

Consultation Response on The revision of the National Planning Framework, NPF,

Prepared by the Environmental Pillar Rep. to the
Planning Advisory Forum, PAF

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The following is a submission in respect of the consultation on the revision of the National Planning Framework, NPF, prepared by the Environmental Pillar representative to the Planning Advisory Forum, PAF.¹

In the interests of not repeating all points already made regarding the revision – the earlier submissions made by this representative should be taken as read here and to compromise part of this consultation response, including on:

- Concerns made on the drivers for the revision and the serious omissions in considerations particularly relating to biodiversity
- Issues around the quality and availability of monitoring data from the previous NPF,
- Issues with the issues paper including on the lack of clarity around it, and
- On the need for effective measurable metrics to be included and their measurement provided for in the revision.

The submission of An Taisce, the National Trust for Ireland on the draft revision, is adopted in full here also.

Timing of Consultation and compromise of public engagement

The consultation on this important planning framework document is welcome. The consultation has however been timed to coincide with a significant traditional summer holiday period in Ireland: Wednesday 10th July 2024 up to 5pm on Thursday 12th September 2024 . This is despite concerns raised in my and others representations in the initial PAF meeting on this matter on July 6th 2023 when the consultation was envisaged over the Christmas / New Year holiday period, which have been repeated throughout this process. It has overlapped significantly with the summer vacation period and concludes in the critical first two weeks of September, when many are challenged with catching up on work after being on leave, and those with families – the important future this framework needs to serve, are dealing with getting back to school, college and university. This has undoubtedly seriously compromised the level of public awareness and engagement on this matter, and indeed the engagement of a whole range of bodies and actors including in Prescribed bodies, State Bodies and others given that holiday period.

Ireland is a full party to the Aarhus Convention, and it is common ground the revision is subject to assessment under the EU's Strategic Environmental Assessment, SEA Directive², and also appropriate assessment under Article 6(3) of the Habitats

¹ It may or may not reflect the views of all the members of the Environmental Pillar

² 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

Directive³. It attracts therefore undoubtedly the public participation obligations under each of these three legal instruments.

Specifically for this type of consultation Aarhus Article 7 provides:

Article 7

PUBLIC PARTICIPATION CONCERNING PLANS, PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. **Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied.** The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

The referred to paragraphs of Article 6 of the Convention provide as follows

3. The public participation procedures **shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.**

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.”

“8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.”

Each of the requirements indicated in Article 6 indicate **clear mandatory requirements**. They are also striking in terms of their qualitative dimension and that the participation required is with a view to ultimately influencing the end decision with due account being taken of the outcome of the public participation. This is not a tick-box compliance exercise.

The Aarhus Convention Compliance Committee, (ACCC) is the body charged with interpreting the Convention. In considering what constitutes “reasonable” in Article 6(3) above, it has issued findings on the matter and provided statements to the Meetings of the Parties to the Convention, not limited to the following:

³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

- In terms of the issue of consultations coinciding with traditional holiday period in its findings on communication ACCC/C/2008/24 (Spain), the Compliance Committee held:

“a period of 20 days for the public to prepare and participate effectively cannot be considered reasonable, in particular if such period includes days of general celebration in the country”.⁴
- The reasonable time frames **must also take into account the interaction between article 6 and other parts of the Convention as set out in the Implementation Guide for the Convention**. For example, following the publication of the documentation for the consultation on the revision a member of the public may wish to make a request for environmental information (AIE requests) in order to prepare comments and the timeframe of 8 weeks for the consultation is clearly and undoubtedly specified regardless of the fact it is entirely incompatible with the timeframes for any AIE request and any interim review. So the public and indeed Government knew it was effectively not worthwhile trying to pursue AIE requests to inform their comments in the context of the timeframes provided for this consultation.
- In its report to the third session of the Meeting of the Parties, the Compliance Committee noted:

“The requirement to provide “reasonable time frames” in article 6, paragraph 3, implies that the public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, inter alia, the nature, complexity and size of the proposed activity. Thus a time frame which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project.”⁵

In terms of the volume and complexity of the information in this consultation and indeed which needs to be read around it – 9 weeks is insufficient when the impact of the holiday period is included.

In summary – the period provided for public consultation is inconsistent with multiple dimensions of what constitutes a reasonable time-frame mandatorily required by the Convention, including in terms of:

- coinciding and overlapping significantly with a traditional holiday period,
- timeframes which are not conducive to facilitating the identification of necessary AIE requests and pursuit of them in order to inform comments, and

⁴ ECE/MP.PP/C.1/2009/8/Add.1, para. 92.

⁵ ECE/MP.PP/2008/5, para. 60.

- the window realistically available to the public and the volume and complexity of materials to be considered, quite apart from reading around the materials.

In terms of the SEA Directive⁶, Article 6(2) of the Directive provides:

“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.”

It is clear that the timeframes for the consultation have not provided for an effective opportunity, nor were they appropriate for the volume and complexity of the materials in the context of the consultation window including such an extensive chunk of the traditional holiday period as mentioned above. As the EU is a full party to the Convention which as the EU Court of Justice has clarified in case c-240/09 LZ I⁷ is an integral part of the EU legal order, the terms of “effective” and “appropriate” need to be read in light of the Aarhus convention also.

Regulation 13(2) on consultation of the Irish SEA Regulations SI 435/2004 (The Regulations) provides: (emphasis added)

“13. ..

(2) A notice under sub-article (1)(b) shall state that—

- (a) a copy of the draft plan or programme, or modification to a plan or programme, and associated environmental report may be inspected at a stated place or places and at stated times during a stated period of **not less than 4 weeks from the date of the notice** (and the copy shall be kept available for inspection accordingly), and
- (b) a written submission or observation with respect to the draft plan or programme, or modification to a plan or programme, and associated environmental report made to the competent authority **within the period referred to in paragraph (a), or such period as may be specified in law in respect of the draft plan or programme, or modification to a plan or programme**, will be taken into consideration before the finalisation of the plan or programme, or modification to a plan or programme.”

⁶ 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

⁷ JUDGMENT OF THE COURT, 8 Mar 2011, c-240/09, *Lesoochránárske zoskupenie VLK*, EU:C:2011:125, para 30.

The 2000 Act is silent on the period for consultation on a revision of the NPF. Therefore it was entirely within the discretion of the Government to provide for an extended period to allow for “reasonable” consultation with the public, under the requirement of Regulation 13(2)(a) being “not less than 4 weeks” - but they have clearly chosen not to do so.

That choice to compromise the public consultation:

- Is unacceptable in the context of how the Government have breached their own published timescales for the revision, and yet still compromise the public's opportunity for meaningful engagement.
- Is particularly egregious as the whole matter of statutory timeframes for the review is now at serious issue, having passed the prescribed timeframe for the revisions as set out below.

When the consultation was initially proposed to run over the Christmas / New Year holiday period it was highlighted to the then Minister of State Kieran O'Donnel in the inception meeting for the PAF for the revision in the Custom's House in July 6th, 2023, and in subsequent submissions that: compromised consultation not only creates potentially significant legal issues for the resulting revision, but also its quality and buy-in.

➤ **Recommendation:**

If the Government wish to proceed with the changes proposed, serious consideration needs to be given to how the anomaly and issues which have now arisen given the exceedance of the statutory timeframe for the revision are to be properly and lawfully addressed, and the implications for decisions made in the intervening period, and to properly allow for public consultation in respect of a) any legislative proposals to accommodate this anomalous issue, and b) what re-emerges to provide for lawful changes on and to the current NPF.

Transboundary consultation:

Serious concerns have been expressed in respect of the adequacy of compliance with obligations for transboundary consultation. It is highlighted here these need to go beyond the requirements of the Espoo Convention, but extend to the requirements of the SEA Directive Article 7, as underpinned by the Aarhus Convention on public participation, including the non-discriminatory requirements of the General Obligations of the Convention.

➤ **Recommendation:**

Any deficiency in transboundary consultation obligations needs to be addressed prior to any advancement of this revision.

Exceedance of the deadline for revision under s.20C(5) of the Planning Act

As I have highlighted to the Department during PAF meetings the provisions of subsection (5) of section 20C of the Planning and Development Act, 2000, (the 2000 Act) are unambiguous in respect of the timeframes in which a revision is to be addressed, providing as follows in section 20C, Matters to be addressed in National Planning Framework: (emphasis added)

“(5) Every 6 years after the date of publication of the National Planning Framework, the Government shall either

— (a) revise the Framework or replace it with a new one, or

(b) publish a statement explaining why the Government has decided not to revise the Framework and include in the statement an indication of a date by which it will be revised or a new National Planning Framework will be published.”

The chapeau requires that the actions be undertaken by the 6 year timeframe.

The Government determined formally and publicly that it would revise the NPF, so sub-paragraph (b) above on a replacement not apply. Commencing an indeterminate process for revision within the 6 years does not conform to the requirement to “revise the Framework”. It is clear the change either a revision or a replacement needs to be complete within the 6 years from the date of the publication.

Both the dates of Feb 2024 and May 2024 have been missed. There are therefore significant legal consequences, as the status of the NPF and any revision thereof are at issue, as are decisions made purportedly on the basis of the NPF following the expiration of the May deadline for the revision.

It is also abundantly clear from numerous changes to provisions on the National Planning Framework in chapter 2, Part 3 of the Planning and Development Bill 2023,(The Planning Bill) and various versions of that over the course of its legislative development in Dáil Select Stage, Dáil Report Stage and Seanad Committee Stage, that the Department is aware of this issue of the deadline. In this legislation it is proposing a number of highly concerning changes around this including around a May 2024 deadline, none of which serves to address the core issues arising here.

One such change introduces a new specific clauses in this bill, which propose that failure to comply with timeframes for the process does not invalidate the NPF⁸ . It is submitted here this is an effective acknowledgment that issues on the validity of the NPF and its revision under the current PDA 2000, where no such clause exists. The

⁸ For example in s 23(8) in the Seanad Committee Stage version of the bill which proposes: 23(8) “A failure to comply with subsections (2) and (3) of section 22 and subsection (6) within the time period specified therein shall not of itself invalidate the National Planning Framework.”

failure of the Government to be open on this issue is gravely concerning, including in the context of this consultation.

The Select Committee version of the Planning bill [here](#) in section 22(2) as it then was stated:

“(2) The first review shall be completed by 28 May 2024 or such other date as may be prescribed.”

The version of the Planning Bill as initiated stated the same as the above in section 20(2) [here](#)

Further to a decision indicated as 20 June 2023, to revise the NPF, rather than replace or keep it, this activity should have been completed within 6 years on from the publication. It is entirely unsatisfactory that the draft NPF attempts to gloss over this significant issue referring vaguely only to publication in 2018 throughout. It is also clear from the original roadmap published for the revision that the timeline intended for completing the revision was in fact March 2024. It was further acknowledged by officials in PAF meetings in the Custom’s House that their view was 28 May 2024 was the deadline for the completion of the revision. As noted above this was also the date explicitly referred to in the Select Committee Version of the Planning and Development Bill, 2023, in s. 22(2) and in section 20(2) of the bill as initiated, but which has since been removed during the ongoing legislative process.

To be clear, it is acknowledged here given the failure to initiate the necessary processes in time and issues with the availability of key data on population demographics etc – meeting the statutory deadline was a problem. However as urged to officials, Government should have engaged responsibly with the Oireachtas and indeed the public on this to ensure the process of revision could be undertaken properly but the issue of the statutory timeframe dealt with properly and lawfully. Instead of the problematic fudge which now appears to be being proposed.

Invariably what results will be now be subject to potential challenge, if it becomes clear the Government do not seek to appropriately correct their hand. It is also clear – multiple obvious references to the publication date of the NPF have been conveniently airbrushed from the general record and sites that most engaging in this consultation or in checking the NPF, might easily see. So the public has been deprived of proper notice of this issue, except for those of us who have kept relevant records.

Total failure to adequately incorporate and respond to GHG emissions and population issues.

Despite all the rhetoric and lines of text around climate change in the documentation and reports and assessments associated with this revision of the NPF – its failures to address this area and to properly incorporate correct data is gravely concerning.

Section 2.3 of the Draft revision of the NPF states on page numbered 10 that:

“The 2018 NPF planned for population growth of 1.1 million people, and a total population of 5.85 million by 2040. Census 2022 recorded a population of 5.15 million (CSO) in Ireland. The ESRI has updated its national and regional population projections to account for Census 2022 and to take account of up to date economic, fertility, mortality and migration data. The updated projection is that the population of Ireland will increase to approximately 5.7 million by 2030 and to 6.1 million by 2040. Given the key role of international migration in shaping population growth in Ireland, the ESRI have also modelled a higher international migration scenario with a projected population of 6.3 million people by 2040 (baseline + 200,000). The ESRI projections form the basis for the revised NPF. This means that the NPF will now need to plan for a population of 6.1 million by 2040, an additional 250,000 people over that planned for in 2018.”

So:

- Putting to one side failures in the ESRI figures to provide for adequate contingency around inward migration consequent on increasingly unstable geopolitical events, and the increasing realities of climate refugees, - the projected and estimated population in 2040 for the purposes of the revision is 6.1 million.
- A discrepancy of 250,000 from the 2018 NPF was considered an issue to be addressed, with population being one of the key factors driving a revision.**

However, the EPA report on [Greenhouse Gas emission Projections 2022-2040](#), which highlight significant exceedances of our Carbon budgets - envisaged a significantly lower population of 5,694,000 in its key macroeconomic indicators here:

Table A.1 Key macroeconomic assumptions underlying the projections out to 2040

	2022	2025	2030	2035	2040
Average Annual % Growth Rate					
GNI*	-3.8	3.4	3.3	3.3	3.3
	2022	2025	2030	2035	2040
Housing Stock ('000)	1,913	1,998	2,168	2,311	2,452
Population ('000)	4,933	5,052	5,257	5,471	5,694
EU-ETS: Carbon €/tCO ₂	75	80	80	82	85
Carbon tax €/tCO ₂ (WEM Scenario)	41	63.5	100	100	100
Coal €/toe	220	128	130	131	139
Oil €/toe	643	643	643	643	680
Gas €/toe	1391	554	473	473	473
Peat €/MWh	25	25	25	25	25

This 5694,000 population in 2040 is a discrepancy of 406,000 in population than the higher ESRI figure used in the NPF of 6.1 million.

As highlighted above, of key significance is that the above EPA report envisages significant exceedances of the carbon budgets out to 2030 with obvious implications then for what needs to be done to 2040.

Yet the Draft NPF revision SEA report fails to engage with this seriously despite there now being over 400,000 extra people envisaged, beyond a level where the EPA was already flagging serious concerns on green house gas emissions implications of that a considerably lower level of population with its associated activities, demands and implications.

In the SEA reports “State of the Environment Overview” in section 5.2 it refers to the EPA report as follows

Table 5-1: Summary assessment and future outlook for selected environmental policy areas from the EPA State of the Environment 2020 Report relevance to the draft Plan

Policy Area	Summary Assessment & Outlook	Relationship to the Draft First Revision to the NPF
Climate	<p>Assessment: Very poor / significant environmental and/or compliance challenges to address</p> <p>Outlook: Partially on track to achieving full compliance or measures in place or planned that will improve the situation</p> <p>Ireland has made good progress in deploying renewable energy sources and has an ambitious National Energy and Climate Plan, and Climate Action Plan. However, Ireland continues to have a high level of greenhouse gas (GHG) emissions and remains above its EU emission limit, missing the target for 2020. Should all the actions in the Climate Action Plan be fully adopted and implemented, the targets for 2050 could be achieved. However significant challenges remain to reaching these goals.</p>	<p>Within the EPA latest emissions data (EPA, 2023⁸), in 2022, Ireland GHG emissions were estimated to be 60.76 million tonnes carbon dioxide, which is 1.9% lower (or 1.19 Mt CO₂ eq) than emissions in 2021 (61.95 Mt CO₂ eq) and follows a 5.1% increase in emissions reported for 2021.</p> <p>The EPA's GHG Emissions Projections report for the period 2022-2040 (June 2023) acknowledges that if all of the unmodelled policies and measures in CAP23 and the, as yet, unallocated emissions savings are included, the reduction in emissions could equate to 42% by 2030, which is closer to the 51% target for 2050.</p> <p>Notwithstanding that the EPA report from 2020 states that the CAP targets could be achieved, more recent EPA inventory data shows that Ireland is not on track to achieve these targets. The draft first revision to the NPF sets out increased targets for population growth which will impact Ireland's ability to achieve stated and committed targets in 2030 and beyond, particularly where reduced emissions cannot be secured from renewable sources to keep pace with the demands brought about by increased population growth.</p>

In terms of the SEA's assessment of Key impact pathways – in terms of Climate Factors CF – it states the following on page 140:

- CF: The increase in population will result in direct and indirect increases in GHG with negative effects on CF. Ireland is already missing key climate targets and despite the publication of the Climate Act 2021 as amended and the annual updates to the Climate Action Plan (most recently 2024) the EPA still note that per capita emissions need to reduce significantly. At current per capita emission levels, each additional 500,000 people would contribute an additional 6 million tonnes of CO₂eq annually. Two key sectors which remain challenged are identified as waste and transport, both of which would be impacted by increased population growth. Loss of carbon sinks for development land and emissions of greenhouse gases from construction and operational activities (building material, transport, processes) are also potential impact pathways.

Yet the mitigation proposed to deal with this is incomprehensible, organised as it is across the chapters, and is not appropriately aligned to the identified factors and key impact pathways such as Climate Factors

The monitoring proposals are totally inadequate and vaguely specified particularly in respect of how the necessary data will be collected, the frequency of that collection particularly where the CSO is involved which therefore be based on limited and sporadic sampling, where the funding and tech for the monitoring will be provided from, and where this data will be made regularly available to the public, and key bodies. It is also unclear where responsibility will lie for addressing exceedances, and how such exceedances will be dealt with.

Table 9-4: Draft Proposed Monitoring Programme for the First Revision to the NPF (2024-2030)

SEA Topic	Indicator	Target	Threshold for Remediation	Rationale	Data Source	Frequency	Monitored by
Climate/ Climatic Factors	National emission values for greenhouse gases (GHGs) in the residential and commercial, energy and transport sectors	Target: A net annual decrease in GHG emissions for relevant sectors	Threshold: A net annual increase in GHG emissions for relevant sector	GHG Emissions monitoring is recommended in EPA SEA Guidance. One of the indicators on the Regional Development Monitor	EPA Annual National GHG Emissions Inventory reporting EEA National GHG Inventory	Annual	EPA EEA
Climate/ Climatic Factors	Commuting travel patterns according to Census data.	Target: Increase in proportion of people (as a percentage) commuting using sustainable and active travel since Census 2022.	Threshold: Increase in proportion of people (as a percentage) using private vehicles rather than sustainable and active travel since Census 2022.	One of the indicators on the Regional Development Monitor (Mode of Travel to Work/Education (Census 2016))	Census	Every five years with next due 2027	Central Statistics Office
Climate/ Climatic Factors	Commuting travel patterns within MASPs according to Census data.	Target: Increase in proportion of people (as a percentage) living within MASPs commuting using sustainable and active travel since Census 2022.	Threshold: Increase in proportion of people (as a percentage) living within MASPs using private vehicles instead of sustainable and active travel since Census 2022.	Focusing the commuting data on the areas with higher levels of public transport	Census	Every five years with next due 2027	Central Statistics Office
Climate/ Climatic Factors	National roll-out of renewable energy generation	Target: Achievement of new renewable energy generation targets in line with national	Threshold: % shortfall in new renewable energy generation targets against	Alignment with the CAP	TBD	TBD	SEAI

There is nothing here in the revision of the NPF itself or in the SEA assessment which speaks to the transformative change necessary, and indeed retrenchment in respect of significant GHG emitting behaviours and developments – given the projected and effectively fixed constraint of population increase. In short – other factors need to change to compensate and accommodate that population growth with our carbon budgets – but the NPF entirely fails on this necessary level of ambition.

Biodiversity:

Every point raised above in respect of even greater population growth and consequences for biodiversity and how this is dealt with in the draft revision and in the SEA report can be repeated here. The pressures associated with population growth, in terms of housing, water and waste demands, habitat destruction, habitat fragmentation, pollution etc – are nowhere adequately mitigated and there is no adequate monitoring therefore of necessary mitigation required. The monitoring is by

and large expressed as merely observing effects rather than facilitating active management of mitigation or warning indicators.

Table 9-4: Draft Proposed Monitoring Programme for the First Revision to the NPF (2024-2030)

SEA Topic	Indicator	Target	Threshold for Remediation	Rationale	Data Source	Frequency	Monitored by
Biodiversity, Flora & Fauna	National total number and condition of European Sites that are reported as impacted as a result of conversion of land uses to housing or construction or modification in existing settlements.	Target (with regard to the Article 17 'F' Pressure/Threat Category Code): - Decreased total number of impacted European sites. - Increasing trend in the condition of European sites.	Threshold (with regard to the Article 17 'F' Pressure/Threat Category Code): - Additional European sites reported as impacted. - Deterioration in the condition of European sites currently impacted	Article 17 monitoring recommended by EPA Monitoring Guidance. One of the indicators on the Regional Development Monitor NPF Monitoring Report recommended including an indicator to clarify how the land use plans ensure the implementation of the required targets in relation to the conservation of European sites and protected species. This will be tied back to relevant threat/pressure codes in Article 17.	NPWS - Status of EU Protected Habitats and Species in Ireland Reports under Article 12 (Birds Directive) & Article 17 (Habitats Directive)	Six yearly reporting, next due 2025	NPWS
Biodiversity, Flora & Fauna	Maintenance of connectivity of European Sites	Target: Maintain and restore connectivity of European Sites	Threshold: Connectivity of European Sites is not maintained or restored	SEA Monitoring Report recommended including an indicator to clarify how the land use plans ensure the implementation of the required targets in relation to the conservation of European sites.	National Land Cover Map NPWS Status of EU Protected Habitats and Species in Ireland Report	National Land Cover Map - every five years with next due 2028 NPWS - Six yearly reporting, next due 2025	National Mapping Division of Tailte Éireann in partnership with the EPA NPWS
Biodiversity, Flora & Fauna	Area of green and blue infrastructure nationally (square metres).	Target: To increase in the overall provision of GBI	Threshold: Decrease in the overall provision of GBI	Amendment of original Indicator to move towards monitoring implementation rather than inclusion in	CORINE Project Urban Atlas Land Cover/ Land Use	CORINE Project - every six years with next due 2024	European Commission CORINE Land Cover dataset

There is no proper recognition of the interdependent nature of the climate and biodiversity and pollution crises, and the revision of the national planning framework is effectively a business as usual approach assuming nature will be able to absorb the impacts of what development and demands we propose for the territory on this island.

There is a vague and over-reliance on the Nature Restoration Law to resolve the obligations in respect of Biodiversity – but this falls far short of what is required in reality for sustainable development, or even for what is legally required under s.20C of the 2000 Act which requires:

20C.—(1) Any document, published after the commencement of this Chapter, that amends or replaces the National Spatial Strategy or thereafter revises or replaces the National Planning Framework shall address the matters set out in subsection (2)—

(a) for the purposes of the objectives of the National Planning Framework, and

(b) in respect of a period that is not less than 10 years nor more than 20 years after such publication or in any revision or replacement of the National Planning Framework. (2)

The matters referred to in subsection (1) are as follows:

- (a) the identification of nationally strategic development requirements as respects cities, towns and rural areas in relation to employment, future population change, and associated housing and commercial development requirements;
 - (b) the indication of national infrastructure priorities to address the strategic development requirements referred to in paragraph (a) as regards transportation (including public transportation), water services, waste management, energy and communications networks and the provision of educational, health care, retail, cultural and recreational facilities;
 - (c) the promotion of co-ordination of development between the terrestrial and marine sectors, having regard to Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 **establishing a framework for maritime spatial planning**⁴, and of any measures taken by the State to give effect to that Directive;
 - (d) the conservation of the environment and its amenities, including the landscape and archaeological, architectural and natural heritage;**
 - (e) the promotion of **sustainable settlement and transportation strategies** in urban and rural areas including the **promotion of measures to reduce anthropogenic greenhouse gas emissions and to address the necessity of adaptation to climate change;**
 - (f) the documents to which subsection (3) relates.
- (3) The National Planning Framework shall—

- (a) have regard to the document entitled “**EDSP - European Spatial Development Perspective Towards Balanced and Sustainable Development of the Territory of the European Union**” which was adopted on 11 May 1999 at Potsdam at the close of an Informal Council of EU Ministers responsible for spatial planning in Member States at Potsdam, 10 and 11 May 1999, and
- (b) shall take account of the **provisions of the Regional Development Strategy 2035 published by the Northern Ireland Department for Regional Development** and any document that amends or replaces a document to which this paragraph relates.”

Instead the revision is clearly about facilitation of development – it is not about a framework for planning for the terrestrial territory in accordance with the requirements of s.20C of the 2000 Act, which need to be seen as a balanced and coherent whole not a shopping list of isolated requirements to be addressed. Sustainable development is the overarching requirement, and that cannot be addressed – on the basis of the odd

gesture to nature, water pollution, and air quality, etc, and without careful balancing of not just future effects, but the redress of the serious imbalances already created.

Sustainable development and appropriate treatment for the environment within the Planning Framework:

There is a failure to meaningfully engage with the serious state of the environment in the SEA report across a range of key environmental indicators, biodiversity, water, air, - all set out in Table 5.1⁹ of the SEA report and to bring that to bear on the requirements of the revised NPF both in terms of bespoke initiatives to address those issues in a meaningful way delivering effective turnarounds to a positive status for key indicators, and as horizontal themes throughout the plan, and as powerful constraints against certain proposals, and as powerful yardsticks against which proposals and alternative are evaluated and dismissed or included.

The ongoing commitment to fail in respect of urban waste water is a classic case in point. Ireland has been failing to meet its obligations under the Urban Waste Water Directive for years, and is effectively planning to continue to fail for years to come. It is making conscious choices in respect of levels of investment and priorities, and the NPF is not influencing any change in that approach.

The failures have not happened by accident. They are a function of flawed and inadequate legislation, poor enforcement, and a decision-making culture which prioritises development and pays lip service to sustainability.

The SEA report lists at length legislation and various plans – but entirely fails to engage with their adequacy – and simply relies on them. This is clearly inappropriate as the evidence of the status of the indicators speaks for itself.

Recommendation:

The revision needs to be redrafted substantially to provide for a range of measures and initiatives which specifically target key environmental indicators to improve significantly their status – this needs to include biodiversity, water, air at a minimum

Objectives:

The objectives for the revision in section 1.3 are wholly inadequate and vaguely specified. They are totally inadequate in respect of environmental considerations in particular, and it is significantly missing from the objectives when the granular text is considered. Environment is commoditised – as a amenity or resouce in the context of the only objectives below where you might look to see it address:

⁹ Table 5-1: Summary assessment and future outlook for selected environmental policy areas from the EPA State of the Environment 2020 Report relevance to the draft Plan

1.3 Shared Goals – Our National Strategic Outcomes

Our ambition is to create a single vision, a shared set of goals for every community across the country. These goals are expressed in this Framework as National Strategic Outcomes.

They are the shared benefits which we believe this plan will deliver if implemented according to the objectives above.



Compact Growth

Carefully managing the sustainable growth of compact cities, towns and villages will add value and create more attractive places in which people can live and work. All our urban settlements contain many potential development areas, centrally located and frequently publicly owned, that are suitable and capable of re-use to provide housing, jobs, amenities and services, but which need a streamlined and co-ordinated approach to their development, with investment in enabling infrastructure and supporting amenities, to realise their potential. Activating these strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development, is a top priority.



Enhanced Regional Accessibility

A co-priority is to enhance accessibility between key urban centres of population and their regions. This means ensuring that all regions and urban areas in the country have a high degree of accessibility to Dublin, as well as to each other. Not every route has to look east and so accessibility and connectivity between places like Cork and Limerick, to give one example, and through the Atlantic Economic Corridor to Galway as well as access to the North-West is essential.



Strengthened Rural Economies and Communities

Rural areas play a key role in defining our identity, in driving our economy and our high-quality environment and must be a major part of our country's strategic development to 2040. In addition to the natural resource and food sector potential as traditional pillars of the rural economy, improved connectivity, broadband and rural economic development opportunities are emerging which offer the potential to ensure our countryside remains and strengthens as a living and working community.



High-Quality International Connectivity

Crucial for overall international competitiveness, this will be achieved through key investments in our ports and airports in line with sectoral priorities already defined through National Ports Policy and National Aviation Policy and signature projects such as the Port of Cork - Ringaskiddy Redevelopment and planned investments at Dublin Airport, Dublin Port and Shannon Foynes.



Sustainable Mobility

In line with Ireland's Climate Action Plan and National Sustainable Mobility Policy, we need to progressively change the way we travel, by reducing dependence on cars and increasing the number of journeys taken by sustainable modes of transport, namely walking, cycling and public shared transport.

As well as significantly increasing the modal share of sustainable transport, we need to ensure that where car transport is required, this travel is increasingly taken by electric vehicle. Therefore, there is a need to complement these measures by increasing the proportion of electric vehicles (EVs) in our car fleet to 30% by 2030 which will improve the efficiency of the national car fleet, and to electrify our mobility systems for public transport fleets. By doing this, our cities and towns will enjoy a cleaner, quieter environment free of engine driven transport systems by 2040.



A Strong Economy, supported by Enterprise, Innovation and Skills

This will depend on creating places that can foster enterprise and innovation and attract investment and talent. It can be achieved by building regional economic drivers, by recognising and supporting enterprise specialisations and clusters which can drive economic activity in each region by strengthening linkages between companies of different sizes and stages of development, regionally, nationally and across the island and by supporting opportunities to diversify and strengthen the rural economy, to leverage the potential of places. Delivering this outcome will require the coordination of growth and place making with investment in world class infrastructure, including digital connectivity, and in skills and talent to support economic competitiveness and enterprise growth.



Sustainable Management of Water, Waste and other Environmental Resources

Ireland has abundant natural and environmental resources such as our water sources that are critical to our environmental and economic well-being into the future. Conserving and enhancing the quality of these resources will also become more important in a crowded and competitive world as well as our capacity to create beneficial uses from products previously considered as waste, creating circular economic benefits.



Access to Quality Childcare, Education and Health Services

Good access to a range of quality education and health services, relative to the scale of a region, city, town, neighbourhood or community is a defining characteristic of attractive, successful and competitive places. Compact, smart growth in urban areas and strong and stable rural communities will enable the enhanced and effective provision of a range of accessible services.



Enhanced Amenities and Heritage

This will ensure that our cities, towns and villages are attractive and can offer a good quality of life. It will require investment in well-designed public realm, which includes public spaces, parks and streets, as well as recreational infrastructure. It also includes amenities in rural areas, such as national and forest parks, activity-based tourism and trails such as greenways, blueways and peatways. This is linked to and must integrate with our built, cultural and natural heritage, which has intrinsic value in defining the character of urban and rural areas and adding to their attractiveness and sense of place.



Transition to a Low Carbon and Climate Resilient Society

The Climate Action and Low Carbon Development (Amendment) Act was enacted in 2021 with a commitment to a legally binding target to reduce greenhouse gas emissions by 51% and increase the share of electricity generated from renewable sources to 80% over the decade (2021 – 2030), and to achieve net-zero emissions no later than 2050¹.

This objective will shape investment choices over the coming decades in line with the National Climate Action Plan and the National Adaptation Framework. New energy systems and transmission grids will be necessary for a more distributed, renewables-focused energy generation system, harnessing both the considerable on-shore and off-shore potential from energy sources such as wind, wave and solar and connecting the richest sources of that energy to the major sources of demand.

➤ Recommendation:

Explicit objectives in respect of protection, restoration and conservation of the natural environment and elements of the environment need to be explicitly included in the revision, in accordance with the obligations in section 20C(2) of the 2000 Act at the very least, and to facilitate delivery of our EU environmental obligations.

Alternatives:

There is no proper assessment of alternatives – you need at least to be able to compare GHG emissions and key indicators for the alternatives, and evaluate their compliance with EU law obligations in order to be able to compare them. In short the examination of alternatives falls short of the standards set out in the Advocate General's opinion in the preliminary reference from the Irish Courts in case c-727/22, *FIE v Government of*

*Ireland and Ors*¹⁰. Amongst other highly relevant matters, one of the questions referred concerned the scope of the assessment of reasonable alternatives in connection with the other strand of *Project Ireland 2040*, the NPF: Specifically,

Question 3(a), the Supreme Court wishes to know whether in the environmental report under Article 5 of the SEA Directive an assessment of the preferred option and the reasonable alternatives is to be carried out on a comparable basis once the reasonable alternatives have been identified.

If that is the case, Question 3(b) seeks to clarify whether a distinction can nevertheless be made between the comparison of the alternatives and an in-depth assessment of the selected option. the Advocate General indicated:

In the Advocate General's proposed response she indicated:

“67. The answer to the third question should therefore be that under Article 5(1) and (2) of the SEA Directive the environmental report must contain the information on the reasonable alternatives to the adopted plan or programme dealt with which is necessary

- to determine compliance with the requirements under other rules relating to the assessment of alternatives and
- to be able to understand how the effects on the environment have been taken into account in the decision to select the adopted plan or programme in comparison with the alternatives dealt with.

It is submitted the information falls far short of this.

The relationship of the NPF and the NDP

The extent to which the NPF provides the framework for future development consents – and the relationship to the NDP is even more vexed under this new revision – with even greater reliance placed on the NDP to provide for greater clarity on the development which is to happen. Therefore the questions raised in the preliminary reference c-722/22 highlighted above, will have a particular significance on the extent to which the NPF revision and associated NDP will need to be assessed and considered together, and/or the assessment requirements for same.

¹⁰ OPINION OF ADVOCATE GENERAL KOKOTT, 21 Mar 2024, c-727/22, FIE v Government of Ireland, EU:C:2024:266

The relationship of the NMPF and the NDP

The outstanding and unresolved issues with the National Marine Planning Framework, NMPF, and its failures to conform to the requirements of the Maritime Spatial Planning Directive (MSPD) are entirely unresolved. This is going to compound the issues in future consents and in developing Development Plans etc on how these two documents need to influence and be accommodated. The Government has continued to ignore the issues with the NMPF in how it was not developed as a spatial plan in accordance with the MSPD including in respect of pursuing an ecosystems based approach, and reflecting the important linkages with the Marine Strategy Framework Directive the Environmental Pillar of the EU's Integrated Maritime Strategy, and in what it provides which is simply not in accordance with Article 8.1 of the Directive which requires a spatial and temporal plan of existing and future uses and activities – which has been developed in accordance with the methodology and principles set out in the MSPD. It is an entirely unmanagement framework – rather than a spatial plan – comprised of over 60 objectives, many of which are incompatible. How any decision-maker, developer or member of the public could determine whether something is compatible with the NMPF is going to be a total nightmare. This is now compounded by a revised NPF which is in no way constrained by any concept of sustainable development, or even GHG emissions and carbon budgets.

In the context, respectfully it is hard to credibly engage with what is proposed, which is a wish list of pet projects – rather than a coherent planning framework for the future sustainable development of the territory out to 2040 and to place it in good stead for beyond that – a concept integral to the UN's definition of sustainable development on foot of the [United Nations Brundtland Commission](#) which is:

“meeting the needs of the present without compromising the ability of future generations to meet their own needs.”

The disruptive potential of Part 3 of the new Planning Bill – and extensive powers afforded Government and Ministers

The impact and implications of Part 3 of the Planning Bill are nowhere adequately considered in the revision or the SEA report. Government and Ministers are afforded extraordinary powers to effectively dictate and disrupt what is proposed here, and with no effective Oireachtas Oversight, and in the context of attempts to constrain public accountability before the Courts with the highly regressive revision to JR rules in Part 9 of the bill.

National Planning Statements, Expedited Variations all potentially will result in a chaotic effect on delivery and orderly planning and development.

Of particular concern is s67 in the current Seanad Committee stage version of the Bill – which provides:

“Urgent direction requiring chief executive to vary development plan 67.

(1) This section applies where the Minister is satisfied that—

(a) an event or situation with significant national, regional or strategic implications has occurred or is likely to occur,

(b) it is necessary for the Government to take action as a matter of urgency for the purpose of dealing with the implications or likely implications of the event or situation concerned, and

(c) the action to be taken includes the variation of a development plan.”

The wording of this provision is extraordinary and arguably could be used to effectively facilitate anything. No reference is made anywhere in this s.67 to any constraint on compliance with the NPF or even any assessment of the implications of the Direction on the assessment of the NPF.

The NPF revision is potentially not worth the paper it is written on in the context of such proposed provisions.

The delays on development consequent on Part 9 of the Planning Bill if enacted.

The revision outlines and assumes certain developments. But there has been no consideration of the delays in the development envisaged which will result from Part 9 of the Planning and Development Bill, 2023 if enacted. Multiple experts have warned that the changes to the rules in Judicial Review are going to add serious complexity to legal cases, with complex issues around legal standing, scope of review, adequacy of remedies, fairness and equity of proceedings and the safeguards required against legal costs being prohibitively expensive for applicants to Judicial Review. During the Pre-legislative scrutiny of the Bill – legal experts warned of delays arising from these changes of years. The published bill which emerged since has only compounded those concerns, with the additional issues arising from deeply problematic set of proposals on legal costs, including one to impose scale fees on applicant lawyers, and to limit the costs an applicant can recover when they win, unless they meet a very high and problematic threshold. In short – you could win your case but still lose your shirt in terms of own costs. This is in the context of legal architecture on access to justice in environmental decision-making which is unparalleled in terms of its qualitative requirements and protections, and which is further reinforced by Human Rights law. The potential implications for complex legal proceedings and escalation in various fora not just in the Irish Courts, but including before the EU Commission, the EU Court of Justice Luxembourg, the Aarhus Convention Compliance Committee in the UN's Palais des Nations in Geneva, and the European Court of Human Rights, Strasbourg is a chilling

prospect. Such issues will bring uncertainty and delay into the system and the negative consequences for the advancement of the NPF have not been considered at all here.

Such delays are particularly unacceptable in the context of the ongoing Housing crisis and the climate and biodiversity crises.

➤ **Recommendation:**

The status quo on rules on JR should be maintained and Part 9 of the Planning Bill in its current form should not be enacted, providing instead for certainty and predictability in respect of rules on JR at a time when delays which will result from the changes proposed can be ill-afforded. Such delay from these changes will have negative consequences for development envisaged under the revised NPF, including development required to mitigate effects of other developments – eg waste water treatment.

Delays in delivery of Offshore Renewable Energy consequent on ch 4, Pt 4 of the Planning Bill

There is significant expectation and reliance on delivery of offshore renewable energy, ORE to delivery energy requirements, and to decarbonise our energy production.

There is no recognition of the ongoing failures in the Irish legislative and administrative processes which have led to delays and uncertainties in advancing these projects in a sustainable and legally compliant way.

The issue is now further compounded with extraordinary provisions in chapter 5 Pt 4 of the Planning Bill, which allow for extensive changes to consents including for the duration of permissions. This is a really problematic incentive to developers to sit on permissions and extend them, in order to maximise the opportunities for technological developments and associated cost reductions, impacting on their bottom line. Also as we have seen in Housing, the more constrained supply is, the more desperate Government is and the more concessions it grants to developers. Exactly as with Housing the ORE market is increasingly disposed towards wealth creation rather than delivery. The new Planning Bill exacerbates this significantly, as do other changes in the Maritime Area Planning Act. The implications therefore of ORE targets not been met needs to be more realistically assessed as part of the revised NPF.

Those issues will of course be further compounded by the effect of the uncertainties and delays arising from the changes to Judicial Review rules proposed in Part 9 of the bill. Uncertainty is toxic to investment, and the bill is a recipe for that – with the huge extent of changes proposed, the extent of errors still in the bill, the compromised legislative process, and under-resourced decision-makers. The transitional arrangements mean the new legislation and new regulations will be run in parallel for a time with the existing provisions under the 2000 Act and its regulations. Anyone with any

sense can see the potential for flawed decision-making is significantly increased, and with that delays compounded then by satellite litigation in the Courts. There is simply no reflection of this risk and issue within the revised NPF.

The missed opportunities for a qualitative approach to the outcomes from the revision:

It is also extraordinary the despite the multiple fast tracked changes to planning legislation enacted over the lifetime of this Government – they made no effort to improve the provisions in respect of the NPF before they sought to bank a revision of it before the election.

Conclusion:

I thank the Department for its consideration of these remarks which are as always constructively intended, albeit frankly conveyed here. But in conclusion it is submitted, the revision is not fit for purpose, and simply not fit to guide our planning through to 2040.

Any queries on this submission should be directed to:

A [REDACTED]