

# Sustainable Development Evaluation of Road Infrastructure Programmes and Projects

## Section 1.

### Environmental Impact Assessment and Transport Policy

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The Foundation for the Economics of Sustainability

Cad a dhéanfaimid feasta gan adhmaid? Tá deireadh na gcoillte ar lár  
'What will we do in the future without wood? The end of the forests has come'

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## SOCIO ECONOMICS

The Socio Economics Section of the Environmental RTDI Programme addresses the need for research in Ireland to inform policymakers and other stakeholders on a range of questions in this area. The reports in this series are intended as contributions to the necessary debate on Socio Economics and the environment.

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## Introduction

This report examines the performance of EIA in Ireland as applied to the NDP / ESIOP National Roads Programme, with specific focus on the area of Transport Policy.

The key objective of the research carried out for the report was to establish whether the current EIA process adequately addresses environmental issues arising out of NDP road infrastructure provision, as a function of transport policy.

## Scope

The manifestation of EIA is chiefly via the Environmental Impact Statements (EISes) required by European and domestic law to be drawn up by the project developer, being in most cases the Local Authorities through which the proposed road schemes pass, the National Roads Authority (NRA), or both.

Three main questions were asked:

- What is current national transport policy and how do EISes reflect this?
- Do EISes conform to EIA Guidelines (EPA & EU) flowing from the EU EIA Directive?
- Do the EPA Guidelines conform to the EU Guidelines?

## Methodology

Methodology for the report consisted of a detailed study of available documentation viz.;

- (i) EIS material for proposed M3 motorway, proposed N6 dual carriageway and N7 / N8 dual carriageway;
- (ii) ABP Oral Hearing transcripts and Inspectors' reports;
- (iii) The following documents:

*The Aarhus Convention: An Implementation Guide (UN, 2000)*

*Evaluation of Investment in the Road Network (Fitzpatrick Associates, 2002)*

*Growth: The Celtic Cancer (Feasta Review No.2, 2004)*

*Making Ireland's Development Sustainable (Dept. of Environment & Local Government, 2002)*

*Mid-Term Evaluation of the Economic and Social Infrastructure Operational Programme (Indecon International Economic Consultants, 2003)*

*The Mid-Term Evaluation of the National Development Plan and Community Support Framework for Ireland 2000 to 2006 (ESRI, 2003)*

*National Climate Change Strategy (2000)*

*NDP Economic & Social Infrastructure Operational Programme 2000-2006*

*Review of Transport Infrastructure Investment Needs (DKM Economic Consultants, 1999)*

*Solving Congestion (Professor P.B. Goodwin, University College London, 1997)*

*Statement of Strategy 2003-2005 (Department of the Environment and Local Government, 2003)*

*Trunk Roads and the Generation of Traffic (SACTRA / UK Department of Transport, 1994)*

## Transport Policy – Stage 1 Introduction and Overview

Stage 1 is concerned with EIA. It is useful to set this in a broad introductory context, which will be expanded upon in greater detail in Stage 2.

### *Environment, Economy & Transport*

Any appraisal of transport policy must first take account of the wider context in which decisions are made. To begin with, an important overall finding made across the documentation and sources researched for this project was a strong sense generally that the economy, and notions of economic growth, are superior to the environment. Effectively, the environment (or more properly, *our* environment) is seen as subordinate to the economy and as an entity to be managed. The concept that the economy may operate *within* our environment is not acknowledged on any level.

As an initial example, it was found that the Department of the Environment was strongly aligned with business in both *Making Ireland's Development Sustainable* (2002) and in its *Statement of Strategy 2003-2005*. Both documents are permeated with business and management terms:

[Sustainable development is]...about ensuring that we...enjoy economic prosperity, social progress and a high quality environment...delivering a better overall quality of life for all...(Making Ireland's Development Sustainable, p.2)

...we need a more real integration of environmental considerations into the activities of the economic sectors...(p.2)

...key initiatives...will include:

- working to break the link between economic growth and damage to the environment
- looking to business and the economic sectors to join in this work...
- working with the market for the environment...(p.2/3)

...this report focuses primarily on the environment-economy link....In doing this, it:...

- seeks to maximise the benefits in environmental terms from Ireland's "new economy" (p.7)

[The report]...seeks to build on the Strategy by placing it more fully in the context of the environmental challenges associated with the stage of economic development which Ireland has now reached...(p.7)

Ireland's environment is a vital national resource...is a key part of what attracts people and investment to Ireland. In short, a high quality environment is essential for economic progress and for sustainable development generally. (p.104)

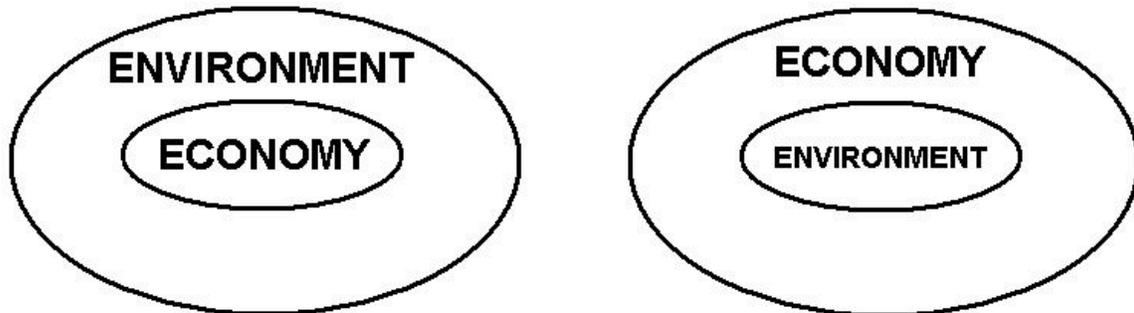
...promoting integration of environmental considerations into economic / fiscal and sectoral policies (Statement of Strategy 2002-2005, p.12)

...the Department's business planning process...The business units within the Department...(p.15)

Such a reversal of hierarchy is simply illustrated below (Fig. 1). It leads to a number of consequences, primarily that major infrastructural projects impacting on people and their environment are seen purely in economic terms. Attempts to express points of view outside this narrow economic viewpoint are restricted, e.g.:

...the relationship between roads and social inclusion would not appear to be a priority issue...(Fitzpatrick, p.D42)

And, in the NDP ESIOP, there are 73 references to the economy and economics, but only 26 to society and 5 to sustainability – a clear indication of where policy-makers' sensibilities have been directed to date.



*Fig. 1 – Environment – economy relationship (left) and its inversion (right)*

#### *Economic Growth and Traffic Growth*

Careful examination of the terminology used in broad transport planning at this level is instructive. One of the most compelling terms used, and used at all levels down to the road scheme EISes, was *traffic growth*. “Growth” implies an organic, natural process with very positive connotations. And, critically, it is a shared word with the term *economic growth*, which is ubiquitous in the various policy documents.

At first sight, there would seem to be nothing remarkable about these phrases, yet it is their apparent simplicity and the mantra-like repetitiveness of their usage which provide the key to understanding their inherent flaws.

For it is evident that positioning increasing car and road freight usage and dependency as *growth* and allying this with economic development, diminishes the serious impact of their effects on the perceptual level, and this is extremely important.

Also, as will be seen, within this paradigm of *growth*, increasing traffic levels become a “necessary evil”, a consequence of economic growth, and one which can and must be “managed” within that same framework of understanding.

Thus, as traffic worsens, the response is deal with the symptoms, not the *causes*. This leads throughout the documents studied to repeated references to “telematics”, “information provision”, “traffic management strategies”, and indeed to further “upgrades” of the road network to “deal with” the problems of increasing congestion, etc.

But also too, the whole notion of “growth” has been challenged by several commentators. What is growth for? Is it sustainable? Can we have a “steady state” economy rather than one which is continually “growing”? Can “growth” continue in view of the rapid depletion of resources?:

How can we sensibly talk of growth if achieving it means consuming even more resources and thus accelerating the pace of destruction? (Jopling, *Feasta Review 2*, p.5)

The system...is depleting our true wealth – our health, our society and our environment. It must be changed. (Cullen, Do., p.39)

Common sense alone refutes endless growth and rampant habitat destruction (Rotering, Do., p.54)

### *Conflation of Economic Growth and Sustainability*

Further, there seems to have been an association made between the concepts of sustainability on the one hand, and growth on the other:

As early as 1998 it was noted that Ireland's sustained and unprecedented levels of growth could be expected to maintain pressure on the environment...  
(*Making Ireland's Development Sustainable*, p.59)

Its [the NDP's] specific objectives are continuing sustainable national economic and employment growth...(Do.)

...the deficiencies [in infrastructure] translate into a constraint on environmentally sustainable economic growth...(NDP ESIOP, p.7)

If the programme of investment from 2000 to 2006 is to achieve its objective of sustaining current levels of economic growth...(Do., p.12)

However, *sustainability* and *sustainable growth* are not the same thing, and are seen by many to be opposing concepts, as above. The attempted conflation of these terms is striking and indicates either a lack of understanding, or possibly an attempt to subsume sustainability theory into the growth paradigm.

### *Sustainable Transportation*

What was the general attitude to the concept of sustainable transportation? Investment in sustainable transport modes such as rail, coach and bus would seem to be a logical course to follow if one were to follow a sustainable transport policy. Such a move is envisaged in the government's *National Climate Change Strategy*:

Key initiatives will include –...

- Fuel efficiency, demand management and modal shift in transport (p.1)

However, as an example, the Department of the Environment's document *Making Ireland's Development Sustainable* didn't discuss these possibilities. Instead, the focus is on road investment:

A high level of investment...aims to bring the road network to an acceptable standard by 2006 and to do so as part of an integrated transport policy, facilitating continued economic growth and regional development while ensuring a high level of environmental protection (p.49)

Policy is not about a determined shift from the car and HGV to other modes, but about:

...managing increasing volumes of road traffic...(p.47)

And, the same Department's *Statement of Strategy 2003-2005* doesn't discuss transport at all.

There was also a conscious attempt generally to conflate high investment in the road network with postulated environmental protection:

The objective of the Programme [NDP ESIOP] is to provide the physical infrastructure that will...

- improve capacity to protect and improve the environment (ESIOP Executive Summary, p.2)

The principal objectives of the National Roads Priority are - ...

- to contribute to sustainable transport policies...while ensuring a high level of environmental protection (Do., p.5)

A high level of investment...aims to bring the road network to an acceptable standard by 2006...while ensuring a high level of environmental protection (Making Ireland's Development Sustainable, p.49)

But *Making Ireland's Development Sustainable* contradicted itself in much the same way as the NDP when admitting (in relation to emissions reduction) that:

...individual vehicle gains are counter-balanced by the increasing number of vehicles (p.75)

The approach is firmly about more road construction to increase capacity and to reduce bottlenecks (NDP ESIOP) in the belief that improving the flow of traffic, but not actually reducing it, is the way forward and in fact is actually sustainable.

Where they were discussed (and coverage was minimal compared to roads) it was notable how the rail, coach and bus modes were lumped together with roads in the recurrent phrase *Roads and Public Transport* used in many of the documents. This is a deceptively innocuous expression and in fact masks a complex series of meanings, counterpoints and biases. Importantly, the phrase contains a *concrete noun* ("roads") allied with an *abstract noun* ("public transport"). This automatically foregrounds the road mode as being more important in the mind of the reader, since it is the concrete noun which is perceived more readily than the abstract. "Public Transport" seems rather amorphous and vague in comparison. The NDP was revealing in this respect where it dealt with proposed Mainline Rail investment:

...the transport of goods and people by rail is enjoying a renaissance in the *public mind*. It is widely *perceived* to be safer and more environmentally friendly than equivalent road transport (NDP ESIOP, p.25, author's italics)

Thus, insofar as road investment is tied to economic "realities", promotion of rail as a transport mode was found to be aspirational, abstract and perceptual – a significant contrast in language.

Any critical independent thinking on the nature and type of infrastructure most appropriate to Ireland, or even new types of infrastructure that may overcome the

mistakes historically made by other countries (such as large-scale road-building generating environmental problems and failing to solve the phenomena of traffic growth and congestion) were not countenanced; the priority appeared to be to copy, and to “catch up” with our European neighbours even if it meant blindly copying their mistakes.

As the NDP revealed:

The adequacy of Ireland’s existing stock of infrastructure must be measured against the extent and quality of infrastructure in other EU Member States and other countries with whom Ireland has trading relations. (NDP ESIOP, p.5)

These broad themes, summarised here, and their consequences, are discussed in depth in Stage 2.

### *A Mono-modal Transport Planning Structure*

If transport policy was generally found to be overwhelmingly roads-based – in the name of economic growth and reflecting an inverted relationship of the economy to the environment – then this was strongly reinforced by what can be termed a *mono-modal* planning structure.

This facilitates only road construction and excludes all other options. No local authority in Ireland has a wide-ranging transportation department. Instead, every single authority, without exception, was found to have either a directly-enabled Roads Department, or a Roads Department under the general Services umbrella.

(In two of the cases studied, there were local authorities with transportation departments in name only; more detailed examination of their roles showed they were roads-orientated).

This setup is reinforced by the existence of the National Roads Authority (NRA), which works in partnership with the councils, strongly reinforcing the roads-dominant planning framework. Fitzpatrick has remarked:

...the relationship between the NRA and the local authorities is, in an international context, unusual. (p.D35)

Importantly, both the Councils and the NRA have powerful broad-based planning and development mandates, in a way which neither Bus Éireann and Iarnród Éireann do not.

Additionally, there is no National Rail Authority, nor a National Bus Authority to act as counter poles to the NRA, nor indeed an over-arching National Transportation Authority.

In this way, roads are “the only option” in the planning process. There is no national fully integrated transport planning policy, and this was reflected across all the documents studied. Some did indeed call for transport integration, but this was always meant solely as internal integration between public transport modes, and in Dublin only:

There is a recognised need to improve the integration of public transport services in the Greater Dublin Area, both within and between the different modes. (NDP ESIOP, p.36)

The concept that there could be a high-quality fully integrated national transport network, planned holistically and inter-connected, was simply not on the table and represents an extraordinary omission of responsibility and extremely poor planning.

As will be seen in the next section, the mono-modal approach to transport planning was found to have had serious consequences for the EIA process.

## EIS Studies

Given the context outlined, EIA contains within it two measures which can positively influence the outcome of any project; *Consideration of Alternatives* and *Public Consultation*.

### *Consideration of Alternatives*

The EU EIA Guidelines on Scoping specifically refer to three components in the consideration of alternatives: *Alternative Location, Process or Design*.

Specifically, Section B6.2 refers to:

- different strategies e.g. to manage demand or reduce losses rather than develop a new resource
- different sites or routes for all or part of the project (p.21)

The same section also states:

Alternatives are essentially, different ways in which the developer can feasibly meet the project's objectives (p.21)

The EU Guidelines Checklist on Alternatives and Mitigation refers to:

- Measures to manage demand for goods or services
- Different approaches to meeting demand
- Locations or routes
- Processes or technologies (p.36)

Significantly, these themes are expressed differently in the EPA's EIA Guidelines:

Alternatives are sometimes examined during consultation (p.2)

For linear projects, such as roads and power lines, alternative routes may be the most important and effective mitigation strategy (p.12)

However, it is important, from the outset, to acknowledge the existence of difficulties and limitations when considering alternatives (p.12)

The EPA goes on to discuss these difficulties and limitations at some length:

EIA is only concerned with projects. Many projects...arise on account of plans, strategies and policies which have previously been decided upon...in some instances neither the applicant nor the competent can be realistically expected to examine options which have already been previously determined by a higher authority...(p.12)

It is important to acknowledge that other non-environmental factors may have equal or overriding importance to the developer, e.g. project economics, land availability, engineering feasibility, planning considerations. (p.12/13)

The consideration of alternatives also needs to be set within the parameters of the availability of land...or the need for the project to accommodate demands or opportunities which are site specific. Such considerations should be on the basis of alternatives *within* a site, e.g. design, layout. (p.13)

This careful qualification of the nature and intention of the consideration of alternatives in the EU Guidelines is at variance with another, shorter, section on p.17 of the EPA document:

The presentation and consideration of the various alternatives investigated by the applicant is an important requirement of the EIA process.

...alternatives may be described at three levels:-

- Alternative Locations
- Alternative Designs
- Alternative Processes

Later, alternatives are mentioned under the section dealing with mitigation measures:

Avoidance is generally the fastest, cheapest and most effective form of impact mitigation. Environmental effects and consideration of alternatives must be taken into account at the earliest stage...e.g. realignment of transport corridor to avoid residential property...(p.26)

What is noteworthy is the striking difference in tone and approach between the EU and the EPA's interpretation of alternatives. The former makes a clear distinction between consideration of alternatives and mitigation, seeing them as two distinct operations, and sees consideration of alternatives as a relatively straightforward matter.

In contrast, the latter makes the consideration of alternatives problematic, and also conflates this with mitigation, upon which there is a much heavier emphasis and a less negative treatment in the EPA document.

Also, the highlighting of the developer's non-environmental needs, including cited project economics, appears to indicate the same business-led approach to the environment seen in other documents and discussed earlier.

Finally, the EPA document makes no mention of meeting the need for the project by another means – a factor of considerable interest in transport policy – and thus is a significant omission.

#### *Consideration of Alternatives in the EISes*

The NDP ESIOP road scheme EISes studied for this report are in turn noteworthy for their surprisingly limited and inadequate consideration of Alternatives. Bearing in mind that two of the EU Guideline criteria for consideration of alternatives and mitigation are:

*Measures to manage demand for goods or services*                      and

*Different approaches to meeting demand*

the failure to embrace these directions is in sharp contrast to the relative thoroughness which other aspects of the EISes are carried out, particularly with regard to mitigation. However this is less unexpected in a context of mono-modal transport planning, as discussed earlier, and prescribed outcomes, which will be discussed later.

The M3 follows the precedent set by other EISes in evaluating alternatives purely in terms of alternative routes:

During the early planning phases of development of the N3 from Clonee to North of Kells many alternative routes for the motorway/dual carriageway were considered. (EIS Section 4.1)

During the early consultation stages discrete alternative route alignments were considered. (Do., Section 4.2)

Q. In terms of rail as a mode of transport, no consideration in the context of the section of the EIS relating to the consideration of alternatives was given, isn't that right?

A. That's correct, yes.

Q. There was no consideration to combine road rail provision in terms of satisfying the existing traffic demand, isn't that right?

A. That's correct, yes.

Q. It wasn't part of your brief?

A. It wasn't part of the brief.

(M3 Oral Hearing, Day 2 Transcript, p. 218)

The M7 / M8 made no discussion of alternatives at all and referred purely to different corridors:

The Corridor Option Selection Study identified five corridor options... (EIS Volume 1, p.7)

The N6 (Ballinasloe to Athlone portion) also makes clear that real consideration of alternatives is not on the menu in its interpretation of what an EIS is for:

An EIS...should provide details of the development and if significant negative effects are predicted it should identify changes to be made to the design to remove or mitigate these effects. (EIS Volume 1, p.1)

Although there is a section in the same N6 EIS entitled "Alternatives Examined and Route Selection", there is actually no discussion on alternatives at all. Instead the text refers to a "Do Nothing Scenario":

The impact of retaining the N6 in its current state will be to increase accident risk, increase transport times from Galway to Dublin, reduce any competitiveness that the area may have and increase traffic related pollution. (EIS Volume 2, p.15)

and simply concludes:

There is, therefore, a clear requirement for the provision of a new, high quality and safe route between Ballinasloe and Athlone. (EIS Volume 1, 15)

Even if one were to accept that alternatives considered in Irish road scheme EIA could just mean alternative routes, the M7/M8 appeared to believe the EIS started *after* the route selection process which should in fact be *part of* the EIS:

Following the selection of the Orange Route as the Preferred Route Option, the environmental impact assessment of the scheme commenced. (Volume 1, p.8)

Traffic forecasts in all the EISes studied assume a purely roads-based transportation system subject to unstoppable and uncontrollable “growth”, and have no interest in controlling or stopping this growth, seeking instead to passively accommodate it (“predict and provide”):

...traffic figures are forecasted to increase along the N3 in future years irrespective of whether the proposed scheme is built or not. (M3 EIS, Volume 2, Introduction)

A. ...The traffic forecasting methodology is based on a simple fixed matrix approach with no induced traffic or explicit mode competition effects  
(M3 Oral Hearing, Day 1 Transcript, p.183)

Q. The modelling process is what?

A. Is quite conventional. Modelling process is based on an observation of existing highway traffic movements.

Q. That is the basis of the model. You have taken the existing patterns of traffic movements and you have carried out your modelling exercise based on those conventional traffic movements, is that right?

A. It is based on the existing traffic movements plus traffic growth for the future which takes account of things like the four-fold expansion proposed with Navan City.  
(M3 Oral Hearing, Day 2 Transcript, p.130)

Recent economic growth in Ireland has led to more traffic on the roads. This, together with the increasing reliance on road transport for the shipping of goods for import and export, has severely tested the road network.

(N6 EIS, Ballinasloe to Athlone portion, Vol 1, p.7)

...detailed traffic modelling was carried out. This allows traffic predictions to be made in future years for the Do-Minimum option...and the Do Something option

(M7/M8 EIS, Vol 1, p.9)

Significantly, there is minimal discussion of road-based public transport in the EISes, suggesting the projects are considered purely in terms of private car and HGV traffic. The N6 (Ballinasloe to Athlone portion) and M7/M8 EISes talk in a very minor way about the impact of the proposed scheme on rail and coach modes:

It is not envisaged that the proposed Scheme will have any long term negative impacts on the rail network.

(N6 EIS, Ballinasloe to Athlone portion, Vol 2, Section 2, p.171)

There will be a decrease in journey time on the Express Service due to the new road. It is likely that the journey time for the rural service will also decrease due to a reduction in traffic volumes on the existing N6 which will be downgraded to a regional road but is likely to remain the preferred route for local buses between Athlone and Ballinasloe  
(Do., p.172)

The enhanced road network will generally result in greater reliability for regional bus services operating along the N7 (Limerick–Dublin) and along the N8 (Cork-Dublin) routes

(M7/M8 EIS, Vol 3, p.9)

Interestingly, the first statement is in direct opposition to the opinion expressed by Indecon earlier, wherein investment in the rail network should be tied to that in the road

network, thereby implying that there is indeed an impact on the former. The next two extracts make it clear that only some coach services may benefit from the new roads, with other services using the existing roads, and proffer an unsupported assumption that these would be facilitated by reduced traffic volumes on the latter. This is inconsistent with the ongoing global traffic growth scenario generally employed, as discussed above.

The EISes additionally display a “foregone conclusion” mode of discourse. Firstly, the M3 resorts to an extraordinary circular justification of itself:

The improvement of the N3 from Clonee to North of Carnaross is identified as a development objective supporting the provision of a new motorway on the N3 from Clonee to Kells  
(M3 EIS, Vol 2, Section 1.2)

Secondly, in the M3, N6 and M7/M8 EISes, repeated use is made of the future tense – the road “will” be advanced as a PPP, the road “will” be constructed in advance of other schemes, the road “will” be developed as part of the primary network. In fact the road “will” not do anything unless approved in the planning process – this basic democratic aspect appears not to be acknowledged or understood.

Thirdly, the projects are presented as pre-existing “needs” (“The Need for the Scheme”). This sets up an implied pressure for approval prior to the scrutiny of the road proposal, and the use of this kind of language should be carefully noted.

#### *Public Consultation - Scoping*

The EU EIA Guidelines on consultation during scoping (as separate to the later consent process) describe how the Public can participate, and are derived mainly from Article 6 of the EU EIA Directive:

In all forms of scoping, consultation with environmental authorities, other interested parties and the public forms an important part of the process. Consultations will help ensure that all the impacts, issues, concerns, alternatives and mitigation which interested parties believe should be considered in the EIA are addressed (Section B5, p.17)

- a Scoping Workshop at which participants work together through a structured programme to identify matters to be addressed by the EIA process...
- establishing an expert or community based Scoping Group who will continue to oversee the environmental studies throughout the process...(Section B5.2, p.18)

All participants in scoping should be invited to comment on the project design, on its potential environmental impacts and their mitigation, and on any alternatives which they consider should be investigated. (Section B5.2, p.18)

- ensure that the views expressed are taken into account, and are seen to be taken into account, in planning the environmental studies and preparing the EIS, and that an explanation is provided if recommendations are not followed. (Section B5.3, p.19)

Again, the EPA Guidelines are somewhat different in interpretation:

For EIA purposes most consultation takes place with the competent authority, specialist agencies and those parties that are most likely to be directly affected.

Public consultation is used principally where the affected population is likely to be very large and/or difficult to identify. To be of value such consultation must have a sufficient time allocation and be expertly structured to ensure clarity and consistency. (p.2)

Under the section on Public Participation the EPA Guidelines state:

Decisions are taken by the competent authorities in consultation with the public... The structure, presentation and the non-technical summary of the EIS as well as the arrangements for public access all facilitate the dissemination of the information contained in the EIS. The core objective is to ensure that society is made as fully aware as possible of the likely environmental impacts of projects *prior to the granting of consent*. (p.8)

This is developed further on:

Public participation enhances the effectiveness and accountability of the process by increasing the explicit consensus of the decision making process. Local historians, farmers, wildlife experts etc. are an invaluable source of local information and if possible can be identified and consulted. Availing of opportunities for participation prior to consent is the key to influencing the development. (p.11)

...the public can also participate in the EIA process by:

*Making Observations* or submissions in response to any preliminary invitations to participate such as scoping, evaluation of alternatives or document review... The most useful form of participation is to inform the applicant of concerns, as early as possible so that the EIA process can include and attempt to address them.

*Direct Participation*, wherever possible, is more likely to result in accurate and focused communications between applicants and members of the public – though community organisations and public representatives can provide invaluable facilities for organising and facilitating such participation. (p.11)

What's clear here is a contrast in emphasis, with the EU Guidelines implying an outward-focussed, dynamic approach by the project developer to public participation, whereas the EPA document is considerably more passive in its approach, viewing the public mainly as observers and as sources of information to the developer.

This passivity is also evident in the EISes:

The public was invited to take part in a number of consultation sessions during the development of the proposed scheme... Total attendance at these sessions was in the region of 4,000 people... where officers of Meath Co. Co. and the Consulting Engineers were available to answer questions and listen to objections and suggestions with regard to alternative routing etc.... Where feasible, adjustment of the alignment to minimise impact on land take was accommodated in the scheme design. (M3 EIS, Section 1.7.1)

The purpose of the Second Public Consultation was to present a series of different route options, which were derived from the route corridors presented at the first Public Consultation and to describe the logical progression which led to the selection of the EPR for the scheme... (N6 EIS, Ballinasloe to Athlone portion, Vol.1, p.16)

1. Consultations with the public – the public were invited to take part in a number of consultation sessions during the development of the proposed scheme.  
(M7/M8 EIS, Vol.1, p.3)

The picture here is essentially one of a disempowered public being invited to attend as passive observers at a *fait accompli*, with genuine consultation – in which unexpected outcomes may occur - being confused with simple information delivery.

Importantly, it is also clear that not fully engaging with the objective of public participation in scoping leads to problems at the consent stage, with the Oral Hearing being used as the forum for issues that should have been examined at the scoping stage:

Could you just explain a little further, and again this is just because I am not sure of each person's role, this is the only forum that the public have to speak to those who are actually building the motorway or those who have an input...  
(M3 Oral Hearing, Day 4 Transcript, p.119)

### *Public Consultation - General*

The Oral Hearing is also a passive process, not an *active* one since hearing is a passive activity. Coming at the end of the sequence, being framed within a passive paradigm, and occurring in a deeply roads-biased environment, the intention of the Oral Hearing is widely perceived to be *to push the project through in an orderly manner*. **Listening** – wherein the outcome may be changed, or the project heavily modified – is not on the agenda. Accounts of public disempowerment and a pronounced democratic deficit are widespread in relation to the Oral Hearings held into many of the state's road projects.

The most common problems cited by Objectors in the transcripts for the M3, N6 (Galway to Ballinasloe portion) and M7/M8 were deficiencies in the EISes, a lack of information, failure to observe due process and non-consideration of legitimate public concerns.

Examples in the case of the M3 and N6:

- The Inspector twice ruled the Hearing could proceed, despite the contesting of the legality of the Meath County Development Plan at the time, and despite a crucial lack of information from Meath Co. Council as to the specification and location of proposed quarrying sites for the extraction of material [M3];
- The Inspector noted but did not act upon serious concerns raised by Counsel for some of the Objectors as to the fair conduct of the Hearing [M3 and N6];
- Galway Co. Council had to provide significant additional data to the Hearing [N6]

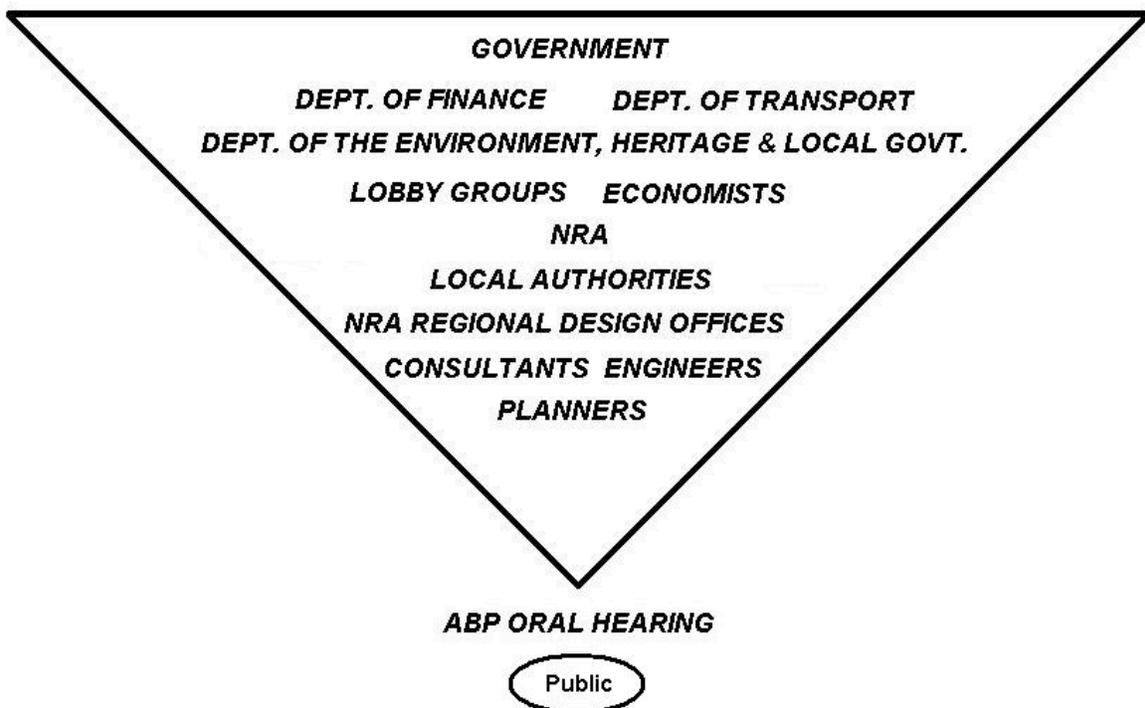
Examples in the case of the M7/ M8:

- Insufficient information was provided by Laois Co. Council on the impacts of the scheme on the Special Area of Conservation (River Barrow and River Nore), and repeated requests for this information to be provided to the Hearing in line with the EIS requirements were dismissed by the Inspector as “not relevant”
- Information on a traffic model used to predict impacts on one of the local affected roads was not supplied when promised
- A marked reluctance was displayed on the part of agents for Laois Co. Council in dealing with citizen's concerns such as access and drainage, and alternative proposals regarding the former
- Information on a proposed water quality management plan belatedly supplied to the Hearing by the Co. Council was not properly labelled nor sufficiently detailed

- The Inspector proceeded with the Hearing in the absence of a necessary document on a species protection plan stating “I want to make some progress this evening”
- One agent for the Co. Council stated “I don’t think this is the forum for negotiation”
- The Inspector allowed the Hearing to proceed in the absence of a key witness, stating that sub-witnesses could cover his areas. But when the first sub-witness was questioned, they referred their answers back to the absent key witness
- There was no dust minimisation plan in the EIS
- The Co. Council prepared mitigation information *during the course of the Hearing*
- The Inspector moved a questioner on despite their question not being answered
- A Council representative said “we are most anxious to try to proceed with this inquiry and an awful lot of time has been wasted today”

There is also extensive evidence of counsel having to ask and/or re-phrase questions repeatedly in order to get meaningful answers from local authority staff and their consultants. This isn’t helped by the quasi-legal confrontational manner of the Oral Hearing format, with opaque procedures which also alienate and intimidate ordinary members of the public. The process is also inherently unfair, with objectors having to usually meet their own costs and take time off work to attend Hearings; whereas the promoters are employed to attend full-time and have access to legal and technical advice.

And, as mentioned earlier, genuine public involvement is too late in the planning sequence, so that their concerns are obviated and referred backwards up the chain – where there is currently no authentic consultation. This generates conflict, leading to negative behaviour and outcomes at the Oral Hearings.



*Fig 2 – The “weight of authority”: the mono-modal structure of transport policy and planning and the manner in which EIA public consultation is carried out in Ireland is disempowering, stressful and non-democratic for the public*

## Assessment of Inspectors' Reports

Further insight into the workings of Irish road scheme EIA is available via the reports carried out by An Bord Pleanála's Planning Inspectors at the end of the Oral Hearing process and EIS evaluation.

The reports for the M3, N6 and M7/M8 are noteworthy for their very different approaches. In the case of the M3 its Inspector used a surprisingly opinion-driven format:

The EIS goes on to point out that the making of a Toll Scheme would be determined in accordance with the procedures in the Roads Act 1993 and the Planning and Development Act 2000...and this, *in my opinion*, removes any necessity for a reference to tolling having to be included in the CDP itself. (p.921, author's italics)

The other issue he raised, that of the lack of a reason for the Variation on the advertisement, was discussed in detail in [ ] cross-examination of [ ] in Section 21.8 of this Report when [ ] stated that the reason was given in the detail in block capitals on the advertisement dated 19 December 2001. *In my opinion* this complies with the requirements of Section 13 (3) (a) of the Planning and Development Act 2000. (Do., author's italics)

*It would seem* from the basis given for the socio-economic in the EIS that [ ] requirement for a witness to have either sociology or economic qualifications to deal with what are, generally, the effects from possible severance of access to community travel patterns *appears to have been an un-necessary criterion and could be likened to using a sledge-hammer to crack a nut.* (p.924/925, author's italics)

Within this approach, the Inspector also makes some unusual contentions:

My ruling rejecting [ ] request is given in Section 14.9 of this Report and followed from [ ] admission that he had failed in his application to obtain injunctive relief in the High Court. From a recent Notification on the outcome of Legal proceedings (06/06/03) *it appears that this application to the High Court challenging the validity of the CDP has now been determined by the action being withdrawn.* It should also be noted that another challenge to the validity of that CDP, *but based on somewhat different grounds -- Smith and McEvoy v. Meath County Council --* was dismissed by the High Court in October 2002. (p.921, author's italics)

As outlined in Section 18.3, in the light of the information outlined at section 8.4 in each of Vols. 3A to 7A of the EIS on the likely quantities of imported fill and the need for further legislative procedures in relation to non-licensed sites *and that the Council were assembling information on this issue*, I ruled that *there was sufficient information available in the EIS, as presented, to allow the Hearing to proceed.* (p.923, author's italics)

I am satisfied that, *notwithstanding the views expressed by [ ] about the competence of the Council witnesses in his submissions, and the concerns expressed by [ ] about the lack of references to the activities and facilities within [ ] in the EIS and their concerns about the noise measurements taken there*, the data presented in the EIS and supported by the direct evidence offered by the Council *is of sufficient detail and its conclusions are sufficiently clear so that a decision can be made on the likely effects on the environment by the proposed road development.* (p.925, author's italics)

Cont.../

While no specific assessment for induced traffic was included in the traffic forecasts developed by either [ ] in his reports or by the Project Team, *the SATURN model used by*

*the Project Team allowed for a more extended network to be modeled than was in [ ] model and it also took trip distribution changes into account, which was not possible in [ ] model. The SATURN model is a robust model that has been used extensively for traffic forecasting on many recent road proposals in Ireland...*  
(p.935, author's italics)

Also, considerable time is spent re-stating the position of the project developer and current planning policies in the sections towards the end of the Report where the Inspector is giving his comments. The following paragraphs and extracts are characteristic:

The Council's evidence in relation to Planning issues referred to the Transportation policies in the 1994 County Development Plan at 2.4 *which included the provision that the Council would implement the relevant road development proposals that formed part of the programs submitted to the Commission of the European Communities to facilitate regional and national development.* This was further detailed in the Roads Program objective at 3.7.2 which stated that National Primary and Secondary roads would be improved and Motorways provided in locations in line with national road policy and programs submitted to the Commission of the European Communities.

The need for improvements to the N3 as a dual carriageway from Clonee to Kells with dual carriageway bypasses for Dunshaughlin and Navan and as a wide two lane from a bypass of Kells northwards was identified in the Roads Needs Study published by the NRA in 1998. The National Development Plan 2000-2006 includes a reference at 4.12 to the N3 being a route where further major improvements formed part of the development strategy for national primary roads.

It is clear from the objectives in the various Development Plans referred to above and, in particular, in the Meath County Development Plan of 2001 as varied, and to the strategies outlined from the National Development Plan 2000- 2006, in the Strategic Policy Guidelines and in the DTO "Platform for Change", that the proposal to construct an off-line roadway as an improvement for the N3 as a Motorway from Clonee to Kells and to continue as a new off-line road from Kells to rejoin with the existing N3 at the county boundary north of Carnaross, including a Bypass of Kells on the N52, conforms to the Transportation Policies and Objectives of the Development Plan.  
(p.934, author's italics, above)

As will be described subsequently in Section 149 of this Report, the CDP of 2001 clearly makes provision for a motorway between Clonee and North of Kells...(Do.)

Further, in several places the Inspector continues to let the developer "do the talking" by simply re-quoting their statements:

[ ] in his closing submission referred specifically to the argument advanced by objectors of the Corridor Selection Report following the Route Selection Report when the NRA Guidelines suggested a different sequence should have been followed, and he set out the reasons for the chronology followed by the Council which are logical in the context of the way the scheme was developed over 1999 to 2002. (p.928)

[ ] explained in his direct evidence and in cross-examination the context in which the route corridor alignments had been assessed and how the decision by which the preferred route was selected came from a balancing of the various factors involved. (p.929)

As [ ] pointed out in his closing submission, there is no specific requirement in the Roads Act 1993, as amended, for Public Consultation, per se, in the preparation of Motorway Orders, CPOs or EISs. (p.930)

As in the EIS for the M3 (and the others), alternatives considered by the developer are defined only in terms of alternative routes. The Inspector does not address this failing, and even issues contradictory findings in terms of the adequacy of the consideration of the alternative routes themselves:

The [ ] referred to a possible alternative that would run to the east and north of [ ] which they had previously suggested to the Council and I asked [ ] about the investigation of the alternative, see Section 115 of this Report. In a response submitted with other documents on Day 28. [ ] confirmed that no specific study of that suggestion had been made but said that it was similar to the alignment assessed as part of route B3 in the route selection process. (p.936)

However:

While it is clear from the submissions made by objectors from the [ ] areas that they considered the wrong route had been selected, *it is equally clear that alternative routes were fully considered by the Council in the process that lead to the "Preferred Route" being proposed* as the road development for which the EIS was prepared. I am satisfied from the evidence in the documents and given at the Hearing that the requirements of Section 50 (2) (d) of the Roads Act 1993, as amended, were fully complied with for this proposed road development. (p. 930, author's italics)

I am...satisfied, from the evidence presented and from the cross-examination of the Council's witnesses, that possible alternative locations to the route finally proposed were given careful consideration. In addition to the details of alternatives presented in Vol. 2 of the EIS, evidence was given by the Project Engineers...on the various alternatives considered in their respective Sections...I am satisfied, as previously referred to in Section 145 on the requirements of Section 50(2)(d), that possible alternatives were adequately considered. (p.937)

Disturbingly, unlike in the M7/M8 Inspector's Report, the M3 Inspector dismisses a proposal for an alternative route legitimately submitted as part of the Hearing process, on the narrow grounds that it is not in current development plans:

[ ] in their submission to the Hearing, see Section 71 of this Report, outlined their proposal that there should be a new route which combined the N3 and N2 routes to provide for through or long distance traffic as an alternative to upgrading the N3 by the M3 proposal of the Council...

There is no provision in the Meath 2001 County Development Plan for such a proposal which contains proposals at Section 3.5.2 (ii) for improving both the N3 and N2 as separate schemes. At my request, the Council made inquiries with Fingal County Council whose response was referred to in a document handed in by the Council on Day 25. This confirmed that...there were no plans to link...with an additional radial route emanating from Dublin. No separate study to investigate the provision of an interchange junction on the M50 between the existing N2 and N3 junctions had been carried out. Fingal suggested that it was doubtful there was sufficient space on the M50 between the N2 and N3 junctions to service a combined N2/N3 radial route...Having regard to this information...and the fact of there being no provision for such a combined route in the County Development Plan, I do not consider that the [ ] proposal for a combined N2/N3 scheme can realistically be seen as a viable alternative to the M3 as proposed in view of the uncertainties associated with a junction onto the M50. (p.938)

Conversely, where rail is discussed, the Inspector is surprisingly casual in considering this important mode – even though it too is in the County Development Plan -and has no

qualms about the fact that the proposed motorway will infringe upon the alignment of a parallel disused rail line:

The proposal to re-open the disused **railway line from Clonsilla to Navan**, as referred to as a Public Transport objective in the 2001 County Development Plan and in the SPGs was referred to in a number of submissions and objections and the point was made that the development of a rail link between Navan and Dublin should be promoted instead of the development of a motorway. This suggestion does not take account of the strategies identified in the National Development Plan at 4.9, 4.10 and 4.12 and the fact of the N3 being a link to regions beyond Navan and outside of Co. Meath. There is also the issue of a feasibility study having been identified in the Development Plan as being a necessary first step in the provision of this rail link and, as I understand the position, such a study has not yet been completed. (p.987, Inspector's bold)

The Council gave evidence that the route selected for the proposed road development had, insofar as it was practical to do so, maintained a corridor along the disused rail line. Arising from concerns expressed, mainly by the [ ] representatives, I asked that a set of Maps be submitted which showed the interface between the proposed M3 and the railway corridor and this Book of Maps was handed in on Day 25, as listed in Appendix 4 of this Report. This shows the provisions that have been made for a future railway alignment *but it has been necessary in some sections to incorporate sections of the disused rail line where it was necessary to adjust the proposed road alignment due to environmental factors*. Evidence was given that Iarnród Éireann had accepted the need for these "incursions" to be made *and that an amended rail corridor would have to be acquired in those areas, when the time comes*. (Do., author's italics)

The Inspector's view of Objectors is also instructive:

As was referred to in the commentary on the compliance of the EIS with the requirements of Sections 50 (2) & (3) of the Roads Act 1993, as amended, the validity of the EIS was questioned on a number of occasions during the Hearing both from legal or quasi-legal aspects and also on the basis of the wrong route having been selected. There were also concerns expressed about aspects of the Public Consultation and suggestions that these *perceived "defects"* had an effect on the selection of the preferred route. (p.920, author's italics)

As well as having their concerns parenthesised, objectors are also unduly required to be able to offer rebuttal evidence in order for their concerns to be valid:

[ ] said his classification of the impact from the Hill of Tara as being of minor significance came from the view from the Hill being very expansive with a view over a very wide area of the surrounding landscape available and the road and interchange being sited low in valley areas which were well screened locally and from the Hill of Tara. It should be noted that while there was strong criticism of these opinions, no rebutting evidence on landscape or visual impacts was given at the Hearing. (p.971)

While [ ] called a number of witnesses on behalf of [ ], no specific evidence to rebut either the details in the socio-economic section in Vol. 4A or [ ] direct evidence were given other than for references to the lack of inclusion of the activities and facilities within [ ] by [ ] and [ ] (p.925)

At the time and as set out in Section 63 I stated that neither [ ] or [ ], who had supported his submissions, had offered any rebutting evidence and that until all sides had been heard the points being raised could not be properly considered. On that basis and in equity to the other objectors who wished to make submissions and to cross-examine the Council witnesses, [ ] request for an adjournment was not acceded to. (p.924)

At least the M3 Inspector commendably acknowledges the difficulties that arise at Oral Hearings due to the failure of project developers to engage in meaningful and adequate public consultation prior to same:

A further exhibition in the latter part of 2001 when the adjustments to the route had been incorporated, and when the Corridor Selection Report was apparently available, could have provided for some of the concerns expressed at the Hearing to be ventilated, and might possibly have satisfied some of those queries.

The issue of availability of documentation and information from the Council was raised by a number of people, particularly at the early stages of the Hearing. [ ] in his closing submission referred to this and pointed out that the Council's witnesses had made every effort to be open and helpful in providing details of what was being proposed. It was apparent at the Hearing that that was so, but many of the points made about the perceived difficulty in obtaining answers to queries raised with the Council related to the period while the scheme was being prepared and before the Hearing commenced.

This issue is not a matter for consideration in relation to the Road Development itself. However, from the frequency it was raised at the Hearing it is something that the Council might wish to consider in the context of the procedures used when responding to queries from the public, and as a part of their focus on customer service. (p. 931)

Moving on to the N6, the Inspector in this case presents his report in a way that does not differentiate between his comments, the assertions of the developer in the EIS and submissions by objectors. This very odd approach makes the report extremely confusing to read, and like the M3, undue weight is given to the developer. The following is typical:

The proposed scheme was stated by Galway County Council to be in compliance with policies set out in the National Development Plan (2000-2006) and the National Road Needs Study. This particular section, Galway/Ballinasloe (N6), is part of one of five routes identified for early development as a motorway/high quality dual carriageway road. The provision of the proposed road will underpin Galway's identification as a 'Gateway' in the National Spatial Strategy (NSS) 2000-2020 where significant projected growth is expected which will facilitate balanced regional development.

The Development Plans for Galway County, Galway City, Roscommon County and Ballinasloe Town have policies and objectives which are supportive of the proposed scheme. (p.100)

A number of points were made by some objectors at the oral hearing with regard to the choice of route especially in relation to the choice of route south of Ballinasloe. The northern route was considered to be preferable for a number of reasons by the objectors. However, as indicated above, the southern route was selected based on engineering, environmental and economic factors.

The data presented in the Constraints Study Report and the Route Selection Report together with the evidence tendered and submissions made at the oral hearing support the selection of the preferred route. (p.103)

And, if the M3 report seemed unduly based solely on the Inspector's opinions, the N6 at the other extreme displays a conspicuous *laissez-faire* approach: Cont.../

Evidence was given at the oral hearing on behalf of the four planning authorities involved, i.e. Galway City Council, Galway County Council, Roscommon County

Council and Ballinasloe Town Council that the proposed scheme is in compliance with the Development Plans of each of the planning authorities.

In addition the scheme is in compliance with the Galway Planning and Transportation Study and the Western Regional Planning Guidelines. At a higher level the scheme accords with the provisions of the National Development Plan and the National Spatial Strategy. (p.113)

Issues raised by the objectors were wide ranging and detailed. Some were directed towards clarifying aspects of the scheme whilst others were in the form of requests to alter aspects of the proposed scheme. A relatively small group of landowners continued to object both in principle and in relation to specific land parcels to the compulsory land acquisition, whilst others focused their objections on perceived deficiencies in the E.I.S.(p.105)

The report is written almost entirely in this purely descriptive fashion with very little critical comment from the Inspector. Where concerns arise, these are outlined but are then set aside:

Statutory Bodies and Non-Governmental Organisations (NGO's) were also consulted. Whilst some reservations were expressed about the public consultation process at the oral hearing by some objectors, given the scale of the project and the length of the proposed road the objections were limited and were focused on one aspect of the scheme. Representations arising from the consultation process were, according to the Council, taken into consideration in the subsequent route corridor selection and alignment design stages.

*The public consultation process appears to have been comprehensive and satisfactory.* (p.102, author's italics)

This submission made on behalf of [ ] and [ ] took issue with various rulings of the Inspector in the conduct of the hearing including the setting of time limits, the non-calling of particular employees of the local authority as witnesses, etc. Fair procedures were not complied with.

*The assertions made in this submission are not accepted.* (p.119, author's italics))

Again, there is no cognisance of the need to meaningfully appraise Alternatives, and peculiarly, there is no mention whatsoever of climate or climate change in the report, which would have been expected given the relative currency of the project (2004/2005). (Incidentally, climate change was mentioned in just two lines of the M3 Inspector's Report). Throughout, the proposed N6 scheme is taken purely at face value:

The evidence tendered by the Council clearly demonstrated the need for and scale of the scheme based on current and projected traffic flows. The standards to be achieved in terms of level of service and design were demonstrated as being logical and in accordance with National Policy as set out in the National Development Plan as well as facilitating the Implementation of the National Spatial Strategy whilst complying with the Development Plans of the relevant planning authorities. (p.105)

As in the other Reports, there is no consideration that traffic volumes could be reduced by enhancement of public rail and coach-based transport along with, for example, an upgraded existing road<sup>†</sup>. "Predict and Provide" is very much in evidence:

- Traffic growth predictions in the National Road Needs Study (1996/97) were considered low. The NRA's "Future Traffic Forecasts 2002 to 2040" updated these. Flows on the

road systems have increased on the national network. The Galway to Dublin road shows a 6% annual increase in the early years. The National Road Needs Study figures were adjusted upwards by 15%. (p.19)

[† The author happened to submit such a proposal to the Hearing in question, but it was never discussed]

Finally, as in the M3, the Inspector does not appear wholly sympathetic to objectors, particularly in this case those who may have been unable to attend the full duration of the Hearing due to say, employment or other reasons. Their contributions are not discussed:

Written submissions were received from a number of objectors some of whom attended the oral hearing for limited periods or did not attend at all. *These have been assembled in a file and are numbered S.1. to S.10.* They include a submission from the Council which deals with errata.

*Account has been taken of the contents.* (p.120, author's italics)

Of the three projects studied, the Inspector's Report for the M7/M8 is the clearest and frankly, the most transparent. Here, the Inspector commendably separates out his comments in a distinct sub-report, and within this, sets out the project details in small sections and deals with each in turn:

**1.4.6** In the following chapters paragraphs in 'bold' type are in general comments and conclusions on the information supplied. (p.6)

This approach demonstrates to the reader genuine engagement with the process, and makes clear the independence of the Inspector in his assessment. Its effectiveness is seen here (on page 16/17):

**4.2.4** It was indicated that however no obvious topographical constraints would make a longer joint route unfeasible (Day 18, page 146). It was pointed out in evidence that no constraints study had been carried out so that the opinion given in relation to the absence of constraints was not based on a detailed examination. Mining areas were noted as one possible constraint.

**4.2.5 Comment**

**Having considered the junction provision and in that context the potential beneficial economic and transportation impacts for the local area I consider that the scheme as now proposed has less potential benefits for the local community than that originally proposed pre August 2003. Therefore the question of alternative route consideration takes on increased importance.**

It is notable too, that in this project the Inspector recommended Refusal to An Bord Pleanála, one of the grounds being that not all optimal route options had been considered:

**4.2.7 From evidence at the Hearing and examination of the EIS, I am of the opinion that a route which combined the N7 and N8 national primary routes for a longer distance should have been considered in more detail.**

**It could well be that no such route exists, but evidence at the Hearing was such that the possibility of such a suitable route cannot be ruled out.** (p.17)

**4.2.12 For the reasons outlined above, I consider that coupled with the effect of reduction in junction provision that the EIS does not adequately address the issue of alternatives.** (p.18)

**6.3 I consider that the major problems concerning the scheme are junction provision and the possibility that a further route could have been put forward for review. (p.25)**

This is in stark contrast to the M3 Report, where the Inspector restricted consideration of any alternative routes arising, via submissions or otherwise, and noted only what was in the County Development or other plans.

Regrettably, the M7/M8 Inspector's report also fails to spot the incorrect narrow interpretation of Alternatives, and like the N6, there is no reference at all to other modes such as rail or coach, even by way of the broader transportation development context. Indeed, this is one of the striking features of these reports, in that it appears to the reader that the Inspectors are not operating from a broad planning overview which one might expect from the national body charged with overseeing such, in a fair and impartial manner.

In summary, this study of Inspectors' Reports shows serious inadequacies and deficiencies. The stark differences in approach highlight the need for a proper reference framework, which is in fact already available through reference to the EU Directive on EIA in the first instance, followed by national sources such as the EPA. None of the Reports make it explicit that such references were made.

And, the reports into the M3 and N6, by mostly foregrounding the project developers' interpretation and analysis of their projects, and by constantly referring backwards to existing plans – which are always indicative in nature and never fixed until *after* the consent process - raise very serious questions of independence and impartiality. This is further emphasised by a marked lack of demonstrable and active engagement in the actual issues, as evidenced, and there is in fact little evidence of an actual *assessment* of the project in each case.

Additionally, though Article 8 of the EU Directive makes it clear that:

The results of consultations and...information gathered...must be taken into consideration in the development consent procedure

this is not explicitly evidenced in the Inspectors' Reports.

Most disturbingly, despite the poor quality of the Reports (the M3 and N6 especially; the M7/M8 less so) An Bord Pleanála subsequently consented to all projects, even overturning the Inspector's recommendation of refusal in the case of the M7/M8. In the latter case, An Bord Pleanála directly contradicted, without any backing evidence, the Inspector's concerns on the project's route planning:

...the Board considered: (a) that the route selection had been properly carried out, with reasonable examination of alternatives;...(Board Direction, 28/10/2004)

In conclusion, the Board in fact appears to be an implementation body for NDP projects rather than an independent assessor. Quoting again from their M7/M8 Direction:

...it would not be appropriate to refuse to approve the road development, as this would entail...delay in this critical element of the national road network, the urgent improvement of which...with a completion date of 2006, is set out in the National Development Plan.

Irish Road Scheme EIA in the Context of the Aarhus Convention (1998)

The UN/ECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998) sets out best practice in these areas and imposes new obligations on government, local authorities and others. Though Ireland is a signatory to the Convention via its membership of the EU, it has not yet ratified it. Having said that, the conduct of road scheme EIA has regrettably proceeded without any regard to this critically important agreement.

The failures to properly carry out EIA as discussed, and as a function of higher-level policy problems, are brought into sharp focus when held up against the Aarhus provisions. Displaying a radically different approach, these quotes (from the Aarhus Implementation Guide) are vivid examples:

...public authorities *must serve the needs of the public* (p.21, author's italics)

...it is...necessary for information to be accurate, comprehensive and up-to-date (p.20)

Article 4, paragraph 1, contains the general obligation for public authorities to provide environmental information in response to a request (p.54)

The Convention requires public authorities to make information available within a specific time limit (p.55)

One of the most telling comments is on page 29 of the Guide:

Instead of solving all of society's problems itself, the State acts as a sort of referee in a process involving larger societal forces, leading to a more home-grown and complete result. This notion...is replacing *the discredited notion that society's problems can be solved through engineering by experts* (Author's italics)

Consideration of Alternatives is embraced as a positive, not a negative:

The quality of decisions can be improved...through the influence that advocacy of alternative solutions can have on the careful consideration of possible solutions (p.18)

Some of the alternatives might come from the public concerned...The public can propose an alternative through its right to comment...(p.107)

True, and early, public participation is a cornerstone of the Convention:

In its ideal form, public participation involves the activity of members of the public *in partnership with* public authorities to reach an optimal result in decision-making and policy-making (p.85, author's italics)

...this requires an open, regular and transparent process in which the public can have confidence (Do.)

Finally, Aarhus also conveys the great importance of demonstrably taking the outcome of public participation into account:

...the requirement to take into account public participation...establishes an objectively high standard to show...that public comments have been seriously considered (Implementation Guide to the Aarhus Convention p.109)

The contrast between Aarhus-led best practice, and reality in Ireland, is dramatic.

### The Concept of Prescribed Outcome

A roads-biased transport policy, a mono-modal transport planning structure and a disempowered public powerfully combine to facilitate what could be called *prescribed outcome* in EIA for Irish road schemes.

That is, *the road will be built, whether anyone likes it or not, irrespective of its environmental and other effects, and with no regard to integration or best planning practice.*

Especially evident is the trend by An Bord Pleanála to approve major road schemes even where its own Inspectors have recommended refusal.

Prescribed outcome is the opposite of what is intended by EIA and negates that process. It is intimately linked with the desire to facilitate notions of economic growth at all costs.

Additionally, prescribed outcome is demonstrably undemocratic, flies in the face of environmental responsibility and is the epitome of defective planning.

As the Implementation Guide to the Aarhus Convention clearly states:

...public participation that is merely pro forma – that takes place when options are foreclosed – can injure the chances for successful implementation of a decision because of the questionable legitimacy of the process. (p. 86)

...the failure to take account of the outcome of public participation is a procedural violation that may invalidate the decision...It is therefore very important that authorities pay serious attention to the requirement that due account be taken of the outcome of public participation (p.110)

And, it is hard to imagine that prescribed outcome in the NDP roads programme is not conscious. The deficiencies in both the EISes and the Oral Hearing procedure reported here are so manifest that it seems extraordinary that they would be allowed to occur unless there was a superceding concern. That concern seems to be the facilitation of economic growth, without regard for its consequences and effects.

The concept of prescribed outcome informs the following Conclusions and Recommendations (below).

## Conclusions

This Report has shown:

- 1) There is no integrated transportation planning policy, and the NDP is essentially focussed on road-building to the detriment of other modes;
- 2) There is clear linkage between this situation and received thinking relating to the concept of economic growth, in lieu of pursuing a broad transportation policy with a wide social, environmental and economic remit;
- 3) There is evidence of either a lack of understanding of, or an attempt to subsume into the growth paradigm, sustainability concepts;
- 4) The current use of EIA in Ireland does not conform to the EU EIA Guidelines, derived from the EU EIA Directive, in the area of transport policy;
- 5) In turn, there is considerable divergence in the EPA Guidelines on EIA compared to their EU counterpart;
- 6) The EISes studied failed in the areas of consideration of alternatives, public consultation, information provision and the reports of the planning Inspectors;
- 7) The outcome of the process, which has been shown to be prescribed - closing off other possible outcomes – reflects an unsustainable policy and planning environment which overwhelmingly and unfairly favours the road mode over other transportation options, with no solid engineering foundation;
- 8) The phenomenon of prescribed outcome is strongly supported from top to bottom via a deterministic mono-modal transport planning structure, which reinforces the dominance of road transport over other modes, and which resists actual and meaningful public participation;
- 9) There is no evidence of referral to international best practice in environmental decision-making, as embodied for example by the Aarhus Convention.

## Recommendations

- 1) The NDP roads programme and current road project specification should be reviewed, and set firmly in the context of a multi-modal transportation policy, with active sustainability and emissions curtailment policies at its core
- 2) The EPA Guidelines on EIA should be revised to follow the EU Directive, particularly such that (a) the consideration of alternatives is not limited to alternative routes but also encompasses alternative means of achieving the goals of the project, and (b) that the EU Guidelines are also incorporated into the EPA's section on Public Participation
- 3) The confrontational, unfair and out-moded Oral Hearing process should be replaced by, for example, a modern workshop-based approach at *both* the scoping and final consent stages. This would ensure the genuine public participation and involvement envisaged in the EU EIA Directive and Guidelines. And, this must be organised to take account of public participants' needs, such as normal working and living patterns, and be adequately resourced to cover participants' expenses
- 4) Local Authorities must revise their public consultation procedures to facilitate and embed true and meaningful public participation – not passive information provision – from the earliest stage of a project onwards using, for example, a workshop-based approach throughout
- 5) Ireland should ratify the Aarhus Convention to drive these changes
- 6) An Bord Pleanála Inspectors' Reports must be harmonised in format, made transparent in all respects, and be explicitly referenced to the EU EIA Directive and to the EU/EPA EIA Guidelines
- 7) Additionally, the Inspector's Reports should make clear conclusions in relation to issues raised in the consent process, give visible reasons for those conclusions, and explicitly demonstrate how participants' concerns, contributions and objectives have been taken into account, pursuant to Article 8 of the EU EIA Directive and Article 6 of the Aarhus Convention.
- 8) Staying within economic-based language, increasing traffic levels can be re-positioned as *inflation*, rather than growth. Considering *traffic inflation* creates a more accurate set of meanings for the policy-maker. Its problematic nature is foregrounded, and is uncoupled from a misleading association with positive economic performance
- 9) The term *public transport* should be re-positioned more equitably as *rail, coach and bus* in policy documents. This creates concrete associations in the same way as the use of the term “national roads” does
- 10) The roads departments of local authorities should become *transportation departments*, with equitable treatment of all transportation modes

Addendum

This Report has been completed to the best of the Author's ability within an allocated timeframe.

It must be noted that some information requested to aid in the research was not made available by the final draft date.

For records purposes the items concerned are as follows:

- A response to a query to the Department of Transport with regard to their perspective on the upgrading of several road schemes to motorway specification after the publication of the National Road Needs Study;
- A report carried out for Meath Co. Council in relation to traffic forecasts in the Dublin – Navan corridor used in the planning of the M3.

[If these items appear in the future their implications for this Report, if any, will be considered, subject to Project considerations]