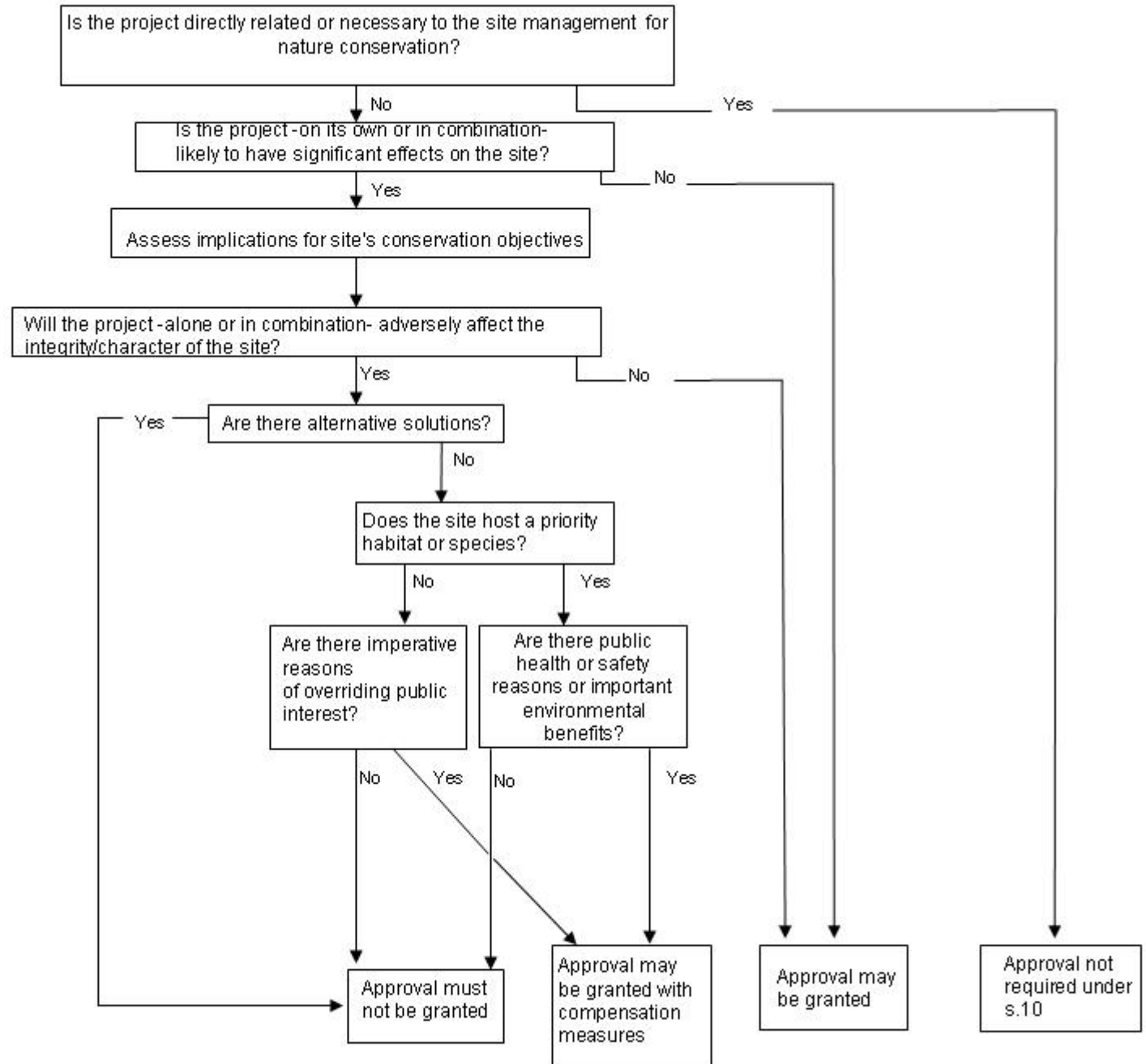


Flow Chart for the Appropriate Assessment required under s.10 of the PMNW and GWB Ordinances



Definition of terms and concepts

- **Directly related or necessary to the site management**

The 'management' component refers to management measures that are for conservation purposes, and the 'directly' element refers to measures that are solely conceived for the conservation management of the site and not for the management of direct or indirect consequences of other activities. Furthermore, if a measure designed for the conservation management of one site affects another site, then it will require assessment, as the conservation management measures are not specifically and directly targeted at that second site.

- **In Combination**

The assessment should address the potential for in combination effects which may result from projects currently under consideration together with the effects of any existing or proposed projects. The contents of assessments of different projects under consideration at the same time must include references to and take account of each other in so far as they may have in combination effects. When impacts are assessed in combination in this way, it can be established whether or not there may be, overall, an impact which may have significant effects on the site or which may adversely affect the integrity or character of a site.

- **Significant effect**

A means of determining the significance of an effect is through the use of key indicators such as percentage loss of a habitat, duration or permanence of a disturbance etc. Some indicators, such as percentage of habitat loss, may be more significant for priority habitat types.

- **Integrity**

Biological integrity can be defined as all those factors that contribute to the maintenance of the ecosystem including structural and functional assets. The decision as to whether it is adversely affected should focus on and be limited to the site's conservation objectives. A site has a high integrity where its capacity for self-repair and self-renewal under dynamic conditions is maintained, and a minimum of external management support is required.

- **Alternative options**

Project proponents should consider alternative solutions at the earliest stages of development.

Alternative solutions must be assessed by the competent authority against the site's conservation objectives.

The examination of alternative solutions requires that the conservation objectives and status of the protected site will outweigh any consideration of costs, delays or other aspects of an alternative solution.

The objectives of the project or plan must be identified in order to assess whether alternatives exist. The alternatives can then be assessed against their likely impact upon the conservation objectives of the site. Alternative solutions could involve alternative locations, different scales or designs of development, or alternative processes. The "zero option" should be considered too.

The competent authority will assess the alternative solutions proposed by the project proponent but will also consider any other alternatives suggested by other stakeholders. The Competent Authority can therefore determine that further alternative solutions exist even where the project proponent has demonstrated that a range of alternatives had been examined at the design stage.

- **Priority Species or habitat**

This concerns the effects of a project on the specific priority species or habitat.

The potential damage of a project to the priority species/habitat can only be accepted as overruling the fulfilment of the conservation objectives if the evoked imperative reason of overriding public interest concerns human health and public safety or overriding beneficial consequences for the environment (In the legislation of the Republic of Cyprus projects may be approved for other reasons of overriding public interest, subject to the opinion of the European Commission. The SBA Ordinance provisions are more stringent, on the precautionary principle, in the lack of the EU mechanism). This restriction applies to all sites hosting a priority habitat or species, when the priority habitat or species is affected.

If such reasons do exist it is necessary to carry out an assessment of compensatory measures.

- **Imperative Reasons of Overriding Public Interest**

The acceptance of imperative reasons of overriding public interest must be fully ascertained and documented. This option may only be examined in the absence of alternative solutions.

They must be actions or policies aiming to protect fundamental values for the citizens' life. Examples of such interests are human health, public safety and beneficial consequences of primary importance for the environment.

Only public interests, whether or not promoted by public or private bodies, can be balanced against the conservation objectives of the legislation. Proposed projects by private bodies can only be considered when public interests are served and demonstrated. Public interest must be overriding. Not every public interest of social or economic nature is sufficient, in particular when seen against the particular weight of the interests protected by the legislation.

Also, the public interest can only be overriding if it is long term. Short term economic or other interests which would yield short term public benefits do not outweigh the conservation objectives of the site.

The imperative requirements include public health, environmental protection and the pursuit of legitimate goals of economic and social policy.

Some examples where the European Commission has provided a positive opinion and justified IROPI are as follows:

- Replacement construction of a motorway bridge: Overriding public interest project with no viable alternatives
- Extension of an airport – overriding public interest as the extension of the airport is necessary for the further economic development of the region where it is based. No viable alternatives existed.
- Public utility project: Construction of a high speed line to connect the capital of a country with other cities and with neighbouring countries.

- **Overriding Beneficial Consequences for the Environment**

The competent authority must check whether such a situation exists. No further guidance is provided and there is no EU case law where projects were considered on those grounds.

- **Mitigation**

Mitigation is defined as “measures aimed at minimising or even cancelling the negative impact of a project, during or after its completion”. The competent authority must consider the project in the absence of mitigation measures that are designed into a project. Once the effects have been recognised and assessed, appropriate mitigation can be decided (following consultation with NGOs etc) by the competent authority. Mitigation measures are an integral part of the specifications of a project.

Mitigation measures are also required when it cannot be demonstrated that the conservation objectives of a site will not be adversely affected.

- **Compensatory measures**

When, in the absence of alternatives and once the imperative reasons of overriding interest are accepted, the decision is taken to proceed with a project which will have a negative impact on the integrity of the site, compensatory measures need to be taken. They are independent of the project (including any associated mitigation measures). The aim is to offset the negative impact remaining (after the implementation of mitigation) of a project and to provide compensation corresponding precisely to the negative effects on the species or habitat concerned. The compensatory measures constitute the "last resort". Furthermore, they should go beyond the normal/standard measures required for designation, protection and management of sites.

Compensatory measures are not a means to allow the implementation of projects while escaping the obligations imposed by the legislation.

Compensation should normally take place before implementation of the project, to avoid irreversible impact of the site.

Compensation measures are often seen as having little guarantee of success.

Compensatory measures should address, in comparable proportions, the habitats and species negatively affected and provide functions comparable to those which had justified the selection criteria for designating the affected site. They may include:

- habitat restoration,
- habitat recreation,
- species reintroduction,
- species recovery and reinforcement,
- land purchase,
- rights acquisition,
- creation of nature reserves,
- incentives for certain economic activities that sustain key ecological functions,
- reduction of threats, usually upon species.

An assessment of how successful the compensation measures are, must be undertaken through legally binding mechanisms. This requires the preparation of management plans with clear and achievable short, medium and long term objectives as well as long term monitoring mechanisms.

The cost of the compensatory measures must be borne by the project proponent.

- **Gathering of information necessary for the appropriate assessment**

The project proponent must submit the information to the competent authority for consideration. The competent authority may use the information as the basis for consultation with relevant authorities, nature conservation agencies and NGOs. Please see the SBAA Guidelines (revised March 2012) to project proponents on the required information.

- **Undertaking of Appropriate Assessment**

The competent authority carries out the appropriate assessment in consultation with various stakeholders.

- **Project**

Project is defined in the Environmental Impact Assessment Ordinance and means:

- (a) the execution of any construction works or other installation or scheme; or
- (b) any other intervention in the environment, including the extraction of mineral resources.

- **Location of project**

The scoping includes projects both inside and outside the boundaries of the site – even at far distances, as long as it may have an impact on the site. An example would be the construction of a dam upstream and far from a wetland, which would affect the water balance of the wetland, or wind farms (off-shore or on-shore) which could affect flight paths relating to an SPA.

- **Precautionary Principle:**

The precautionary principle requires that the conservation objectives of the site should prevail where there is uncertainty. The European Commission states that the use of the precautionary principle presupposes:

- the identification of potentially negative effects resulting from a phenomenon, product or procedure,
- a scientific evaluation of the risks which, because of the insufficiency of the data, their inconclusive or imprecise nature, makes it impossible to determine with sufficient certainty the risk in question.

The precautionary principle applies both to the screening process (test of significance) and to the Appropriate Assessment process.

References

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