

Subject: Submission regarding National Planning Framework
From: Alison Hardiman, McDowell Purcell
Date: 27 March 2017
Re: Strategic Environmental Assessment of the National Planning Framework

1.0 Specification of Individual Projects within the National Planning Framework (NPF)

It was evident from the comments made by Minister Coveney and David Walsh, Assistant Secretary, Planning, Housing, Market Policy & Land Management at the *'Towards a National Planning Framework; Planning for Ireland in 2040'*¹ that that no final decisions have been made as yet regarding which projects will be specified for development within the terms of the National Planning Framework (NPF) but that it is likely that the NPF will highlight particular projects for development within the term of this national strategy.

Any such projects will, by definition, be of strategic importance to the State and central to the wider planning objectives within the NPF. Accordingly, it is of central importance that the planning process in relation to them is prioritised from the outset in order to mitigate the risk that many years down the road, after the NPF has been designed around them, these projects could be refused permission by An Bord Pleanála ("the Board").

It is therefore crucial that the EIA process for those projects is not compromised from the outset by failure to carry out a plan level planning and environmental assessment of those projects. This is particularly important in relation to consideration of alternative locations and it is important that the Strategic Environmental Assessment (SEA) for the NPF is properly utilised in this regard.

¹ 9 March 2017, Sponsored by 'Eolas', Conference held in the Gibson Hotel.

2.0 Consideration of Alternatives

Strategic infrastructure projects the subject of government policy can be criticised by third party objectors on the basis that the consideration of alternatives, a crucial part of the EIA process, is curtailed by the location of the project having been determined by government policy that is decided on the basis of considerations that do not relate to proper planning and sustainable development.² While planning and environmental factors will never be the only consideration behind such government policies, it is important that these factors are validly assessed at the SEA stage in order to ensure for instance that the proposed location of the project accords with the principles of proper planning and sustainable development. This approach will help to safeguard these important projects against the risk of challenges to the planning process and the serious delays that ensue. A robust ‘consideration of alternatives’ process at the SEA stage in respect of each project specified for development, before its location is determined within the NPF, is therefore an important risk mitigating factor.

The consideration of alternatives in previous Irish SEA’s for various government plans has often been limited to the alternative of having a plan or not having a plan. This has no value.

3.0 Legislative Requirements

The SEA Directive states that:³

‘The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision-making. The inclusion of a wider set of factors in decision-making should contribute to more sustainable and effective solutions.’

The Directive provides for the integration of its requirements into existing established procedures.⁴ It further provides that:⁵

² *Timahoe v An Bord Pleanála* [2015] IEHC 18 held *inter alia* that the findings of the SEA constitute part of the EIA process. See also ‘Development of Strategic Infrastructure Projects under Irish Planning and Development Law: Part II, Hardiman A., (2016) 23(3) I.P.E.L.J.

³ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. (5)

⁴ *Ibid.* (9)

⁵ *Ibid.* (11)

‘In order to contribute to more transparent decision-making and with the aim of ensuring that the information supplied for the assessment is comprehensive and reliable, it is necessary to provide that authorities with relevant environmental responsibilities and the public are to be consulted during the assessment of plans and programmes, and that appropriate time frames are set, allowing sufficient time for consultations, including the expression of opinion.’

Article 6(2)⁶ and 6(3) permit Member States to identify the appropriate authorities that ought to be consulted regarding the implementation of plans and programmes on the basis of their ‘*specific environmental responsibilities*’.

Article 13E(1) of the Planning Regulations specifies that the SEA shall identify, describe and evaluate the likely significant effects on the environment of implementing the plan, and consider reasonable alternatives.

4.0 Recommended Approach

It is suggested that assessment of projects specified in the NPF by the Board should be specifically sought as part of the SEA process due to the strategic importance of these projects and the potential risk to them of lengthy third party challenges at project stage. The Board is already a prescribed authority for consultation in respect of plans submitted under the SEA process⁷ and requirement of a thorough review of such SEAs by them would fulfill the dual objectives of complying fully with the SEA Directive and achieving greater transparency and certainty with regard to the planning process for projects of such strategic importance to the State before the Board.

It is further suggested that augmenting the SEA process at this early stage to thoroughly consider the planning and environmental assessment of known issues in respect of specifically identified NPF projects (primarily location and nature of development) is an appropriate step to properly facilitate third party contributions at the earliest stages when those submissions can effect real change and crucially, to ensure that those projects are not unnecessarily hampered in demonstration of a valid EIA.

⁶ SEA Directive (Directive 2001/42/EC), Art (6)(2): The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.

⁷ Planning and Development Regulations 2001 – 2017, Art 13(b).

In assessing SEA practice in Ireland, the Environmental Protection Agency (EPA) previously concluded that the 'Limits to SEA Effectiveness in Ireland' were poor buy-in to the process and a failure to integrate SEA into the plan-making process.⁸ The EPA went on to observe that SEA is currently perceived as a time and resource intensive checklist process and that for the process to be of benefit, this mindset must be changed. This change will require affording the designated statutory authorities with the necessary resources to effectively conduct the necessary consultation processes and it may be necessary to now make this investment as part of the States dedication to delivery of an effective NPF.

⁸ Review of Effectiveness of SEA in Ireland, Key Findings and Recommendations, Environmental Protection Agency 2012, xii.