



Submission to
The National Planning Framework 2040
by
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Overview

ART Generation is an Irish SME involved in the energy sector. As citizens and active participants in Irish business, we have a general interest in national strategic planning for Ireland's future. We have a particular concern on county boundaries that we wish to raise in response to some of the questions posed in the National Planning Framework (NPF) 2040 document.

We believe that any future planning framework should only be based on the existing county boundaries instead of any changes proposed in Boundary Committee recommendations. The shortcomings highlighted below illustrate, what we believe to be the wholly inadequate basis of the recommendation by the Waterford Boundary Committee in particular. Their report is inconsistent to the point of error, in that it notes the most salient points and subsequently ignores their import, in particular the actual reason rather than the misconception about Waterford's failure to develop as well as certain management and administration failings.

We have reviewed both the Boundary report and National Planning Framework documents technically and legally. The legal analysis is contained in the detailed analysis section below and has been assessed by Senior Council.

From our own technical analysis we would like to comment specifically as follows:

Section 4.1, Our Capital, Cities and Towns, Page 25:

"Do we need to reform and strengthen administrative and governance structures so that they are capable of delivering the necessary alliances, collaboration and actions to build up our cities and their regions?"

Previous Governments have engaged in some poorly managed initiatives in this area. For example, the inadequately implemented National Spatial Strategy, discussed in the NPF, which lacked a legal framework though, admittedly, it was affected by the recent economic downturn.

However, we wish to highlight the county boundary revision reports, commissioned by the previous Minister for the Environment, Alan Kelly TD. We have examined four such reports, for Athlone, Carlow, Drogheda and Waterford. These seem to have been a complete waste of time with high costs and expense incurred since it was obvious before they were commissioned that moving boundaries was not going to address any perceived issues.

The outcome of the first three of those reports correctly concluded that no change is recommended. At first glance, a boundary change may seem like the logical answer to less than expected development in the 'Areas of Interest', which is maybe why these reports were commissioned. However, on closer examination by the boundary committees themselves, it is clear that a boundary change would not address the issues, never mind the fact that the people most directly affected, being those living in the localities overwhelming reject such changes. The Committees suggest that there are much better solutions, mainly around inter-council cooperation.

The Waterford report is the outlier, as the Committee does recommend a significant boundary change, completely overlooking the fact that the submissions were roughly 19,000 to 200 against such a change. Indeed, much of the evidence against such a change lies in the report itself.

This Committee report has been very divisive, controversial and emotive, causing further tensions, and raising fears that ordinary people in Kilkenny County could well do without. Such is the opposition to the changes throughout the county that the Government itself should recognise this gross error, dismiss the recommendation, and instead respect the peoples' wishes. To ignore them is to contravene Article 28a of the Constitution which enshrines the rights of local communities.

It can safely be said that logic is reversed, because Athlone, Carlow and Drogheda have developed on both sides of their respective rivers, even if the Shannon is no small waterway. And yet the city of Waterford has not. In fact much of the more effective development on the north bank of the River at or near Waterford City is in County Kilkenny, including the shopping centre in Ferrybank. The port is in, and has been driven by, Kilkenny and is a huge local success, even a national asset.

Misconception that Waterford City has no land for developments

The Committee's report is clear and the City confirms that there is ample space with planning in Waterford City for its development (point 10 below). Nevertheless, it has been afflicted by a lot of peripheral shopping centre development causing decline in the city centre. We believe the reasons Waterford has not developed to expectations are many, but one of them is not the fact that the county boundary runs through Ferrybank. That is a misconception, disingenuous and seems to have been mainly put about by Waterford County Council to promote its own financial interests. It may appear to be a plausible explanation, when in fact it is not.

It is more likely the case that despite this common boundary, Waterford has been less than fully cooperative with Kilkenny County Council, notably on the PLUTS, something well documented. Kilkenny County Council wrote several times to Waterford County Council requesting meetings but to no avail as described and evidenced in Kilkenny's own published submission. It is odd, if not illogical, therefore that the Committee recommends moving the boundary, as this will extend the area badly run by Waterford and reduce the area generally well run by Kilkenny. That would seem to reward bad management, and create a moral hazard contrary to the objective rewarding good performance.

The Committee's report is incomplete, inaccurate and misleading and fails to address the salient and substantive issues. It provides no Cost Benefit Analysis (CBA) and appropriate justifications to the recommendations that stand a reasonable scrutiny test or comparative or weighting analysis. It offers nothing of material or meaningful substance, only empty recommendations that are biased, spurious and politically motivated in a 'smash and grab' of land and rates revenue.

The counter-arguments when considered and the approach options available to the Minster significantly out-weigh the argument presented by the Boundary Committee. The existing Regional Assembly options are more efficient, effective, less controversial, less costly but more importantly constructive to achieve the same objectives – i.e. the development of the region and growth of Waterford City.

Furthermore, the justification of the biased decision of the Boundary Committee is being attributed to lack of co-operation between Kilkenny and Waterford County Councils and there being no land for Waterford City to expand, which is misleading.

Waterford County Council's woes of failure to grow are not the result of the boundary issue or the misconceived excuse of Kilkenny non co-operation but due to the fact that Waterford has abandoned the steering Regional Assembly forum. The core issue is lack of Government and National support especially regarding the implementation of the new PLUTS and to prioritise Waterford as employment black spot and failure to attract sufficient Foreign Direct Investment. Indeed, it is not more houses that is preventing Waterford's growth but more jobs or the lack of, industry and infrastructure. Houses follow industry, growth and employment and not the other way around.

Waterford has extensive housing land banks reserves to the tune of approximately 27,000 units and does not need more housing land. The main growth of Waterford housing numbers has been associated with the town of Tramore due to the uncertainty and delays around the location of a new bridge river crossing instead of development in the city.

Misconception that the two County Councils cannot work together

The other view advanced is that the two County Councils cannot work together is not correct as the opposite is in fact the case. Indeed, the two County Councils have recently demonstrated a good solid business relationship on a day to day basis e.g.:

1. The proposal for European City Culture (The Three Sisters proposal);
2. Joint Co-operation on the development of Greenways paths across both counties
3. Several Sections 85 agreements e.g.- Adree Hotel;
4. Fire service co-operation on the provision of services;
5. Joint road legislation policy and road construction;
6. The preparation of a Joint Retail Strategy;
7. Joint Sanitary Services collaboration.

As can be seen, this argument does not stand scrutiny.

In fact, Kilkenny County Council's performance has been outstanding in the development of the general South Kilkenny and South East areas. Some examples include:

- Development of Ferrybank shopping complex,
- It supported Glanbia in the development of a new baby powder facility currently in operation which has the effect of supporting hundreds of jobs in the area.
- The Louisiana MDF facility is a major woodboard producer in Ireland and in Europe.
- Allied Beef Producers is also located nearby.
- Substantial IDA lands are zoned and developed and ready for Foreign Direct Investment.
- The Port of Waterford continues to grow and there are plans for a new oil storage terminal (granted planning permission).
- The new gas line to Great Island power plant was successfully installed with Above Ground Installation (AGI) for future gas connections in the area for industry. This is of strategic value, not to mention the extensive high voltage electrical Grid, availability of cooling water, and road and rail infrastructure.
- Kilkenny has managed to successfully grow the Belview area as prime industrial land in terms of increasing industrial land bank capacity and appropriate set back to houses. Kilkenny is a power house in this area compared to Waterford County Council's performance and successfully balances its own financial record books while Waterford County Council is running an annual deficit of €8M (overall debt circa €30M). Kilkenny County Council has some of the best if not the best industrial zone land in the country with sufficient infrastructure to compete for international FDI which is really the target of Waterford County Council in the long term. This land bank is important when competing with other projects internationally and should be prioritized by Government and the IDA.

Therefore, the NPF needs to comprehensively consider the conceptual approach to be inclusive and collaborate of both Councils' requirements and the best options available to securing growth through the Regional Assembly Forum and/ or a steering Group chaired by the Minister's Department to monitor and report performance on a six monthly basis – and not on false controversial Boundary changes and assumptions.

In reply to the questions:

Section 4.2, Opportunities for our Regions, Page 30:

"Are there strategic issues (i) across local authority boundaries or (ii) on an inter-regional basis, that the Regional Assemblies can co-ordinate to ensure more effective sub-regional and regional outcomes?"

The consultation document itself provides an outline of the answer to this question in sections 7.1.2 & 7.1.3

"7.1.2 Learning from experience with the National Spatial Strategy, legislative support, backed up by wider political and institutional commitment is central to ensuring that the NPF will influence public policy across Government, the Regional Assembly and Local Authority administrations. It is therefore intended that the finalisation of the National Planning Framework will be followed up by strong national, regional and local level implementation.

7.1.3 In line with the recommendations of the final report of the Mahon Tribunal published in 2012, it is intended that a statutory process for the making of the National Planning Framework and its implementation will be put in place under the Planning and Development (Amendment) Bill 2016."

Implementation of inter-county co-operation is the key here, especially between Waterford & Kilkenny, where so much opportunity has apparently been missed. It has two basic components. Firstly, there needs to be a legislative basis for the NPF 2040 unlike its predecessor, in order for full implementation, and that is the intention, which is to be welcomed.

Secondly, proper co-operation from planning to implementation needs to be required of neighbouring county councils, especially in such sensitive locations as those that have been subjected to boundary reviews. The NPF suggests a role for the regional assemblies, to monitor progress. The key point here is that this function also needs to have a legal backing, in order for it to have any real effect.

DETAILED ANALYSIS

1. The Waterford Boundary Review Committee was asked to carry out a review of the boundary between the City and County of Waterford and County Kilkenny and to make such recommendations with respect to that boundary, and any consequential recommendations with respect to the area of the Metropolitan District of Waterford, that it considered to be necessary in the interests of "effective and convenient local government"
2. The Committee has recommended that the Minister should extend the boundary of Waterford City and County Council into County Kilkenny by including the entire Electoral

Area of Kilculliheen and those parts of the Electoral Areas of Aglish and Dunkitt contained within the Area of Interest that lie south of the of the N25 bypass.

3. The Minister's decision falls to be made on the criteria of "effective and convenient local government".

"Effective and convenient local government"

4. A fundamental flaw in the report of the Committee that it has made no effort to identify what it understood by the concept of "*effective and convenient local government*". A further example of the Committee's flawed approach can be seen in its failure to even attempt a Cost/Benefit Analysis.
5. It is assumed that the Minister's considerations will remedy these flaws.
6. The Committee's failure to address these issues has undermined its recommendation.
7. It is surprising that the Committee did not find it necessary to address Article 28A of the Constitution to inform its view of "effective and convenient local government". Article 28A provides:

"The State recognises the role of local government in providing a forum for the democratic representation of local communities, in exercising and performing at local level powers and functions conferred by law and in promoting by its initiatives the interests of such communities."

The issues of "identity" are central to the key concept of "local communities", but the Constitutional basis of the identity issue was entirely overlooked by the Committee, with the result that it was not given sufficient weight.

8. A further indication of the Committee's failure to engage with the concept of "*effective and convenient local government*" can be found in its failure to appreciate a crucial finding in its own Report. At Page 5, Point 3, the Committee observed:

"...it is the Committee's view that there is very limited, if any, scope for delivery of further efficiencies in day-to-day service delivery costs through a range of reconfiguration of boundaries that it has examined".

That clearly puts a very large hole in the contention that the re-drawing of the boundaries is in any sense necessary for effective and convenient local government.

9. By way of further example, Waterford made it clear that while it would continue the Kilkenny-provided branch library in Ferrybank, it would not offer other non-library local services, currently provided by Kilkenny, from that location. The response of the Committee was to recommend that Waterford would: "re-consider" this approach. The Commission thought:

"It would be a pity if a boundary extension resulted in a diminution of the existing level of service" – see para 6.2.3.

With respect to the Committee, this is a misconception – its job was to consider whether the boundary review was necessary for "effective and convenient local government". It is hard to see how it can recommend a boundary change where it has identified the exact opposite – and then express the vague hope that the adverse consequences will not happen when it is clear that they will. Indeed, the Committee actually went on to acknowledge that the anticipated increase in population would require an area office – but then proceeded to completely ignore this by shifting the boundary in favour of the local authority which was determined to close the area office. Such an approach can only be described as "irrational".

10. By way of further example, the submission from Waterford to the Boundary Committee stated at page 17 –

"The situation regarding population projections and land availability in Waterford City is as follows

- *Census 2011 population of Waterford City – 46,732*
- *Targeted RPG Population 53,000 persons by 2019*

The available residential zoned land is 360 hectares while the extent of available enterprise & service lands is 122.6 hectares of zoned employment land (however 32 hectares is already committed with extant planning permissions) which is more than adequate to service the requirements of the whole of Waterford City and it should be noted that all of the lands are serviced."

11. The Committee has advanced no justification for a boundary adjustment where the availability of serviced land within the existing boundaries is acknowledged to be already more than adequate.
12. A further, very practical consideration arises in respect of commercial rates. The Boundary Review Committee noted the valuation "revision" process has been completed in Waterford but not yet commenced in Kilkenny. It is assumed that this supposed to be a reference to "revaluation" rather than "revision". This confusion does not inspire confidence in the rest of the report.
13. In fact, the revaluation process for Kilkenny has in fact been commenced by Order of the Commissioner for Valuation dated 23rd September 2016. Again, it is surprising that the Committee was not aware of this in issuing its report some months later.
14. The Order of the Commissioner for Valuation requires the net annual value of Kilkenny properties to be determined as of 30th October 2015. The occupiers of commercial premises bear the cost of obtaining expert assistance in this regard. If the boundary revision proceeds, then the same occupiers face further expense and inconvenience as the value of the properties will have to be revisited again – as under the Valuation Act 2015 the fact that relevant property has been moved or transferred from the jurisdiction of one rating authority to another rating authority constitutes a "material change of circumstance" which triggers a revision of the revaluation. In such a scenario, the value of the property is revisited using a different rating method (namely "tone of the list") - and by reference to a different valuation date (in Waterford properties are valued as of the 28th October 2011).
15. In other words, the work done (and expense incurred) for the purposes of the Kilkenny revaluation will be entirely wasted. This is an unnecessary and unjustifiable expenses for businesses in the affected area.
16. The Waterford Boundary Review Committee did not seem to appreciate this as it was not addressed at all in the Report. Indeed, the Report only considers the ARV component of the Rates Bill but not the NAV component. This is all the more serious in the light of the significant deficit in the finances of Waterford.
17. Accordingly, the conclusion of the Committee:

"It is therefore estimated that the Rate differential should not significantly impact on the Commercial Rate Payers in the area of interest"

has no basis.

Enhanced Co-operation and Putting People First.

18. The Terms of Reference identified the need to have regard to Government policy in relation to local government as set out in the Action Programme for Effective Local Government, '**Putting People First**'.
19. As clearly stated at p104 of '**Putting People First**':

"There will also be need for appropriate cooperation and engagement on an inter-regional basis within the State. This can be provided for through legislation (if necessary) and guidance issued by the DECLG, for example in relation to the most appropriate manner to draw up future Regional Spatial and Economic Strategies, and to address matters that transcend boundaries (e.g. important Gateway towns that might straddle boundaries or the development and progression of mutual objectives to co-ordinate development on corridors between the gateways)."

20. Notwithstanding this clear policy, the Waterford Boundary Review Committee does not seem to have appreciated or engaged with the wide range of options available in respect of co-operation. Thus, there is no mention of the potential of:

- a) Agreements under section 85 of the Local Government Act 2001 – which allow one local authority, by agreement, to perform specified functions of the other local authority for the area of the local authority as a whole, or for part of the area. The Athlone Boundary Review Committee described this as “a commonly used mechanism”. By section 87, the Minister has the power to direct the making of such an agreement
- b) Agreements under section 86 of the Local Government Act 2001 - Two or more local authorities may make arrangements for the joint discharge of any of their functions in relation to all or part of an area of a local authority.
- c) There are also a broad range of cooperative mechanisms used by adjoining local authorities to suit specific requirements, and these mechanisms can be either short-term to address specific circumstances or long-term standing arrangements
- d) Section 9 of the Planning and Development Act 2000-2010 – which enables the Minister to direct that two or more planning authorities co-operate to produce a single plan for an urban area and its rural environs. In its 2012 report the Waterford Local Government Committee:

"recommends that the Minister should use his statutory power in this respect [ie section 9 of 2001 Act] to ensure the comprehensive and co-ordinated planning and development of the built up area of Waterford which spans from the edges of Mount Congreve to the west and Belview port to the east."

21. The failure of the Waterford Boundary Review Committee to address these statutory mechanisms may be contrasted with the report of Athlone Boundary Review Committee and the Drogheda Boundary Review Committee, both of which noted:

"There are also a broad range of cooperative mechanisms used by adjoining local authorities to suit specific requirements, and these mechanisms can be either short-term to address specific circumstances or long-term standing arrangements.... Joint planning, shared services, and inter-local authority agreements between neighbouring local authorities are also increasingly common features of local government service provision both nationally and internationally. In some instances, inter-local agreements are pursued as an alternative to boundary change".¹

22. The failure of the Waterford Boundary Review Committee to address these statutory mechanisms is all the more unsatisfactory in the light of the existing Planning Land Use and Transportation Strategy (PLUTS). In 2013, the "**Waterford Gateway Report**" by the Southern and Eastern Regional Assembly described the PLUTS as:

"... a step towards the development of an integrated planning vision for the Waterford Gateway".

¹ Page 31 of Athlone Report; Page 30 of Drogheda Report

23. In 2006, the Department of the Environment, Community and Local Government document **"Implementing the National Spatial Strategy; Gateway Investment Priorities Study"** said as follows in regard to the PLUTS:

"An innovative development strategy for Waterford and its environs has been prepared and adopted by the relevant authorities and enables support for the development of the Gateway. An Implementation Group has been established. Achieving effective co-ordination in the planning and delivery of new development infrastructure across the administrative boundaries is now fundamental to driving the growth of Waterford Gateway."

24. The question thus arises as to why the Committee did not share the view that "achieving effective co-ordination across the administrative boundaries" was "fundamental to driving the growth of Waterford Gateway".

25. The answer supplied by the Committee appears to relate to a lack of confidence in the ability to achieve such co-ordination. At page 5 the Committee stated:

"it is our analysis that collaboration between the two authorities is significantly less in evidence at strategic level than it is at operational. For example, no joint Retail Strategy has been developed between the authorities, and there is no implementation plan or joint working group to deliver the jointly-adopted Planning and Land-Use Study since its initiation in 2004."

26. The Report goes on to say (after detailing the various boundary revision requests by Waterford):

"It is the view of the Committee that such proposals may well have had an adverse impact on the relationship between elected members in the two local authorities. For example, the 2005 application was made only a year after the two authorities had formally adopted the Waterford Planning and Land Use Study (see section 4.4.1 above), and it may have detracted from successful implementation of the PLUTS."

27. The Committee also noted the point made by Kilkenny Council:

"An Implementation Committee was subsequently established which met on three occasions with the most recent meeting in 2008. A further request by KCC seeking the re-establishment of the Implementation Committee and co-operation on a joint retail strategy was sent in August 2011 during the preparation of the Waterford City Development Plan. No response was received."

While this submission does not dispute the point made by the Committee that the PLUTS now needs to be updated, and effective implementation mechanisms established (see page 33), the Report effectively endorses the decision of Waterford to abandon the co-operative approach, which was essential to the PLUTS.

28. In the circumstances, to approve the Boundary changes suggested by the Boundary Review Committee would be to undermine the concept of co-operation and the different means provided for co-operation in the local Government Acts. To adopt the proposed changes would be to send a clear message to Local Authorities that non-co-operation will not only be overlooked but will be rewarded.

29. The favouring of boundary changes over co-operation is also inconsistent with the approach of the National Planning Framework 2040, which at paragraph 7.2 identifies the following as "Key Policy Considerations" :

- Preparation of Regional Spatial and Economic Strategies to co-ordinate across local authority and wider public policy levels in support of the NPF;
- Implementation programmes developed on a cross-local authority basis within the Regional Assembly structure;
- Strengthened legislative basis for local authority co-operation on planning.

Conclusions

1. At paragraph 4 of the Executive Summary the Committee stated:

“Waterford’s relative lower level of economic performance in comparison with other designated Gateways requires that it has the capacity most fundamentally to consolidate the core of the city to the greatest extent possible. This must include control over any matter that poses a threat to that consolidation”.

This is a hopelessly vague method of analysis.

2. Further, the Committee has signally failed to identify why the existing boundaries constitute a “threat” to that consolidation. The real threat is the failure of Waterford to co-operate with agreed mechanisms.

Recommendations

The Minister needs to fully reconsider the Boundary reports and

- before making any decision, to clearly set out what Government means by “effective and convenient local government”, as specified in the TOR of the Committees,
- carry out CBA and RIA on the Waterford recommendation,
- or simply follow the lead of the three other reports, and dismiss the recommendations altogether,
- and in doing so take full account of the overwhelming majority of opinions expressed against such a change, not least for cultural and sporting reasons, especially in County Kilkenny with its unrivalled hurling tradition.