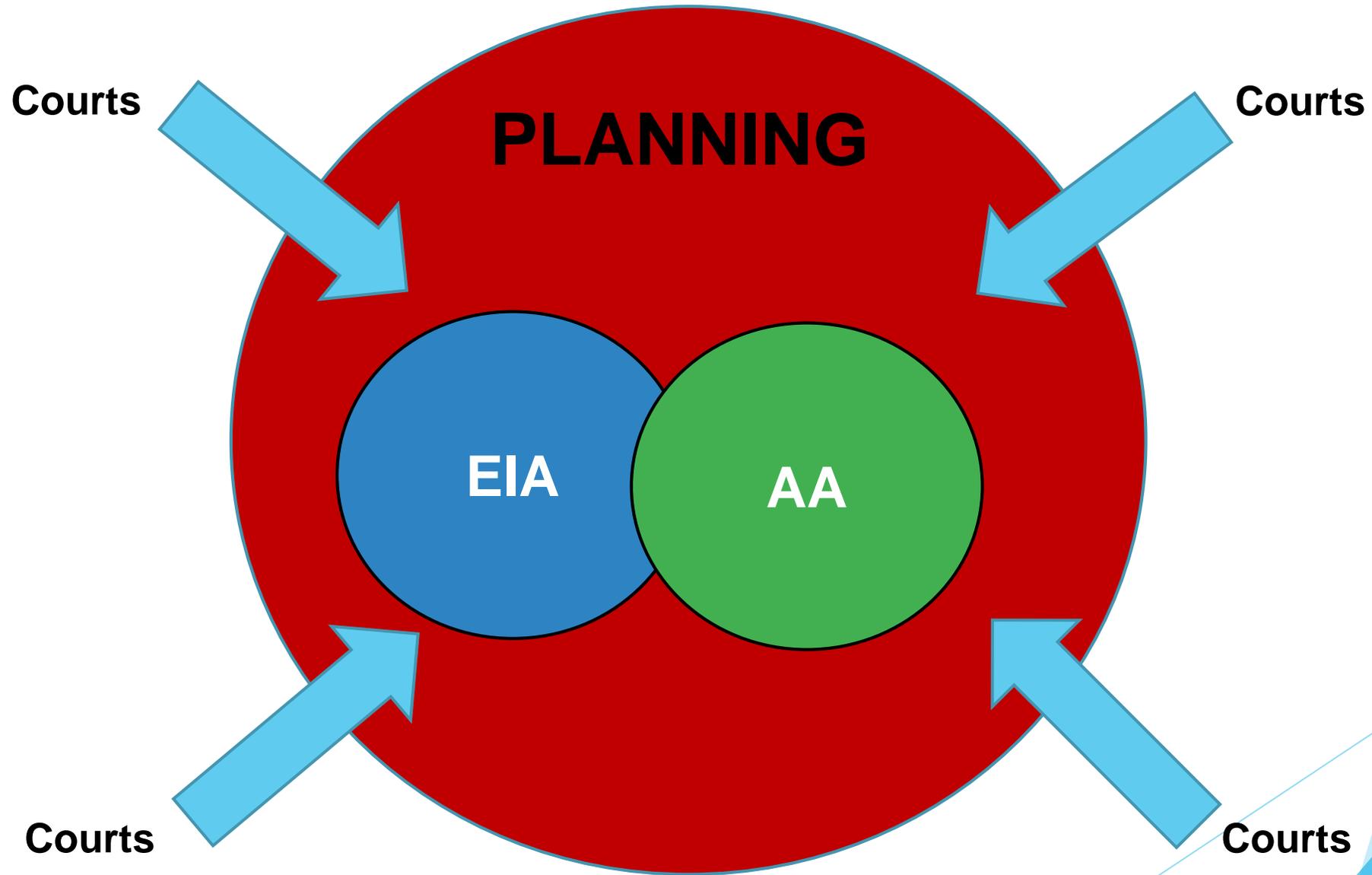
May 2020



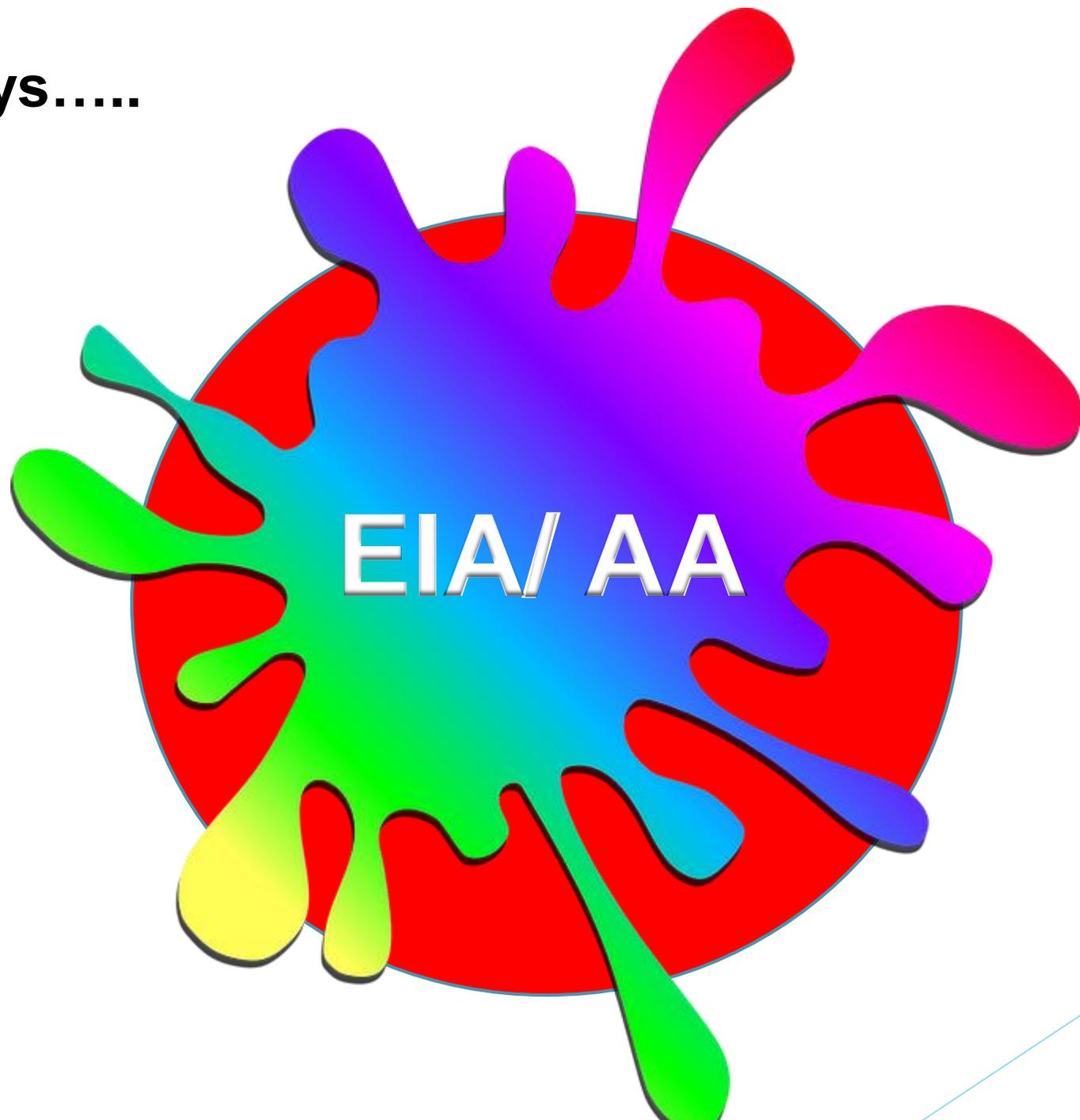
**Oifig an
Rialaitheora Pleanála**
Office of the
Planning Regulator

Outline

- ▶ Context: The changing role of development management planning
- ▶ Key Differences between EIA and AA
- ▶ The EIA Process
 - ▶ EIA Screening
 - ▶ EIA Evaluation by the competent authority
 - ▶ EIA Decision
- ▶ Trends & Observations



Some days.....

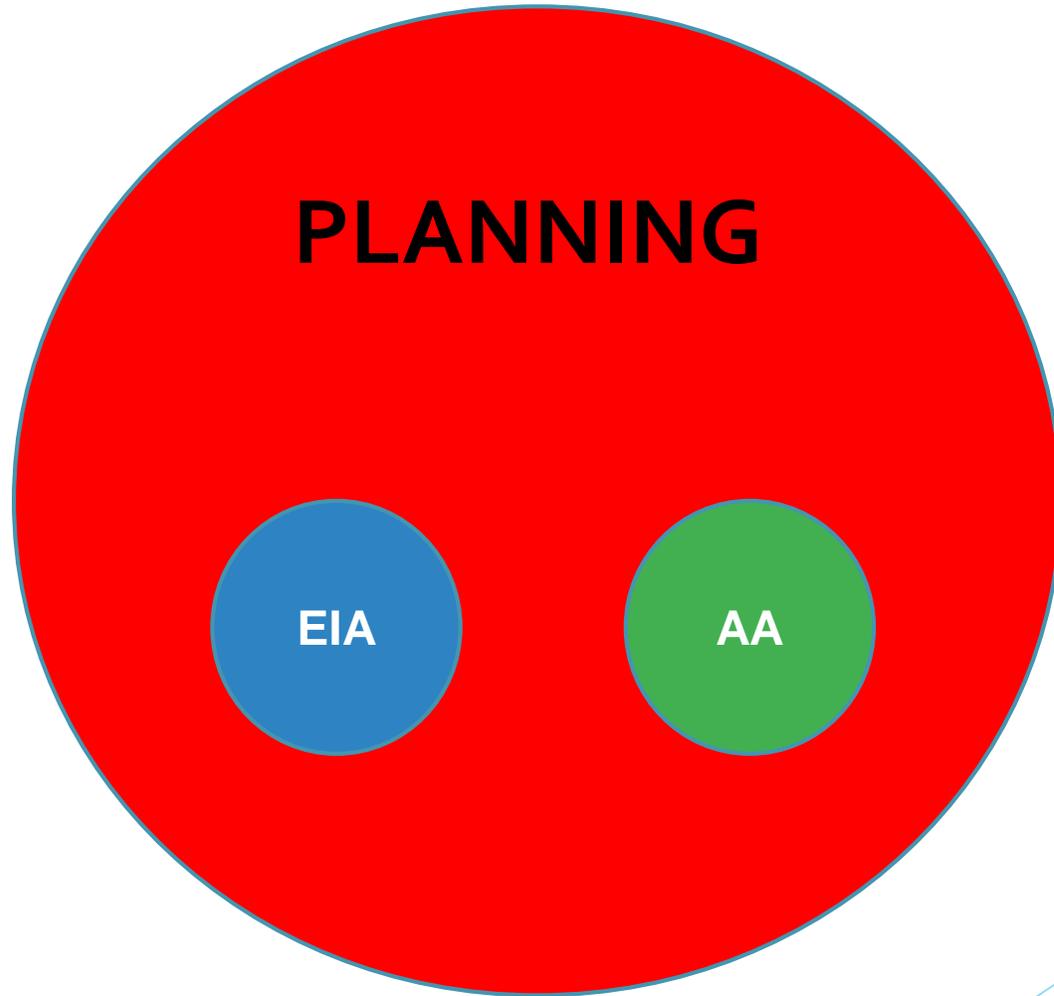


The Question?

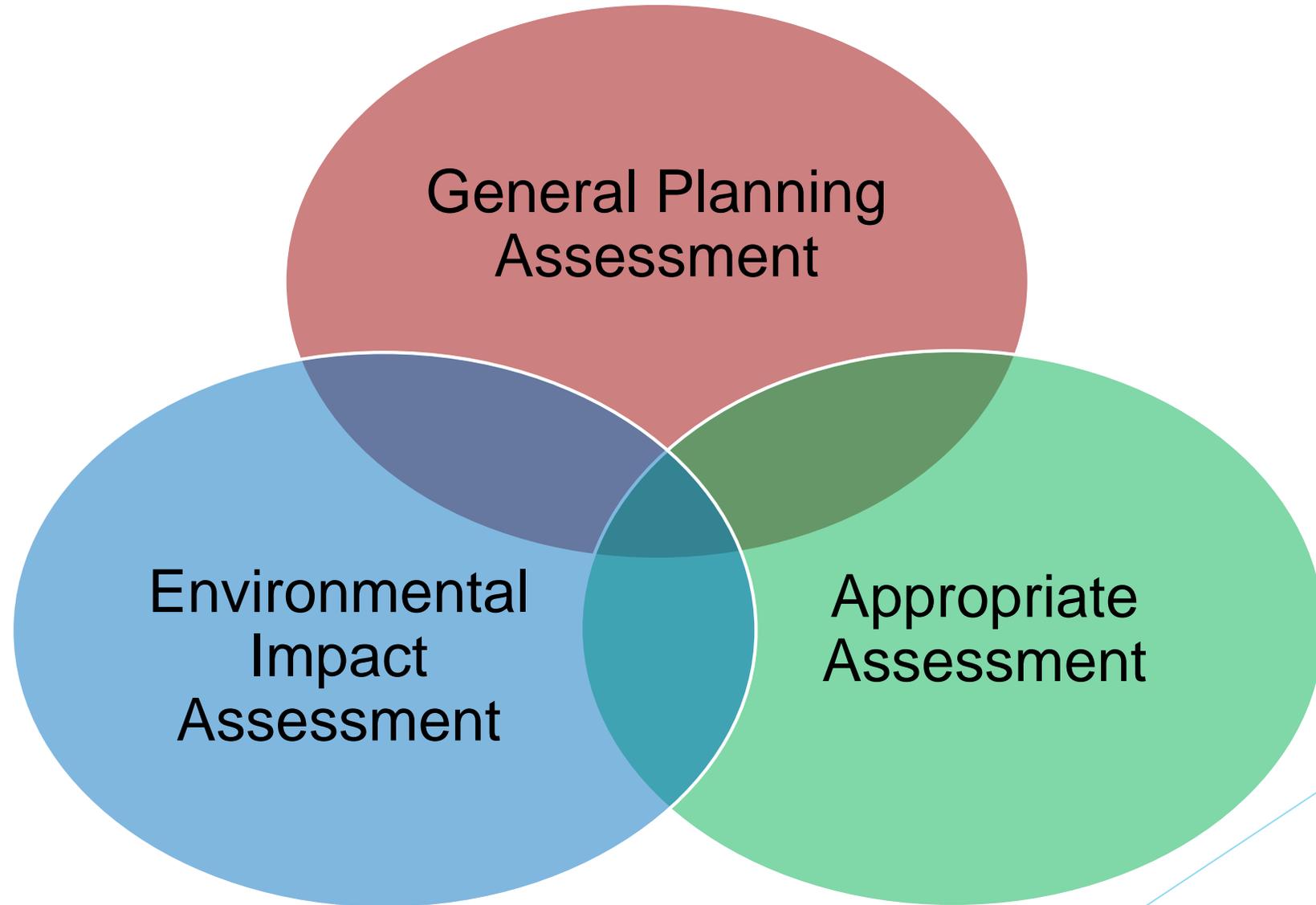
What do we do now?

Need for a change of mindset

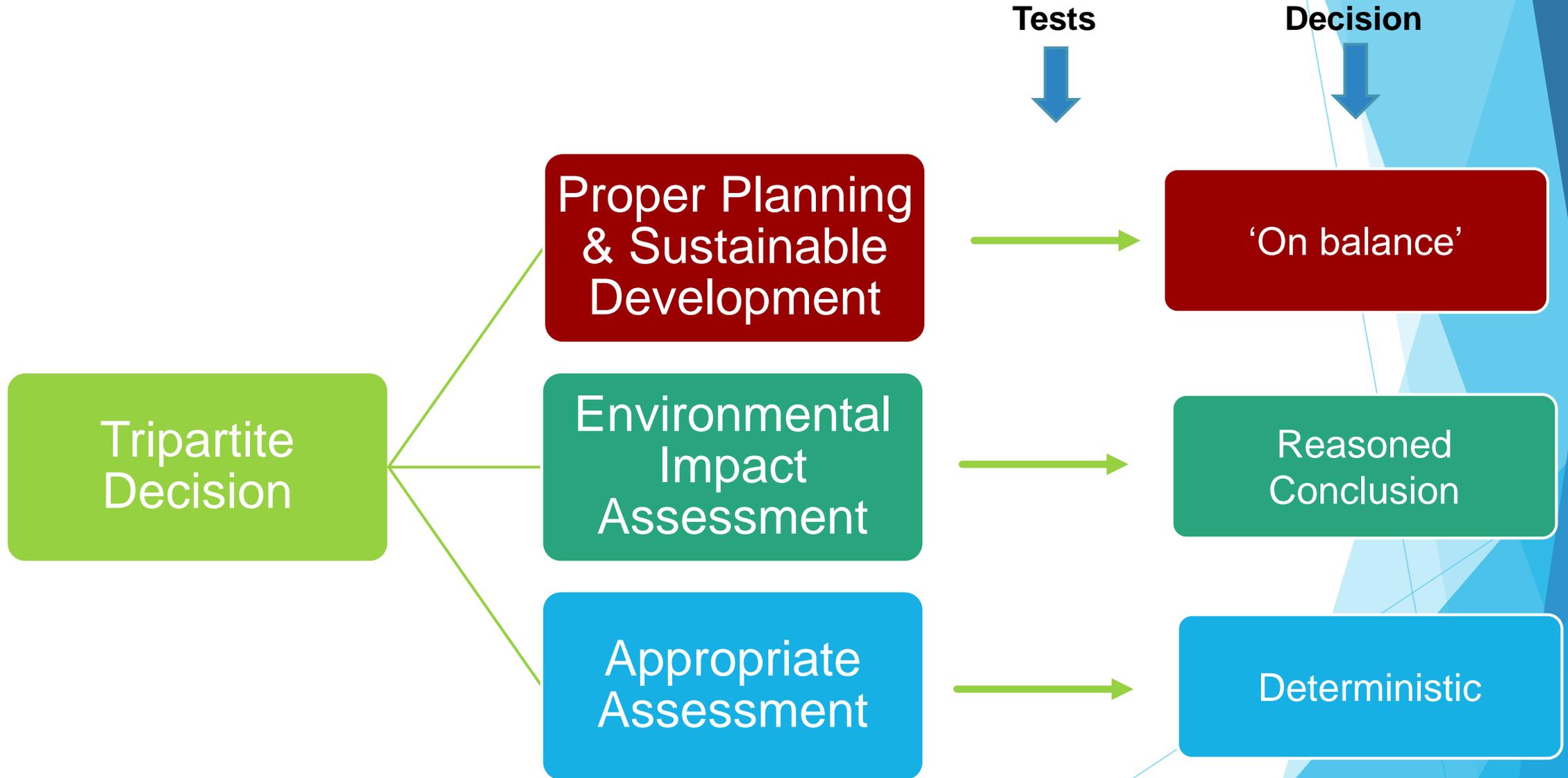
From this...



.....to this



What is a 'Planning Decision'?



Consequence for planning

Imperative that as planners we start to think about the 'Planning Decision' issued under the Planning and Development Act as three separate but interrelated entities

DIRECTIVES COMPARISON TABLE		
	EIA Directive	Habitats Directive
Purpose	The EIA Directive is aimed at ensuring that a holistic assessment is carried out of all elements of a development to ascertain its potential effects, both positive and negative, prior to the granting of development consent.	An Appropriate Assessment under the Habitats Directive is focused narrowly and on the specific issue of whether the proposed development is going to have an adverse effect on the integrity of specific and identified EU sites in view of the site's conservation objectives.
Projects / Thresholds	Relates only to projects set out in Annex I and II of the Directive (Part 1 and 2, Schedule 5 PDR)	Relates to all development
Screening Test	Projects of a class set out in PDR that would be likely to have significant effects on the environment should be subject to EIA (Screening criteria set out in Schedule 7 PDR).	The trigger for Stage 2 AA is low. Projects where likely significant effects on the European Site in view of the site's conservation objectives cannot be excluded trigger the need for a Stage 2 AA.
Mitigation Measures	Mitigation measures can be used to screen out the need for EIA in the case of sub-threshold development.	Mitigation measures cannot be used to screen out the need for Stage 2 AA.
Monitoring Conditions	Monitoring conditions should be attached where relevant, although consideration should be given to the remedial measures should a problem be identified through monitoring.	Monitoring conditions should not be used to ensure that a development will not adversely affect a European Site as it indicates uncertainty regarding the potential effects.
Cumulative / in-combination effects	EIA/ screening for EIA should include an assessment of the cumulative effects of a project with existing and permitted developments.	AA/ screening for AA must include and assessment of the effects in-combination with other plans or projects. This is wider than the EIA requirement for existing and permitted developments.
Outcome	The EIA Directive does not preclude the granting of development consent even where those effects may be negative.	If a conclusion cannot be reached that the development would not adversely affect the integrity of a European Site in view of the site's conservation objectives, it cannot be permitted except under the limited circumstances set out in Article 6(4) of the Habitats Directive (IROPI).

EIA Directive -v- Habitats Directive

Context - EIA Directive

Key Characteristics

▶ 'Procedural' Directive

- Process – set out in the definition of the EIA Article 1(2)
- Requirements of the process lead to quality decision making

▶ Wider function of the EIA Directive to transpose conventions

- Aarhus Convention
 - Right to access to environmental information (art 8a, 9)
 - Right to participate in environmental decision making (art 1(2), 6, 8)
 - Access to Justice on environmental matters (art 11)
- Espoo Convention (Convention on EIA in a Transboundary Context) – art 7

Definition of EIA Process

Article 1(2)

“**environmental impact assessment**” means a **process** consisting of:

- (i) the preparation of an **environmental impact assessment report** by the developer,
- (ii) the carrying out of **consultations** as referred to in Article 6 (and Article 7);
- (iii) the **examination** by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided by the developer and any relevant information received through the consultations;
- (iv) the **reasoned conclusion** by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and
- (v) the integration of the competent authority's **reasoned conclusion** into any of the **decisions** referred to in Article 8a.

Context - EIA Process



EIA Screening



EIA Screening

EIA Directive - Article 4

- ▶ 2014 Directive introduced new requirements in relation to screening for EIA, including issuing determinations as to whether sub-threshold development requires EIA (90 days)
- ▶ 2018 EIA Regulations - mandatory process for screening of all sub-threshold development
 - ▶ 'sub-threshold development' means development of a type set out in Schedule 5 which does not exceed a quantity, area or other limit specified in that Schedule in respect of the relevant class of development (unchanged)
- ▶ Schedule 5 PDR derives from Annex I and II Directive
 - No change to list of projects
- ▶ Schedule 5 (PDR) vs Annex I and II (Directive)

EIA Screening

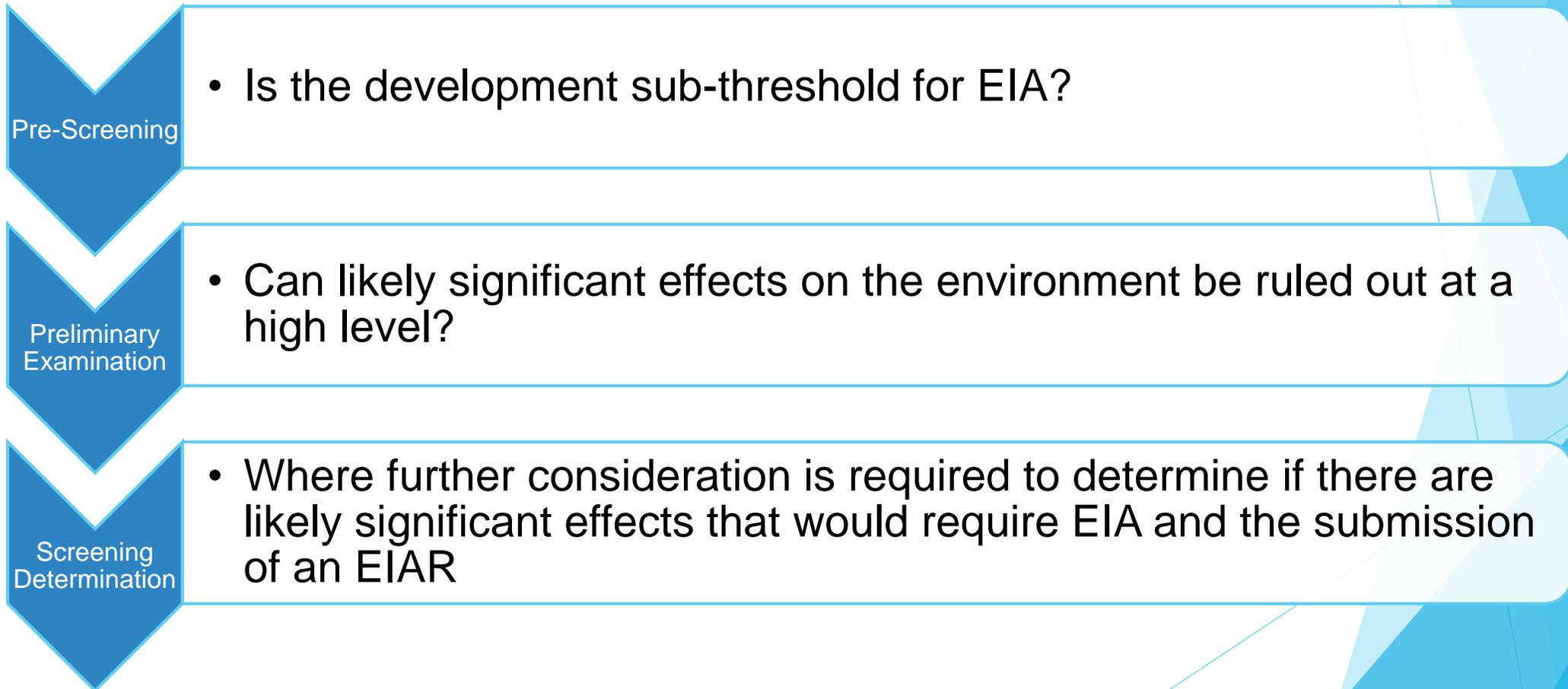
Application Types

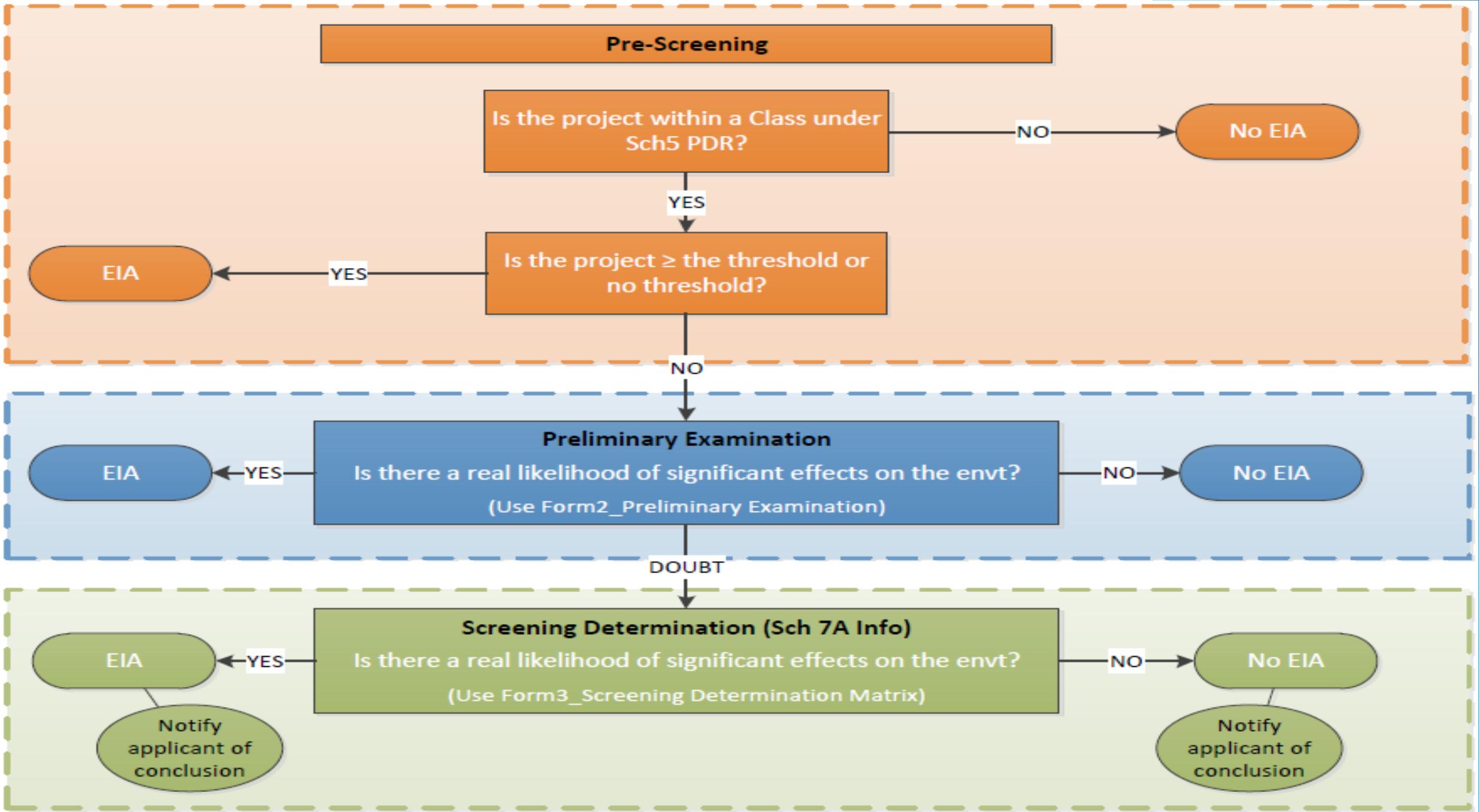
Screening applies to:

- ▶ S.34 Applications and S.37 Appeals
- ▶ S.5 Referrals (Exempt Development)
- ▶ Strategic Housing Development
- ▶ S 146B Amendments to Strategic Infrastructure/ Housing
- ▶ Local Authority/ State Development
- ▶ New direct applications for Screening Determination under s.176A

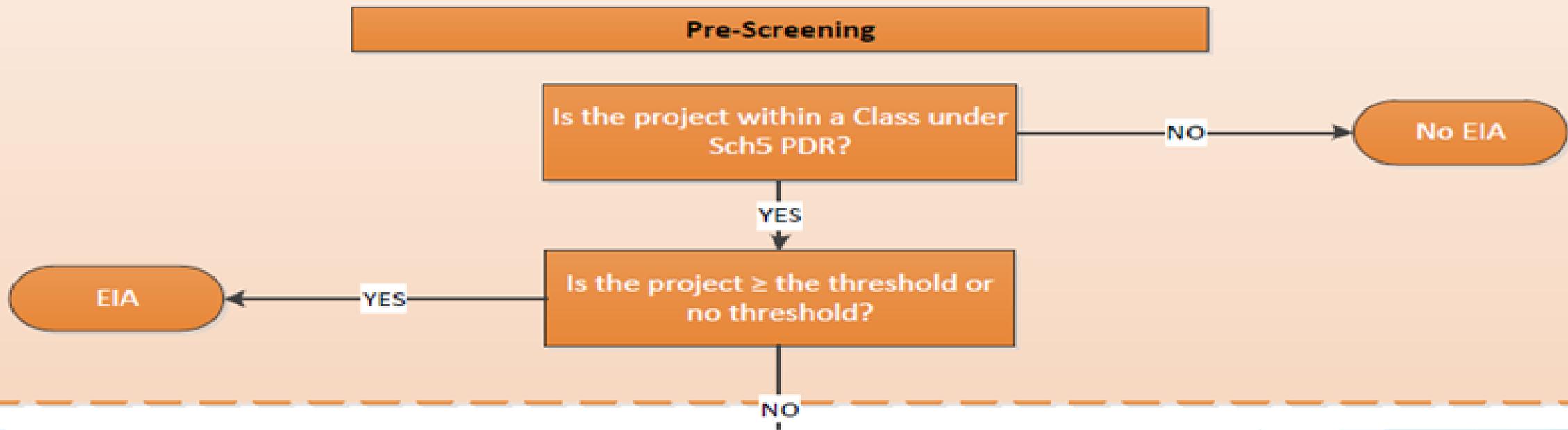
EIA Screening

Three steps to screening for EIA:





EIA Screening – Pre-screening



EIA Screening - Pre-screening

Developments excluded at Pre-screening

- ▶ Change of use (no works) – not a project
- ▶ Sheds, walls, landscape – not a class
- ▶ Antennae – not a class
- ▶ Shopfront – not a class
- ▶ Signage – not a class
- ▶ Solar Farms / Battery storage facilities – not a class (Sweetman v ABP IGP Solar, 2020)

The *Brendan Slattery* warning!!

EIA Screening – Pre-screening

Changes and Extensions – Mandatory EIA or Screening?

▶ Part 1 Class 21

- Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.

▶ Part 2 Class 13

- (i) result in the development being of a class listed in Part 1 or Part 2 of this Schedule, (where the existing development has already been subject to EIA this first requirement is automatically met), **and**
- (ii) result in an increase in size greater than 25%, or 50% of the threshold, whichever is the greater.

EIA Screening – Pre-screening

Changes and Extensions - Example

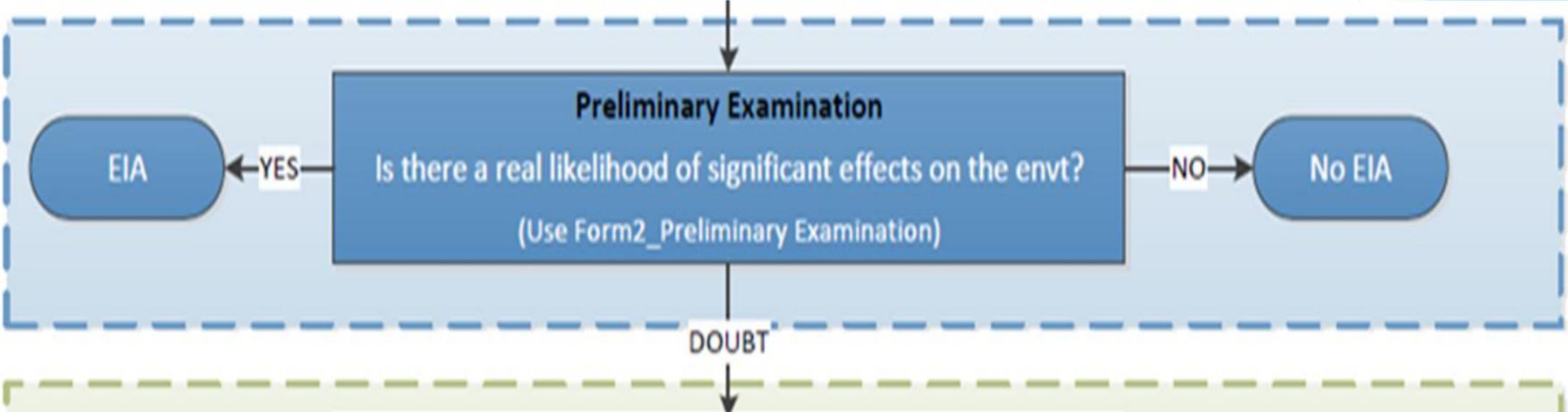
- ▶ Quarry with an extracted area of 8ha that has previously been subject to EIA.
 - ▶ Mandatory threshold for any extension would be 2.5ha further extraction - ie 50% of the 5ha threshold for quarrying which, in this case, is greater than 25% of the existing extracted area (2ha).
 - ▶ BUT, less than 2.5ha requires screening - either preliminary examination or screening determination.
- ▶ Fact that an EIA was previously carried out does not necessarily trigger an EIA for the extension, it just means that screening must be carried out.
- ▶ **Cumulative impacts** must be taken into account in that screening.

EIA Screening

Considerations

- ▶ **Main purpose:** To ensure that proposed developments likely to have significant effects on the environment are subject to EIA
- ▶ **Relationship with Habitats Directive/ AA**
 - ▶ Link much stronger in 2014 EIA Directive
 - ▶ While the need for a Stage 2 AA does not necessarily trigger the need for EIA, consideration must be given to the likely significant effects on European Sites in screening for EIA
- ▶ **Mitigation measures!**
 - ▶ Can be taken into account at screening for EIA
 - ▶ Extreme care in relation to any measures linked to European sites where NIS not submitted.
- ▶ **No public participation** - but strict procedural rules and timelines

EIA Screening – Preliminary Examination



EIA Screening – Preliminary Examination

- » **High-level screening** to establish if the proposed development would be likely to have significant effects on the environment by virtue of the nature, size or location of the development.
- » **Screen out** cases based on:
 - » **Nature**: where the development will not result in the production of any significant waste, or result in emissions or pollutants
 - » **Scale**: limited size of the development – eg a single house
 - » **Location**: location of the site removed from any sensitive locations or features or the absence of a pathway to any sensitive location in the vicinity

EIA Screening - Preliminary Examination

Conclusion (examples)

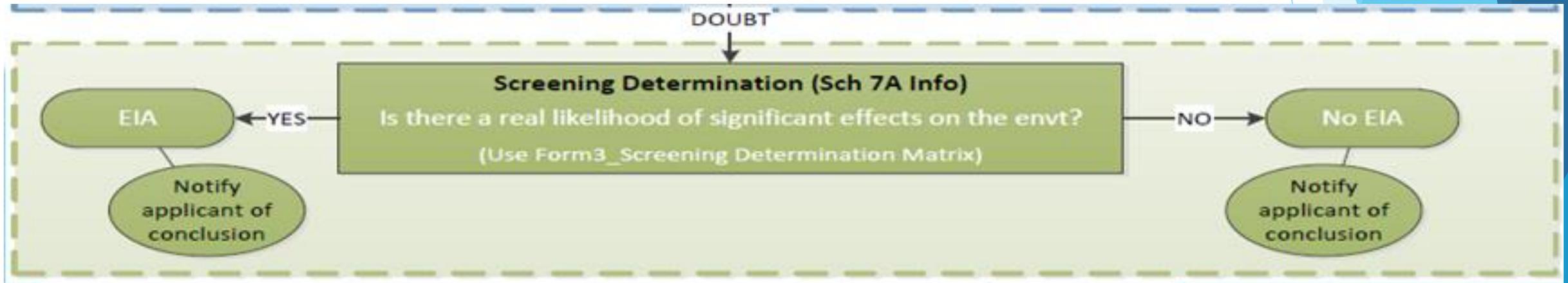
Screening Determination not required (no issues)

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Screening Determination not required (AA issues)

Having regard to the nature and scale of the proposed development it is considered that the issues arising from the proximity/ connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment) as there is no likelihood of other significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

EIA Screening – Screening Determination



EIA Screening – Screening Determination

- ▶ A Screening Determination must be carried out if there is **significant and realistic doubt** in regard to the likelihood of significant effects on the environment arising from the proposed development.
- ▶ Requirement **for Schedule 7A information** to be submitted by applicant to form basis for the screening determination
- ▶ The conclusion of the screening determination must be notified to the applicant within **8 weeks of receipt** of the Schedule 7A information.

EIA Screening - Screening Determination

Schedule 7A Information (1)

- ▶ **Schedule 7A information** is the information that needs to be submitted by the applicant to inform the PA/Board in deciding whether an EIAR is required. It comprises:
 - a. A description of the proposed development
 - b. A description of the aspects of the environment likely to be significantly affected by the proposed development.
 - c. A description of any likely significant effects of the proposed development on the environment.
- ▶ Where relevant, accompanied by:
 - d. The results of any other relevant assessment (eg SEA)

EIA Screening - Screening Determination

Schedule 7A Information (2)

- ▶ Applicant may also submit:
 - e) 'Mitigation Measures' - a description of any features or measures envisaged to avoid or prevent a significant adverse effect on the environment, and these may be taken into account when determining whether an EIAR is required
- ▶ When is Schedule 7A information actually Schedule 7A information?
 - ▶ ABP approach: Can be presented as a separate EIA screening report so long as it is clear that the information relates to Schedule 7A of the PDR (as amended).

EIA Screening - Screening Determination

- ▶ Should be carried out in accordance with the criteria set out in Schedule 7 P&D Regs:
 - ▶ Characteristics of proposed development
 - ▶ Location of proposed development
 - ▶ Types and characteristics of potential impacts
- ▶ The conclusion itself should be similar to the reasons and consideration for other decisions setting out:
 - ▶ the matters which were had regard to (as set out in article 103 or article 109)
 - ▶ details of the characteristics of the development and sensitivity of the location
 - ▶ description of any likely significant effects on the environment (if any)
 - ▶ details of any features or measures envisaged to avoid or prevent a significant adverse effect on the environment proposed by the applicant, which were taken into account (if relevant)

D. MAIN REASONS AND CONSIDERATIONS

EG - EIAR not Required

Having regard to:

- (a) The nature and scale of the proposed development, which is significantly under the threshold in respect of Class 10(b)(i) (Infrastructure – Dwelling Units) and Class 10(b)(iv) (Infrastructure – Urban Development) of the Planning and Development Regulations 2001 (as amended),
- (b) The location of the site on lands that are zoned for residential use under the provisions of the XX Development Plan 2013-2019 and the results of the strategic environmental assessment of this Plan undertaken in accordance with the SEA Directive (2001/42/EC),
- (c) The location of the site in an established residential area served by public infrastructure and the existing pattern of development in the vicinity,
- (d) The location of the site outside of any sensitive location specified in article 109(4)(a) of the Planning and Development Regulations 2001 (as amended) and the absence of any relevant connectivity to any sensitive location,
- (e) the separation distance between the site and the Archaeological Protection zone to the north and the results of the archaeological desk top study and investigations,
- (f) the guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- (g) the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report is not therefore required.

EIA Screening – Issues (1)

▶ Project Splitting

- ▶ Recent example of 3 adjoining housing applications

▶ Where development is part of a Masterplan

- ▶ No project splitting arises if each part of the masterplan development is subject to the EIA Directive (in terms of screening and/ or assessment).
- ▶ Screening must consider the effects of the proposed development cumulatively with other relevant development, especially existing or permitted elements of the masterplan.
- ▶ Example – Masterplan for urban mixed use development including 600 houses. Phase One for 200 houses must be subject to screening (as sub-threshold) but may be screened out if not considered to result in likely significant effects in the knowledge that the cumulative effects of Phase One will be considered once the masterplan build out reaches the point where the screening for EIA determines that the proposed development is likely to result in significant effects on the environment..
- ▶ Apple Data centre – Fitzpatrick v ABP [2017] IEHC 585

EIA Screening – Issues (2)

▶ Indirect Effects

- ▶ Inputs to the development (peat fuel source, utilities, infrastructure requirements), and
- ▶ Outputs from the development (electricity outputs, land-spreading associated with agricultural installations, wastes etc).
- ▶ Edenderry Peat burning power plant - An Taisce v ABP [2015] IEHC 633

▶ Extension of time

- ▶ *Wells (C-201/02)* - A decision which is necessary to prevent an existing development consent from expiring constitutes a new development consent within the meaning of the EIA Directive.
- ▶ Section 42 P&D Act

Examination by Competent Authority



EIA - Reasoned Conclusion

- ▶ The means by which the competent authority finalises its examination of the environmental impact of the project (Preamble 21)
- ▶ Limited to main significant effects, not all effects
- ▶ Specify the main significant direct, indirect and cumulative effects and how/ if these will be mitigated
- ▶ Must be up to date when the decision to grant development consent is made
- ▶ Must be integrated into the Decision to Grant or Refuse permission.

EIA - Reasoned Conclusion

Examples

- ▶ 301522 (Residential scheme) – landscape, cultural heritage, noise and vibration (construction), air (construction), water (surface water management).
- ▶ 301908 (Wastewater treatment) – population & human health (positive and negative), marine, bathing and general water quality, flooding, marine biodiversity, birds, traffic.
- ▶ 09.JA0042 (Flood relief scheme) – noise and vibration (construction), traffic (construction), biodiversity (construction), cultural heritage, landscape, land (positive impacts).
- ▶ 09.JA0041 (Landfill remediation) – air and noise (construction), ground and surface water (construction), biodiversity, traffic, archaeology.
- ▶ 303086 (Wind farm) – human health (shadow flicker), biodiversity, land & soil (peat), water, landscape and visual impact, noise and vibration.

Examination by Competent Authority



EIA – Content of Decision

	Grant	Refuse
Reasons and Considerations for the decision	✓	
Statement that the EIAR submitted and the information on file copy is sufficient to allow for an EIA in accordance with Section 172 of the PDA (The EIAR submitted identifies and describes adequately the direct and indirect significant effects on the environment of the proposed development.)	✓	✓
Reasoned Conclusion on the significant effects on the Environment	✓	✓
Details of features or measures to avoid, prevent, reduce or offset the significant effects on the environment	✓	
Statement that the Board is satisfied that the reasoned conclusion is up to date at the time of taking the decision	✓	✓
Summary of the results of consultation and the information gathered <u>in the course of the EIA</u> , and how those results have been incorporated into the decision	✓	✓
Mitigation Conditions – measures to avoid, prevent, reduce or offset the significant effects on the environment	✓	
Monitoring Conditions - measures to monitor the significant effects on the Environment	✓	
Reasons for materially altering the recommendation or conditions in the Inspector's report	✓	✓

EIA – Decision

- ▶ Where PA/ Board **agrees** with the evaluation in the planner/ inspector's report, it can adopt in full
- ▶ Where PA/ Board **disagrees** in part or in full with the evaluation/ reasoned conclusion in the planner/ inspector's report the PA/ Board's reasons and own considerations in this regard must be reasoned and recorded.
- ▶ Reasons must be given for materially altering or omitting an environmental **condition** in the planner/ Inspector's report

Trends and Observations - Screening

- ▶ Insufficient consideration given to whether proposal constitutes a sub-threshold development - Is it of a Class?
- ▶ Confusion regarding extensions and alterations (Class 13)
- ▶ Relatively few appeal cases in 'screening determination' – either EIAR submitted or ruled out at Preliminary Examination – exception being piggeries and waste facilities
- ▶ Abundance of caution – Are EIAR being prepared when the proposed development could be screened out?
- ▶ Requirement for AA does not trigger EIA!

Trends and Observations – Evaluation & Decision

▶ **Planner Reports**

- ▶ Inconsistency in approach to Reasoned Conclusion & legislative requirements
- ▶ Absence of Reasoned Conclusion

▶ **Planning Authority Notification of Decision**

- ▶ No change to reflect requirements of 2018 Regulations
- ▶ Reasoned Conclusion not integrated into the Decision
- ▶ Reasons not given for materially altering or not accepting conditions/ recommendation in planner's report.

Questions and Discussion

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