



Rialtas na hÉireann
Government of Ireland

RPS

AA Conclusion Statement

Project Ireland 2040

National Planning Framework



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1 INTRODUCTION

In accordance with Article 6(3) of the EU Habitats Directive (Directive 92/43/EEC) and Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended, the Minister for Housing, Planning and Local Government, in conjunction with his Departmental Officials has undertaken an Appropriate Assessment process in respect of the proposed *Ireland 2040: National Planning Framework*.

The purpose of this document is to provide expert advice to assist the Minister and the Department of Housing, Planning and Local Government in carrying out this exercise. The document has been prepared by RPS, in consultation with Departmental Officials.

This document is an Appropriate Assessment Conclusion Statement for the *Ireland 2040: National Planning Framework*. It should be read in conjunction with the following documentation:

- *Ireland 2040: National Planning Framework*
- *Pre-consultation NIS published September 2017*
- *Post-consultation NIS published April 2018*

1.1 IRELAND 2040: THE NATIONAL PLANNING FRAMEWORK

The purpose of the NPF is to outline a high-level, national vision and provide the strategic framework and principles to manage future population and economic growth in Ireland over the next 20 years. It informs the parameters for the preparation of Regional Spatial and Economic Strategies (RSESs) by each of the three Regional Assemblies, established under the Local Government Reform Act 2014. The NPF will influence the strategic planning of urban and rural areas in a regional development context. The RSESs will, in turn, influence the preparation of statutory land use plans at a local level, in particular, city and county development plans.

By its nature the NPF is a high level document which is a building block for a tiered planning system. It does not, in and of its own right, confer planning permission for any specific development but rather guides the subsequent tiers of planning in their more detailed decision making.

1.2 THE AA PROCESS

1.2.1 Screening

In accordance with Regulation 42(6) of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended, RPS, on behalf of the DHPLG, undertook screening for Appropriate Assessment and it was determined in July 2017 that the NPF is not directly connected with or necessary to the management of a European Site. Furthermore it could not be concluded at that stage in the process, on the basis of objective scientific information, that the NPF, would not, individually or in combination with other plans or projects, have a significant effect on a European site. As such it was concluded that AA should move to Stage 2 Appropriate Assessment and the preparation of an NIS. This conclusion was included in SEA Scoping Documentation which was sent to the Development Application Unit, Department of Culture, Heritage and the Gaeltacht for

comment. Comments were received and were considered prior to entering into Stage 2 of the assessment process.

1.2.2 Assessment and Preparation of Natura Impact Statement

A Natura Impact Statement (NIS) was then prepared by RPS on the draft NPF prior to consultation. This considered the potential for the draft NPF to adversely affect any Natura 2000 site with regard to its qualifying interests, associated conservation status, structure/function of the site and overall site integrity. This pre-consultation version of the NIS concluded that, subject to the mitigation proposed being incorporated into the NPF, there would be no adverse effects on the integrity of any European Sites as a result of implementation of the draft NPF.

The draft NPF, the pre-consultation NIS and an SEA Environmental Report were subject to public consultation in September 2017 as part of the SEA process which was also being applied in parallel to the NPF. RPS, on behalf of the DHPLG submitted the draft plan, the SEA Environmental Report and pre-consultation NIS to the Development Application Unit, Department of Culture, Heritage and the Gaeltacht for comment.

Following this statutory consultation, modifications and amendments were made to the draft NPF to reflect issues raised by a wide range of stakeholders. These modifications and amendments were assessed in a new section of a post consultation NIS. The post consultation NIS also reviewed how the proposed NIS mitigation measures had been addressed in the NPF. The post-consultation NIS concluded the National Planning Framework would not, either individually or in combination with other plans and projects, adversely affect the integrity of any designated site within the Natura 2000 network.

1.2.3 Integration of AA into the NPF

The AA process has been undertaken in parallel to the preparation of the NPF. This has taken the form of an iterative assessment which started with the AA team engaging directly with the NPF team at an early stage to raise issues and create awareness on key considerations for protection of the Natura 2000 network relating to policy alternatives. The AA team were involved in the:

- Evolution of policy actions;
- Assessment of each National Policy Objective and National Strategic Outcomes; and
- Recommendation of mitigation measures to address the potential impacts arising.

1.3 APPROPRIATE ASSESSMENT

In carrying out the Appropriate Assessment for the NPF, the Birds and Habitats Regulations 2011, as amended require that the public authority take account of the following:

Requirement under Art. 42(11)	How has this been addressed
(a) NIS	A NIS accompanies this AA Conclusion Statement and the NPF
(b) any other plans or projects that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site	This has been addressed in Chapter 6 of the NIS
(c) any supplemental information furnished in relation to any such report or statement	The NIS includes information on the relevant sites and the condition assessment of those sites
d) if appropriate, any additional information sought by the authority and furnished by the applicant in relation to a Natura Impact Statement	N/A
(e) any information or advice obtained by the public authority	RPS has provided the ecological advices in relation to the AA process for the NPF. The NIS has also taken into account submissions received during the AA process – see Appendix A of the NIS.
(f) if appropriate, any written submissions or observations made to the public authority in relation to the application for consent for proposed plan or project	The NIS has taken into account submissions received during the AA process – see Appendix A of the NIS.
(g) any other relevant information	The NIS has taken into account submissions received during the AA process – see Appendix A of the NIS.

The National Planning Framework is a strategic and high-level policy framework, to inform the preparation of subsidiary strategies, such as Regional Spatial and Economic Strategies and other statutory land-use plans such as city and county development plans and local area plans. These lower tier plans will include additional necessary detail on the form and expression of NPF objectives and policies at regional and then local levels. As such the NPF is at the highest level of a hierarchy of plans and strategies. The NPF does not determine the precise location of any development project or designate or allocate specific land uses, nor does it preclude the consideration of alternatives.

At the time the policies of these lower tier plans are being adopted, more detail will be known as to the proposed locations proposed for, for example, land zonings or infrastructural projects. These lower tier plans and their detailed objectives and policies will themselves be subject to appropriate assessment and will therefore be fully considered as part of that appropriate assessment at that time.

All subsidiary actions and policy preparation informed by the NPF shall be required to conform to the relevant regulatory provisions aimed at preventing pollution or other environmental effects likely to adversely affect the integrity of European Sites. For this reason, in considering whether the NPF will adversely affect the integrity of any European site, it has been recognised that the NPF does not, in and of itself, give direct effect to any specific projects nor does it authorise specific individual projects which might adversely affect the integrity of any European Site.

Moreover, the NPF does not allocate any specific lands to a particular use nor does it preclude consideration of alternatives. Rather, the policies in the NPF must first pass through the medium of another policy document or documents, i.e. at regional, county or local level, and are then subject to a project level consent process. All of this ensures that no project will be authorised, or land allocated or designated to a particular use without first being subject to AA under the intermediary policy documents. This cascading effect provides the assurance that the NPF itself will not adversely affect the integrity of any European Site.

This approach to tiered assessment has been recognised at EU level through ECJ case c-6/04 *EC v. the UK*. In that case the Advocate General's opinion noted that the hierarchy of assessment that must take place from higher level to lower level plans. In her opinion Advocate General Kokott said (paragraph 49): "*adverse effects on areas of conservation must be assessed at every relevant stage of the procedure to the extent possible on the basis of the precision of the plan. This assessment is to be updated with increasing specificity in subsequent stages of the procedure*".

Notwithstanding this, a precautionary approach has been applied in the case of the NPF in order to ensure that these lower tier plans and strategies do not themselves give rise to effects on the integrity of European sites, by explicitly including a number of safeguards, which will guide the lower tier plans in the protection of the Natura 2000 network.

In a most practical and realistic approach the NPF has built these safeguards directly in to the framework thereby setting out at the most fundamental level for the NPF, the commitment of the Government to respect the objectives EU Habitats Directive.

The first of these safeguards is NPO 59 which states:

Enhance the conservation status and improve the management of protected areas and protected species by:

- Implementing relevant EU Directives to protect Ireland's environment and wildlife;
- Integrating policies and objectives for the protection and restoration of biodiversity in statutory development plans;
- Developing and utilising licensing and consent systems to facilitate sustainable activities within Natura 2000 sites;
- Continued research, survey programmes and monitoring of habitats and species.

This specifically addresses the need to better integrate biodiversity protection and management of protected habitats and species into land use planning.

The second is NPO 75 which states:

Ensure that all plans, projects and activities requiring consent arising from the National Planning Framework are subject to the relevant environmental assessment requirements including SEA, EIA and AA as appropriate.

This policy sets the scene for a cascading hierarchy of protection by explicitly ensuring that all plans, projects and activities informed by the NPF will be subject to the provisions of the Planning and

Development Act 2000, as amended and / or the Birds and Natural Habitats Regulations 2011, as amended, both of which include provisions intended to ensure compliance with the Habitats Directive through the planning hierarchy.

Furthermore, Section 11.2 specifically considers such integration and requires all applications for development consent informed by the NPF include an environmental appraisal in the form of an EclA, Environmental Report, EIAR, and/or NIS as appropriate. The inclusion of these additional precautionary objectives and content in the NPF which have the express intention of ensuring lower tier plans and strategies are fully aware of their obligations when developing detail around the National Policy Objectives provides further assurance that the NPF itself will not adversely affect the integrity of any European Site.

Chapters 6 and 7 of the post-consultation NIS presents the analysis of the individual National Policy Objectives contained in NPF. In the majority of cases, the analysis indicated that the objective would not give rise to negative effects particularly as they do not identify or authorise specific projects or designate particular lands. However, in a small number of cases recommendations were made to improve the clarity of objectives and / or to explicitly reference to AA. These recommended measures are outlined in Table 8.1 of the NIS. These were intended to contribute to providing additional clarity on some of the NPOs in the context of AA and protection of the Natura 2000 network. These measures respond to the concerns raised through the NIS thereby adding further protection for lower tiers of planning and applying appropriate safeguards to the level of the NPF to ensure the rest of the planning hierarchy can avoid adverse effects on European Sites.

In making an assessment of the in-combination effects, the NIS has considered other plans and projects. In theory, there are many other plans/ projects that interact with or have the potential to combine pressures and threats to European Sites; however, the in-combination assessment is a matter of applying a practical and realistic approach, recognising the level of detail available, particularly at a national level.

The main focus of the NIS has been on the potential for in-combination effects [both positive and negative] with other inter-acting national policy documents across areas such as forestry, agriculture, energy, climate, water management and land use management in particular. These national policies in many cases share common goals with the NPF such as transition to a low carbon economy, increasing energy efficiency, achieving EU targets. For those national plans and policies which have the potential to give rise to specific land use practices or projects, they have in the majority of cases undergone or will be undergoing their own appropriate assessment process, with the appropriate mitigation measures included. With the application of the required mitigation measures, no significant in-combination impacts have been predicted.

Consideration has also been given to the in-combination effect with lower tier land use plans, starting at the regional level. As the RSES will be applying the policies of the NPF to the regional level, the safeguard of the protection policies built in to the NPF [detailed above] will ensure that in-combination effects with lower tier plans are grounded in protection of the wider environment and the Natura 2000 network. Furthermore, it is noted that the RSES are being subject to their own AA process. The in-combination effects at lower tier of the planning hierarchy will similarly be guided by the RSES, with a cascading effect, integrating the overarching protection policies of the NPF at evermore detailed levels of planning.

Therefore in considering “in combination” or “cumulative” impacts, it is again emphasised that the NPF is a high level strategic plan, and does not determine the precise location of any development project or designate or allocate specific land uses, nor does it preclude the consideration of alternatives. The public authority making the lower tier plans retains discretion as to the nature, scale and location of specific development projects and can thus avoid adverse effects on the integrity of any European site. The making of these lower tier plans is subject under the relevant provisions of national law to Stage 1 screening, and Stage 2 appropriate assessment as required. These statutory provisions are underscored by the specific objectives in the NPF (discussed above) which expressly state that they *are subject to the relevant environmental assessment requirements* including AA under the Habitats Directive. The fact that proposals for land use designation and/or proposal for the location for individual projects will be formulated in more detail in the context of these lower tier plans ensures that a meaningful appropriate assessment can be carried out at that time.

Finally it is noted that consultation was undertaken with the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht¹ on two occasions. The first was in July 2017 when an SEA Scoping Report was sent which included confirmation that full AA would be undertaken. A submission was received which included guidance in relation to the AA. Subsequently in September 2017 the pre-consultation NIS was forwarded to the DCHG, together with the draft NPF for their comment and observations. A response was received which addressed a number of issues including the use of generic conservation objectives; suggested additional data sets; recommendations on text in the NPF; and comment on the conclusion of the NIS.

The issues raised in the submission have been reviewed in the context of both the NIS and NPF. Where appropriate, text in the NIS has been updated or clarified to address the issues raised. Where no change has been made a clear response has been provided which clarifies where / how issues are to be addressed through other documents.

1.4 AA CONCLUSION

Having considered the text of the NPF, the conclusions of the NIS, the submission from the DCHG, and based on the foregoing, it can be concluded, for the purposes of Article 6(3) of the Habitats Directive that the adoption of the NPF would not adversely affect the integrity of a European site (whether individually or in combination with other plans or projects).

¹ The DAU was part of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs (DAHRRGA) at the time of the initial consultation. They subsequently became part of the DCHG.