

**NPF Submissions,
Forward Planning Section,
Dept of Housing, Planning,
Community & Local Gov't,
Custom House
Dublin D01 W6X0**

**Dhuish Environmental Group,
The Haven,
Upper Glasleck,
Shercock,
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A81 AX53**

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Ref: National Planning Framework 2040

Dear Sir / Madam.

Thank you for the opportunity to comment on the National Planning Framework 2040.

Going forward in the near future, and as far as 2040 it is an absolute necessity that Government and Local Councils abide by the letter of the Law.

Dhuish Environmental Group is involved in ongoing disputes with Cavan County Council, Local Developers, An Bord Pleanala, the Irish Ombudsman, the European Ombudsman and the European Commission, regarding non-compliance with the Law and EU Directives. EU Laws and Directives may well have been transposed into Irish Law, but the laws are then "not" being implemented. It is difficult to see how you can expect to move forward when what is happening at the moment is not correct.

The following laws and Directives are not being implemented despite being transposed into Irish Law:

1. The SEA Directive 2001/42/EC
2. The EIA Directive 2011/92/EC
3. The Aarhus Convention
4. The Public Participation Directive 2003/35/EC

It is quite clear that the SEA Directive for Energy in Ireland has not been complied with. With regard to energy and wind farms there is still no SEA for Energy in Ireland. There is a requirement for the Wind Energy Development Guidelines to have an SEA but this does

not exist either. So how has it been possible to install wind farms anywhere in Ireland without complying with the SEA Directive. Further more, the scope of Article 7 of the Aarhus Convention is wider than the SEA Directive and the SEA Protocol. Article 7 applies to plans, programmes and policies “relating to the environment”, while the SEA Directive and SEA Protocol are based on the narrower concept of likelihood of significant effects on the environment. The legal scheme for identifying the likelihood of having significant effects is almost identical in both the Directive and the Protocol. They both determine which plans and programmes will be subject to SEA and those which will require “screening”; (ie: a significance test to determine whether an SEA should be required). Article 7 does not envisage any test of “significance” or “likelihood”, nor any procedures for screening. The UNECE Implementation Guide for the Aarhus Convention states that:

The rule is simple: ANY PLAN, PROGRAMME OR POLICY “RELATING TO THE ENVIRONMENT” IS SUBJECT TO ITS REGIME. IN PARTICULAR, A PLAN, PROGRAMME OR POLICY MAY BE CONSIDERED “AS RELATING TO THE ENVIRONMENT” REGARDLESS OF WHETHER “IT SETS THE FRAMEWORK” FOR A DEVELOPMENT CONSENT FOR ANY PROJECT OR NOT.

This is not an ambiguous statement. There can be no doubt whatsoever that an SEA is required for “every” wind farm, because every wind farm “relates to the environment”. It is the case that anything to do with the SEA is routinely dismissed by the Government and local Councils. Even greater incredulity comes from the supposedly unbiased state body An Bord Pleanala. This is a planning body that states that it does not deal with anything to do with the Strategic Environmental Assessment. A planning body that does not recognise or deal with environmental and other planning Law but is happy to adjudicate on it – how is this possible ? An Bord Pleanala needs to start getting real, grow up and start following it’s own mission statement, namely: “To play our part as an independent national body in an impartial, efficient and open manor, to ensure that physical development and major infrastructure projects in Ireland respect the principles of sustainable development, including the protection of the environment”.

Until the public can see that the Government, An Bord Pleanala, and local Councils abide by the law there will be continued problems in implementing any “energy strategy” put forward anywhere in the country. It is quite clear that the Government, An Bord Pleanala and

local Councils have continually tried to circumvent and frustrate any effort to comply with the SEA Directive with regard to installation of wind farms in Ireland. If you add to this the fact that there has never been a cost base analysis made for wind energy in Ireland, the table featured in the governments analysis is blank, is it any wonder that local communities have a deep distrust of anything the Government and local Councils try to instigate.

That brings us on to things like "County Development Plans". These are essentially a contract between the county councils and the public. It is our case that the council in Cavan has stated that any wind energy development "must" comply fully with the current wind energy guidelines 2006. It has been and remains the case that the council does not comply with its own county plan in as far as wind turbines are concerned because they routinely try and allow wind developers to place wind farms in areas which are not suitable and which do not meet with the guidelines as far as set back distance, noise and shadow flicker are concerned. The Council completely dismiss the Aarhus Convention, Public Participation and the SEA Directive. If the Government are going to make new guidelines regarding wind energy development which are going to last up to 2040 then the guidelines must make the parameters for siting of turbines "statutory / mandatory", so that unscrupulous developers can not put wind farms up wherever and whenever they feel like, as happens to be the case at present. The Government and Council must implement and comply with the Law.

It is a fact that the Minister has been sitting on a report instigated by his own department since May 2015. The RPS Report on Wind Turbine Noise Modelling. When the present government took office we were led to believe in a statement made by the Minister that "new" wind energy development guidelines would be published within the first 6 months of office. We are still waiting for the new guidelines to be published nearly a year into the Governments term of office, when the Minister knows full well what is required from the commissioned report and from World Health organisation reports. If the Minister and Government are serious about looking after citizens rights, which is one reason why they were elected, instead of pandering to developers, then they need to conform with their own "Framework for Sustainable Development in Ireland". In this the government claims that sustainable development is a continuous, guided process of economic, environmental and social change aimed at promoting "well-being of citizens now and in the future", and that the framework is founded on a "fair and just society". It also

mentions in this framework that the “EIA Directive” plays a central role in the assessment of proposals for environmental protection as it ensures that the environment implications of projects are taken into account in the permitting process, **“BEFORE FINAL DECISIONS ARE MADE, AND IT INVOLVES THE PUBLIC IN THE DECISION MAKING PROCESS”**. This Framework also mentions the Aarhus Convention in which it says: **“THE AARHUS CONVENTION IS DESIGNED, INTER ALIA, TO GIVE ORDINARY CITIZENS THE RIGHT TO HAVE A SAY IN DECISION MAKING THAT EFFECTS THE ENVIRONMENT. THE PRINCIPLES OF THE CONVENTION ARE ALREADY INCORPORATED INTO IRISH LAW AND IRELAND INTENDS TO RATIFY IT AS SOON AS POSSIBLE”**. The Aarhus Convention was ratified into Irish Law in June 2012.

It would be a worthwhile exercise defining what is “Public Participation” as compared to “public consultation”. These are two very different things. Proper public participation is of the type we have recently seen regarding the 8th Amendment and the abortion law, but for local issues does not need to be on that scale. Public consultation is what is happening at this moment – the public are being “consulted” about the National Planning Framework. The public are very unlikely to actually be “participants” in it.

There is no case concerning “energy” that we know of in Ireland where actual proper public participation has taken place. Article 3 (4) of the Public Participation Directive states: “the public concerned **“shall”** be given **“early”** and **“effective”** opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and **“shall”** for that purpose, be entitled to express comments and opinions when **“all options are open”** to the competent authority or authorities **“before”** the decision on the request for development consent is taken.

It is always the case that a developer will put in planning permission for example a wind farm and may speak to the council first. The first any of the public concerned know anything about a development is when a planning notice appears in a national paper – if they happen to see it, and when local planning notices are put up by the developer in the area where planning permission is sought. This is no longer acceptable, particularly where the environment is concerned. Councils should reject planning applications outright if any developer has not carried out proper public participation prior to any planning application which involves the environment, being


lodged with the council. Proof of public participation, in front of the council preferably must take place in order for this to be credible.

We have a letter from the Minister dated 19th September 2016 part of which states: "while it is not a mandatory requirement, it is strongly recommended that the developer of a wind energy project should engage in active consultation and dialogue with the local community at an early stage in the planning process." It is quite clear that even the Minister has seemingly failed to acknowledge the **legally binding nature** of the Aarhus Convention and the Public Participation Directive 2003/35/EC.

The public and their rights to be heard and participate are still being side lined in Ireland. The Government and local Councils will go to extraordinary lengths not to involve the public. It was only through a person requesting under "Access to Information on the Environment" from the government department, that the RPS report on Wind Turbine Noise was found. The Minister was sitting on this report for the best part of two years with no intention of letting the public see it. How are the public supposed to trust the Government, Minister and Councils if this type of thing is going on. The Government continually claims to be transparent, open and inclusive in all it does. This sort of thing goes directly against what they claim. How can the public be expected to believe anything any Government says and does when they are looking to formulate a plan that goes forward as far as 2040.

At present and in the future, the Government, An Bord Pleanala, and local Councils need to implement and comply with the Law. At present there is complete disregard for the Laws and Directives set down in Ireland for the environment by Councils, An Bord Pleanala and the Government. Councils through the Government, are there to serve the public by upholding the Law, Directives and Regulations that are in force. The Government, An Bord Pleanala and local Councils would make a good start by implementing and having proper knowledge of the Law, and complying with the Law, before they start making any plan to go forward to 2040.

Yours sincerely,



Joan O'Callaghan
Secretary of Dhuish Environmental Group