



**The SEA Directive Transboundary Consultation  
Just what is required?**

**John Linden MIPI**

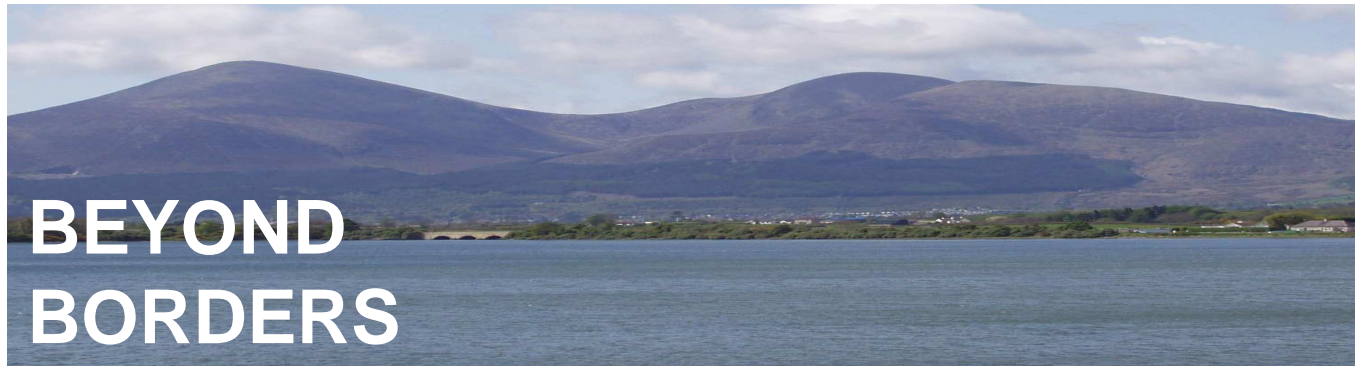
**Monaghan Market House Arts Centre**

**25<sup>th</sup> June 2010**



## **Guiding Principles of IPI Northern Branch**

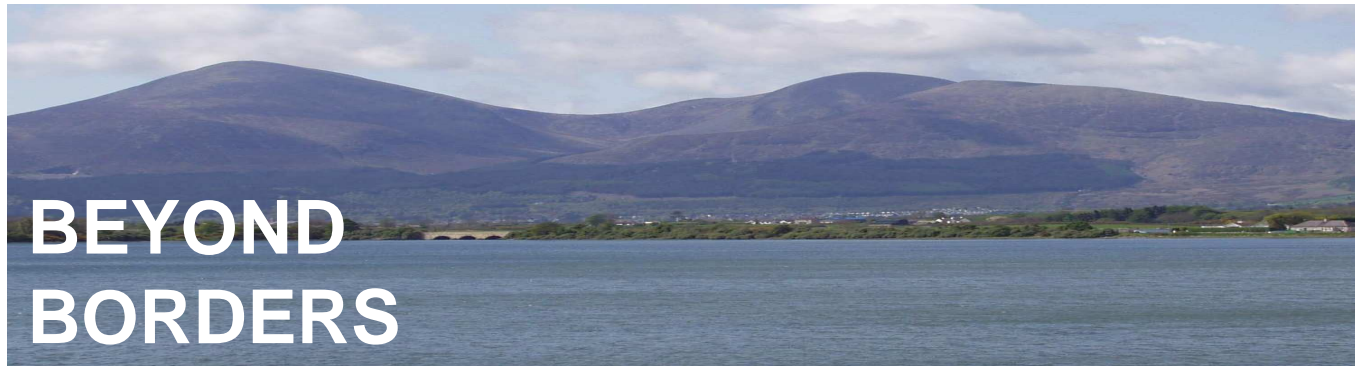
- To promote the practice of planning by learning from **shared knowledge & experience**;
- To explore **areas of common interest** in different planning systems; and
- To investigate opportunities for continued professional development with **related professional bodies**.



## **Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment**

The Directive, commonly referred to as the SEA Directive, came into force in 2004. Its objective is:

*“to provide for a high level of protection for the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development”*



### **Transposed into legislation in Northern Ireland:**

- Environmental Assessment of Plans & Programmes Regulations 2004 (EAPP Regs).

### **Transposed into legislation in the Republic of Ireland:**

- European Communities (Environmental Assessment of Certain Plans & Programmes) Regulations 2004; **and**
- Planning & Development (SEA) Regulations 2004



## **Core requirements of SEA Process**

- To be undertaken as an integral part of the plan making process (Art 4);
- Preparation of an Environmental Report (Art 5);
- Consultation – including public consultation (Art 6);
- **Potential Transboundary consultation (Art 7);**
- Statement produced on adoption of plan (Art 9); and
- Monitoring (Art 10).



## **Guidance on the SEA Process**

- European Commission's Guidance on the implementation of Directive 2001/42/EC, Sept 2003
- Guidelines for Regional Authorities & Planning Authorities (DoEHLG), Nov 2004
- Practical Guide to SEA Directive (ODPM, Scottish Executive, Welsh Assembly DoENI), Sept 2005
- UNECE Protocol on SEA – Draft Resource Manual, April 2007
- Websites for EPA, NIEA, Environment Agency, NGOs – such as RSPB and many others.



## **What is Transboundary Consultation?**

Article 7 of the SEA Directive makes provision for a Member State to enter into formal consultations with a neighbouring Member State concerning (a) the likely transboundary environmental effects of implementation of a plan or programme on its territory and (b) the measures envisaged to reduce or eliminate such effects



## **When is Transboundary Consultation required?**

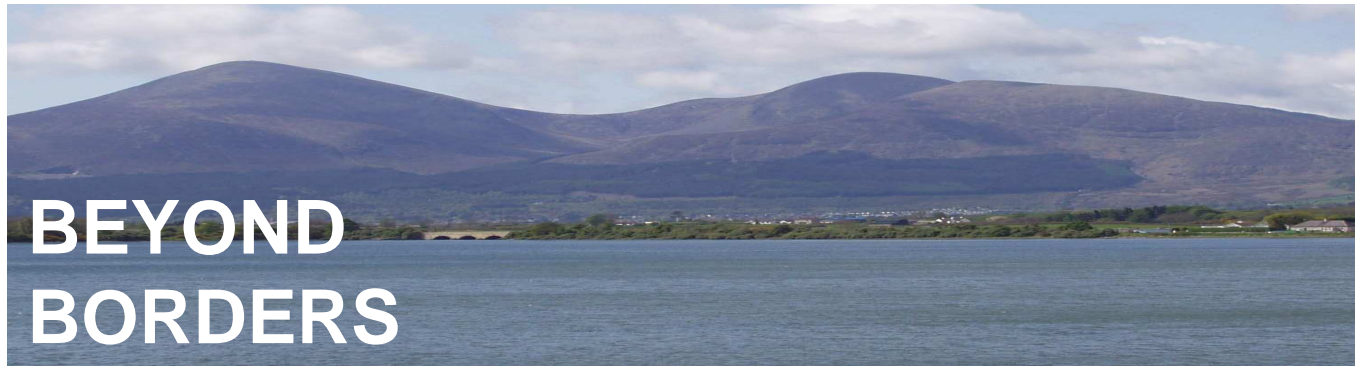
It will only arise where:

*“a Member State considers the implementation of a plan or programme...is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests....”*



## The “Beyond Borders” Recipe

- One EU Directive...
- Two adjoining Member States...
- Three sets of National Regulations...
- A lengthy Border...
- A number of plans (north and south)...
- Mix in limited experience...
- A sprinkling of guidance...
- and garnish with devolution and RPA in the north and greater delegated responsibility in the south...



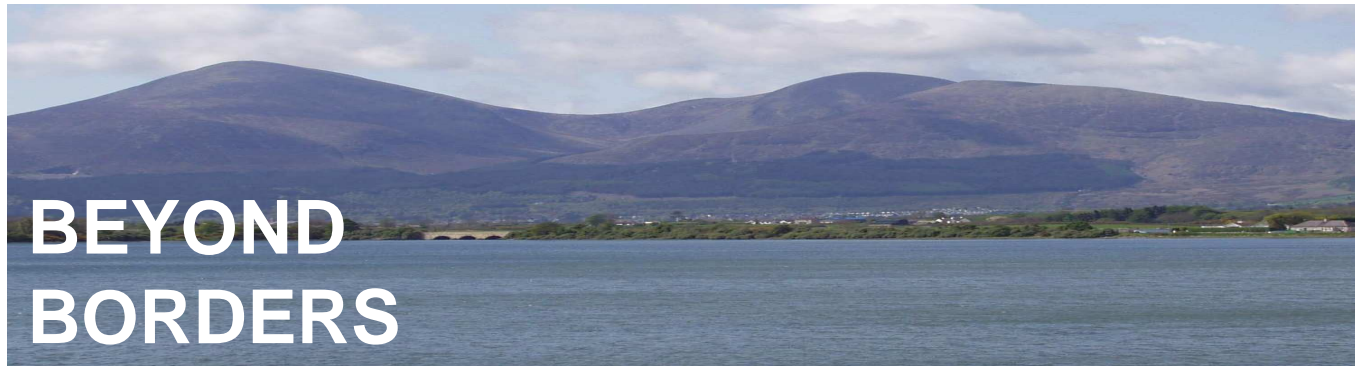
## **Outcome to date = Confusion**

- Lack of detailed knowledge;
- little consistency in approach;
- erratic consultation procedures;
- differing interpretations;
- different views on level of delegated responsibility
- wrong consultation destinations; and
- ultimately the potential for legal challenge (the northern obsession).



## **Guidance on Transboundary consultation**

- Para 7.25 of EU Guidance – *“Member States will need to ensure they have provisions in place which allow them to identify whether plans or programmes are indeed likely to have transboundary effects.”*
- DoEHLG Guidelines recommend Transboundary consultation for Regional Guidelines & County Development Plans along the Border
- UK Practical Guide is basically silent on the matter
- UNECE Draft Resource Manual – Promotes informal consultation between Member States



**This is a shared problem & requires a shared solution**

- DOENI and DoEHLG officials met to discuss how we could bring greater clarity & consistency of interpretation & application.
- Both Member States are aware of the objectives of the Directive and want to produce environmentally aware plans promoting sustainable development.
- Agreed to draft guidance that will be mirrored in both jurisdictions – currently well advanced.



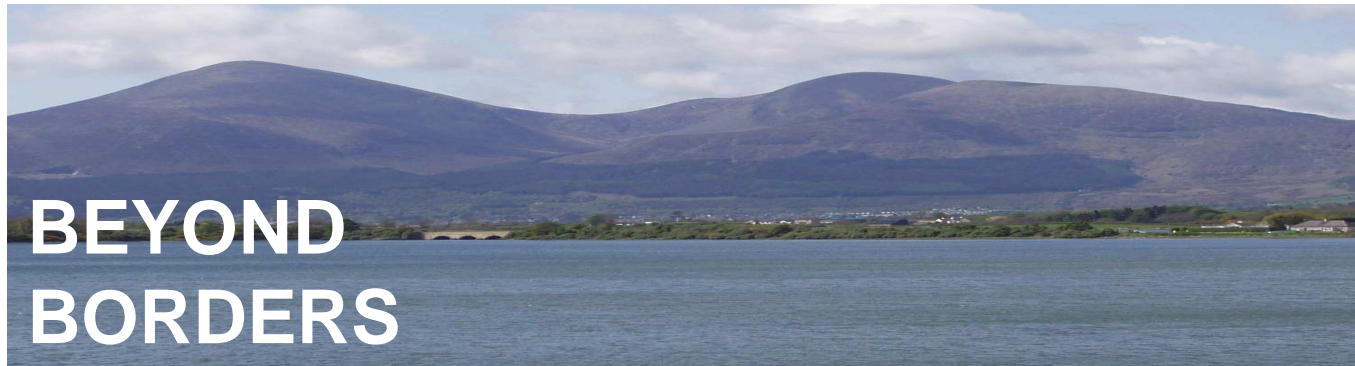
### **Best Practice Paper / guidance:**

- Sustainable planning which avoids or mitigates adverse environmental impacts both in the plan area and on the adjacent Member State.
- Encourages regular informal liaison and contact by plan-making authorities with adjoining authorities & environmental agencies on both sides of the Border.
- Contains agreed procedures for Formal Transboundary (TB) Consultation when considered necessary by either Member State,
- Will promote greater consistency through a mirrored three step approach.



## **Step 1 – Plan Making**

- Plan Making Authority (PMA) to liaise & source data from relevant NI / ROI bodies to determine likelihood of significant TB effects. Both the Scoping Report and Environmental Report should indicate the outcome
  1. No significant TB effects
  2. Potential TB effects which can be successfully mitigated to the extent they pose no significant TB effects
  3. In rare cases a plan might give rise to potential significant adverse TB effects with no or only limited mitigation proposed.



## **Step 2 – Confirmation of Findings with Member State**

- PMA confirms findings with relevant Government Department (DOENI or DoEHLG) who will:
  1. Agree with PMA; or
  2. Disagree & specify an appropriate course of action e.g. further analysis, consideration of (additional) mitigation, or potentially recommend consideration of an alternative policy approach.



### **Step 3 – Communication of Findings (part 1)**

In all cases where the Government Department confirms that a land use plan may have significant adverse effects on an adjacent Member State including those that can be successfully mitigated for by the PMA it will forward a copy of the draft plan and ER to relevant Government Department in the adjoining Member state with a covering letter.



### **Step 3 – Communication of Findings (part 2)**

On receipt of a draft plan and ER from an adjoining state the relevant Government Department will confirm if it wishes to enter into Formal TB consultation.

If so, then the procedural requirements of the Directive and transposing Regulations for Transboundary Consultation will be implemented.



## **Conclusion**

- The SEA Directive will continue to be fully implemented by DOENI and DEHLG in order to ensure the preparation and production of land use plans in both jurisdictions will not give rise to significant effects in the adjacent Member State.
- It will be a matter DOENI and DEHLG to liaise with each other and the relevant plan making authorities at regular intervals on the operation of the SEA Directive.