



An Roinn Ealaíon, Oidhreachta,
Gnóthaí Réigiúnacha, Tuaithe agus Gaeltachta

Department of Arts, Heritage,
Regional, Rural and Gaeltacht Affairs

HERITAGE DIVISION

(Built and Natural)

Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs

Contribution and Observations to

**National Planning Framework - Ireland 2040, Our Plan
Consultation Issues Paper & SEA Scoping Document**

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A. INTRODUCTION

1. The Heritage Division of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs is responsible with other State bodies for the conservation, preservation, protection, development and presentation of Ireland's built and natural heritage. Ireland's built heritage includes our National Monuments, which are buildings or structures the preservation of which is a matter of national importance by reason of the historical, architectural, traditional, artistic, or archaeological interest. Ireland's natural heritage includes the habitats and species located in the State, a number of which are unique to Ireland, or which are of significant European importance and for which Ireland has a particular responsibility.
2. The function of the Heritage Division is given effect primarily through the National Monuments Acts 1930 to 2014, the Wildlife Acts 1976 to 2012, and the European Communities (Birds and Natural Habitats) Regulations 2011-2015, the current legislative vehicle which transposes the Habitats and Birds Directives. The comprehensive list of the legislation overseen by the Heritage Division is outlined in the Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (S.I. No. 192 of 2011).
3. The Heritage Division welcomes the proposed development of a National Planning Framework (NPF) and recommends that there are many shared and complimentary objectives that should be included in the plan as regards a whole of Government approach. The Division plays an important role in the planning process and in contributing to sustainable economic development which protects our built and natural heritage.
4. There is growing recognition that the habitats and species, archaeology and architecture of our natural and built heritage represent a vital public good, the protection of which is of intrinsic importance to the economic, social and physiological well-being of the country. The promotion and presentation of our built and natural heritage is a crucial factor in continued economic expansion, regional and rural development and in maintaining a high quality of life rather than being a hindrance or burden in achieving those objectives. The Division welcomes the focus on the role of our natural resources, natural capital and cultural assets proposed by the

outline of a National Planning Framework, and in particular the proposed linkages to policies designed to protect and promote our built and natural heritage.

The Heritage Division manages a large portion of the State's most pristine habitats directly, with over 80,000 hectares of State-owned land under direct management by the National Parks and Wildlife Service of the Department, which is housed within the Heritage Division. 1,350,000 and 570,000 hectares of marine and terrestrial habitats are selected for designation as Special Areas of Conservation and Special Protection Areas under the Habitats and Bird Directives, known collectively as the Natura 2000 network. There are some overlaps between the two designations.

5. A number of policies and initiatives underway within the Heritage Division are relevant to the development of the NPF and could provide significant cross-over potential. These include the:
 - a. National Landscape Strategy for Ireland 2015 – 2025;
 - b. Government Policy on Architecture (Urban Consolidation/Adaptive Reuse Policies);
 - c. Built Heritage fiscal and investment programme;
 - d. Development of a National Heritage Plan;
 - e. Investment in our National Parks and Nature Reserves; The National Biodiversity Plan
 - f. The Prioritised Action Framework for Natura 2000 in Ireland (2014-2020)
 - g. The Conservation Objectives for Natura 2000 sites

Ireland's Biodiversity Sectoral Climate Change Adaptation Plan

- h. UNESCO World Heritage Sites;
- i. UNESCO Biosphere Reserves;
- j. NATURA network of European Sites;
- k. National Peatlands Strategy; and the,
- l. National Raised Bog Special Areas of Conservation Management Plan.

B. Built Heritage and Architectural Policy

6. Cities and their qualities in terms of the urban environment have become a key element in competitive advantage and in driving economic investment and progress. Irish cities and towns have perhaps always ensured, in part, that investment in continued urban regeneration, in public realm improvements, transport, and in the appropriate reuse of our built environment plays a key factor in promoting and investing in place. It is now widely acknowledged that *place* has become a key element of the economic proposition for urban regeneration and consolidation.
7. Learning from the lessons of the recent past, which in part produced an unsustainable level of new build in rural locations together with suburban/peripheral development around our towns and cities, there is a new opportunity to re-focus on the sustainable and adaptive reuse of both our existing and historic assets and harnessing that aspect of our built environment and landscapes in driving the wider regeneration of existing urban areas and communities through well planned and executed infill development and new-build in towns and villages; and the maintenance in use of existing rural dwellings in the countryside and small settlements in order to maintain population in those areas where decline has been experienced.
8. Given the concentration of historic assets and brownfield sites in the urban core of our cities and towns, a *re-use* strategy would focus on and incentivise jobs-rich investment in existing assets and protects the value of those assets.

Over the longer term it will encourage the maintenance and consolidation of our urban cores and reduce pressure for unsustainable expansion into green field areas, maximising the use of other infrastructure such as schools, retail, recreation and public transport facilities while enabling more healthy travel options such as cycling and walking. It is particularly consistent with the objectives of a low carbon economy.

B1. Built Heritage initiatives

National Landscape Strategy for Ireland 2015 – 2025

9. The National Landscape Strategy for Ireland was published by the Department of Arts, Heritage and the Gaeltacht in 2015 as part of the state's commitments under the European Landscape Convention. The NLS establishes principles for protecting and enhancing the Irish landscape while positively managing its change. It provides a high level policy framework to achieve balance between the protection, management and planning of the landscape by way of supporting actions. Core objectives include the development of landscape policies and a National Landscape Character Assessment.

The NLS addresses issues concerning all types of landscape including rural and urban, peri-urban and marine and will therefore have significant cross-over areas with the NPF, including the opportunities identified in the SEA Report to integrate landscape considerations into the design of future developments and to develop requirements for design statements for villages, towns and cities.

Government Policy on Architecture Implementation Programme

10. The Government Policy on Architecture as launched in 2009 provides the appropriate framework for architectural policy up to 2015 and beyond and is led centrally by Built Heritage, Architectural Policy and Strategic Infrastructure Section, DAHRRGA. The policy places an emphasis on sustainable development of the environment and urban design, incorporates architectural heritage in a holistic integrated manner, and encourages and supports high quality modern architecture. A focus on this policy's defined outcomes on quality within the built environment should provide a central pillar to the NPF objectives and should be referenced as such – information in this regard is available directly from Built Heritage, Architectural Policy and Strategic Infrastructure Unit of DAHRRGA.

11. Under the Government Policy on Architecture 2009-2015 (GPA) implementation programme, a number of key policies have been developed to align the objectives of heritage led regeneration with that of spatial planning. Publications such as *Shaping the Future – case studies in adaptation and reuse in historic urban environments* (DAHG), *Retail Design Manual – a companion document to the retail planning guidelines for planning authorities* and the best practice *Manual for Local Area Plans*

(DECLG/DAHG) have all contributed to the objective of a new focus on the sustainable and adaptive reuse of both our existing and historic stock and securing the future of our cities and towns. The final annual reports were published in December 2016 and developments for a review leading to a consecutive and on-going policy on architecture are currently underway.

Built Heritage fiscal and investment programme

12. The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs proposes that significant investment in the sustainable management and conservation of Ireland's built heritage has the potential to assist in the country's continued economic recovery and in meeting the objectives as proposed in a NPF.

13. As part of this on-going challenge, a number of targeted policies and programmes have been developed and implemented to assist in the further regeneration and consolidation of our cities and towns, such as the Historic Towns Initiative (HTI), the Living City Initiative (2015) for the six large urban areas as developed by the Department of Finance and more recently the ERDF supported Designated Urban Centres Grants Scheme 2014 – 2020.

National Heritage Plan 2018 - 2023

14. As outlined in the *Programme for a Partnership Government*, it is the intention to develop and publish an updated National Heritage Plan. Following on from the previous National Heritage Plan 2002-2007, and over the course of recent years, the Department's responsibilities for the development of policies for the protection and promotion of our built and natural heritage have been met by various ongoing policy developments, responding to the range of challenges in each of the sectoral areas within the heritage remit.

15. The heritage sector is composed of many different sub-sectors with differing needs. Given the breadth of the sectors involved and the on-going resource constraints, initial consideration will focus on how best to develop the strategy, with a view to availing of the opportunities and dealing with the challenges in the context currently prevailing.

16. In this regard, work has been initiated by the Department regarding the scope and terms of reference for the process which should reflect the core objectives of that set out in the NPF and further spatial development of Ireland.

C. Natural Heritage and Nature Conservation

17. There is an increasing awareness of the contribution of our natural environment and natural heritage to sustainable economic development and a high and improving quality of life. Traditionally, policymakers have relied on the Hedonic Pricing Method and ‘willingness-to-pay’ methods to establish the economic value of our natural heritage. This first approach uses real market and behavioural data to infer otherwise difficult to ascertain monetary value by using proxies such as, in the case natural heritage such as a Nature Reserve, local house prices (after the necessary adjustment). This approach fails to capture many of positive externalities associated with our natural heritage, such as health benefits or environmental benefits. For that reason, our natural heritage has often been undervalued by more dated methods of economic calculation. The latter attempts to ascribe market values to our natural heritage through surveys and questionnaires which ask firms and individuals how much they would be willing to pay for the externalities and direct services provided by nature.

18. Since the 1990s, policymakers have increasing used the concepts of *ecosystem services* and *natural capital* in considering the contribution of ecological systems and nature to human welfare. Costanza et. al. define ecosystem services as ‘flows of materials, energy and information from natural capital stocks which combine with manufactured and human capital services to produce human welfare. Natural capital stocks include trees, minerals, ecosystems, and the atmosphere.’¹ The National Plan for Biodiversity 2011-2016 identifies four broad areas of ecosystem services:

- Provisioning services (production of food and water, etc.)
- Regulating services (e.g. the control of climate and disease)
- Supporting services (e.g. nutrient cycling and crop pollination)
- Cultural services (such as spiritual and recreational benefits)

¹ Robert Costanza et. al. (1997), ‘The value of the world’s ecosystem services and natural capital’, *Nature*, Vol. 387 (15), pp. 253 -260.

19. Natural peatlands (those with little human impact) are considered some of the most important ecosystems of the world, because of their key value for biodiversity, water filtration and supply, the potential for climate regulation via the sequestration and storage of carbon from the atmosphere, and important support for human welfare.
20. The NPF should have particular regard to these ecosystem services, and the value, much of which is not captured by current national accounting methodologies such as Gross Domestic Product, which they provide to society.
21. The principle target of the EU Biodiversity Strategy to 2020 is to halt the loss of biodiversity and ecosystem services by 2020 and restore them in so far as feasible.
22. The EU Habitats Directive (Directive 92/43/EEC) and the Birds Directive (Directive 79/409/EC) form the cornerstone of Europe's nature conservation policy. They are built around two pillars: (i) the Natura 2000 network of protected sites (called Special Areas of Conservation in the Habitats Directive, and Special Protection Areas in the Birds Directive); and (ii) systems for the protection of species outside those protected areas. Both Directives include a requirement for periodic reporting on implementation. Article 17 of the Habitats Directive requires that Member States must undertake national assessments, on a 6-year cycle, of the conservation status of habitats and species protected under the Directive. The Habitats Directive report for Ireland was submitted in 2013. The requirements for reporting under Article 12 of the Birds Directive were recently changed to 6 years and streamlined with reporting cycles under Article 17 of the Habitats Directive. The changes also included a new requirement to report on the size and trends of the populations of birds in each Member State, and provide information on changes in distribution. The Birds Directive report for Ireland was submitted in February 2014.
23. In terms of habitats, the reports show continuing declines or serious threats to Ireland's bogs, coastal dune systems, area of limestone pavement and some native woodland habitats. Regarding non-bird species, there has been improvement in the status of species since the last report in 2007 including the otter and Natterjack toad,

however ongoing declines were reported for many invertebrates species. The health of Ireland's bird population is mixed; some species such as the Buzzard and Blackcap are expanding and some new species have appeared, such as the Little Egret and Great Spotted Woodpecker. However, other species have undergone significant declines in their long-term breeding distribution: Corncrake (92%), Curlew (89%), Whinchat (77%), Grey Partridge (74%), Woodcock (68%), Lapwing (56%), Red Grouse (52%), and Redshank (50%). The hen harrier remains in long-term decline.

24. The provision of recreational and cultural ecosystem services in the form of eco-tourism, walking and other outdoor activities, and the aesthetic, artistic, spiritual and scientific values provided by ecosystems, are of particular importance to the health and well-being of citizens, and Ireland's six National Parks and eighty statutory Nature Reserves provide key services in this regard. The restoration of Ireland's designated peatlands can provide community benefits through the installation of recreational amenities where suitable (e.g. boardwalks, walking trails and signage). The spatial vision outlined in the NPF should make provision for spaces for all citizens to enjoy the cultural and recreational opportunities offered by our natural heritage.

25. The value of designating Natural Heritage Areas was described by Henry Comerford in "*Wildlife Legislation 1976-2000*" (Round Hall, Dublin, 2001) as follows: "These protected sites under the Act of 1976 if combined with special protection areas and special areas of conservation ...form a complex of sites throughout the length and breadth of Ireland catering for every variety of flora and fauna and their habitats. The introduction of Natural Heritage Areas completes the complex by bringing in sites which may be significant in biological terms for species communities and habitats but which may also be of interest for landforms and geological and geomorphological features or for their diversity of natural attributes".

26. The term 'proposed NHA' (or pNHA) refers to the suite of 1235 biological sites that were advertised as such in 1994-1995. Subsequently, 308 became candidate SACs outright, a further 192 were subsumed as subsites into candidate SACs and/or SPAs, 100 became designated peatland NHAs, and 3 were delisted. This leaves 632 'stand-

alone' pNHAs. These sites are considered to be of at least regional or national significance. Most, or all, are protected under County Development Plans and Local Area Development Plans. Designation under the Wildlife Acts is desirable but has not been possible to date due to the priority of completion of Natura 2000 sites, i.e. SACs and SPAs.

27. In the longer term, it will be necessary to apply the scientific selection criteria to the national resource for each habitat/species/geological interest for the NHAs.

C1. Natural Heritage initiatives

Investment in National Parks and Nature Reserves

28. The Department is committed to investing in our National Parks and State-owned Nature Reserves to appropriately manage their natural heritage and enable appropriate public access. The Department has entered a strategic partnership with Fáilte Ireland under their *Strategy for Investment 2016-2022*, and expects to draw down significant capital expenditure under the plan. At present, the Parks and Reserves attract over 3 million visitors per annum, and play a key role in the national and regional economy. Five of the National Parks are located near the West coast, namely Killarney, the Burren, Connemara, Ballycroy and Glenveagh National Parks.

National Biodiversity Plan 2017-2021

29. The United Nations Convention on Biological Diversity (UNCBD) which is an international legal instrument for the conservation and sustainable use of biological diversity was opened for signature in 1992. Ireland is a party to this Convention. The CBD Strategic Plan 2011-2020 provides an overarching framework on biodiversity, not only for the biodiversity-related conventions, but for the entire United Nations system and all other partners engaged in biodiversity management and policy development. Parties agreed to translate this overarching international framework into [revised and updated national biodiversity strategies and action plans](#). Ireland's 3rd Biodiversity Action Plan 2017-2021 will be implemented by a range of government, civil and private sectors. The targets in the Plan address issues ranging from improving the management of protected areas to increasing awareness and appreciation of biodiversity and ecosystem services.

30. Ireland's Biodiversity Sectoral Climate Change Adaptation Plan

Climate change will have predominantly adverse impacts on biodiversity and many ecosystems and services essential for human well-being. A climate change adaptation strategy for biodiversity is being drafted to identify adaptation options that will help to protect biodiversity and ecosystem services from the impacts of a changing climate.

Biodiversity and ecosystem services can also help people to adapt to the adverse effects of climate change by utilising Ecosystem-based approaches to climate change adaptation.

Examples of EbA include: restoration of floodplains for flood protection and water storage; greening of cities to counter the heat island effect; crop diversification with indigenous varieties that are resistant to climate change; creating a network of protected areas to enhance ecosystem resilience and continued provision of essential ecosystem services such as erosion control, beach stabilization and water retention.

These approaches should be considered as part of the NPF.

31. Selection, designation and protection of the Natura 2000 network

The Natura 2000 network in Ireland comprises almost 600 sites nationwide (currently 439 SACs (104 designated to date) and 154 SPAs (129 classified to date), which have been selected to protect habitats and species listed in the Habitats and Birds Directive. Article 6 of the Habitats Directive sets out the framework for conservation and protection of these sites, including preventative and proactive requirements. This includes the need for appropriate assessment of any “plan or project” that may have a significant effect on a Natura 2000 site. In order to facilitate the appropriate assessment process and as a first step in management planning for Natura 2000 sites, the Department is preparing site-specific conservation objectives for each site. A set of generic conservation objectives has been published for each SAC and SPA. A programme for setting more detailed site-specific conservation objectives is underway and these replace the generic objectives as they are produced. To date 212 site Specific conservation Objectives have been completed.

32. The Prioritised Action Plan for Natura 2000 in Ireland

Under Article 8 of the Habitats Directive, Member States are obliged to identify the priorities for Natura 2000 for the relevant programming period and in turn to have regard to the available sources of funding under relevant EU funding instruments. The Prioritised Action Framework provides a mechanism to identify the requirements of each Member State and to focus resources on these main priorities. In this regard, the key priorities for Ireland for the period 2014-2020 include: restoration of raised bogs, better protection for blanket bogs and Ireland's uplands generally, better management of Ireland's dunes and machair systems, better protection for turloughs, measures to protect Ireland's remaining freshwater pearl mussel populations and new measures to protect birds in decline such as the corncrake, curlew and hen harrier. These priorities are now set out in a structured way in Ireland's Prioritised Action Framework.

33. UNESCO Biosphere Reserves

Ireland has two UN Biosphere Reserves, Killarney National Park Biosphere Reserve and Dublin Bay Biosphere Reserve. When initially designated in 1981 and 1982, the Reserves were small in scale, reflecting the then focus on the UN Man and Biosphere Programme (MAB) on habitat protection. Since the publication of the Seville Strategy by UNESCO MAB in 1995, Biospheres are expected to fulfil three complementary functions: a conservation function, to preserve genetic resources, species, ecosystems and landscapes; a development function, to foster sustainable economic and human development, and a logistic support function, to support demonstration projects, environmental education and training, and research and monitoring related to local, national and global issues of conservation and sustainable development.

The Bull Island Biosphere Reserve, underwent a periodic review by UNESCO and led by Dublin City Council was successfully expanded and re-named the Dublin Bay Biosphere Reserve in 2015. Given the initial designations were made in the early 1980s, significant work and expansion of the size Biosphere Reserve is required to ensure UNESCO continue to recognise the designation. The Killarney National Park Biosphere Reserve periodic review process is underway with Kerry County Council

Dublin Bay Biosphere may be a very useful model for the National Planning Framework.

34. National Peatlands Strategy

The National Peatlands Strategy published in 2016 sets out a cross-governmental approach to managing issues that relate to peatlands, including compliance with EU environmental law, climate change, forestry, flood control, energy, nature conservation, planning, and agriculture.

Peatlands cover approximately 20% of the State's land area and their use has implications across a wide spectrum of public policy. The Strategy aims to provide a long-term framework within which all of the peatlands within the State can be managed responsibly in order to optimise their

It contains 32 actions to be implemented by a range of Government Departments and State Agencies. Its implementation is being overseen by the independently chaired Peatlands Strategy Implementation Group whose members come from the relevant Government Departments and State Agencies.

35. National Raised Bog Special Areas of Conservation Management Plan

The National Raised Bog Special Areas of Conservation (SAC) Management Plan (due to be published shortly subject to the approval of the Government), provides for the future restoration and management of 53 raised bog SACs and was developed arising from a motion in Dáil Éireann in March 2012, put forward by the Technical Group and unanimously supported by all members.

The Plan sets out the approach to how each of the raised bog SACs is to be conserved and managed into the future and how the needs of turf cutters and other stakeholders are to be addressed including exploring the options in terms of certain provisions of article 6 of the Habitats Directive.

36. Restoration of Raised Bog SACs

In November 2015 the European Commission approved funding for a €5.4m project under the EU LIFE 2014-2020 programme for the restoration of active raised bog in 12 SAC sites in Ireland. This project, which will operate for 5 years, commenced in January 2016 and is being implemented by a project team who will work closely with the local communities and stakeholders in advance of the restoration works commencing. The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs will oversee the project and contribute

€1.352m to this project with the EU providing €4.056m over the 5 years of the project duration.

Outside of the 12 LIFE project sites a restoration programme for the other SACs and NHAs will be implemented on a phased basis and by priority taking into account a number of factors such as contribution to the national network target, ownership matters and restoration requirements.

37. Peatlands and Climate Change

As a long term carbon store peatlands are very important in climate change mitigation removing carbon from the atmosphere and storing it in the peat under waterlogged conditions (world peat carbon stocks are equivalent to at least 60 per cent of all atmospheric carbon). Drained peatlands on the other hand are a significant source of carbon emissions with less than 0.3% of the land area giving rise to almost 6% of total global anthropogenic CO₂ emissions. Restoring drained peatlands by rewetting has been demonstrated to reduce greenhouse gas emissions and this is now an accepted climate mitigation activity under international climate change agreements. The storage capacity of Irish peatlands is estimated to be 1,566million tonnes. The National Peatland Strategy (2016) emphasises the role of peatlands in sequestering and storing carbon, and makes recommendations on continuing research to consolidate our scientific understanding of how peatland management might be used to enhance carbon sequestration and reduce greenhouse gas emissions.

The National Raised Bog SAC Management Plan sets out a commitment to undertake research at the level of greenhouse gas emissions from peat soils under various management practices and to identify and review peatland restoration projects and techniques to assess their effectiveness in terms of hydrology, carbon storage and sequestration potential.

38. Peatlands and Water

Raised bogs are linked with their surrounding areas and continuously exchange substances through the transformation of nutrients, buffering or storage resulting in a change in chemical composition of the water outflow. Raised bogs play an important part in regulating water within a catchment and in maintaining water quality. Mosses, which are the main vegetation component of a healthy raised bog can hold twenty times their own weight in water and together with the peat mass, they help to filter contaminants and release ‘clean’ water.

Raised bogs may fulfil an essential role as source areas for rivers, especially in maintaining low flows during dry periods. Under certain geographical conditions, raised bogs in good condition can control the flow of water within a catchment, mitigating flooding downstream by reducing the speed at which water leaves the catchment area. The storage capacity of a natural bog is however limited and depends on the composition of the top layer of the bog and the quality (presence or absence of drainage and cutting) of the bog margins.

Generally bogs are great sinks of atmospheric pollutants and therefore purify the water downstream. Damage to bogs, peat cutting, and associated drainage on the high bog and the cutover and loss of vegetation, can increase the amount and speed of water leaving the bog. This drained water contains higher amounts of carbon and particulate organic carbon (brown water) and nitrogen than natural bog water due to erosion and to leaching of nutrients from the decomposing peat (Holden et al. 2004).

39. Peatlands, Community and Recreation

Outdoor experiences in the open landscape, and bogs are ideal places, are increasingly used and have provided inspiration throughout history for poets, painters, artists. Where raised bogs occur in the landscape, they are often the only remaining wild areas and represent an invaluable asset for natural, cultural and well-being tourism with an increasing demand in a changing society. Substantial opportunities exist for the enhancement of raised bogs as sustainable tourism and recreation amenities and to return a community dividend. The open, natural environment of a bog can be an ideal place for physical exercise, relaxation, social interaction and provide general benefits to health and well-being. Having these amenities in turn encourages inward investment through eco-tourism and other industries.

Development of community based conservation and management groups whom can act as custodians of these sites is recognised as one of the best ways to ensure the long-term protection of habitats such as peatlands whilst maximising the benefits to local communities.

Through consultation with the local community and other stakeholders there is possibility to develop ideas for maximising socio-economic benefits for the local community through conservation and restoration. These might include building or improving existing facilities (i.e. tracks, board walks, bog bridges), encouraging the creation of small tourism enterprises, promoting the benefits to human health and well-being and enhancing the value of a site as an

educational resource (both for ecological features and potential industrial archaeological and architectural heritage features that may be present within and surrounding the site). There is significant potential for investment in upgrading, expanding and maintaining these facilities as access routes for amenity and recreation.

Many of the designated raised bogs in Ireland already offer significant potential for recreation and amenity. Boardwalks and bog bridges have been built and paths improved in many raised bogs across the country and are very popular among the locals and are successful attracting visitors to the sites. e.g. Abbeyleix Bog (Co. Laois), Clara Bog (Co. Offaly).

40. Peat Extraction and Planning

Planning permission is generally considered to be required under the Planning and Development Acts for developments such as domestic turf cutting in a new or extended area of 10 hectares or more, where the drainage of the bogland commenced on or after 21 January 2002. All other new or extended peat extraction is classified as “exempted development”, that is to say, planning permission is not generally required. However, as is the case with all other classes of exempted development, the exemption for small scale peat extraction does not apply where Environmental Impact Assessment (EIA) or Appropriate Assessment (AA) is required in relation to the activity. In order to comply with the EIA, Habitats and Birds Directives, planning permission is required in such cases.

EIA is mandatory under the planning code for peat extraction in a new or extended area of more than 30 hectares, and must also be carried out in respect of smaller new or extended areas where the planning authority determines that the activity is likely to have significant effects on the environment. Similarly, AA is required under the planning code for all proposed peat extraction where the planning authority determines that the proposed development could adversely affect the integrity of a European site (including a Special Area of Conservation).

The Programme for a Partnership Government (2016) provides that the Government commits to reviewing the position in relation to the planning code as it relates to turf cutters for domestic use.

D. NATIONAL MONUMENTS SERVICE

The National Monuments Service is responsible for the following:

- Protecting, conserving and managing our archaeological heritage through the provision of an appropriate administrative, policy and legislative framework under the National Monuments Acts.
- Creating increased public awareness and appreciation of the value and importance of Ireland's archaeological heritage.
- Promoting and providing information on the quality of our archaeological heritage as a support and stimulus for inward investment and cultural tourism.

NMS is also responsible for development and promotion of World Heritage sites and the increased interest in heritage tourism initiatives such as the Wild Atlantic Way and the Ireland's Ancient East.

Under the provisions of the National Monuments Acts 1930-2014, the Department has established and maintains the Record of Monuments and Places, which affords legal protection to over 120,000 recorded archaeological sites and monuments in the State. Anyone proposing works to a monument that is included in the Record of Monument and Places must give my Department two months prior notice before works can start.

The Department has a number of measures at its disposal to facilitate the maintenance and restoration of major historical or cultural sites. The Minister of Arts, Heritage, Regional, Rural and Gaeltacht Affairs is the owner or guardian under the National Monuments Acts of approximately 1,000 national monuments located at approximately 750 sites and in such cases there is a statutory duty to maintain the national monument. Such maintenance is undertaken by the Office of Public Works (OPW). Local authorities are responsible under the National Monuments Acts for maintaining the national monuments of which they are owners or guardians.

The National Planning Framework is required to take account of such policies and roles under archaeological protection as part of the core objectives in national heritage management.

Appendix 1

Nature Conservation Observations in relation to formal notification of SEA Scoping in relation to the Ireland 2040 Our Plan – the National Planning Framework

Context of submission

It is understood that the National Planning Framework (NPF) is a high level plan, which is to succeed the ‘National Spatial Strategy’, and that submissions are invited at present from the Department Arts, Heritage, Regional, Rural and Gaeltacht Affairs in relation to the plan and the scope of the SEA.

This submission is made in the context of this Department’s role in relation to nature conservation, including as an environmental authority under SEA legislation. The observations are offered to assist the Department of Housing, Planning, Community and Local Government in meeting the obligations that arise in relation to European sites, other nature conservation sites, natural habitats and protected species, and biodiversity in general in the context of this plan and the environmental assessment(s) required. They are not exhaustive and are made without prejudice to any observations or recommendations that may be made by the Minister and this Department at future stages in the plan-making process.

In addition to the scope of the SEA, the opportunity has been taken to make observations in relation to the appropriate assessment process, including the preparation of the NIS (or NIR), in the event that screening for appropriate assessment by your Department finds that this is necessary. It is unclear, at present, whether the NPF is a ‘land use plan’ for the purposes of Part XAB of the Planning and Development Act, 2000 as amended; if not, Part 5, Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations, 2011² (hereafter the ‘2011 Regulations’), will be the legislation that applies in the case of the appropriate assessment process. The record-keeping obligations of a public authority, as set out in Regulation 61 of the 2011 Regulations³, should also be noted, as should the duties of a public authority in general under Regulation 27 (see below).

Matters relating to the plan

It is outlined that the NPF is to be a statutory document that will provide context for planning policy to 2040. It is to be a broad national plan for the strategic planning of urban and rural areas to secure regional development and the co-ordination of spatial and economic strategies. The NPF is to be a high level document which will influence and co-ordinate other plans for development across different sectors. It is also noted that development will take place with or without a planning framework in place.

² SI 477 of 2011, Part 5

³ Regulation 61 requires public authorities to retain, for at least 12 years, records of a range of documents pertaining to screenings and appropriate assessments, including any information or advice obtained by the public authority.

The NPF is not yet available but its broad scope and high level of application are evident from the information available. It is indicated that the NPF will cover natural heritage and biodiversity matters. The NPF will also be subject to SEA and appropriate assessment before the plan is made, again based on the information provided. The appropriate assessment will inform DHPCLG's decision on whether the plan may be adopted – see also below.

The 'Issues and Choices' report covers nature conservation and biodiversity matters in general terms in sections 5.4 – Heritage and Landscape, and 5.5 – Green Infrastructure. It is advised that these topics are considered in their own right in the NPF, as well as in the context of multifunctional uses and opportunities, including, for example, as 'green' and 'blue' infrastructure, and ecosystem services. It is also advised that there should be full integration of the requirements of the nature Directives, and relevant associated legislation, into the NPF, including across all sections, sectors and objectives, as appropriate. This will be assisted by the environmental assessments which are being undertaken, and by the plan-level mitigation measures which will be required to ensure that significant adverse effects on nature conservation do not result from the implementation of the NPF.

The implications of the NPF for European sites and the Natura 2000 network in Ireland will need to be examined, assessed and mitigated, noting the potential over-riding significance that adverse effects on European sites could have for the realisation of the NPF and future development. Note this could include plans and projects that could act in combination to have adverse effects on European sites, as well as scenarios where adverse effects may already be occurring and where restoration is required.

From a nature conservation and biodiversity perspective, the following are critical considerations for planning policy in Ireland:

- the likely significant effects of planning policy on European sites, noting that adverse effects on the integrity and conservation objectives of European sites should not result from, or be perpetuated by future development and associated environmental pressures alone, or in combination with other plans and projects; and
- the likely significant effects of planning policy on the environment, including on biodiversity, flora and fauna, noting that adverse effects on nature conservation sites, and natural habitats and protected species should not result from future development and associated environmental pressures alone or cumulatively with other plans, programmes or projects.

SEA and appropriate assessment are addressed further below. The following points raise examples of some key issues which may need to be addressed in the NPF and the associated environmental assessments. The list is not exhaustive but includes recurrent issues which have been problematical for the developers and/or the regulatory and competent/public authorities involved.

- The NPF is likely to refer to or reflect other national plans or strategies, and their policies or objectives (e.g. Section 4.5.9 of the Position Paper refers to *Harnessing our ocean wealth – An integrated marine plan for Ireland*, which in turn refers to other plans (e.g. p.32: “Implement existing (e.g. Food Harvest 2020) and planned (e.g. Ports Policy, Offshore Renewable Energy Development Plan) sectoral strategies/plans”). It is important that any such plans or strategies can demonstrate their own compliance with the requirements for appropriate assessment and SEA, as relevant, and with the overarching requirement to safeguard European sites, in particular. Where this is not possible, such plans or strategies should be excluded or assessed as part of the current NPF.
- Where no national sectoral plans are in existence and the NPF will include policies for future development of those sectors, e.g. onshore wind and other renewable energy, such policies will need to be assessed as part of the current NPF.
- With a timeframe of up to 2040, the NPF should address, and assist in managing and adapting to predicted sea level rise (incorporating surge levels), including in terms of coastal flooding, ‘coastal squeeze’, and the approaches to future strategic coastal management and protection.
- The NPF, and its policies on settlement and development, should integrate with the requirements of the Habitats Directive and the Water Framework Directive in relation to existing and future pressures on surface waters and groundwater, particularly arising from wastewater discharges and water abstraction. Among other things, the ability to provide adequate compliant water and wastewater services must be a precursor to new planned settlements and development.
- The NPF should consider the development of policies for proper planning and sustainable development of amenity and recreational facilities, including green/blue infrastructure, so that appropriate locations and routes are targeted, and are planned in an integrated rather than piecemeal way. The particular sensitivities of nature conservation sites, protected species locations, and fragile and changeable habitats and environments (e.g. active flood plains and flood zones, mobile coastal habitats, peatlands and other wetlands, etc.) should be taken into account and avoided, noting, among other things, the additional costs of assessment, sensitive construction, and ongoing management and replacement that may be required where such constraints exist.
- The need for and approach to flood relief measures for coastal and fluvial flooding (but not groundwater flooding) of settlements and other features is being addressed in OPW catchment Flood Risk Management Plans. In addition to the need to avoid future development of existing and many historic floodplains/flood zones in planning policy wherever possible, and including areas prone to groundwater flooding, there is also a need to address increased runoff, and to plan for and identify areas for flood storage in some river catchments. An evidence-based assessment of whether SUDS is, and/or can be, successful in practice needs to be carried out for existing and future development.

- The cumulative effects of existing and future development, including road infrastructure and expanding urban development, should be considered, including in terms of increasing habitat fragmentation and increased environmental pressures including on water resources. This may include pressures on groundwater aquifers that feed and are essential to the structure and function of nature conservation sites.
- There are examples of well-designed ‘win-win’ development and conservation outcomes that were achieved through best practice and collaboration. The development of the NPF could provide a mechanism to highlight how optimum multiple use of areas with nature conservation designations can be achieved in appropriate locations. Also, whether the current land use zoning categories could be defined more precisely for clarity, and to allow for different receptor sensitivities to be captured, should be examined.
- The meaning of better planning to can avoid environmental harm (p. 46) needs to be further considered, including in the context of implications for European sites and NHAs, and their conservation objectives, and in the context of, for example, ‘environmental damage’, and ‘proper planning and sustainable development’.

SEA – Biodiversity, flora and fauna

It has been determined that the likely significant effects of the NPF on biodiversity, flora and fauna must be assessed. Biodiversity is generally defined as the variety of life on earth. An outline of key elements of biodiversity of potential relevance to the NPF is given in Appendix 1A, and includes sites, habitats, species of flora and fauna, and ecological networks. There are interrelationships between biodiversity, flora and fauna and most other environmental issues or topics, including population, human health, water, soil, air, climatic factors, landscape, and possibly architectural and archaeological heritage. The potentially significant effects of the NPF on these interdependencies should be explored and assessed in the SEA.

There will be overlaps and linkages between biodiversity, flora and fauna in SEA, and sites, habitats and species of relevance to the appropriate assessment and Articles 6(3) and 6(4) of the Habitats Directive. SEA should address all such issues in general, as well as any other relevant provisions of the Habitats and Birds Directives, including in respects of Article 6(1), 6(2) and 10 of the Habitats Directive, and associated national legislation. See also the general duties of a public authority below.

As outlined above, the NPF should be developed to integrate biodiversity considerations in a positive, proactive and precautionary way, and this should be reflected in the text and content of the NPF, including its aims, objectives and policies, as well as in maps. The findings and recommendations of SEA should be assimilated into the plan, and should modify the content of the NPF where necessary.

The biodiversity, flora and fauna section of the Environmental Report should be prepared by or in conjunction with a suitably qualified ecologist(s), and other specialists as necessary, and in conjunction with the NIS (or NIR) to ensure full integration of biodiversity issues and

concerns. The EPA's *Integrated Biodiversity Impact Assessment* best practice guidance is of relevance in this regard.

SEOs

The Environmental Report is required to contain information on environmental protection objectives which are established at international to national level, and are relevant to the NPF. For biodiversity, flora and fauna, these should integrate with the objectives and obligations of other directives such as the Habitats Directive, the Birds Directive, the Water Framework Directive and the Floods Directive, and with the Wildlife Acts, 1976-2000, and the National Biodiversity Plan.

The (draft) Strategic Environmental Objective (SEO) for 'Biodiversity, Flora and Fauna' in Section 5.3.2 of the SEA Scoping report is noted. It is suggested that the target is examined and revised to reflect, at a minimum, required targets in relation to the conservation of European sites, other nature conservation sites, ecological networks, and protected species. The current draft target is: "*Require all regional, county and local level land use plans to include ecosystem services and green infrastructure provisions in their land use plans*".

SEA monitoring

The monitoring programme should be clearly set out and developed in such a manner as to ensure it will identify the effects on the environment that will or may arise, and to monitor the effectiveness of any mitigation on which the assessment relies. While it may be considered efficient to use monitoring programmes that are already in place and run by other authorities, it is important to establish that these are in fact designed in such a way that they will identify the effects anticipated from the particular plan in question. As such, it is important to understand the objectives, methodologies, parameters, assumptions, etc. of any existing monitoring programme that is proposed to be used in such a way.

It is advisable to set out clearly where responsibilities for monitoring programmes lie, and their frequency and reporting/publication arrangements, as well as the procedures that will be put in place to ensure that there is a response mechanism to any unforeseen or undesirable negative effects/results, and that remedial action will be taken, if necessary.

Available guidance

Existing EU and Irish guidance on SEA and appropriate assessment (see Appendix 1B) should be followed in general terms when carrying out the environmental assessments, but you should also be cognisant of changes in the interpretation and application of Directives and national legislation arising from European and Irish jurisprudence, particularly in respect of Article 6 of the Habitats Directive. There should be due regard to the terminology, stages and tests of the assessment processes as set out in relevant legislation, notably in the case of the appropriate assessment process. Where legislation updates or amends elements of existing guidance, the former should be used or applied in preference in all cases.

Available ecological information

The National Parks and Wildlife Service website (www.npws.ie) is a key source of data, information and publications on nature conservation sites and biodiversity issues of potential relevance to the plan area and the environmental assessment(s) required. This includes site boundaries, site synopses, lists of qualifying interests (SACs) and special conservation interests (SPAs), conservation objectives (European sites), features of interest (NHAs), and dates of site designation. GIS datasets are available for download for nature conservation sites⁴, and for certain habitats and species arising from various sources, including national surveys. Other NPWS-held data on habitats and species may be requested by submitting a 'Data Request Form'⁵.

Site-specific conservation objectives (SSCOs), and associated backing documents, are available for some European sites on the NPWS website⁶. GIS datasets associated with site-specific conservation objectives are also available for download: <http://www.npws.ie/mapsanddata/habitatspeciesdata/>. For all other European sites, generic conservation objectives are available and the most up-to-date versions should be used and referenced in any relevant documents. The full scope of conservation objectives should be used, as appropriate, to guide and inform the scope of the scientific assessment and analysis in an NIS. The most recent version of the conservation objectives should be used and referenced, and each of the individual conservation objectives of relevance should be addressed separately.

The Habitats Directive Article 17 reports for 2007 and 2013, which should be consulted, are available from <http://www.npws.ie/article-17-reports-0>. The recent national report on Article 12 of the Birds Directive, at <http://www.npws.ie/news/birds-directive-article-12-reporting>, should also be consulted. The national habitat surveys that have been undertaken, and their resulting reports, should be consulted, including for information regarding the definitions and evaluations that have been developed for Annex I habitat types in Ireland.

Data on biodiversity and ecological features will be available from various other sources including, for example:

- Other organisations, e.g. National Biodiversity Data Centre, BirdWatch Ireland, Bat Conservation Ireland, etc.
- SEA Environmental Reports, NIRs/NISs and other reports for other plans

Appropriate assessment

It appears that it has been determined that an appropriate assessment is required in this case, and it is understood that an NIS (or NIR) is in preparation. General notes on the preparation of an NIS are included in Appendix 1C, and should be taken into account as relevant. As

⁴ Special Areas of Conservation (SACs, currently known as candidate sites but fully legally protected); Special Protection Areas (SPAs); Natural Heritage Areas (NHAs); and proposed Natural Heritage Areas (pNHAs)

⁵ Available from <http://www.npws.ie/maps-and-data/request-data>

⁶ <http://www.npws.ie/protectedsites/conservationmanagementplanning/conservationobjectives/>

outlined above, there should be due regard to the terminology, stages and tests of the appropriate assessment process as set out in relevant legislation.

Where the NIS (or NIR) identifies that plan-level mitigation is necessary, including to avoid adverse effects on European sites and to manage future scenarios, this must amend and be reflected in the content and objectives of the final plan wherever necessary. Specific and repeated cross-referencing to mitigation measures in other sections or reports may be used but should be done clearly, consistently and unambiguously.

The appropriate assessment is carried out for the final iteration of a plan by the public authority⁷ (or by the competent authority under planning legislation). It is required to take account of the NIS (including any addenda or revisions), and should also address the content of submissions made where issues or concerns are raised regarding the likely effects on European sites. The decision-making authority has obligations to address scientific uncertainties or discrepancies, including matters raised by other parties, particularly in relation to the implications for European sites and their conservation objectives in the appropriate assessment (e.g. judgment of Justice Barton (Irish High Court, January 2016) in the case of Balz and others versus An Bord Pleanála); the final determinations should demonstrate how the differing scientific opinions were resolved, noting the standards of the appropriate assessment. Case law of the Court of Justice of the European Union (e.g. case C-258/11) has established that an appropriate assessment cannot have lacunae, and must contain complete, precise and definitive findings and conclusions with regard to the implications of a project for the conservation objectives and integrity of a European site or sites.

General duties of a public authority

Your attention is drawn to Regulation 27 of the 2011 Regulations as this places particular duties on all public authorities in relation to European sites. Among other things, this includes a duty to exercise all functions, including but not only consent functions, in compliance with, and so as to secure compliance with the requirements of the Habitats and Birds Directives and the 2011 Regulations. Public authorities are obliged, when exercising their functions, to take appropriate steps to avoid in European sites the deterioration of natural habitats and the habitats of species, as well as disturbance of species for which a site has been designated insofar as this disturbance could be significant in relation to the objectives of the Habitats Directive. All public authorities are advised to incorporate such obligations into their plans and programmes, and associated assessments, as required and relevant. This could usefully include the development of systems that will monitor and ensure the compliance of “downstream” projects with these obligations, as well as any internal mechanisms that may be needed to ensure compliance.

⁷ As defined in Part 1 of the European Communities (Birds and Natural Habitats) Regulations, 2011, and including DHPCLG

Appendix 1A

Key elements of biodiversity, flora and fauna of relevance to SEA include the following:

- European sites, including (candidate) Special Areas of Conservation (SACs) and Special Protection Areas (SPAs): these are sites of international importance for nature conservation and form part of Ireland's contribution to the Natura 2000 network within the European Union;
- Natural Heritage Areas (NHA): these are sites of national importance for nature conservation established under the Wildlife (Amendment) Act, 2000, and protected under the Wildlife Acts, 1976-2000, or through planning legislation;
- Proposed Natural Heritage Areas: these are undesigned sites that are/were known to be of importance for biodiversity but have not yet been fully evaluated, and are often protected through policies in statutory land use plans. Adopting a precautionary approach, pNHAs not covered by other nature conservation designations should be given due recognition in plans and afforded a level of protection accordingly;
- Nature Reserves and Refuges for Fauna or Flora;
- Wildfowl Sanctuaries;
- National Parks;
- World Heritage Sites designated for biodiversity reasons;
- Annex IV (Habitats Directive) species of flora and fauna, and their key habitats (i.e. breeding sites and resting places), which are strictly protected wherever they occur, whether inside or outside the above sites, e.g. otter and bats;
- Other species of flora and fauna and their key habitats which are protected under the Wildlife Acts, 1976-2000, wherever they occur, including species protected under the Flora Protection Order;
- Birds Directive – Annex I species and other regularly occurring migratory species, and their habitats (wherever they occur), including 'protected species and natural habitats' as defined in the Environmental Liability Directive (2004/35/EC) and European Communities (Environmental Liability) Regulations, 2008;
- Habitats Directive – Annex I habitats, Annex II species and their habitats, and Annex IV species and their breeding sites and resting places (wherever they occur), including 'protected species and natural habitats' as defined in the Environmental Liability Directive (2004/35/EC) and European Communities (Environmental Liability) Regulations, 2008;

- Stepping stones and ecological corridors including nature conservation sites (other than European sites), habitat areas and species' locations covered by Article 10 of the Habitats Directive;
- 'Margaritifera Sensitive Areas': information about the implications of these areas, and associated data, are available from the NPWS website: <http://www.npws.ie/mapsanddata/habitatspeciesdata>;
- Other areas recognised as being of importance for biodiversity or nature locally, e.g. in local authority Biodiversity, Heritage and/or land use plans;
- Other natural or semi-natural habitats, including wetlands, woodlands and linear habitats, and habitat creation, restoration or reinstatement areas;
- Areas considered to be of "high nature value", e.g. farmland identified as "high nature value farmland".

Appendix 1B

Available guidance on Article 6 of the Habitats Directive and appropriate assessment:

- Department of Environment, Heritage and Local Government. 2010. Appropriate assessment of plans and projects in Ireland: Guidance for planning authorities. Available on www.npws.ie
- European Commission, 2011. Wind energy developments and Natura 2000
- European Commission, 2011. The implementation of the Birds and Habitats Directives in estuaries and coastal zones with particular attention to port development and dredging
- European Commission, 2001. Methodological guidance on the provisions of Article 6 (3) and (4) of the Habitats Directive 92/43/EEC
- European Commission, 2000. Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC

More guidance documents, or revisions of existing guidance, may become available from the European Commission in the future.

It is advisable to take account of any European or national jurisprudence that supersedes any guidance within these documents. Information relating to every case brought before the European Court of Justice and the Court of First Instance since 1953 can be found on the following webpage (access to the case-law by case number): <http://curia.europa.eu/fr/content/juris/index.htm>. The following publications, available at http://ec.europa.eu/environment/nature/legislation/caselaw/index_en.htm, provide useful information on relevant cases:

- European Commission, 2006. Nature and Biodiversity Cases: Ruling of the European Court of Justice
- Ecosystems Ltd, 2014. Article 6 of the Habitats Directive: Rulings of the European Court of Justice

Selected examples of Jurisprudence concerning Article 6 of the Habitats Directive:

Connected with or necessary to the management of the site

- European Court of Justice Ruling C-241/08

Procedural Obligations

- Balz et al v An Bord Pleanála (Judicial Review, Ireland 2016)

- Kelly v An Bord Pleanála (Judicial Review, Ireland, 2014)
- European Court of Justice (Case C-259/11) Sweetman v An Bord Pleanála (2013)

Article 6 (3) mitigation or Article 6 (4) compensation

- European Court of Justice (Case C-521/12) Briels (2014)

Appendix 1C

Notes on the preparation and content of an NIS

The term, Natura Impact Statement (NIS), is defined in legislation. In general, an NIS, if required, should present the data, information and analysis necessary to reach a definitive determination as to 1) the implications of the plan or project, alone or in combination with other plans and projects, for a European site in view of its conservation objectives, and 2) whether there will be adverse effects on the integrity of a European site. The NIS should be underpinned by best scientific knowledge and objective information, as required in the case of screening for appropriate assessment, and by the precautionary principle.

The following advice is offered in relation to the preparation and content of an NIS:

1. An NIS is a scientific assessment that presents relevant evidence, data and analysis, and focuses on the implications of the plan or project, on its own and in combination with other plans and projects, for the conservation objectives of the relevant European site(s), taking the full scope of these objectives, whether generic or site specific, into account;
2. Examination of the potential effects of the plan or project must be undertaken to identify what European sites, and which of their qualifying interests (SAC), special conservation interests (SPA) or conservation objectives, are potentially at risk. In combination effects must also be taken into account. This is required to determine a 'zone of influence' or 'zone of impact' for the project, if such a concept is used. The 15km distance in existing guidance is an indicative figure only and its application and validity should be examined and justified in each specific case on an ecological or other basis;
3. The scientific basis on which sites and their conservation objectives are included or excluded from assessment and analysis should be presented and justified;
4. The full area or extent of the likely effects of the plan or project should be determined and quantified. Where temporary damage and disturbance will occur, predicted timelines for recovery should be presented;
5. The relevant environmental baseline and trends in European sites should be taken into account, bearing in mind changes and in combination effects which have occurred since site designation;
6. An NIS should be informed by any necessary surveys of habitats and species at the appropriate time(s) of year to identify, describe, evaluate and map their presence within the receiving environment. In all relevant cases, the scientific basis and justifications for categorising or not categorising habitats as Annex I habitats, or priority types, should be presented;
7. An NIS should be informed by any necessary hydrological, hydrogeological or geotechnical investigations to assess impacts on habitat structure and function;

8. Where mitigation measures are required, full details should be included in the project description and drawings, with method statements provided, where necessary. It must be demonstrated that mitigation measures will be delivered in full, and at the appropriate time, at all post-consent stages, and that they will be effective in any specific location or set of conditions. The necessary analysis should be presented to demonstrate how the mitigation measures will avoid or remove the risks of adverse effects on the integrity of European sites that have been identified in an NIS so that the final analysis is undertaken in the context of the predicted residual effects;

9. An NIS should contain, or clearly cross-reference, all the scientific data and analysis on which the assessment is based, and should contain clear and precise findings and conclusions as to the implications of the project, on its own and in combination with other plans and projects, for the conservation objectives and integrity of the relevant European site(s).



An Roinn Ealaíon, Oidhreachta,
Gnóthaí Réigiúnacha, Tuaithe agus Gaeltachta

Department of Arts, Heritage,
Regional, Rural and Gaeltacht Affairs

Our Ref: **DP00018/2017**

(Please quote in all related correspondence)

31 March 2017

RPS

West Pier Business Campus,
Dun Laoghaire,
County Dublin.
Ireland

Via email

Re: SEA Scoping for the Ireland 2040 Our Plan – the National Planning Framework

A chara

On behalf of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, I refer to correspondence received in connection with the above.

Outlined below are heritage-related observations/recommendations of the Department under the stated heading(s).

Nature Conservation

The Department refers to your correspondence of 02/02/17 in respect of the proposed new plan entitled 'Ireland 2040 – Our National Planning Framework'. Reference is also made to your email of 03/02/17, and to the associated documents supplied. It is understood that the National Planning Framework (NPF) is a high level plan, which is to succeed the 'National Spatial Strategy', and that submissions are invited at present in relation to the plan and the scope of the SEA.

Context of submission

This submission is made in the context of this Department's role in relation to nature conservation, including as an environmental authority under SEA legislation. The observations are offered to assist the Department of Housing, Planning, Community and Local Government in meeting the obligations that arise in relation to European sites, other nature conservation sites, natural habitats and protected species, and biodiversity in general in the context of this plan and the environmental assessment(s) required. They are not exhaustive and are made without prejudice to any observations or recommendations that may be made by the Minister and this Department at future stages in the plan-making process.

In addition to the scope of the SEA, the opportunity has been taken to make observations in relation to the appropriate assessment process, including the preparation of the NIS (or NIR), in the event that screening for appropriate assessment by your Department finds that this is

necessary. It is unclear, at present, whether the NPF is a 'land use plan' for the purposes of Part XAB of the Planning and Development Act, 2000 as amended; if not, Part 5, Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations, 2011¹ (hereafter the '2011 Regulations'), will be the legislation that applies in the case of the appropriate assessment process. The record-keeping obligations of a public authority, as set out in Regulation 61 of the 2011 Regulations², should also be noted, as should the duties of a public authority in general under Regulation 27 (see below).

Matters relating to the plan

It is outlined that the NPF is to be a statutory document that will provide context for planning policy to 2040. It is to be a broad national plan for the strategic planning of urban and rural areas to secure regional development and the co-ordination of spatial and economic strategies. The NPF is to be a high level document which will influence and co-ordinate other plans for development across different sectors. It is also noted that development will take place with or without a planning framework in place.

The NPF is not yet available but its broad scope and high level of application are evident from the information available. It is indicated that the NPF will cover natural heritage and biodiversity matters. The NPF will also be subject to SEA and appropriate assessment before the plan is made, again based on the information provided. The appropriate assessment will inform DHPCLG's decision on whether the plan may be adopted – see also below.

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The implications of the NPF for European sites and the Natura 2000 network in Ireland will need to be examined, assessed and mitigated, noting the potential over-riding significance that adverse effects on European sites could have for the realisation of the NPF and future development. Note this could include plans and projects that could act in combination to have adverse effects on European sites, as well as scenarios where adverse effects may already be occurring and where restoration is required.

From a nature conservation and biodiversity perspective, the following are critical considerations for planning policy in Ireland:

- the likely significant effects of planning policy on European sites, noting that adverse effects on the integrity and conservation objectives of European sites should not result from, or be

¹ SI 477 of 2011, Part 5

² Regulation 61 requires public authorities to retain, for at least 12 years, records of a range of documents pertaining to screenings and appropriate assessments, including any information or advice obtained by the public authority.

perpetuated by future development and associated environmental pressures alone, or in combination with other plans and projects; and

- the likely significant effects of planning policy on the environment, including on biodiversity, flora and fauna, noting that adverse effects on nature conservation sites, and natural habitats and protected species should not result from future development and associated environmental pressures alone or cumulatively with other plans, programmes or projects.

SEA and appropriate assessment are addressed further below. The following points raise examples of some key issues which may need to be addressed in the NPF and the associated environmental assessments. The list is not exhaustive but includes recurrent issues which have been problematical for the developers and/or the regulatory and competent/public authorities involved.

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- Where no national sectoral plans are in existence and the NPF will include policies for future development of those sectors, e.g. onshore wind and other renewable energy, such policies will need to be assessed as part of the current NPF.
- With a timeframe of up to 2040, the NPF should address, and assist in managing and adapting to predicted sea level rise (incorporating surge levels), including in terms of coastal flooding, ‘coastal squeeze’, and the approaches to future strategic coastal management and protection.
- The NPF, and its policies on settlement and development, should integrate with the requirements of the Habitats Directive and the Water Framework Directive in relation to existing and future pressures on surface waters and groundwater, particularly arising from wastewater discharges and water abstraction. Among other things, the ability to provide adequate compliant water and wastewater services must be a precursor to new planned settlements and development.
- The NPF should consider the development of policies for proper planning and sustainable development of amenity and recreational facilities, including green/blue infrastructure, so that appropriate locations and routes are targeted, and are planned in an integrated rather than piecemeal way. The particular sensitivities of nature conservation sites, protected species locations, and fragile and changeable habitats and environments (e.g. active flood plains and flood zones, mobile coastal habitats, peatlands and other wetlands, etc.) should be taken into account and avoided, noting, among other things, the additional costs of

assessment, sensitive construction, and ongoing management and replacement that may be required where such constraints exist.

- The need for and approach to flood relief measures for coastal and fluvial flooding (but not groundwater flooding) of settlements and other features is being addressed in OPW catchment Flood Risk Management Plans. In addition to the need to avoid future development of existing and many historic floodplains/flood zones in planning policy wherever possible, and including areas prone to groundwater flooding, there is also a need to address increased runoff, and to plan for and identify areas for flood storage in some river catchments. An evidence-based assessment of whether SUDS is, and/or can be, successful in practice needs to be carried out for existing and future development.
- The cumulative effects of existing and future development, including road infrastructure and expanding urban development, should be considered, including in terms of increasing habitat fragmentation and increased environmental pressures including on water resources. This may include pressures on groundwater aquifers that feed and are essential to the structure and function of nature conservation sites.
- There are examples of well-designed ‘win-win’ development and conservation outcomes that were achieved through best practice and collaboration. The development of the NPF could provide a mechanism to highlight how optimum multiple use of areas with nature conservation designations can be achieved in appropriate locations. Also, whether the current land use zoning categories could be defined more precisely for clarity, and to allow for different receptor sensitivities to be captured, should be examined.
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SEA – Biodiversity, flora and fauna

It has been determined that the likely significant effects of the NPF on biodiversity, flora and fauna must be assessed. Biodiversity is generally defined as the variety of life on earth. An outline of key elements of biodiversity of potential relevance to the NPF is given in Appendix 1A, and includes sites, habitats, species of flora and fauna, and ecological networks. There are interrelationships between biodiversity, flora and fauna and most other environmental issues or topics, including population, human health, water, soil, air, climatic factors, landscape, and possibly architectural and archaeological heritage. The potentially significant effects of the NPF on these interdependencies should be explored and assessed in the SEA.

There will be overlaps and linkages between biodiversity, flora and fauna in SEA, and sites, habitats and species of relevance to the appropriate assessment and Articles 6(3) and 6(4) of the Habitats Directive. SEA should address all such issues in general, as well as any other relevant provisions of the Habitats and Birds Directives, including in respects of Article 6(1), 6(2) and 10 of the Habitats Directive, and associated national legislation. See also the general duties of a public authority below.

As outlined above, the NPF should be developed to integrate biodiversity considerations in a positive, proactive and precautionary way, and this should be reflected in the text and content of the NPF, including its aims, objectives and policies, as well as in maps. The findings and recommendations of SEA should be assimilated into the plan, and should modify the content of the NPF where necessary.

The biodiversity, flora and fauna section of the Environmental Report should be prepared by or in conjunction with a suitably qualified ecologist(s), and other specialists as necessary, and in conjunction with the NIS (or NIR) to ensure full integration of biodiversity issues and concerns. The EPA's *Integrated Biodiversity Impact Assessment* best practice guidance is of relevance in this regard.

SEOs

The Environmental Report is required to contain information on environmental protection objectives which are established at international to national level, and are relevant to the NPF. For biodiversity, flora and fauna, these should integrate with the objectives and obligations of other directives such as the Habitats Directive, the Birds Directive, the Water Framework Directive and the Floods Directive, and with the Wildlife Acts, 1976-2000, and the National Biodiversity Plan.

The (draft) Strategic Environmental Objective (SEO) for 'Biodiversity, Flora and Fauna' in Section 5.3.2 of the SEA Scoping report is noted. It is suggested that the target is examined and revised to reflect, at a minimum, required targets in relation to the conservation of European sites, other nature conservation sites, ecological networks, and protected species. The current draft target is: "*Require all regional, county and local level land use plans to include ecosystem services and green infrastructure provisions in their land use plans*".

SEA monitoring

The monitoring programme should be clearly set out and developed in such a manner as to ensure it will identify the effects on the environment that will or may arise, and to monitor the effectiveness of any mitigation on which the assessment relies. While it may be considered efficient to use monitoring programmes that are already in place and run by other authorities, it is important to establish that these are in fact designed in such a way that they will identify the effects anticipated from the particular plan in question. As such, it is important to understand the objectives, methodologies, parameters, assumptions, etc. of any existing monitoring programme that is proposed to be used in such a way.

It is advisable to set out clearly where responsibilities for monitoring programmes lie, and their frequency and reporting/publication arrangements, as well as the procedures that will be put in place to ensure that there is a response mechanism to any unforeseen or undesirable negative effects/results, and that remedial action will be taken, if necessary.

Available guidance

Existing EU and Irish guidance on SEA and appropriate assessment (see Appendix 1B) should be followed in general terms when carrying out the environmental assessments, but you should also be cognisant of changes in the interpretation and application of Directives and national legislation arising from European and Irish jurisprudence, particularly in respect of Article 6 of the Habitats Directive. There should be due regard to the terminology, stages and tests of the assessment

processes as set out in relevant legislation, notably in the case of the appropriate assessment process. Where legislation updates or amends elements of existing guidance, the former should be used or applied in preference in all cases.

Available ecological information

The National Parks and Wildlife Service website (www.npws.ie) is a key source of data, information and publications on nature conservation sites and biodiversity issues of potential relevance to the plan area and the environmental assessment(s) required. This includes site boundaries, site synopses, lists of qualifying interests (SACs) and special conservation interests (SPAs), conservation objectives (European sites), features of interest (NHAs), and dates of site designation. GIS datasets are available for download for nature conservation sites³, and for certain habitats and species arising from various sources, including national surveys. Other NPWS-held data on habitats and species may be requested by submitting a 'Data Request Form'⁴.

Site-specific conservation objectives (SSCOs), and associated backing documents, are available for some European sites on the NPWS website⁵. GIS datasets associated with site-specific conservation objectives are also available for download: <http://www.npws.ie/mapsanddata/habitatspeciesdata/>. For all other European sites, generic conservation objectives are available and the most up-to-date versions should be used and referenced in any relevant documents. The full scope of conservation objectives should be used, as appropriate, to guide and inform the scope of the scientific assessment and analysis in an NIS. The most recent version of the conservation objectives should be used and referenced, and each of the individual conservation objectives of relevance should be addressed separately.

The Habitats Directive Article 17 reports for 2007 and 2013, which should be consulted, are available from <http://www.npws.ie/article-17-reports-0>. The recent national report on Article 12 of the Birds Directive, at <http://www.npws.ie/news/birds-directive-article-12-reporting>, should also be consulted. The national habitat surveys that have been undertaken, and their resulting reports, should be consulted, including for information regarding the definitions and evaluations that have been developed for Annex I habitat types in Ireland.

Data on biodiversity and ecological features will be available from various other sources including, for example:

- Other organisations, e.g. National Biodiversity Data Centre, BirdWatch Ireland, Bat Conservation Ireland, etc.
- SEA Environmental Reports, NIRs/NISs and other reports for other plans

Appropriate assessment

It appears that it has been determined that an appropriate assessment is required in this case, and it is understood that an NIS (or NIR) is in preparation. General notes on the preparation of an NIS are included in Appendix 1C, and should be taken into account as relevant. As outlined above,

³ Special Areas of Conservation (SACs, currently known as candidate sites but fully legally protected); Special Protection Areas (SPAs); Natural Heritage Areas (NHAs); and proposed Natural Heritage Areas (pNHAs)

⁴ Available from <http://www.npws.ie/maps-and-data/request-data>

⁵ <http://www.npws.ie/protectedsites/conservationmanagementplanning/conservationobjectives/>

there should be due regard to the terminology, stages and tests of the appropriate assessment process as set out in relevant legislation.

Where the NIS (or NIR) identifies that plan-level mitigation is necessary, including to avoid adverse effects on European sites and to manage future scenarios, this must amend and be reflected in the content and objectives of the final plan wherever necessary. Specific and repeated cross-referencing to mitigation measures in other sections or reports may be used but should be done clearly, consistently and unambiguously.

The appropriate assessment is carried out for the final iteration of a plan by the public authority⁶ (or by the competent authority under planning legislation). It is required to take account of the NIS (including any addenda or revisions), and should also address the content of submissions made where issues or concerns are raised regarding the likely effects on European sites. The decision-making authority has obligations to address scientific uncertainties or discrepancies, including matters raised by other parties, particularly in relation to the implications for European sites and their conservation objectives in the appropriate assessment (e.g. judgment of Justice Barton (Irish High Court, January 2016) in the case of *Balz and others versus An Bord Pleanála*); the final determinations should demonstrate how the differing scientific opinions were resolved, noting the standards of the appropriate assessment. Case law of the Court of Justice of the European Union (e.g. case C-258/11) has established that an appropriate assessment cannot have lacunae, and must contain complete, precise and definitive findings and conclusions with regard to the implications of a project for the conservation objectives and integrity of a European site or sites.

General duties of a public authority

Your attention is drawn to Regulation 27 of the 2011 Regulations as this places particular duties on all public authorities in relation to European sites. Among other things, this includes a duty to exercise all functions, including but not only consent functions, in compliance with, and so as to secure compliance with the requirements of the Habitats and Birds Directives and the 2011 Regulations. Public authorities are obliged, when exercising their functions, to take appropriate steps to avoid in European sites the deterioration of natural habitats and the habitats of species, as well as disturbance of species for which a site has been designated insofar as this disturbance could be significant in relation to the objectives of the Habitats Directive. All public authorities are advised to incorporate such obligations into their plans and programmes, and associated assessments, as required and relevant. This could usefully include the development of systems that will monitor and ensure the compliance of “downstream” projects with these obligations, as well as any internal mechanisms that may be needed to ensure compliance.

The above observations/recommendations are based on the papers submitted to this Department on a pre-planning basis and are made without prejudice to any observations that the Minister may make in the context of any consultation arising on foot of any development application referred to the Minister, by the planning authority/ies, in her/his role as statutory consultee under the Planning and Development Act, 2000, as amended.

You are requested to send further communications to this Department’s Development Applications Unit (DAU) at manager.dau@ahg.gov.ie (team monitored); if this is not possible, correspondence may alternatively be sent to:

⁶ As defined in Part 1 of the European Communities (Birds and Natural Habitats) Regulations, 2011, and including DHPCLG

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Appendix 1

Key elements of biodiversity, flora and fauna of relevance to SEA include the following:

- European sites, including (candidate) Special Areas of Conservation (SACs) and Special Protection Areas (SPAs): these are sites of international importance for nature conservation and form part of Ireland's contribution to the Natura 2000 network within the European Union;
- Natural Heritage Areas (NHA): these are sites of national importance for nature conservation established under the Wildlife (Amendment) Act, 2000, and protected under the Wildlife Acts, 1976-2000, or through planning legislation;
- Proposed Natural Heritage Areas: these are undesignated sites that are/were known to be of importance for biodiversity but have not yet been fully evaluated, and are often protected through policies in statutory land use plans. Adopting a precautionary approach, pNHAs not covered by other nature conservation designations should be given due recognition in plans and afforded a level of protection accordingly;
- Nature Reserves and Refuges for Fauna or Flora;
- Wildfowl Sanctuaries;
- National Parks;
- World Heritage Sites designated for biodiversity reasons;
- Annex IV (Habitats Directive) species of flora and fauna, and their key habitats (i.e. breeding sites and resting places), which are strictly protected wherever they occur, whether inside or outside the above sites, e.g. otter and bats;
- Other species of flora and fauna and their key habitats which are protected under the Wildlife Acts, 1976-2000, wherever they occur, including species protected under the Flora Protection Order;
- Birds Directive – Annex I species and other regularly occurring migratory species, and their habitats (wherever they occur), including 'protected species and natural habitats' as defined in the Environmental Liability Directive (2004/35/EC) and European Communities (Environmental Liability) Regulations, 2008;
- Habitats Directive – Annex I habitats, Annex II species and their habitats, and Annex IV species and their breeding sites and resting places (wherever they occur), including 'protected species and natural habitats' as defined in the Environmental Liability Directive (2004/35/EC) and European Communities (Environmental Liability) Regulations, 2008;
- Stepping stones and ecological corridors including nature conservation sites (other than European sites), habitat areas and species' locations covered by Article 10 of the Habitats Directive;
- 'Margaritifera Sensitive Areas': information about the implications of these areas, and associated data, are available from the NPWS website:
<http://www.npws.ie/mapsanddata/habitatspeciesdata> ;
- Other areas recognised as being of importance for biodiversity or nature locally, e.g. in local authority Biodiversity, Heritage and/or land use plans;

- Other natural or semi-natural habitats, including wetlands, woodlands and linear habitats, and habitat creation, restoration or reinstatement areas;
- Areas considered to be of “high nature value”, e.g. farmland identified as “high nature value farmland”.

Appendix 2

Available guidance on Article 6 of the Habitats Directive and appropriate assessment:

- Department of Environment, Heritage and Local Government. 2010. Appropriate assessment of plans and projects in Ireland: Guidance for planning authorities. Available on www.npws.ie
- European Commission, 2011. Wind energy developments and Natura 2000
- European Commission, 2011. The implementation of the Birds and Habitats Directives in estuaries and coastal zones with particular attention to port development and dredging
- European Commission, 2001. Methodological guidance on the provisions of Article 6 (3) and (4) of the Habitats Directive 92/43/EEC
- European Commission, 2000. Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC

More guidance documents, or revisions of existing guidance, may become available from the European Commission in the future.

It is advisable to take account of any European or national jurisprudence that supersedes any guidance within these documents. Information relating to every case brought before the European Court of Justice and the Court of First Instance since 1953 can be found on the following webpage (access to the case-law by case number): <http://curia.europa.eu/fr/content/juris/index.htm>. The following publications, available at http://ec.europa.eu/environment/nature/legislation/caselaw/index_en.htm, provide useful information on relevant cases:

- European Commission, 2006. Nature and Biodiversity Cases: Ruling of the European Court of Justice
- Ecosystems Ltd, 2014. Article 6 of the Habitats Directive: Rulings of the European Court of Justice

Selected examples of Jurisprudence concerning Article 6 of the Habitats Directive:

Connected with or necessary to the management of the site

- European Court of Justice Ruling C-241/08

Procedural Obligations

- Balz et al v An Bord Pleanála (Judicial Review, Ireland 2016)
- Kelly v An Bord Pleanála (Judicial Review, Ireland, 2014)
- European Court of Justice (Case C-259/11) Sweetman v An Bord Pleanála (2013)

Article 6 (3) mitigation or Article 6 (4) compensation

- European Court of Justice (Case C-521/12) Briels (2014)

Appendix 3

Notes on the preparation and content of an NIS

The term, Natura Impact Statement (NIS), is defined in legislation. In general, an NIS, if required, should present the data, information and analysis necessary to reach a definitive determination as to 1) the implications of the plan or project, alone or in combination with other plans and projects, for a European site in view of its conservation objectives, and 2) whether there will be adverse effects on the integrity of a European site. The NIS should be underpinned by best scientific knowledge and objective information, as required in the case of screening for appropriate assessment, and by the precautionary principle.

The following advice is offered in relation to the preparation and content of an NIS:

1. An NIS is a scientific assessment that presents relevant evidence, data and analysis, and focuses on the implications of the plan or project, on its own and in combination with other plans and projects, for the conservation objectives of the relevant European site(s), taking the full scope of these objectives, whether generic or site specific, into account;
2. Examination of the potential effects of the plan or project must be undertaken to identify what European sites, and which of their qualifying interests (SAC), special conservation interests (SPA) or conservation objectives, are potentially at risk. In combination effects must also be taken into account. This is required to determine a 'zone of influence' or 'zone of impact' for the project, if such a concept is used. The 15km distance in existing guidance is an indicative figure only and its application and validity should be examined and justified in each specific case on an ecological or other basis;
3. The scientific basis on which sites and their conservation objectives are included or excluded from assessment and analysis should be presented and justified;
4. The full area or extent of the likely effects of the plan or project should be determined and quantified. Where temporary damage and disturbance will occur, predicted timelines for recovery should be presented;
5. The relevant environmental baseline and trends in European sites should be taken into account, bearing in mind changes and in combination effects which have occurred since site designation;
6. An NIS should be informed by any necessary surveys of habitats and species at the appropriate time(s) of year to identify, describe, evaluate and map their presence within the receiving environment. In all relevant cases, the scientific basis and justifications for categorising or not categorising habitats as Annex I habitats, or priority types, should be presented;
7. An NIS should be informed by any necessary hydrological, hydrogeological or geotechnical investigations to assess impacts on habitat structure and function;
8. Where mitigation measures are required, full details should be included in the project description and drawings, with method statements provided, where necessary. It must be demonstrated that mitigation measures will be delivered in full, and at the appropriate time, at all post-consent stages, and that they will be effective in any specific location or set of conditions. The necessary analysis should be presented to demonstrate how the mitigation measures will avoid or remove the risks of adverse effects on the integrity of European sites

that have been identified in an NIS so that the final analysis is undertaken in the context of the predicted residual effects;

9. An NIS should contain, or clearly cross-reference, all the scientific data and analysis on which the assessment is based, and should contain clear and precise findings and conclusions as to the implications of the project, on its own and in combination with other plans and projects, for the conservation objectives and integrity of the relevant European site(s).